



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

MONDAY, AUGUST 29, 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://cityofberkeley-info.zoomgov.com/j/1606057708>. 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 **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and Enter Meeting ID: **160 605 7708**. 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.

AGENDA

Roll Call

Public Comment

Review of Agendas

- 1. Approval of Minutes: July 11, 2022**
- 2. Review and Approve Draft Agenda:**
 - a. 9/13/22 – 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 Tuesday, September 6, 2022

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 Thursday, August 25, 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.

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

MONDAY, JULY 11, 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: **886 0867 4408**. 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.

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

Public Comment – 3 speakers

Review of Agendas

1. Approval of Minutes: June 27, 2022

Action: M/S/C (Wengraf/Hahn) to approve the minutes of 6/27/22.

Vote: All Ayes.

2. Review and Approve Draft Agenda:

a. 7/26/22 – 6:00 p.m. Regular City Council Meeting

Action: M/S/C (Arreguin/Wengraf) to approve the agenda of 7/26/22 with the changes noted below.

- Item Added: Charging Stations at Tuolumne Camp (City Manager)
- Item 17 Negotiating Agreement (City Manager) – revised recommendation submitted
- Item 25 Youth Commission (Commission) – removed from the agenda per Rules of Procedure for City Manager companion report
- Item 26 Relinquishment Item (Taplin) – removed from the agenda
- Item 27 Living Wage Act (Robinson) – Councilmember Hahn added as a co-sponsor
- Item 28 Personal Delivery Device (City Manager) – referred to HLEEC Committee
- Item 31 Additional Meetings (Mayor) – scheduled for 7/26 Consent Calendar
- Item 32 Outcomes Based Funding (Bartlett) – referred to Budget & Finance Committee

Order of Items on Action

Item 29 Surveillance Technology

Item 30 Police Equipment

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

- July 19 Worksession cancelled; request for Measure O presentation

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: 1 speaker. No action taken.

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

Action: 3 speakers. Discussion of legislative proposals regarding remote participation. Discussion and preference for continuing to meet in a virtual-only setting until conditions improve.

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

- None

Adjournment

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

Vote: All Ayes.

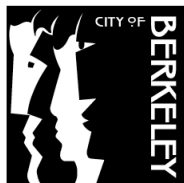
Adjourned at 3:22 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee held on July 11, 2022.

Mark Numainville, City Clerk

Communications

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DRAFT AGENDA
BERKELEY CITY COUNCIL MEETING
Tuesday, September 13, 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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Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244.

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

*To join by phone: Dial 1-669-254-5252 or 1-833-568-8864 (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.*

1. Pledge of Allegiance to the Flag

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.

Recess Items

- 1. Contract No. 084534-1 Amendment: NextGen Health Care Information Systems, Inc. for Electronic Health Records**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to amend Contract No. 084534-1 with NextGen Healthcare Information Systems, Inc., increasing the amount by \$188,955 for a total contract value not to exceed \$1,008,291.20 and extending the term from September 30, 2010 through June 30, 2024.
Financial Implications: See report
Contact: LaTanya Bellow, Information Technology, (510) 981-6500
- 2. Contract No. 31900288 Amendment: Disability Access Consultants for ADA Transition Plan**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to execute an amendment to Contract No. 31900288 with Disability Access Consultants (DAC) for Americans with Disabilities Act (ADA) Transition Plan and On-Call ADA accessibility consulting services, increasing the contract amount by \$122,000 for a total not-to-exceed amount of \$606,800 and extend the contract term to June 30, 2023.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
- 3. Contract No. 32100194 Amendment: Bay Cities Paving & Grading, Inc. for construction and repairs**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to amend Contract No. 32100194 with Bay Cities Paving & Grading, Inc. for work on the Street Rehabilitation FY 2021 Project, Specification No. 21-11422-C, increasing the current contract amount by \$260,000, for a total amount not to exceed \$4,556,733.
Financial Implications: See report.
Contact: Liam Garland, Public Works, (510) 981-6300

Consent Calendar

- 4. Minutes for Approval**
From: City Manager
Recommendation: Approve the minutes for the Council meetings of July 7 (closed), July 12 (closed and regular), July 18 (closed), July 26 (special and regular) and August 3 (special).
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900

Consent Calendar

- 5. Contract: Municipal Resource Group for Addressing Impacts Resulting from Great Resignation**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract, with any amendments, with Municipal Resource Group (MRG) for professional services needed to respond to the impacts within the City as a result of the Great Resignation. Total contract direct costs will not exceed \$87,675.
Financial Implications: General Fund - \$87,675
Contact: LaTanya Bellow, City Manager's Office, (510) 981-7000
- 6. Urgency Ordinance for Leasing the Real Property at 1720 San Pablo Avenue**
From: City Manager
Recommendation: Adopt an Urgency Ordinance to enter into a lease for the real property located at 1720 San Pablo Avenue, Berkeley, CA for a term of 5 years.
Financial Implications: See report
Contact: Peter Radu, City Manager's Office, (510) 981-7000
- 7. Contract No. 32100053 Amendment: Orsolya Kuti, DVM to Provide On-site Veterinary Services for Berkeley Animal Care Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32100053 with Orsolya Kuti for on-site veterinary services for Berkeley Animal Care Services, increasing the contract amount by \$8,000 for a new total not to exceed amount of \$228,000, and extending the contract term to September 14, 2023.
Financial Implications: See report
Contact: Peter Radu, City Manager's Office, (510) 981-7000
- 8. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on September 13, 2022**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: Various Funds - \$440,000
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 9. Request for Proposal for Project Homekey**
From: City Manager
Recommendation: Adopt a Resolution authorizing City Manager to: 1. Release a Request for Proposals (RFP) for a Homekey Round 3 Project; and 2. Consider a reservation of up to \$8.5M in General Funds collected pursuant to Measure P, and/or other funding source, to support a future Homekey project.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

Consent Calendar

- 10. Contract: Tiana Sanchez International LLC for HHCS Equity Consultant**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Tiana Sanchez International, LLC. (Contractor) to provide equity consulting services for the Department of Health, Housing and Community Services (HHCS) from October 1, 2021 to May 30, 2023 in an amount not to exceed \$120,000.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 11. Contract No. 31900043 Amendment: Kings View Professional Services for Mental Health Reporting Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 31900043 with Kings View Professional Services to provide mental health financial reporting services through June 30, 2024 in an amount not to exceed \$220,628.
Financial Implications: Mental Health Realignment-Administration Account - \$57,100
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 12. Accept Future of Public Health Funds from the State of California**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to submit grant agreements to the State of California, to accept the grants, and to execute any resultant revenue agreements and amendments for the Future of Public Health program for an amount of \$912,213 for the Fiscal Year 2023.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 13. Donation of Painting Services from MB Jessee Painting, Inc.**
From: City Manager
Recommendation: Adopt a Resolution accepting the donation of painting services and materials from MB Jessee Painting, Inc., estimated to be a value of \$8,994, to paint interior areas of 1900 6th Street building in accordance with Administrative Regulation 3.19, Donations to the City from Individuals of Outside Organizations.
Financial Implications: \$8,994 (Donation)
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

Consent Calendar

14. Contract No. 8392 Amendment: Innovative Claim Solutions (ICS) for claims administration of the City's Workers' Compensation Program

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to extend Contract No. 8392 with Innovative Claims Solutions (ICS) to provide third-party claims administrative services, Medicare, Medicaid, and SCHIP Extension Act (MMSEA) Section 111 Mandatory Reporting to the Centers for Medicare & Medicaid Services (CMS), for an additional term of three years from July 1, 2022 through June 30, 2025 at a decreased annual rate of \$570,000 for a total contract amount of \$7,393,611 for year 2023.

Financial Implications: See report

Contact: Donald E. Ellison, Human Resources, (510) 981-6800

15. AHEAD, Inc: Using the California Department of General Services' (DGS) Software Licensing Program (SLP) for Software License Purchases

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to increase spending authority with AHEAD, Inc. ("AHEAD") for the purchase of Varonis software licenses and professional services, utilizing pricing and contracts, amendments, and extensions from the California Department of General Services (DGS) Software Licensing Program (SLP) increasing the amount by \$71,481 for a total amount not-to-exceed \$236,305, and the period beginning September 29, 2022 through September 28, 2023.

Financial Implications: IT Cost Allocation Fund - \$71,481

Contact: LaTanya Bellow, Information Technology, (510) 981-6500

16. Lease Agreement: 80 (North Building), 82/84 & 90 Bolivar Drive in Aquatic Park with Waterside Workshops

From: City Manager

Recommendation: Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement with Waterside Workshops to use the 80 (North Building), 82/84 & 90 Bolivar Drive in Aquatic Park for a lease term anticipated to begin November 1, 2022 and ending November 1, 2031.

Financial Implications: See report

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

17. Donation: Memorial Bench at the Cesar Chavez Park in memory of Walt and Trudee Rowson

From: City Manager

Recommendation: Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at the Cesar Chavez Park at the Berkeley Marina in memory of Walt and Trudee Rowson.

Financial Implications: \$3,400 (Donation)

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

Consent Calendar

- 18. Donation: Memorial Bench at the Cesar Chavez Park in memory of Don Rothenberg**
From: City Manager
Recommendation: Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at the Cesar Chavez Park at the Berkeley Marina in memory of Don Rothenberg.
Financial Implications: \$3,400 (Donation)
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 19. Donation: Memorial Bench at the Indian Rock Park in memory of Dave Altman**
From: City Manager
Recommendation: Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Indian Rock Park at the Berkeley Marina in memory of Dave Altman, a longtime Berkeley rock climber and a treasured member of the rock-climbing community.
Financial Implications: \$3,400 (Donation)
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 20. Contract: Bellingham Inc. to replace and repair docks at the Berkeley Marina**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract with Bellingham Inc. to repair and replace docks at the Berkeley Marina in a total amount not-to-exceed \$550,000, which includes a contract amount of \$480,000 and a 14.58% contingency in the amount of \$70,000.
Financial Implications: Marina Fund - \$550,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 21. Revenue Grant: California Office of Traffic Safety (OTS) for the 2023 "Selective Traffic Enforcement Program (STEP) Grant**
From: City Manager
Recommendation: Adopt a Resolution authorizing the Chief of Police to accept the "Selective Traffic Enforcement Program (STEP)" grant and enter into the resultant grant agreement and any amendments, with the California Office of Traffic Safety. This OTS grant is for \$180,000 for the period of October 1, 2022 through September 30, 2023, which is Federal Fiscal Year 2023
Financial Implications: See report
Contact: Jennifer Louis, Police, (510) 981-5900
- 22. Adopting the Vision 2050 Program Plan**
From: City Manager
Recommendation: Adopt a Resolution adopting the Vision 2050 Program Plan, a plan for the City to achieve sustainable and resilient infrastructure by 2050.
Financial Implications: None
Contact: Liam Garland, Public Works, (510) 981-6300

Consent Calendar

23. 2022 Vision Zero Program Grant Applications

From: City Manager

Recommendation: Adopt three Resolutions:

1. Certifying that the Berkeley Vision Zero Action Plan, the Berkeley Bicycle Plan, and the Berkeley Pedestrian Plan, collectively meet the Safe Streets and Roads for All grant program requirement for a Comprehensive Safety Action Plan.
2. Authorizing the City Manager to submit a grant application to the federal Safe Streets and Roads for All (SS4A), accept the grant awarded, and execute any resultant agreements and amendments.
3. Authorizing the City Manager to submit a grant application to the federal Reconnecting Communities Pilot Grant Program (RCP), accept the grant awarded, and execute any resultant agreements and amendments.

Financial Implications: See report

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

24. Red Curbs and Visible Signage

From: Disaster and Fire Safety Commission

Recommendation: The Disaster and Fire Safety Commission (“Commission” or “DFSC”) respectfully requests that Council immediately take the following remedial actions to improve emergency vehicle access and residents’ ability to evacuate in the event of a wildfire, while we await implementation of more comprehensive long-term actions such as the Safe Passages program. In identified high fire risk areas (Fire Zones 2 and 3) and in other high-risk areas, such as where hazardous chemicals are stored or used: 1. Inspect, fix or replace all parking restriction signage as necessary; 2. Red curb all fire hydrant areas to the maximum extent allowed by law; and 3. Direct the Fire Department and Public Works to identify areas that could be pinch points for fire trucks to travel.

Financial Implications: See report

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

25. Appointment of Judy Appel to Mental Health Commission for the City of Berkeley

From: Mental Health Commission

Recommendation: Adopt a Resolution appointing Judy Appel as a representative of the Special Public Interest Category (family member), to complete her first 3- year term beginning September 14, 2022 and ending September 13, 2025.

Financial Implications: None

Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400

Council Consent Items

- 26. Pacific Center for Human Growth: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**
From: Mayor Arreguin (Author)
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$1,000 per Councilmember including \$1,000 from Mayor Arreguin to the Pacific Center for Human Growth, for the planning and production of a historical quilt to honor their 50th anniversary. Funds would be relinquished to the City's General Fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguin and any other Councilmembers who would like to contribute.
Financial Implications: Mayor's Discretionary Funds - \$1,000
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 27. Efficiency Unit Ordinance** (*Reviewed by the Land Use, Housing, & Economic Development Committee*)
From: Councilmember Taplin (Author), Councilmember Robinson (Co-Sponsor)
Recommendation: Refer to the City Manager and Planning Commission to adopt objective standards for Efficiency Units pursuant to California Housing and Safety Code § 17958.1, developing an ordinance to amend the Berkeley Municipal Code modeled after standards implemented in the City of Davis, the City of Santa Barbara and other cities.
Policy Committee Recommendation: Approve the item with a positive recommendation.
Financial Implications: Staff time
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 28. Resolution in Support of High-Quality, Equitable Healthcare Services at UCSF Children's Hospital Oakland**
From: Councilmember Taplin (Author)
Recommendation: Adopt a Resolution in support of patients, nurses, doctors, caregivers and other employees at UCSF Children's Hospital Oakland; and send resolution to the UC Board of Regents, UC Office of the President, and UCSF Health.
Financial Implications: None
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 29. Berkeley Youth Alternatives (BYA) Charity Golf Classic: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds**
From: Councilmember Taplin (Author)
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$200 from Councilmember Taplin, to support the 4th Annual Charity Golf Classic hosted by Berkeley Youth Alternatives (BYA).
Financial Implications: Councilmember's Discretionary Funds - \$200
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Council Consent Items

- 30. California Marriage Equality Resolution (Prop 8 Repeal)**
From: Councilmember Taplin (Author), Councilmember Droste (Co-Sponsor), Councilmember Wengraf (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor)
Recommendation: Adopt a Resolution Urging the California Legislature to Place a Measure on the Ballot to Repeal Article I Section 7.5 of the State Constitution, a.k.a. Proposition 8; and send copies to the Offices of the Speaker of the Assembly, Senate President Pro Tempore, and Governor.
Financial Implications: None
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 31. Referral: Keep Innovation in Berkeley** (*Reviewed by the Land Use, Housing, & Economic Development Committee*)
From: Councilmember Robinson (Author), Councilmember Taplin (Co-Sponsor), Mayor Arreguin (Co-Sponsor), Councilmember Harrison (Co-Sponsor)
Recommendation: Refer to the City Manager and the Planning Commission to consider and return to Council with Zoning Ordinance amendments, codified performance standards, and other actions to encourage the growth and retention of Research & Development (R&D) in Berkeley. Staff and the Commission should explore: 1. Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C), West Berkeley (C-W), University (C-U), and Downtown Berkeley (C-DMU) with a Zoning Certificate, subject to performance standards. a. Performance standards should regulate and mitigate potential impacts on quality of life, public health, and environmental health, such as noise, odors, fumes, vibrations, dust, light pollution, hours of operation, and disposal and storage protocols for flammable, combustible, chemical, and hazardous substances. 2. Updating the “District Purpose” sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate. 3. Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements. 4. Reviewing Berkeley Municipal Code 23.206.080 to ensure that language regulating Biosafety Level (BSL) Classes 1-4 is clear and consistent with regulations in neighboring jurisdictions and other cities that support a broad range of R&D. Consider repealing the section or amending it to permit BSL-2 in all districts where research and development facilities or laboratories are permitted. 5. Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process.
Policy Committee Recommendation: Approve the item with a positive recommendation.
Financial Implications: See report
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

Council Consent Items

- 32. Relinquishment of Council Office Budget Funds to the General Fund and Grant of Such Funds for the Center for Independent Living's 50th Anniversary**
From: Councilmember Robinson (Author), Councilmember Bartlett (Author)
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 each from Councilmember Robinson and Councilmember Bartlett, to the Center for Independent Living to fund a Berkeley mural project, street festival, CIL open house, three-day conference on independent living, and other activities for their 50th Anniversary.
Financial Implications: Councilmembers' Discretionary Funds - \$500
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 – Old Business

- 33. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers** *(Continued from July 26, 2022. Item contains revised and supplemental materials)*
From: City Manager
Recommendation: Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.
Financial Implications: None
Contact: Jennifer Louis, Police, (510) 981-5900; LaTanya Bellow, City Manager's Office, (510) 981-7000

Action Calendar – New Business

- 34. An Ordinance Repealing Chapter 12.76 of the Berkeley Municipal Code and Repealing Ordinance 7643-NS.**
From: City Manager
Recommendation: Adopt first reading of an ordinance repealing Chapter 12.76 of the Berkeley Municipal Code and repealing Ordinance 7643-NS.
Financial Implications: None
Contact: Farimah Brown, City Attorney, (510) 981-6950, Dee Williams-Ridley, City Manager, (510) 981-7000, Paul Buddenhagen, City Manager's Office, (510) 981-7000
- 35. Taking Action on the City of Berkeley's Commitment to Abortion Access**
From: Peace and Justice Commission
Recommendation: Adopt a Resolution Taking Action on the City of Berkeley's Commitment to Abortion Access.
Financial Implications: Staff time
Contact: Okeya Vance-Dozier, Commission Secretary, (510) 981-7100

Council Action Items

- 36. Equitable Safe Streets and Climate Justice Resolution** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*
From: Councilmember Taplin (Author)
Recommendation: Adopt a resolution committing the expenditure of City and state/federal matching/recurring funds on city-maintained roads, sidewalks, and bike lanes to accelerate safety improvements in a manner consistent with City, State, and Federal policy on street safety, equity, accessibility, and climate change; refer to the City Manager fully integrate Complete Streets design as defined by the NACTO Urban Street Design Guide in the default engineering standard for city streets; restrict city use of the Manual on Uniform Traffic Control Devices (MUTCD) to only documented cases that require its use for compliance with Federal/State regulations; in all other cases, restrict use of the MUTCD to "engineering judgment."
Policy Committee Recommendation: Send the item to Council with a positive recommendation.
Financial Implications: See report
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Action Calendar – Policy Committee Track Items

- 37. Ordinance Amendment: Correction to the COVID-19 Emergency Response Ordinance, BMC Chapter 13.110.**
From: Mayor Arreguin (Author)
Recommendation: Adopt the first reading of an Ordinance correcting BMC Chapter 13.110, the COVID-19 Emergency Response Ordinance, to clarify the effect of Ordinance No. 7,762-N.S. upon tenant protections that were inadvertently omitted during the last update of BMC Chapter 13.110.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 38. Information Report Request: Alternatives to Chemical Agents for Response to Violent Large-Scale Crowd Scenarios**
From: Councilmember Taplin (Author)
Recommendation: Direct the City Manager to study alternatives to chemical agents to improve the Berkeley Police Department's ability and capacity to respond to and de-escalate large-scale crowd scenarios, including violent militias, and return a report to the City Council by the end of Fiscal Year 2023. Report should include but not be limited to the following factors: -BPD intelligence-gathering capabilities on potentially violent large crowd scenarios; - BPD response protocols including procedures for protecting bystanders, peaceful protesters, and businesses; -Tools and tactics available for crowd control in potentially violent scenarios; -Mutual aid and support from other local/state/federal agencies; -Applicable state and federal laws on crowd control and First Amendment rights.
Financial Implications: Staff time
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Information Reports

- 39. City Council Short Term Referral Process – Quarterly Update**
From: City Manager
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 40. Federal Economic Relief Spending in Berkeley**
From: City Manager
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 41. Sanctuary City Contracting Compliance Report for FY 2022**
From: City Manager
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 42. Environment and Climate Commission 2022 Work Plan**
From: Environment and Climate Commission
Contact: Billi Romain, Commission Secretary, (510) 981-7400

Information Reports

43. Planning Commission Fiscal Year 2022-23 Work Plan From: Planning Commission

Contact: Alene Pearson, Commission Secretary, (510) 981-7400

Public Comment – Items Not Listed on the Agenda

Adjournment

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply:*

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

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Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street as well as posted on the City's website at <https://berkeleyca.gov/>.

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Tel: 510-981-6900, TDD: 510-981-6903, Fax: 510-981-6901
Email: clerk@cityofberkeley.info

Libraries: Main – 2090 Kittredge Street,
Claremont Branch – 2940 Benvenue, West Branch – 1125 University,
North Branch – 1170 The Alameda, South Branch – 1901 Russell

COMMUNICATION ACCESS INFORMATION:

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



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

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Disaster and Fire Safety Commission

CONSENT CALENDAR  
September 13, 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: Red Curbs and Visible Signage

RECOMMENDATION

The Disaster and Fire Safety Commission (“Commission” or “DFSC”) respectfully requests that Council immediately take the following remedial actions to improve emergency vehicle access and residents’ ability to evacuate in the event of a wildfire, while we await implementation of more comprehensive long-term actions such as the Safe Passages program.

In identified high fire risk areas (Fire Zones 2 and 3) and in other high-risk areas, such as where hazardous chemicals are stored or used:

1. Inspect, fix or replace all parking restriction signage as necessary;
2. Red curb all fire hydrant areas to the maximum extent allowed by law; and
3. Direct the Fire Department and Public Works to identify areas that could be pinch points for fire trucks to travel.

It is important that residents understand parking restrictions in the City and State Vehicle Codes. The City should lessen any confusion that might be caused by poorly maintained, misplaced or unclear signs or curbs. The simple step of a periodic inspection of existing parking visual cues (signage, red curbs, etc.) has a profound impact on the safety of all Berkeley residents at any time, but at this time, this effect is enhanced enormously when we are experiencing wildfire conditions tied to severe drought. This proposed periodic review is something that needs to be done and that can be done easily and quickly to reduce the increasing stress residents feel about fire danger and evacuation routes.

FISCAL IMPACTS OF RECOMMENDATION

The Commission is not privy to the budget or plans from Public Works Department and other departments, however, given the increasing fire danger, we ask that completion of this initiative be a priority. Use of Measure FF funds should be considered if necessary to expedite implementation of this initiative for the 2022 fire season.

### CURRENT SITUATION AND ITS EFFECTS

On June 22, the commission passed a motion to recommend remedial actions to improve emergency vehicle access and residents' ability to evacuate in the event of an emergency.

Motion: Dean, second: Bradstreet, Vote: 8 Ayes: Bedolla, Dean, Bradstreet, Cutler, Simmons, Degenkolb, Rader, Stein; 0 Noes; 0 Absent;; 0 Abstain:

### BACKGROUND

Signage in the Berkeley hills in particular is in various states of disrepair. Without clear signage, in these and other high-risk areas of the City, residents and visitors tend to ignore signage and park in prohibited areas. Parking in restricted areas could result in blocking fire trucks' ability to get to an emergency and could prevent residents from egress in the event of wildfire. While there is existing law that governs parking near hydrants regardless of red curbing, that tends to be ignored.

As such, red curbing to the maximum distance around hydrants to the extent allowed by law will serve as a reminder of the parking restriction and allow for the fire department to access hydrants in case of fire. Lastly, we ask for further interdepartmental discussions around identifying pinch points for fire trucks where red curbing those pinch points would allow for fire truck access in case of emergencies. In cases where there is no sidewalk, the edge of the asphalt could be painted to serve the same purpose.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There is no direct environmental impact of this recommendation.

### RATIONALE FOR RECOMMENDATION

The rationale is to improve emergency vehicle ingress during common emergencies and in the event of wildfire, and to improve emergency public egress in case of wildfire while we await a larger discussion around the Safe Passages program.

### ALTERNATIVE ACTIONS CONSIDERED

There is no alternative to improving existing signage and red-curbing around fire hydrants other than delayed or no action. Not red curbing the areas around the fire hydrants and focusing on parking enforcement is another possible approach but would require substantially increased parking enforcement.

### CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report. The Fire Department has already begun to address replacement of all existing "No Parking" signs that have faded and the repainting of all existing Red Curbs in Fire Zones 1, 2, and 3.

Funding has been allocated within Measure FF to initiate this project. The Fire Department will evaluate what the one-time fees will be to update the painting of curbs, replacement of signs, and then analyze continual maintenance costs.

The Safe Passages Project is aimed at mitigation of wildfire risks by supporting Berkeley's Emergency Evacuation Plan and helping to keep emergency ingress and egress routes accessible.

CONTACT PERSON

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







Mental Health Commission

CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
 From: Mental Health Commission  
 Submitted by: Dr. Margaret Fine, Mental Health Commission Chair  
 Subject: Appointment of Judy Appel to Mental Health Commission for the City of Berkeley

RECOMMENDATION

Adopt a Resolution appointing Judy Appel as a representative of the Special Public Interest Category (family member), to complete her first 3- year term beginning September 14, 2022 and ending September 13, 2025.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The Mental Health Commission is authorized to be composed of thirteen members. However, there are presently five vacancies on the Commission. The Mental Health Commission is actively seeking candidates with the ability to fulfill the state law duties for Commissioners, including reviewing and evaluating the community's needs, services, facilities and special problems. Approval of the recommended action will fill one vacancy and allow the Commission to move one step closer to having a full and diverse complement of commissioners.

BACKGROUND

California State law requires that appointments to the Mental Health Commission meet specific categories, who may serve up to nine years consecutively. The general public interest category may include anyone who has an interest in and some knowledge of mental health services. The special public interest category includes direct consumers of public mental health services and family members of consumers, which together must constitute at least fifty percent or nine of the commission seats. Direct consumers and family members shall each constitute at least 20% of the commission membership.

The Mental Health Commission nominated Judy Appel as a special public interest consumer applicant for appointment to the Mental Health Commission for the City of Berkeley for a three-year term. She grew up with a sister who was close in age and who

had severe psychiatric disabilities. She was in mental health programs and hospitals much of her life, so Judy has that personal experience which in many ways that informs her professional experience. Her sister died several years ago.

Judy Appel is a long-time Berkeley resident with a deep commitment to supporting Berkeleyans living with mental health and substance use issues and disabilities. She currently serves on the Board of Directors for the Ashby Village and is a non-profit organizational development consultant. She is committed to addressing diversion for people calling 911 who need emergency mental health and substance use services in the community and moreover, avoiding involvement in the criminal legal system and incarceration. She has worked with very diverse populations of people impacted by mental health and substance use challenges, including for people experiencing homelessness.

In addition, Judy is a strong supporter of mental health and substance use services for young people in need. She was elected to the School Board for Berkeley Unified School District in 2012 and 2016 and served two times as President. She provided policy direction for educational instruction with a focus on closing the opportunity gap for students of color and low-income students. The School Board oversees a budget of \$160M from local, state, and federal sources and directs budgeting and fiscal oversight. She has lead School Board efforts to implement restorative justice, social-emotional learning, and trauma-informed practices at multiple school sites.

Further Judy served as a Senior Program Officer and Director of Special Projects for the Jonathan Logan Family Foundation. She managed a broad range of education portfolios and grantees focused on social justice projects, equity, and inclusion. She also leveraged an extensive network to secure involvement from community leaders and influencers on foundation initiatives, including a broad range of local, national, and global grantees.

The Mental Health Commission passed the following motions at the June 23, 2022 meeting:

M/S/C (Fine, Pritchett) Motion to nominate Judy Appel to the Mental Health Commission  
Ayes: Fine, Jones, Opton, Pritchett Noes: None; Abstentions: None; Absent: Escarcega; Taplin

#### ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Approval of the recommended action will allow the Mental Health Commission to move one step closer to having a full and diverse complement of commissioners to review and evaluate the community's mental health needs, resources, and programs.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager takes no position.

CONTACT PERSON

Jamie Works-Wright, Commission Secretary, HHCS, 510-981-7721

Attachments:

1: Resolution

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

APPOINTMENT OF JUDY APPEL TO THE MENTAL HEALTH COMMISSION

WHEREAS, membership of the Mental Health Commission is composed of thirteen appointments by the City Council as a whole, including one appointment by the Mayor (*or designee*), six special public interest appointments, and four general public interest appointments; and

WHEREAS, with the ongoing implementation of the Mental Health Services Act, the City of Berkeley will need to have a full complement of diverse appointees to the Commission to review and evaluate the community's mental health needs, resources, and programs and to fulfill its mandate; and

WHEREAS, Ms. Judy Appel has an investment in the mental health community and has family lived experience,

WHEREAS, the Mental Health Commission at its June 23, 2022 meeting recommended appointments of Judy Appel.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council appoint Judy Appel as a representative of the Special Public Interest family member category, to complete her first term ending September 13, 2025.



Office of the Mayor

CONSENT CALENDAR  
September 13, 2022

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Pacific Center for Human Growth: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$1,000 per Councilmember including \$1,000 from Mayor Arreguín to the Pacific Center for Human Growth, for the planning and production of a historical quilt to honor their 50<sup>th</sup> anniversary. Funds would be relinquished to the City's General Fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguín and any other Councilmembers who would like to contribute.

BACKGROUND

Founded in 1973, the Pacific Center for Human Growth has served the Bay Area's LGBT+ community for almost 50 years. It is the oldest LGBT+ center in the Bay Area, and third oldest in the nation. The Pacific Center works to enhance the mental health and overall well being of its clients and LGBT+ community by providing support groups, community outreach, facilitated workshops, and culturally responsive therapy. Their programs aim to counter the social and institutional experiences of homophobia, ageism, misogyny, and racism.

The City of Berkeley has an existing partnership with the Pacific Center. In 2010, to better serve individuals in underserved populations who have been exposed to trauma, the City signed a contract with the Pacific Center. Through this, the Mental Health Division partners with the Pacific Center to provide trauma support services to the LGBT+ population. This contract continues today, which was last extended in July 2022.

To commemorate their 50<sup>th</sup> anniversary in the spring of 2023, the Pacific Center plans on creating a historical quilt. A local artist will design the quilt using testimonies from community members on how the Pacific Center has supported them. These stories will be presented visually on the quilt, which will create a sense of community and connectedness. To make this project happen, the Pacific Center is requesting \$3,500, which will be used for labor, materials, and related expenses (details in Attachment 2).

FINANCIAL IMPLICATIONS

No General Fund impact; \$1,000 is available from Mayor Arreguín's Council Office Budget discretionary account.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: Resolution
- 2: Description of 50<sup>th</sup> Anniversary Quilt Project

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

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

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

WHEREAS, a California non-profit tax exempt corporation, the Pacific Center for Human Growth seeks funds in the amount of \$3500 to provide the following public services; to develop a historical quilt to commemorate their 50<sup>th</sup> anniversary, which will feature personal stories and testimonies about how the Pacific Center has meant to them; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose of creating a sense of community and connectedness and advancing their causes of improving mental health in the LGBT+ community.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to \$1,000 per office shall be granted to the Pacific Center for Human Growth.



Pacific Center for Human Growth: Honoring 50 Years Building LGBTQIA+ Community Wellness

Pacific Center for Human Growth (“PC”) is thrilled to celebrate 50 years of building community wellness for the East San Francisco Bay Area’s diverse LGBTQIA+ communities. The Pacific Center is the oldest LGBTQIA+ community center in the Bay Area and the third oldest in the nation.

Pacific Center requests a one time project support grant of \$3,500 from the City of Berkeley to support the planning and production of a historical quilt to honor our “golden” (50th) anniversary in spring 2023.

The vision for a historical quilt emerged from a local artist who approached Pacific Center to offer their vision of a collaborative project that will engage LGBTQIA+ community members in sharing their personal stories and testimonies about what Pacific Center has meant to them. Using a variety of media, the artist will facilitate a series of online or socially distanced workshops to support participants to tell their stories in a visual form.

Rooted in the East San Francisco Bay Area, we serve LGBTQIA+ community members from age nine through senior adulthood. Our peer groups, clinical program, training, and outreach activities positively impact a broad spectrum of LGBTQIA+ community members across age, race/ethnicity, and gender identities.

For 49 years, PC has provided accessible, culturally responsive mental health services and peer-driven community engagement programs. Our programs serve to counter the social and institutional experiences of homophobia, ageism, misogyny, and racism which present ongoing challenges to the wellbeing of LGBTQIA+/BIPOC community members.

The collaborative process inherent to the quilt project will increase participants’ sense of connectedness, decrease isolation, and create a legacy project to be enjoyed by many for decades to come.

Project Budget

A one-time project grant of \$3,500 will enable Pacific Center to purchase materials, compensate the labor of a Project Coordinator for 100 hours of work at a living wage of \$25.00 per hour, and cover overhead expenses.

| Expense              | Total              | Details                                                                                                          |
|----------------------|--------------------|------------------------------------------------------------------------------------------------------------------|
| Labor                | \$ 2,500.00        | Project Coordinator at 100 Hours x \$25.00 hour                                                                  |
| Materials            | \$ 500.00          | Fabric, paper, ink, paint, other                                                                                 |
| Overhead             | \$ 500.00          | Technology platforms supporting safe and accessible meetings including Zoom, Google Workspace, Rev Live Captions |
| <b>TOTAL REQUEST</b> | <b>\$ 3,500.00</b> |                                                                                                                  |





CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Taplin, Councilmember Robinson (co-sponsor)  
 Subject: Efficiency Unit Ordinance

### RECOMMENDATION

Refer to the City Manager and Planning Commission to adopt objective standards for Efficiency Units pursuant to California Housing and Safety Code § 17958.1, developing an ordinance to amend the Berkeley Municipal Code modeled after standards implemented in the City of Davis, the City of Santa Barbara and other cities.

### POLICY COMMITTEE RECOMMENDATION

On July 7, 2022, the Land Use, Housing, & Economic Development Committee adopted the following action: M/S/C (Droste/Robinson) to approve the item with a positive recommendation. Vote: Ayes – Droste, Robinson; Noes – None; Abstain – None; Absent – Bartlett.

### FINANCIAL IMPLICATIONS

Staff time.

### CURRENT SITUATION AND ITS EFFECTS

Establishing standards for Efficiency Units is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

BMC Chapter 23F.04 defines Group Living Accommodations (GLAs) as a “building or portion of a building designed for or accommodating a residential use by persons not living together as a household.” This broad category includes several distinct housing types, such as Dormitories and Residential Hotels. While this definition rests on cohabitation by multiple persons not constituting a “household,” state law provides a legal framework for establishing positive efficiency unit standards for one- or two-person households. California Housing and Safety Code § 17958.1 allows local governments to “permit efficiency units for occupancy by no more than two persons which have a minimum floor area of 150 square feet and which may also have partial kitchen or bathroom facilities, as specified by the ordinance.” The City of Berkeley currently lacks such an ordinance.

Berkeley’s current standards for Residential Hotels disincentivizes their production, limiting the supply of lower-cost housing that could be built without limited or no public subsidies. Development standards in Commercial districts are equivalent to those in R-3

zones, requiring a minimum of 350 square feet of total lot area per occupant, inclusive of 90 square feet of open space per occupant. This effectively permits fewer residents by area than other residential uses and reduces financial feasibility. For example, a proposed multifamily apartment development at 2720 San Pablo Ave. in the C-W district is on a 9,576 square-foot project site, with 25 dwelling units and a total of 97 bedrooms. If it were a GLA project such as a residential hotel, it would only be permitted a maximum of 27 bedrooms.

### BACKGROUND

Berkeley has made insufficient progress on meeting its state-mandated Regional Housing Need Allocation (RHNA) goals for low- and moderate-income housing in the 2014-2022 RHNA cycle. As recently as the city's 2020 Housing Pipeline Report, the city had only fulfilled 23% of its moderate-income RHNA goals, 21% of its RHNA goals for Very-Low Income households, and a mere 4% for Low-Income households. Berkeley's next RHNA cycle is estimated to mandate roughly 3 times as many units as the previous cycle's total of 2,959 units across all income tiers. In 2019, development costs in the San Francisco Bay Area averaged \$600,000 for new housing funded by 9% Low Income Housing Tax Credits.<sup>1</sup>

According to an October 2014 report on affordable housing development by several state housing agencies, "for each 10 percent increase in the number of units, the cost per unit declines by 1.7 percent."<sup>2</sup> A 2020 study by UC Berkeley's Terner Center on affordable housing projects funded by 9% Low Income Housing Tax Credits reported: "On average, efficiencies of scale translate into a reduction of about \$1,162 for every additional unit in a project."<sup>3</sup>

Because GLAs typically offer lower market rents for smaller dwelling units, certain types of GLAs including Residential Hotels are exempted from Berkeley's Affordable Housing Mitigation Fee requirements pursuant to BMC 23C.12.020.B. With the exception of Dormitories, GLA units also count toward Berkeley's RHNA housing production targets for low- and moderate-income households if rents meet household affordability thresholds. Lower-cost housing forms with smaller dwelling units such as Single Room Occupancy (SRO) hotels have historically provided a significant portion of affordable housing for cities in the San Francisco Bay Area and nationwide without public subsidies for construction, but current zoning has made projects with this type of cost-

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<sup>1</sup> Reid, C. (2020). The Costs of Affordable Housing Production: Insights from California's 9% Low-Income Housing Tax Credit Program. *UC Berkeley Terner Center for Housing Innovation*. Retrieved from [https://ternercenter.berkeley.edu/wp-content/uploads/pdfs/LIHTC\\_Construction\\_Costs\\_March\\_2020.pdf](https://ternercenter.berkeley.edu/wp-content/uploads/pdfs/LIHTC_Construction_Costs_March_2020.pdf)

<sup>2</sup> California Department of Housing and Community Development, et al. (2014). *Affordable Housing Cost Study: Analysis of the Factors that Influence the Cost of Building Multi-Family Affordable Housing in California*. Retrieved from [https://www.treasurer.ca.gov/ctcac/affordable\\_housing.pdf](https://www.treasurer.ca.gov/ctcac/affordable_housing.pdf)

<sup>3</sup> See footnote 1.

effective unit size practically infeasible throughout much of Berkeley's transit-rich corridors.

The lack of Efficiency Unit standards has contributed to some consternation in the community with respect to recent GLA projects. For instance, an appeal of Use Permit # ZP2018-0229 for a Residential Hotel project at 2435 San Pablo Avenue—a permit that the City Council upheld in 2021—criticized the project as “neither fish nor fowl” because the project was designated as a Residential Hotel but resembled an Efficiency Unit project.<sup>4</sup> If the project were an Efficiency Unit, the individual efficiency kitchens and bathrooms would be subject to State standards (or local standards if the City were to adopt them), and the communal kitchens would be an amenity for residents rather than a requisite feature of a Residential Hotel.

Other jurisdictions in California have availed themselves of state authority to establish local standards. For example, the City of Davis establishes a definition of Efficiency Units pursuant to CHSC § 17958.1 with “a minimum floor area of two hundred twenty square feet and shall have a bathroom facility and a partial kitchen or kitchenette.”<sup>5</sup> Davis Municipal Code § 40.01.010(e) and Santa Barbara Municipal Code § 30.185.040 establish standards for Efficiency Units consistent with state law.<sup>67</sup> Santa Barbara's standards also enable a minimum floor area of 150 square feet for “Affordable Efficiency Units” subject to deed restrictions for low- and very-low income households.

Notably, both Davis and Santa Barbara, like Berkeley, are host cities to campuses in the University of California system. There is a dire shortage of student housing in the neighborhoods adjacent to campus such as Southside, and moreover, a dire shortage of affordable units available to students without overcrowding apartments. Partial kitchen or bathroom facilities, as allowed for efficiency units as now laid out by state law, will not always be ideal for all tenants, but may be a highly attractive option for students. Establishing an efficiency unit ordinance would be an important pathway to permitting denser, student-oriented housing in neighborhoods adjacent to campus and on key transit corridors connecting to campus.

In 2014, the City of Seattle enacted strict limitations on new “congregate” micro-housing projects, and saw a corresponding increase in production of Small Efficiency Dwelling Units (SEDUs) following this change. However, due to increases in minimum floor area

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[https://www.cityofberkeley.info/Clerk/City\\_Council/2021/01\\_Jan/Admin\\_Record\\_ZAB\\_Appeal\\_0\\_\(2435\)\\_San\\_Pablo\\_Ave.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/01_Jan/Admin_Record_ZAB_Appeal_0_(2435)_San_Pablo_Ave.aspx)

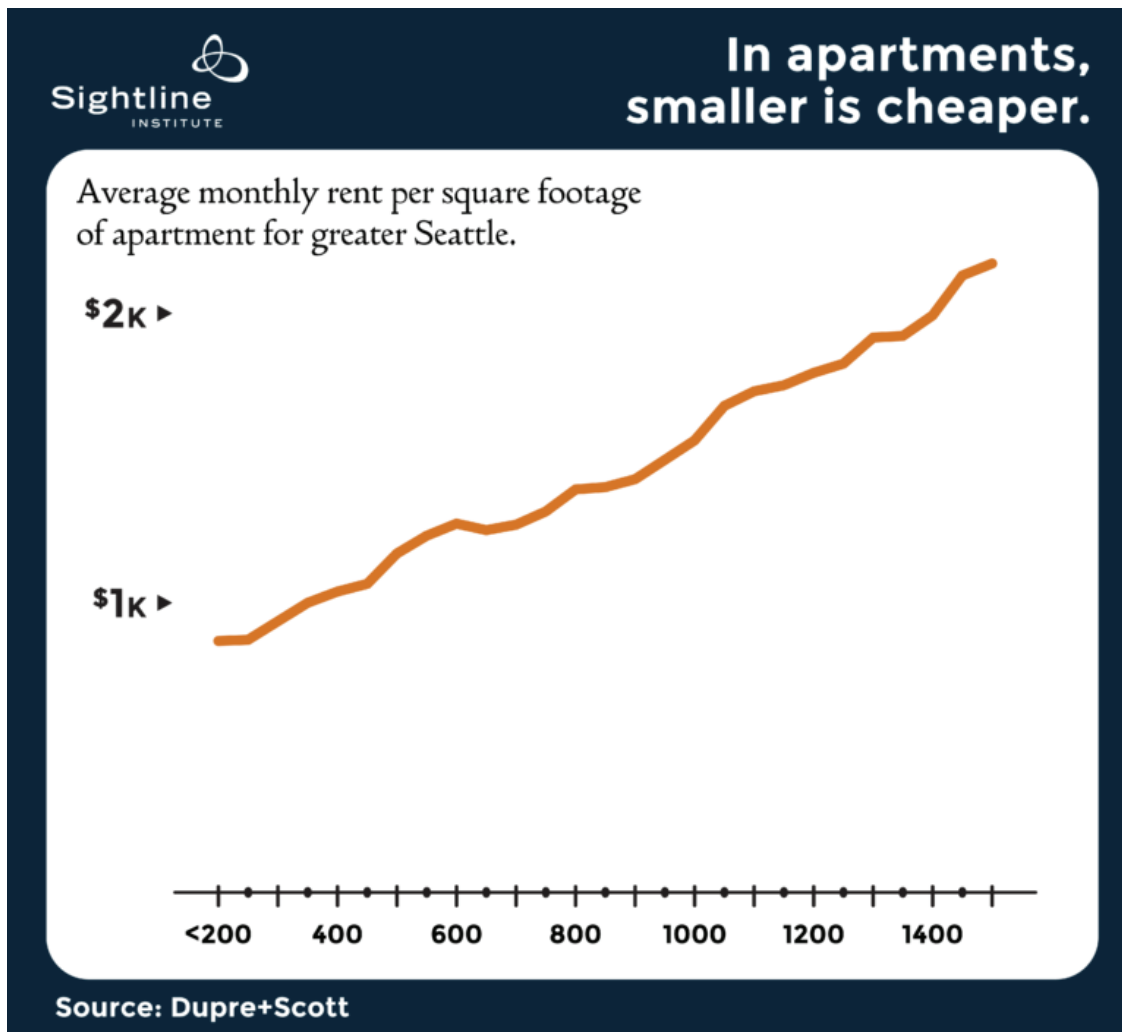
<sup>5</sup> [http://qcode.us/codes/davis/?view=desktop&topic=40-40\\_01-40\\_01\\_010#:~:text=Efficiency%20unit%20has%20the%20meaning,a%20partial%20kitchen%20or%20kitchenette](http://qcode.us/codes/davis/?view=desktop&topic=40-40_01-40_01_010#:~:text=Efficiency%20unit%20has%20the%20meaning,a%20partial%20kitchen%20or%20kitchenette)

<sup>6</sup> [http://qcode.us/codes/davis/?view=desktop&topic=40-40\\_26-40\\_26\\_450](http://qcode.us/codes/davis/?view=desktop&topic=40-40_26-40_26_450)

<sup>7</sup> [https://qcode.us/codes/santabarbara/view.php?topic=30-iii-30\\_185-30\\_185\\_040&frames=on](https://qcode.us/codes/santabarbara/view.php?topic=30-iii-30_185-30_185_040&frames=on)

requirements and inability to access affordable housing incentives, the number of new SEDUs completed per year in Seattle has declined.<sup>8</sup>

Nevertheless, the data from Seattle shows a clear marginal benefit to housing affordability. A 2021 study of Seattle's microhousing market by the firm Kidder Matthews found that the average monthly rent of SEDUs was \$277 or 18% lower than comparable market-rate studio apartments.<sup>9</sup>



Sightline Institute, 2017<sup>10</sup>

<sup>8</sup> Neiman, D. (2021). When is Seattle Going to Fix Microhousing? *Sightline Institute*. Retrieved from <https://www.sightline.org/2021/02/04/when-is-seattle-going-to-fix-microhousing/>

<sup>9</sup> Anderson, J. & Simon, D. (2021). 2021 Micro Report. *Kidder Matthews*. Retrieved from [https://secureservercdn.net/72.167.230.230/qjx.818.myftpupload.com/wp-content/uploads/2021/12/2021-Micro-Report\\_Simon-Anderson-Team.pdf?time=1649887261](https://secureservercdn.net/72.167.230.230/qjx.818.myftpupload.com/wp-content/uploads/2021/12/2021-Micro-Report_Simon-Anderson-Team.pdf?time=1649887261)

<sup>10</sup> Neiman, D. (2017). How Seattle Killed Microhousing Again. *Sightline Institute*. Retrieved from <https://www.sightline.org/2017/03/20/how-seattle-killed-micro-housing-again/>

In Berkeley, the 39-unit “Step Up Housing”<sup>11</sup> project at 1367 University Ave. will lease 180 square foot furnished studio units to the nonprofit Building Opportunities for Self Sufficiency (BOSS) for \$1,400 per month, roughly \$600 or 30% lower than local studio apartment rents. The City will be supporting the leasing and operations of the project with Measure P funds to provide permanent supportive housing.

Irrespective of subsidies, this cost is also \$195 below the “fair market rent” for SRO/studio units in Alameda County set by the U.S. Department of Housing and Urban Development (HUD), and roughly the same as Alameda County’s rent limit for deed-restricted studio units for a household earning 60% of Area Median Income.<sup>12</sup>

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Incentives for affordable housing offer potential to reduce Vehicle Miles Traveled Per Capita by increasing housing options in Berkeley and shortening commute times for a greater share of the local workforce. In an analysis of 252 California Cities, Durst (2021) finds that “each additional affordable housing incentive is associated with a 0.37 percentage point decrease in the share of workers who commute more than 30 minutes.”<sup>13</sup> With transportation accounting for 60% of Berkeley’s carbon footprint, per capita VMT reduction is critical for emissions reductions. Research from UC Berkeley scholars and the CoolClimate Network finds that urban infill offers one of the greatest potential policy levers for municipalities to reduce their greenhouse gas emissions.<sup>14</sup> Notably, this study predates the City of Berkeley’s 2019 prohibition on natural gas in new buildings,<sup>15</sup> which would further reduce the carbon footprint of future Berkeley residents relative to the regional average.

### CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

### ATTACHMENTS

1. City of Santa Barbara Ordinance 5794
2. City of Davis Ordinance 2602

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<sup>11</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/02\\_Feb/Documents/2021-02-23\\_Item\\_26\\_Step\\_Up\\_Housing\\_Initiative.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/02_Feb/Documents/2021-02-23_Item_26_Step_Up_Housing_Initiative.aspx)

<sup>12</sup> <https://www.acgov.org/cda/hcd/documents/2021IncomeandRentLimits.pdf>

<sup>13</sup> Durst, N. J. (2021). Residential Land Use Regulation and the Spatial Mismatch between Housing and Employment Opportunities in California Cities. *Terner Center for Housing Innovation*. Retrieved from <http://californialanduse.org/download/Durst%20Residential%20Land%20Use%20Regulation%202020.pdf>

<sup>14</sup> Jones, C. et al. (2017). Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities. *Urban Planning*, 3(2). doi:10.17645/up.v3i2.1218.

<sup>15</sup> Cagle, C. (2019). Berkeley became first US city to ban natural gas. Here's what that may mean for the future. *The Guardian*. Retrieved from <https://www.theguardian.com/environment/2019/jul/23/berkeley-natural-gas-ban-environment>

ORDINANCE NO. 5794

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA AMENDING THE SANTA BARBARA MUNICIPAL CODE BY AMENDING SECTIONS 30.185.040 AND 30.295.020 TO REGULATE ACCESSORY DWELLING UNITS IN THE NON-COASTAL ZONE OF THE CITY, AND REPEAL INTERIM URGENCY ORDINANCE NO. 5930

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 30.185.040 of Chapter 30.185 of Title 30 of the Santa Barbara Municipal Code is amended to read as follows:

**30.185.040 Accessory Dwelling Units**

Accessory dwelling units and junior accessory dwelling units shall be located, developed, and occupied subject to the following provisions:

**A. Purpose.** The purpose of this section is to:

1. Expand opportunities in the City to create additional housing to suit the spectrum of individual lifestyles and space needs, allow more efficient use of existing housing stock and public infrastructure, and provide a range of housing opportunities.
2. Allow accessory dwelling units or junior accessory dwelling units as an accessory use to a primary residential unit, consistent with California Government Code Section 65852.2 or 65852.22, as applicable.
3. Promote accessory dwelling units or junior accessory dwelling units with high-quality designs that are compatible with the surrounding neighborhood, historic resources, and historic districts; preserve the City's visual resources; promote long-term sustainability; and contribute to a desirable living environment.

**B. Definitions.** For the purposes of this section, the following words and phrases shall have the following meanings:

1. ***Accessory Dwelling Unit.*** An attached or a detached residential unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residential unit. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation and be located on the same parcel that the primary residential unit is or will be situated. The following



categories of accessory dwelling units are subject to specific development standards:

- a. ***Special Accessory Dwelling Unit.*** These are specific types of smaller accessory dwelling units and junior accessory dwelling units with certain size, height, and setback standards described in subsection L. Development Standards for Special Accessory Dwelling Units. Special accessory dwelling units allow for more than one accessory dwelling unit on a lot.
- b. ***Standard Accessory Dwelling Unit.*** These are typically larger accessory dwelling units with size, height, and setback standards generally described in subsection G. Development Standards for Standard Accessory Dwelling Units. Standard accessory dwelling units do not allow for more than one accessory dwelling unit on a lot.

An accessory dwelling unit also includes the following:

- a. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.
  - b. A manufactured home, as defined in Section 18007 of the Health and Safety Code.
2. ***Efficiency Kitchen.*** A kitchen that includes at a minimum:
    - a. Appliances for cooking food and refrigeration, either built-in or countertop.
    - b. A sink for food preparation greater than 12 inches by 12 inches, excluding the sink located in the bathroom.
    - c. A food preparation counter.
  3. ***Existing Floor Area.*** A legally permitted building constructed on the site with a final inspection or certificate of occupancy as of the date of application submittal, that conforms to current zoning standards or is legal nonconforming as to current zoning standards.
  4. ***Junior Accessory Dwelling Unit.*** A unit that is no more than 500 square feet in size and contained entirely within the structure of an existing or proposed single residential unit. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing or proposed single residential unit and includes an efficiency kitchen.
  5. ***Passageway.*** A pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.
  6. ***Primary Residential Unit.*** The existing or proposed residential unit on a lot on which an accessory dwelling unit or junior accessory dwelling unit is permitted. The primary residential unit shall comprise one of the residential housing types described in Section 30.295.020.A (i.e., single-unit residential, two-unit residential, multi-unit residential) or mixed-use development.
  7. ***Principal Place of Residence.*** The residence where a property owner actually lives for the greater part of time, or the place where the property owner remains when not called elsewhere for some special or temporary purpose and to which the

property owner returns frequently and periodically, as from work or vacation. There may be only one “principal place of residence,” and where more than one residence is maintained or owned, the burden shall be on the property owner to show that the primary residential unit, or accessory dwelling unit, or junior accessory dwelling unit is the property owner’s principal place of residence as evidenced by qualifying for the homeowner’s tax exemption, voter registration, vehicle registration, or similar methods that demonstrate owner-occupancy. If multiple persons own the property as tenants in common or some other form of common ownership, a person or persons representing at least 50% of the ownership interest in the property shall reside on the property and maintain the property as a principal place of residence. Any person or persons who qualify for the homeowner’s tax exemption under the California State Board of Equalization rules, may qualify as an owner occupant.

**C. Where Permitted.**

1. ***Accessory Dwelling Unit.*** An accessory dwelling unit may be permitted in any zone that allows residential use, located on a lot developed or proposed to be developed with one or more residential units, except as prohibited below.
2. ***Junior Accessory Dwelling Unit.*** A junior accessory dwelling unit may be permitted in any zone that allows residential use, and shall be located on a lot developed with an existing or proposed single residential unit.
3. ***Prohibited Locations.*** No standard accessory dwelling unit shall be permitted on a lot located within the Fire Hazard Area (Extreme Foothill and Foothill), or as may be subsequently retitled in the future as the “Very High Fire Hazard Severity Zone,” as defined in the City’s Community Wildfire Protection Plan adopted by City Council.
  - a. ***Exception for Special Accessory Dwelling Units.*** Accessory dwelling units permitted in accordance with all the configuration, standards, and special procedures outlined in subsection L. Development Standards for Special Accessory Dwelling Units, may be permitted on any lot, including lots located within any Fire Hazard Area (Extreme Foothill and Foothill), or as may be subsequently retitled in the future as the “Very High Fire Hazard Severity Zone,” as defined in the City’s Community Wildfire Protection Plan adopted by City Council, if the lot is zoned to allow for residential use and contains an existing or proposed primary residential unit.

**D. Unit Configuration.**

1. Only one accessory dwelling unit or junior accessory dwelling unit shall be permitted on a lot in addition to the primary residential unit in the configuration set forth in subsections D.2 and 3, below. However, multiple accessory units may be permitted in accordance with all the configuration, standards, and special procedures outlined in subsection L. Development Standards for Special Accessory Dwelling Units.
2. An accessory dwelling unit may be permitted in the following configurations:



- a. Incorporated entirely within an existing or proposed primary residential unit;
  - b. Incorporated entirely within an existing accessory building, including garages, located on the same lot as the primary residential unit;
  - c. Attached to or increasing the size of an existing primary residential unit or accessory building located on the same lot as the primary residential unit; or
  - d. Detached from and located on the same lot as the existing or proposed primary residential unit. An accessory dwelling unit that is attached to another detached accessory building, but not the primary residential unit, or is attached by a breezeway or porch, is considered detached.
3. A junior accessory dwelling unit must be incorporated entirely within the existing floor area of an existing or proposed single residential unit or attached garage.
- E. Sale, Rental, and Occupancy Terms.** All accessory dwelling units and junior accessory dwelling units shall be subject to the following sale, rental, and occupancy terms:
1. ***Not to Be Sold Separately.*** An accessory dwelling unit or junior accessory dwelling unit shall not be sold separately from the primary residential unit.
  2. ***Rental Terms.*** The accessory dwelling unit or junior accessory dwelling unit may be rented separately from the primary residential unit, however rental terms shall not be less than 31 consecutive days, nor shall rental terms allow termination of the tenancy prior to the expiration of at least one 31-day period occupancy by the same tenant.
  3. ***Owner Occupancy.*** The following types of projects are subject to an owner occupancy requirement:
    - a. All lots developed with junior accessory dwelling units; except that owner occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.
    - b. Any accessory dwelling unit located in an RS zone submitted on or after January 1, 2025, unless otherwise prohibited by state law, or upon repeal of Government Code 65852.2 (a)(6)(B) removing the state-imposed prohibition of an owner occupancy requirement, whichever occurs first.
  4. ***Owner's Unit.*** If owner occupancy is required, the property owner shall reside in and maintain either the primary residential unit or the accessory dwelling unit/junior accessory dwelling unit, as the property owner's principal place of residence ("owner's unit"). Owners of lots developed with an accessory dwelling unit/junior accessory dwelling unit shall live on the lot as long as the lot is developed with an accessory dwelling unit/junior accessory dwelling unit. Owners may re-designate the primary residential unit or the accessory dwelling unit/junior accessory dwelling unit as the owner's unit upon written notice to the Community Development Director and written approval of the re-designation by the Community Development Director, which approval shall not be denied unreasonably. The property owner shall not rent or lease both the primary

residential unit and the accessory dwelling unit/junior accessory dwelling unit simultaneously.

5. **Hardship Waiver.** If owner occupancy is required, in the event of a hardship, such as the death or disability of the property owner, job transfer, or similar significant personal situation which prevents the property owner from occupying one of the units as the owner's unit, a property owner or estate representative may apply for a temporary waiver of the owner-occupation requirement for a specific time period to allow the owner's unit to be occupied by a non-property owner pending disposition of the property through probate or non-probate transfer to a new owner, or the cessation of the circumstances preventing the property owner from occupying the owner's unit on the property. The Community Development Director shall review applications for a hardship waiver. Any such waiver shall specify the period of time for which it is granted, provided that no such waiver may be granted for a period longer than three years.
6. **Removal of Recorded Owner Occupancy Requirement.** With the exception of owner occupancy covenants required to permit a junior accessory dwelling unit, the Community Development Director will, in a form acceptable to the City Attorney, release an owner occupancy requirement recorded against the property prior to adoption of this ordinance upon the request of the property owner. No other covenants required pursuant to this section, and contained in the agreement recorded against the property, shall be released.

F. **Required Features.** Each accessory dwelling unit and junior accessory dwelling unit shall contain, at a minimum, the following features:

1. **Residential Elements.** Permanent provisions for separate residential occupancy must be provided as follows within the contiguous livable floor space of the accessory dwelling unit or junior accessory dwelling unit and must be independent from the primary residential unit:
  - a. A kitchen, consisting of a sink, cooking appliance, and refrigeration facilities. A junior accessory dwelling unit may utilize an efficiency kitchen.
  - b. A bathroom consisting of a toilet, sink, and bathtub or shower. A junior accessory dwelling unit may share sanitation facilities with the existing or proposed single residential unit.
  - c. A separate living room.
  - d. A separate sleeping room, except in studio residential units, where a living room is considered a sleeping room.
2. **Minimum Floor Area.** Notwithstanding the dwelling unit minimum described in Section 30.140.150, Residential Unit, the minimum floor area for a newly constructed accessory dwelling unit is as follows:
  - a. **Efficiency Unit:** 150 square feet.
  - b. **Studio Unit:** 220 square feet.

- c. *All Other Units*: 400 square feet.

Such usable floor area shall be exclusive of open porches, garages, basements, cellars, and unfinished attics. The minimum floor area for accessory dwelling units that are created by converting existing structures is 150 square feet.

- 3. *Exterior Access*. Exterior access to the unit, that is independent from the primary residential unit, must be provided. An interior connection consisting of one fire-rated lockable door between the primary residential unit and an accessory dwelling unit or junior accessory dwelling unit may be provided.
- 4. *Fire Sprinklers*. Fire sprinklers are required only if they are required for the primary residential unit.
- 5. *Permanent Foundation*. Attached and detached units shall be constructed with an approved permanent foundation.
- 6. *Property Addresses*. Addresses identifying all residential units on the lot, with minimum three- and one-half-inch numbers plainly visible from the street or road fronting the property shall be provided.
- 7. *Public Sewer*. Accessory dwelling units and junior accessory dwelling units shall be connected to a public sewer. If public sewer connection is not available, approval of a new or expanded onsite wastewater treatment system shall be required in accordance with the procedures from the Code of the County of Santa Barbara California prior to issuance of a building permit.
- 8. *Water Meter*. Accessory dwelling units shall comply with the water metering requirements of Title 14, Section 14.08.150 E.
- 9. *Passageway*. No passageway is required in conjunction with the construction of an accessory dwelling unit or junior accessory dwelling unit.

**G. Development Standards for Standard Accessory Dwelling Units.**

- 1. *Development Standards Generally*. The development standards listed in this section apply to standard accessory dwelling units and junior accessory dwelling units, except for those units permitted in accordance with all the configuration, standards, and special procedures outlined in subsection L. Development Standards for Special Accessory Dwelling Units.
  - a. The reductions and exceptions to the development standards normally applicable to residential development allowed in this section are for the express purpose of promoting the development and maintenance of an accessory dwelling unit on the lot. If for any reason the accessory dwelling unit is not maintained on the lot in conformance with this section, the lot shall be brought into compliance with all of the requirements for the residential development, or with the legal nonconforming condition of the lot prior to the development of the accessory dwelling unit, including, but not limited to, the requirements for open yard, setbacks, and covered parking.

- b. Except as otherwise specified in this subsection, projects developed in accordance with this section shall otherwise comply with the development standards applicable to an attached or detached accessory building for the housing type and the base zone in which the lot is located.
  - c. One primary residential unit shall be designated on a lot on which an accessory dwelling unit or junior accessory dwelling unit is permitted.
  - d. Notwithstanding the size limit of an attached accessory dwelling unit based on a percentage of the proposed or existing primary unit, or lot coverage, floor area ratio, open yard, and minimum lot size standards for an attached or detached accessory dwelling unit, an 800-square-foot, 16-foot high attached or detached accessory dwelling unit may be constructed in compliance with all other development standards for standard accessory dwelling units.
2. **Maximum Floor Area.** The maximum floor area for a standard accessory dwelling unit and junior accessory dwelling unit is as follows:
- a. **Attached Accessory Dwelling Unit.** An accessory dwelling unit that is attached to, and increasing the size of, the primary residential unit shall not exceed 50% of the living area of the existing primary residential unit.
  - b. **Converted Accessory Dwelling Unit.** An accessory dwelling unit that is incorporated entirely within an existing primary residential unit, or within an existing accessory building, is not limited in size except that it shall not exceed the footprint of the existing structure.
  - c. **Detached Accessory Dwelling Unit.** An accessory dwelling unit that is detached from the primary residential unit and may or may not be attached to another detached accessory building, including detached garages, shall not exceed the following maximum floor area based on lot size and number of bedrooms:
    - i. *Lots up to 14,999 square feet and developed with one-bedroom or studio units:* 850 square feet.
    - ii. *Lots up to 14,999 square feet and developed with two or more-bedroom units:* 1,000 square feet.
    - iii. *Lots 15,000 square feet or larger:* 1,200 square feet.
  - d. **Junior Accessory Dwelling Unit.** The maximum floor area of a junior accessory dwelling unit shall be 500 square feet.
3. **Building Separation.** The minimum separation between the primary residential unit and a detached accessory dwelling unit shall be five feet.
4. **Open Yard.** No open yard areas are required for accessory dwelling units or junior accessory dwelling units. The minimum area, dimensions, and location of the required open yard pursuant to Section 30.140.140.C, Open Yards, for the existing or proposed primary residential unit on lots developed with single-unit or two-unit residential, may be reduced as follows in order to construct a standard accessory

dwelling unit pursuant to this subsection, or to construct an accessory dwelling unit proposed over a new or reconstructed maximum 500 square foot garage, provided all other open yard requirements are met:

- a. **Minimum Area.**
  - i. *Lots less than 6,000 square feet:* 500 square feet.
  - ii. *Lots 6,000 up to 7,999 square feet:* 800 square feet.
  - iii. *Lots 8,000 square feet up to 9,999 square feet:* 1,000 square feet.
  - iv. *Lots 10,000 square feet or greater:* 1,250 square feet.
- b. **Minimum Dimensions.** 15 feet long and 15 feet wide.
- c. **Location in Driveways and Turnarounds.** Notwithstanding Section 30.140.140.E.6.a, Vehicle Areas, the required open yard may be located in driveways and turnarounds, but not parking areas, in order to allow the construction of a new accessory dwelling unit.

5. **Setbacks.** The following setbacks shall apply to new and converted standard accessory dwelling units approved pursuant to this subsection:

- a. **New Construction.** Newly constructed accessory dwelling units shall comply with the following setback standards:
  - i. **Front Setback:** Meet the minimum front setback for residential structures in the zone, unless further limited by subsection H.8., Front Yard Location, below.
  - ii. **Interior Setback:** Four feet.
- b. **Conversion.** No setback is required to convert the existing, legally permitted, floor area of a main or accessory building to an accessory dwelling unit. Improvements to existing nonconforming buildings, including conforming additions, are allowed pursuant to Chapter 30.165, Nonconforming Structures, Site Development, and Uses.
- c. **Substantial Redevelopment.** No setback is required when an existing main or accessory building is substantially redeveloped and converted to an accessory dwelling unit, provided that the new building is reconstructed in the same location and with the same dimensions and floor area as the existing building.
  - i. **Exception for Small Conforming Additions.** One small 150-square-foot conforming first floor addition may be permitted on a substantially redeveloped and converted nonconforming accessory building.
- d. **New Construction Combined with Replacement of a Nonconforming Garage.** The construction of an accessory dwelling unit may be combined with the demolition and replacement of a nonconforming detached garage if all of the following requirements are met:
  - i. The new garage is reconstructed in the same location and with the same dimensions as the existing garage; or



- ii. The new garage is enlarged only as necessary to provide the same number of parking spaces and to meet the dimension requirements of the City of Santa Barbara Access & Parking Design Standards, but located no closer to the property line as the existing garage; and
  - iii. The accessory dwelling unit is constructed above the reconstructed garage; and
  - iv. The accessory dwelling unit and any additions to the garage shall conform with current setbacks; and
  - v. The new structure shall comply with all applicable height and building story limitations, and all other development standards are met.
- e. **Setback Encroachments.** Setback encroachments allowed pursuant to Section 30.140.090, Encroachments into Setbacks and Open Yards, may be permitted for accessory dwelling units or junior accessory dwelling units.

**H. Architectural Review.** All accessory dwelling units or junior accessory dwelling units shall be subject to the following architectural design criteria as applicable to either new construction or exterior alterations, which shall be reviewed ministerially by the Community Development Director. For purposes of this section, portions of a building or site considered to be the accessory dwelling unit shall include all of the contiguous interior livable floor area of the accessory dwelling unit and any exterior alterations directly attached to, and integral to, the livable floor area of the accessory dwelling unit.

- 1. **Prohibition of Shiny Roofing and Siding.** New roofing and siding materials that are, shiny, mirror-like, or of a glossy metallic finish are prohibited.
- 2. **Roof Tile.** Where a new clay tile roof is proposed, the use of two-piece terra cotta (Mission “C-tile”) roof is required and “S-tile” is prohibited, unless necessary to match the S-tile roof materials of the existing primary residential unit.
- 3. **Skylights.** New skylights shall have flat glass panels. “Bubble” or dome type skylights are not allowed.
- 4. **Glass Guardrails.** New glass guardrails are not allowed, unless necessary to match the glass guardrails of the existing primary residential unit.
- 5. **Garage Conversion.** If a garage is converted to an accessory dwelling unit, the garage door opening shall be replaced with exterior wall coverings, or residential windows and doors, to match the existing exterior garage wall covering and detailing.
- 6. **Grading.** No more than 250 cubic yards of grading (i.e., cut and/or fill under the main accessory dwelling unit building footprint and outside the main building footprint to accommodate the accessory dwelling unit) is proposed in the Hillside Design District or on lots in other parts of the City with a slope of 15% or greater.
- 7. **Height.** The construction of an accessory dwelling unit shall not exceed the following, whichever is greater:
  - a. Height of the primary residential unit;

- b. Number of stories of the primary residential unit; or
- c. 17 feet.

This height limitation is not applicable to an accessory dwelling unit constructed above a garage, however, in no event shall the resulting building exceed the maximum height or number of stories allowed for a detached or attached accessory building in the zone.

- 8. **Front Yard Location.** The construction of a new detached accessory dwelling unit located in the front yard shall be subject to all of the following:
  - a. The new accessory dwelling unit must be located a minimum of 20 feet back from all front lot lines or meet the minimum front setback for the zone in which the lot is located, whichever is greater.
  - b. Unless constructed over a garage, the new unit shall be:
    - i. No more than one-story and less than 17 feet in height; and
    - ii. Screened from the street by topography, location, or landscape, in a manner designed to blend into the surrounding architecture or landscape, so as to minimize visibility of the accessory dwelling unit to the casual observer as viewed from the street.
- 9. **Design Style.** New detached or attached accessory dwelling units shall be compatible with the design of the primary residential unit regarding style, fenestration, materials, colors, and details if the accessory dwelling unit meets any of the following:
  - a. Attached to, or if any portion of the accessory dwelling unit is located within 20 feet of, the primary residential unit;
  - b. Located in the Hillside Design District and 20% or greater average slope;
  - c. Two or more stories tall, or 17 feet or taller in building height;
  - d. Located on a site on which there is a historical resource as follows:
    - i. Listed on the National Register of Historic Places or the California Register of Historic Resources;
    - ii. Designated as a City of Santa Barbara Landmark or Structure of Merit; or
    - iii. Located in a designated historic district.
  - e. Located in the front yard.
- 10. **Privacy Standards.** The construction of an accessory dwelling unit where any portion of the proposed construction is either: two or more stories tall or 17 feet or taller in building height, shall comply with the following:
  - a. Upper story unenclosed landings, decks, and balconies greater than 20 square feet, that face or overlook the adjoining property, shall be located a minimum of 15 feet from the interior lot lines.

- b. Upper story unenclosed landings, decks, and balconies, that do not face or overlook the adjoining property due to orientation or topography, may be located at the minimum interior setback line if an architectural screening element such as enclosing walls, trellises, awnings, or perimeter planters with a five-foot minimum height is incorporated into the unenclosed landing, deck, or balcony.
  - c. Upper story windows that face or overlook the adjoining property, located within 15 feet of the interior lot lines, shall be installed a minimum of 42 inches above finish floor.
11. **Exceptions.** Discretionary applications for design review may be requested in the following circumstances:
- a. An applicant may propose an accessory dwelling unit that does not meet these design criteria subject to approval by the Single Family Design Board, Architectural Board of Review, or Historic Landmarks Commission, as appropriate.
  - b. Discretionary design review may be required for any exterior alterations to the project site or main buildings that are not an integral part of the accessory dwelling unit, but are proposed in conjunction with the accessory dwelling unit, if required pursuant to Chapter 22.22, 22.68, or 22.69 of this code.
- I. **Protection for Historic Resources.** No accessory dwelling unit or junior accessory dwelling unit shall be permitted if the proposal would cause a substantial adverse change in the significance of a historical resource listed on the National Register of Historic Places or the California Register of Historical Resources, designated as a City of Santa Barbara Landmark or Structure of Merit, or located in a designated historic district. The Community Development Director shall make this determination by reviewing the proposal for compliance with appropriate Secretary of Interior's *Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings*.
- J. **Parking Standards.** No automobile parking spaces are required for accessory dwelling units or junior accessory dwelling units. The required parking for the existing residential units on site may be reduced or replaced as follows to construct an accessory dwelling unit:
- 1. **No Replacement Parking Required.** When an existing garage, carport, or other covered parking structure is converted to an accessory dwelling unit or demolished in order to construct an accessory dwelling unit, those off-street parking spaces for the existing residential unit are not required to be replaced.
  - 2. **Optional Parking Standards.** If optional new or replacement parking spaces are proposed for either the primary residential unit or the accessory dwelling unit, those spaces may be provided as covered, uncovered, in a mechanical lift, or in a tandem configuration pursuant to f. below. The replacement spaces shall meet all of the following:



- a. Covered parking shall meet the development standards applicable to the primary residential unit within the zone in which the lot is located.
- b. All parking spaces must meet the minimum dimensions and development standards consistent with the City Parking Access & Design Standards and Section 30.175.090 Parking Area Design and Development Standards.
- c. In order to maintain visibility for adjacent driveways and intersections, uncovered parking spaces shall comply with Section 30.140.230, Visibility at Driveways and Intersections.
- d. Replacement uncovered parking spaces may be allowed in a front or interior setback, provided all uncovered parking spaces are contained within the area of an existing paved driveway and no increase to paved areas occurs in the setbacks.
- e. New uncovered parking spaces, that are not replacement parking spaces as described above, may be located three feet from any interior lot line, provided a minimum of three feet in width of planting area is provided for the length of the paved parking area along the interior lot line.
- f. Tandem parking configuration shall meet all the following:
  - i. No more than two automobiles shall be placed one behind the other.
  - ii. Both automobile parking spaces parked in tandem shall be assigned to the same residential unit. Tandem parking shall not create any traffic safety issues.
  - iii. Vertical or stackable tandem parking, provided by means of mechanical lifts, is subject to approval by the Public Works Director. Mechanical lifts shall be fully enclosed within a structure and shall require a recorded maintenance agreement, pursuant to Chapter 30.260, Recorded Agreements.
  - iv. Tandem parking in multi-unit and commercial zones is subject to approval by the Public Works Director. Tandem parking shall not create traffic safety issues.

**K. Fire Hazard Area Standards.** All accessory dwelling units or junior accessory dwelling units located in any Fire Hazard Area as defined in the City's Community Wildfire Protection Plan or as may be subsequently retitled in the future as a "High" or "Very High Fire Hazard Severity Zone" as defined in the Community Wildfire Protection Plan adopted by City Council, shall comply with the following standards as applicable to new construction or parking:

- 1. **No Tandem Parking.** No parking space shall be developed in a tandem configuration.
- 2. **High Fire Construction.** The accessory dwelling unit shall be designed to meet high fire construction standards adopted or enforced by the City, as determined by the Chief Building Official or the Fire Code Official.

3. **No Variance or Modification.** No variance or modification to any Fire Code requirements or high fire construction standards shall be permitted.
4. **Defensible Space.** The site must meet defensible space requirements, pursuant to Chapter 8.04 of this code, prior to occupancy and those requirements must be maintained.
5. **Parking.** One covered or uncovered automobile parking space per unit or bedroom, whichever is less, meeting all of the same parking standards required for the primary residential unit as described in subsection J., Parking Standards, shall be required for an accessory dwelling unit.
  - a. **Parking Exceptions for Certain Accessory Dwelling Units.** Automobile parking is not required for an accessory dwelling unit in any of the following instances:
    - i. The accessory dwelling unit is located within a walking distance of one-half mile of a public transit stop, such as a bus stop or train station.
    - ii. The accessory dwelling unit is located within an architecturally and historically significant historic district. For purposes of this provision, El Pueblo Viejo Landmark District, Brinkerhoff Avenue Landmark District, Riviera Campus Historic District, and the El Encanto Hotel Historic District, constitute architecturally and historically significant historic districts within the City and any district hereafter created deemed to be architecturally and historically significant.
    - iii. The accessory dwelling unit is contained entirely within the permitted floor area of the existing primary residential unit or an existing accessory building.
    - iv. When on-street parking permits are required but not offered to the occupant(s) of the accessory dwelling unit.
    - v. When there is a “carshare vehicle” as defined in Chapter 10.73 of this code, located within a walking distance of 500 feet of the accessory dwelling unit.

**L. Development Standards for Special Accessory Dwelling Units.**

1. **Development Standards Generally.** The development standards listed in this section apply to specific types of small accessory dwelling units and junior accessory dwelling units with certain size, height, and setback standards that, if followed, allow for an accessory dwelling unit to be permitted on lots in a Fire Hazard Area, or more than one accessory dwelling unit on a lot, and allows additional reductions and exceptions to development standards for open yard and maximum floor area. Applications utilizing the special standards described in this section may not utilize the less restrictive configuration, size, and height standards allowed under another section to achieve a larger unit or more than one unit.

- a. Any reductions and exceptions in this section are for the express purpose of promoting the development and maintenance of a special accessory dwelling unit or junior accessory dwelling unit on the lot. If for any reason the special accessory dwelling unit or junior accessory dwelling unit is no longer maintained on the lot, the lot shall be brought into compliance with all of the requirements for the remaining residential development, or with the legal nonconforming condition of the lot prior to the development of the accessory dwelling unit or junior accessory dwelling unit.
  - b. Except as otherwise specified in this section, projects developed in accordance with this Chapter shall otherwise comply with the development standards applicable to the housing type and base zone in which the lot is located.
  - c. One primary residential unit shall be designated on a lot on which an accessory dwelling unit or junior accessory dwelling unit is permitted. In the case when multiple residential units are existing on a lot, there shall be only one primary residential unit.
2. **Configuration – Single Unit Lots.** A lot developed with only one existing or proposed single-unit residence, may permit one of the following types of special accessory dwelling units:
- a. *Converted Portion of Main Building.* Only one accessory dwelling unit or junior accessory dwelling unit contained entirely within the existing, legally permitted, fully enclosed livable floor area of the existing or proposed primary residential unit; or
  - b. *Converted Accessory Building.* Only one accessory dwelling unit contained entirely within the existing, legally permitted, fully enclosed floor area of a garage or other accessory building on the same lot as the primary residential unit, plus one 150-square-foot conforming first floor addition, if the expansion is limited to accommodating ingress and egress; or
  - c. *One Unit – New Construction.* One newly constructed accessory dwelling unit, detached from any other main or accessory building; or
  - d. *Two Units – Combination.* One junior accessory dwelling unit contained entirely within the existing, legally permitted, fully enclosed livable floor area of the existing or proposed primary residential unit, plus one newly constructed accessory dwelling unit, detached from any other main or accessory building.
3. **Configuration – Two-Unit or Multi-Unit Lots.** A lot developed with two or more existing residential units, may permit one of the following types of special accessory dwelling units:
- a. *Converted Non-Livable Space.* At least one accessory dwelling unit, and up to 25 percent of the existing number of residential units on a lot, may be converted on a lot if contained entirely within portions of existing, legally

permitted, fully enclosed floor area of a residential structure that is not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages; or

- b. *Two Units – New Construction.* No more than two newly constructed accessory dwelling units, detached from the main or accessory building.

4. **Maximum Floor Area**

- a. *Detached Accessory Dwelling Unit.* The maximum floor area of any detached, new construction, special accessory dwelling unit approved pursuant to this subsection is 800 square feet.
- b. *Converted Accessory Dwelling Unit.* An accessory dwelling unit that is incorporated entirely within portions of existing floor area, approved pursuant to this subsection, is not limited in size.
- c. *Junior Accessory Dwelling Unit.* The maximum floor area of a junior accessory dwelling unit shall not exceed 500 square feet.

- 5. **Maximum Height – Detached Accessory Dwelling Unit.** The maximum building height of a detached, new construction, special accessory dwelling unit approved pursuant to this subsection is 16 feet.

- 6. **Exempt from Other Size Limitations.** A special accessory dwelling unit or junior accessory dwelling unit approved pursuant to this subsection is exempt from any other size limitation in this Title.

- 7. **Exempt from Open Yard.** No open yard is required for a special accessory dwelling unit or junior accessory dwelling unit approved pursuant to this subsection. Open yard for any existing residential units on a lot may be reduced or eliminated entirely in order to permit a special accessory dwelling unit meeting all the standards and criteria in this subsection.

**M. Building Permit Required.** All accessory dwelling units and junior accessory dwelling units shall comply with applicable state and local building codes and shall require approval of a building permit. Applications shall be processed pursuant to Chapter 30.205, Common Procedures, and the specific requirements of this section. The City shall ministerially approve or disapprove a complete building permit application for an accessory dwelling unit or junior accessory dwelling unit in compliance with time periods established by state law.

- 1. **Combined Permits.** An accessory dwelling unit or junior accessory dwelling unit permit shall not be combined with a permit for other proposed construction on the site unrelated to the accessory dwelling unit or junior accessory dwelling unit. If a permit application for an accessory dwelling unit or junior accessory dwelling unit is submitted at the same time as a permit application for a new single-unit dwelling, review of the permit for the accessory dwelling unit or junior accessory dwelling unit application shall be delayed until the permit for the single-unit dwelling has been approved.

2. **Modifications and Minor Zoning Exceptions for Accessory Dwelling Units or Junior Accessory Dwelling Units.** An accessory dwelling unit or junior accessory dwelling unit that is not in compliance with the development standards of this section may be granted a modification or minor zoning exception if all the required findings can be met, pursuant to the procedures outlined in Chapter 30.250, Modifications, or Chapter 30.245 Minor Zoning Exceptions.
  3. **Posted Sign.** Within five calendar days after submitting an initial building permit application to the City, the property owner shall install a public notice in the form of a posted sign on the property in a manner deemed acceptable by the Community Development Director. The sign shall remain posted until a building permit is issued, or the application expires or is withdrawn. At the time of application submittal, the applicant shall sign an affidavit stating that he or she will post the required sign per this subsection. The validity of the permit shall not be affected by the failure of any property owner, resident, or neighborhood or community organization to receive this notice.
- N. **Recorded Agreement.** Before obtaining a building permit for an accessory dwelling unit or junior accessory dwelling unit, the property owner shall execute an agreement, pursuant to Chapter 30.260, Recorded Agreements, containing a reference to the deed under which the property was acquired by the present owner which outlines the requirements regarding the sale, rental, and owner occupancy of lots developed with accessory dwelling units and junior accessory dwelling units as specified in subsection E. of this section.
- O. **Residential Density.** An accessory dwelling unit or junior accessory dwelling unit is a residential use that is consistent with the existing General Plan designations and zoning for lots within the allowable residential zones. Any accessory dwelling unit or junior accessory dwelling unit permitted pursuant to this section does not exceed the allowable density for the lot upon which the accessory dwelling unit or junior accessory dwelling unit is located. (Ord. 5834, 2018)

SECTION 2. Section 30.295.020 of Chapter 30.295 of Title 30 of the Santa Barbara Municipal Code is amended to read as follows:

**30.295.020 Residential Use Classifications.**

**A. Residential Housing Types.**

1. **Single-Unit Residential.** One primary residential unit and up to one Accessory Dwelling Unit or one Junior Accessory Dwelling Unit located on a single lot. This classification includes individual mobilehomes and manufactured housing units installed on a foundation system pursuant to Section 18551 of the California Health and Safety Code and meeting the standards of Section 30.185.270, Mobilehomes, Recreational Vehicles and Modular Units, Individual Use.
2. **Two-Unit Residential.** No more than two residential units and may include one or more Accessory Dwelling Units located on a single lot. The residential units



may be located in a single building that contains two residential units (also known as a duplex) or in two detached buildings.

3. **Multi-Unit Residential.** Three or more attached or detached residential units and may include one or more Accessory Dwelling Units on a single lot. Types of multi-unit residential include townhouses, multiple detached residential units (e.g. bungalow court), and multi-story apartment buildings.

**B. Special Residential Unit Types.**

1. **Accessory Dwelling Unit.** An attached or a detached residential unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residential unit. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the primary residential unit is or will be situated. An accessory dwelling unit also includes the following:
  - a. An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.
  - b. A manufactured home, as defined in Section 18007 of the Health and Safety Code.
6. **Junior Accessory Dwelling Unit.** A unit that is no more than 500 square feet in size and contained entirely within the structure of an existing or proposed single-unit residential housing type. A junior accessory dwelling unit includes its own separate sanitation facilities, or shares sanitation facilities with the existing or proposed single residential unit and includes an efficiency kitchen.

**SECTION 3. Severability and Interpretation.**

A. **Severability.** If any provision of this Ordinance or the application thereof to any persons or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are hereby declared to be severable.

B. **Interpretation.** This Ordinance shall be construed to confer upon the City the maximum power and authority allowed by state and federal law. In the event state or federal law is found to conflict with and preempt any provision of this Ordinance, or in the event state or federal law changes to conflict with and preempt any provision of this Ordinance, the remaining and non-conflicting provisions of this Ordinance shall be interpreted and construed to give maximum effect to the remaining and non-conflicting provisions so as to effectuate to the greatest extent possible the purposes and restrictions expressed herein.

**SECTION 4. CEQA**

Under California Public Resources Code Section 21080.17, the California Environmental Quality Act (CEQA) does not apply to the adoption of an ordinance by a city or county

implementing the provisions of Section 65852.2 and 65852.22 of the Government Code, which is the state Accessory Dwelling Unit law.

SECTION 5. Local building codes

For purpose of Government Code Section 65852.2(a)(D)(viii) “local building codes” shall mean, but not be limited to, the uniform technical codes adopted through Santa Barbara Municipal Code Chapter 22.04 and any and all objective development, design, and environmental standards and policies adopted by or implemented within the City.

SECTION 6. Effect on Projects in the Permit Process

Applications for Accessory Dwelling Units subject to the City’s Interim Urgency Ordinance No. 5927, extended by Ordinance No. 5930, that were received on or after January 1, 2017 but before the effective date of City Council adoption may continue to be processed in accordance with Government Code 65852.2 provided that a building permit is issued within 60 days after the effective date of the ordinance, or may elect to be processed in accordance with the proposed Title 30 ordinance amendments. All applications for Accessory Dwelling Units submitted on or after the effective date of City Council adoption, and any Accessory Dwelling Unit applications which have not yet received a building permit by the deadlines described above, shall be subject to the proposed Title 30 ordinance amendments.

SECTION 7. Interim Urgency Ordinance No. 5930

Interim Urgency Ordinance No. 5930 shall automatically terminate and have no further force or effect upon the effective date of this ordinance.

ORDINANCE NO. 5974

STATE OF CALIFORNIA                    )  
                                                   )  
 COUNTY OF SANTA BARBARA            ) ss.  
                                                   )  
 CITY OF SANTA BARBARA                )

I HEREBY CERTIFY that the foregoing ordinance was introduced on October 27, 2020 and adopted by the Council of the City of Santa Barbara at a meeting held on November 10, 2020, by the following roll call vote:

- AYES:                    Councilmembers Eric Friedman, Oscar Gutierrez, Meagan Harmon, Mike Jordan, Kristen W. Sneddon; Mayor Cathy Murillo
- NOES:                   None
- ABSENT:                None
- ABSTENTIONS:       None

IN WITNESS WHEREOF, I have hereto set my hand and affixed the official seal of the City of Santa Barbara on November 11, 2020.



  
 \_\_\_\_\_  
 Sarah P. Gorman, CMC  
 City Clerk Services Manager

I HEREBY APPROVE the foregoing ordinance on November 11, 2020.

  
 \_\_\_\_\_  
 Cathy Murillo  
 Mayor



**ORDINANCE NO. 2602**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS AMENDING VARIOUS SECTIONS OF CHAPTER 40 (ZONING) OF THE DAVIS MUNICIPAL CODE TO IMPLEMENT REGULATIONS REGARDING ACCESSORY DWELLING UNITS, JUNIOR ACCESSORY DWELLING UNITS, AND GUEST HOUSES, AND MAKING A DETERMINATION OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

WHEREAS, effective January 1, 2020, Senate Bill 13 (“SB 13”), Assembly Bill 68 (“AB 68”), Assembly Bill 587 (“AB 587”), Assembly Bill 670 (“AB 670”), and Assembly Bill 881 (“AB 881”) amended state regulations to further encourage the development and limit the standards cities may impose on accessory dwelling units (“ADUs”) and junior accessory dwelling units (“JADUs”). Government Code Section 65852.2 also was amended in 2020 by Senate Bill 1030 (“SB 1030”) and Assembly Bill 3182 (“AB 3182”). To comply with State law as amended by this recent legislation, the City must now update the Municipal Code; and

WHEREAS, on March 10, 2021, the Planning Commission of the City of Davis conducted a duly noticed public hearing on Ordinance No. 2602. At the hearing, all interested persons were given the opportunity to be heard. The Planning Commission received and considered the staff report and all the information, evidence and testimony presented in connection with this Ordinance. Following the close of the public hearing, the Planning Commission recommended approval of Ordinance No. 2602 to the City Council; and

WHEREAS, on May 4, 2021, the City Council of the City of Davis conducted a duly noticed public hearing on Ordinance No. 2602. At the hearing, all interested persons were given the opportunity to be heard. The City Council received and considered the staff report, the Planning Commission’s recommendation, and all the oral and written information, evidence, comments, and testimony presented in connection with this Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The recitals above are true and correct and are hereby incorporated into this Ordinance.

SECTION 2. The General Plan of the City of Davis states that a variety of housing types should be encouraged to meet the housing needs of an economically and socially diverse Davis, and to encourage infill as an alternative to sprawl. The Housing Element of the General Plan of the City of Davis also contains a policy to continue to facilitate ministerial accessory dwelling units and discretionary accessory dwelling units. This Ordinance is therefore consistent with the City’s General Plan.

SECTION 3. The definition of “Accessory dwelling unit” in Section 40.01.10 (Definitions) of Article 40.01 (In General) of Chapter 40 of the Davis Municipal Code is amended to read as follows, with all other definitions to remain the same:



“Accessory dwelling unit (“ADU”). Has the meaning set forth in Government Code Section 65852.2 and means an attached or detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit includes the following: an efficiency unit, as defined in Health and Safety Code Section 17958.1, and a manufactured home, as defined in Health and Safety Code Section 18007.”

SECTION 4. The definition of “Accessory building or structure” in Section 40.01.010 (Definitions) of Article 40.01 (In General) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other definitions to remain the same:

“Accessory building or structure. A structure detached from a primary building located on the same lot and incidental to and subordinate to the principal building or use, including, but not limited to, garages, carports, storage sheds, gazebos, and guest houses. An Accessory Dwelling Unit is not an Accessory Building or Structure and is subject to separate regulations found in Sections 40.26.450 and 40.26.460.”

SECTION 5. The definition of “Guest house” in Section 40.01.010 (Definitions) of Article 40.01 (In General) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other definitions to remain the same:

“Guest house. Living quarters or conditioned space within an accessory building for the use of persons living or employed on the premises, or for temporary use by guests of the occupants of the premises. Such quarters may have bathroom facilities (toilet, sink, tub/shower) and shall have no kitchen facilities. Such quarters shall not be rented or otherwise be used as a separate dwelling. A pool house, workshop, home office or studio is also considered a guest house.”

SECTION 6. The definition of “Apartment, efficiency” in Section 40.01.010 (Definitions) of Article 40.01 (In General) of Chapter 40 of the Davis Municipal Code is hereby repealed.

SECTION 7. The following definitions are hereby added to Section 40.01.10 (Definitions) of Article 40.01 (In General) of Chapter 40 of the Davis Municipal Code to read as follows, with all other definitions to remain the same:

“Accessory dwelling unit, junior (“JADU”). Has the meaning set forth in Government Code Section 65852.22 and means a residential dwelling unit that is no more than 500 square feet in size and is contained entirely within a single-family residence, which does not include the garage. A JADU shall include an efficiency kitchen, and may include separate bathroom facilities or share bathroom facilities with the single-family residence.”

“Attached ADU. An ADU that shares at least one common wall with the primary dwelling.”

“Detached ADU. An ADU that is constructed as a separate structure from an existing or proposed single-family dwelling or multifamily dwelling. An accessory dwelling unit attached



to the primary structure via a roof, breezeway, trellis, or covered walkway shall be considered a detached ADU.”

“Efficiency Unit. Has the meaning set forth in Section 17958.1 of the Health and Safety Code, and may be permitted for occupancy by no more than two persons. The efficiency unit shall have a minimum floor area of 220 square feet and shall have a bathroom facility and a partial kitchen or kitchenette.”

SECTION 8. Section 40.03.045 [Conditional uses permitted with an administrative use permit (AUP)] of Article 40.03 (RESIDENTIAL ONE-FAMILY (R-1) DISTRICT) of Chapter 40 of the Davis Municipal Code is hereby amended in its entirety to read as follows:

“40.03.045 Conditional uses permitted with an administrative use permit (AUP).

The following conditional uses may be permitted in an R-1 district subject to the granting of an administrative use permit (AUP):

(a) Non-ministerial accessory dwelling unit. Accessory dwelling units that are not permitted pursuant to Section 40.26.450 (Ministerial accessory dwelling units) shall be permitted subject to the granting of an administrative use permit and shall be known as non-ministerial accessory dwelling units. Non-ministerial accessory dwelling units shall comply with all of the requirements of Section 40.26.460.

(b) Guest houses. Guest houses are conditionally allowable accessory structures, subject to the granting of an administrative use permit (AUP). Guest houses shall comply with all of the requirements of Section 40.26.470.”

SECTION 9. Subdivisions (h) and (i) of Section 40.04.040 (Conditional Uses) of Article 40.04 (RESIDENTIAL ONE- AND TWO-FAMILY (R-2) DISTRICTS) of Chapter 40 of the Davis Municipal Code are hereby amended to read as follows, with all other subdivisions to remain the same:

“(h) Non-ministerial accessory dwelling units. Accessory dwelling units that are not permitted pursuant to Section 40.26.450 (Ministerial accessory dwelling units) shall be permitted subject to the granting of an administrative use permit and shall be known as non-ministerial accessory dwelling units. Non-ministerial accessory dwelling units shall comply with all of the requirements of Section 40.26.460.

(i) Guest houses. Guest houses are conditionally allowable accessory structures, subject to the granting of an administrative use permit (AUP). Guest houses shall comply with all of the requirements of Section 40.26.470.”

SECTION 10. Subdivision (e) of Section 40.04A.030 (Accessory Uses) of Article 40.04A (RESIDENTIAL ONE- AND TWO-FAMILY CONSERVATION (R2-CD) DISTRICT) of Chapter 40 of the Davis Municipal Code is hereby amended to read in full, with all other subdivisions to remain the same:



“(e) Accessory dwelling units. Accessory dwelling units meeting the requirements of Section 40.26.450.

SECTION 11. Subdivision (g) of Section 40.04A.040 (Conditional Uses) of Article 40.04A (RESIDENTIAL ONE- AND TWO-FAMILY CONSERVATION (R2-CD) DISTRICT) of Chapter 40 of the Davis Municipal Code is amended in its entirety to read as follows, with all other subdivisions to remain the same:

“(g) Conversion of an existing non-conforming non-habitable accessory structure to a guest house as provided for in Section 40.04A.080 of this article; provided that:

(1) The accessory structure was not constructed in violation of any zoning ordinance previously in effect in the district; and

(2) The new use will not constitute a nuisance.”

SECTION 12. A new Section 40.04A.045 is hereby added to Article 40.04A (RESIDENTIAL ONE-AND TWO FAMILY CONSERVATION (R-2CD) DISTRICT) of Chapter 40 of the Davis Municipal Code to read as follows:

“40.04A.045 Conditional uses permitted with an administrative use permit (AUP).

The following conditional uses may be permitted in an R-2CD district subject to the granting of an administrative use permit (AUP):

(a) Non-ministerial accessory dwelling unit. Accessory dwelling units that are not permitted pursuant to Section 40.26.450 (Ministerial accessory dwelling units) shall be permitted subject to the granting of an administrative use permit and shall be known as non-ministerial accessory dwelling units. Non-ministerial accessory dwelling units shall comply with all of the requirements of Section 40.26.460.

(b) Guest houses. Guest houses are conditionally allowable accessory structures, subject to the granting of an administrative use permit (AUP). Guest houses shall comply with all the requirements of Section 40.26.470.”

SECTION 13. Paragraph (3) of Subdivision (a) of Section 40.04A.070 (Parking) of Article 40.04A (RESIDENTIAL ONE- AND TWO-FAMILY CONSERVATION (R2-CD) DISTRICT) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other paragraphs and subdivisions to remain the same:

“(3) Accessory Dwelling Unit Parking. No vehicle parking space is required for an ADU.

SECTION 14. Subdivision (e) of Section 40.07.030 (Accessory Uses) of Article 40.07 (Residential One- and Two-Family and Mobile Home (R-2-MH) District) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other subdivisions to remain the same:



“(e) Accessory dwelling units meeting the requirements of Section 40.26.450.”

SECTION 15. Subdivision (d) of Section 40.14.040 (Accessory Uses) of Article 40.14 (Central Commercial (C-C) District) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other subdivisions to remain the same:

“(d) Accessory dwelling units meeting the requirements of Section 40.26.450.”

SECTION 16. Subdivision (e) of Section 40.15.040 (Accessory Uses) of Article 40.15 (Mixed-Use District) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other subdivisions to remain the same:

“(e) Accessory dwelling units meeting the requirements of Section 40.26.450.”

SECTION 17. Paragraph (15) of Subdivision (c) of Section 40.26.010 (Accessory buildings/structures) of Article 40.26 (Special Uses) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other subdivisions to remain the same:

“(15) Use for Dwelling Purposes. Accessory structures shall not be used for dwelling purposes.”

SECTION 18. Paragraph (8) of Subdivision (d) of Section 40.26.010 (Accessory buildings/structures) of Article 40.26 (Special Uses) of Chapter 40 of the Davis Municipal Code is hereby amended in its entirety and a new paragraph (9) is hereby added to read as follows, with all other subdivisions to be renumbered accordingly and otherwise remain the same:

“(8) Accessory Dwelling Units. In accordance with the underlying zoning district, ministerial accessory dwelling units are subject to the standards in Section 40.26.450, and non-ministerial accessory dwelling units are subject to the standards in Section 40.26.460.

(9) Guest Houses. Guest houses are subject to the standards in Section 40.26.470 and in accordance with the requirements of the underlying zoning district.”

SECTION 19. Section 40.26.450 of Article 40.26 (Special Uses) of Chapter 40 of the Davis Municipal Code is hereby amended in its entirety to read as follows:

“40.26.450 Ministerial Accessory Dwelling Units and Junior Accessory Dwelling Units.

- (a) Purpose. The purpose of this section is to implement the requirements of Government Code Sections 65852.2 and 65852.22 to allow ministerial accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) in a manner that encourages their development but simultaneously minimizes impacts on traffic, parking, density, and other areas where the City is still permitted to exercise local control. ADUs that do not meet the provisions of this Section 40.26.450, shall be considered as non-ministerial ADUs subject to the provisions of Section 40.26.460.



- (b) Definitions. For the purpose of this section, the following definitions apply. Otherwise, the words and phrases shall have the meanings respectively ascribed to them by section 40.01.010.

Manufactured Home. Has the meaning set forth in section 18007 of the Health and Safety Code.

Primary Dwelling. For purposes of this section, means the existing or proposed single-family or multi-family dwelling on the lot where an ADU would be located.

Public Transit. For purposes of this section, has the meaning set forth in Government Code Section 65852.2(j).

- (c) Permitting procedures.

(1) Before constructing an ADU or converting an existing structure or portion of an existing structure or residence to an ADU or JADU, the applicant shall obtain permits in accordance with the requirements of this section.

(2) All ADUs and JADUs shall satisfy the requirements of the California Building Standards Code, as amended by the City, and any other applicable laws.

(3) Building permit approval only. An applicant shall not be required to submit an application for an ADU permit under subsection (d) of this section, and may instead seek building permit only approval for an ADU or JADU, or both, where the proposal satisfies the requirements of Government Code Section 65852.2(e)(1), as the same may be amended from time to time, the California Building Standards Code, as amended by the City, and any other applicable laws. An ADU or JADU approved pursuant to this subsection shall be rented only for terms of 30 days or longer. The following are the categories of ADUs and JADUs that shall be approved under this paragraph (3), unless Government Code Section 65852.2(e)(1) is amended to state otherwise:

(A) A JADU within the Primary Dwelling, and an ADU within the Primary Dwelling or an ADU within an existing accessory structure. One ADU and one JADU per lot with a proposed or existing single-family dwelling is allowed if all of the following apply:

(i) The JADU is within the proposed space of a single-family dwelling or existing space of a single-family dwelling and the ADU is within either the existing or proposed space of a single-family dwelling or an existing accessory structure. An ADU built in an existing accessory structure may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. Such an expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.



- (I) The space has exterior access from the proposed or existing single-family dwelling.
  - (II) The side and rear setbacks are sufficient for fire and safety.
  - (III) The JADU complies with the requirements of Government Code Section 65852.22 and with the requirements set forth in subsections c, d, and e of this section.
- (B) Detached new construction ADU for Primary Dwelling. This ADU may be combined with a JADU described in subparagraph (a) above. One detached, new construction ADU for a lot with a proposed or existing single-family dwelling if all of the following apply:
- (i) The ADU shall be no more than 800 square feet in size.
  - (ii) The ADU shall not exceed a height limit of 16 feet.
  - (iii) The ADU shall be set back a minimum of four feet from side and rear lot lines.
  - (iv) The ADU shall comply with the front yard setback as required by the zone in which it is located.
- (C) ADU within non-livable space in existing multifamily structure. One ADU within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings. If requested, more than one ADU shall be allowed, up to the number of ADUs that equals 25 percent of the existing multifamily dwelling units in the structure.
- (D) Detached new construction ADUs for existing multifamily dwelling. Not more than two detached ADUs located on a lot that has an existing multifamily dwelling, subject to a height limit of 16 feet and minimum four-foot rear and side setbacks.
- (4) Projects Subject to ADU Permit Review and Timelines.
- (A) The director or his/her designee shall ministerially review and approve an ADU permit application and shall not require a public hearing, provided that the submitted application is complete and demonstrates that the ADU complies with the requirements contained in this section and any other applicable law.
  - (B) ADU permit applications subject to ministerial approval shall be processed within the timelines established by California Government Code Section 65852.2.
  - (C) Where an ADU permit application is submitted with an application for a Primary Dwelling that is subject to discretionary review under this Code, the ADU permit application will be considered separately without discretionary review or a public hearing, following action on the portion of the project subject to discretionary review.

- (D) In addition to obtaining an ADU permit, the applicant shall be required to obtain a building permit and any other applicable construction or related permits prior to the construction of the ADU.
- (d) ADU permit application submittal requirements
- (1) An ADU application is required to be filed with the Department of Community Development and Sustainability for an ADU that does not satisfy the requirements of subsection (c)(3) of this section (Building permit approval only). An ADU application shall be accompanied by the filing fee as established by resolution of the City Council, and shall include, but not be limited to, the following documents and information:
- (A) Name and address of the applicant.
- (B) Owner-Builder Acknowledgment and Information Verification Form.
- (C) Assessor's parcel number(s) of the property.
- (D) Plot Plan (Drawn to Scale). In sufficient detail to clearly describe:
- (i) Physical dimensions of the property.
  - (ii) Location and dimensions of all existing and proposed structures, walls, and fences.
  - (iii) Location and dimensions of all existing and proposed easements, septic tanks, leach lines, seepage pits, drainage structures, and utilities.
  - (iv) Location, dimensions, and names of all adjacent roads, whether public or private.
  - (v) Setbacks.
  - (vi) Existing and proposed methods of circulation, including ingress and egress, driveways, parking areas, and parking structures.
  - (vii) Panoramic color photographs showing the property from all sides and showing adjacent properties.
  - (viii) A description of architectural treatments proposed for the ADU.
  - (ix) Written confirmation from any water district or sewer district providing service of the availability of service.
- (E) Floor plans. Complete floor plans of both existing and proposed conditions shall be provided. Each room shall be dimensioned and resulting floor area calculation included. The use of each room shall be labeled. The size and location of all doors, closets, walls, and cooking facilities shall be clearly depicted. For an attached ADU, the plans must include the Primary Dwelling as well.
- (F) Elevations. North, south, east, and west elevations that show all exterior structure dimensions, all architectural projections, and all openings for both the primary residence and the proposed accessory dwelling unit. For an attached ADU, the plans must include the Primary Dwelling as well.



- (G) Additional Information. Such additional information as shall be required by the Community Development Department Director.
- (2) All ADUs shall satisfy the requirements of Chapter 8, Buildings, of the Davis Municipal Code and require a building permit from the city building official.
- (3) In accordance with State law, ADUs are an accessory use to the Primary Dwelling on the lot. ADUs shall not be considered to exceed the allowable density for the lot.
- (e) Development Standards for ADUs. Except those ADUs approved pursuant to subsection (c)(3) of this section (Building permit approval only), ADUs shall comply with the following development standards:
- (1) Location Restrictions. One ADU shall be allowed on a lot with a proposed or existing Primary Dwelling that is zoned to allow single family or multi-family residential use.
- (2) Development Standards.
- (A) Size restrictions. If there is an existing Primary Dwelling, an Attached ADU shall not exceed fifty percent (50%) of the gross floor area for the Primary Dwelling. A Detached ADU shall not exceed 850 square feet in gross floor area, or 1,000 square feet in gross floor area if the ADU provides more than one bedroom. In no case shall an ADU be less than 220 square feet, or the minimum square footage to allow an "efficiency unit" as defined in Health and Safety Code Section 17958.1, as that law may be amended.
- (B) Height restrictions.
- (i) An Attached or Detached ADU shall not exceed 16 feet in height, except as permitted in (ii) below.
- (ii) An Attached ADU may be constructed on or as the second story of an existing primary single family residence (including the garage area) provided it complies with the height and setbacks as required by the zone in which the property is located.
- (C) Setbacks. No new setback shall be required for an ADU that is constructed within an existing structure or new ADU that is constructed in the same location and with the same dimensions as an existing structure. For all other ADUs, the required minimum setback from side and rear lot lines shall be four feet. An ADU shall comply with all required front yard and street side yard setbacks otherwise required by the Davis Municipal Code.
- (D) Lot Coverage, Floor Area Ratio, and Open Space. An ADU shall conform to all lot coverage, floor area ratio, and open space requirements applicable to the zoning district in which the property is located, except that an ADU that is 800 square feet or less, not more than 16 feet in height, and compliant with a minimum 4-foot side and rear setback, shall be considered consistent with all city development standards, irrespective of any other Municipal Code limitations governing lot coverage, floor area ratio, and open space.

- (E) Design. All Accessory Dwelling Units that are approved subject to the provisions of subdivision (d) shall comply with the following design standards:
- (i) The accessory dwelling unit shall have the same roof pitch as the primary dwelling with matching eave details, but may vary by up to 2/12 more or 2/12 less than the roof pitch of the primary dwelling unit. If the unit is located in a historic conservation zone, it must follow the roof pitch requirements for the design style allowed in that zone or subarea.
  - (ii) A garage converted to an ADU that does not proceed under the building permit only approval process shall include removal of the garage door(s) which shall be replaced with architectural features, including walls, doors, windows, trim and accent details to match the primary structure.
  - (iii) An ADU shall not require exterior alterations to the street-facing façade of a property that is historically designated or in a conservation overlay district.
  - (iv) The architecture of the ADU shall use the same architectural features, including walls, doors, windows, trim and accent details to match the primary structure.
- (F) Exterior access. An ADU shall have a separate exterior access. Access stairs, entry doors and decks must face the primary residence or the alley, if applicable.
- (G) Fire sprinklers. ADUs are required to provide fire sprinklers if they are required for the Primary Dwelling.
- (H) Separation. An ADU shall be located at least 5 feet from the Primary Dwelling.
- (I) Properties Listed on the California Register of Historic Resources. An ADU that has the potential to adversely impact any historical resource listed on the California Register of Historic Resources, shall be designed and constructed in accordance with the “Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings” found at 36 CFR 68.3, as the same may be amended from time to time.
- (3) Parking.
- (A) No additional vehicle parking space is required for a ministerial ADU.
  - (B) When an ADU is created by converting or demolishing a garage, carport or covered parking structure, replacement of parking space(s) eliminated by the construction of the ADU shall not be required as long as the ADU remains in use as a legal ADU.



- (f) Standards for JADUs. In accordance with the standards set forth in Government Code Section 65852.22, JADUs shall comply with the following requirements, unless State law is amended to set forth different standards in which case State law standards will govern.
  - (1) A JADU shall be a minimum of 220 square feet and a maximum of 500 square feet of gross floor area. The gross floor area of a shared sanitation facility shall not be included in the maximum gross floor area of a JADU.
  - (2) A JADU must be contained entirely within the walls of the habitable portion of the existing or proposed single-family dwelling. The habitable portion of the single family dwelling does not include the garage or carport.
  - (3) A separate exterior entry from the main entrance to the single-family dwelling shall be provided to serve a JADU.
  - (4) A JADU may include separate sanitation facilities, or may share sanitation facilities with the existing single-family dwelling.
  - (5) A JADU shall include an efficiency kitchen or kitchenette, which shall include all of the following:
    - (A) A cooking facility with appliances.
    - (B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the JADU.
  - (6) No additional parking is required for a JADU.
- (g) Covenant required. Prior to the issuance of a Certificate of Occupancy for the ADU or JADU, the property owner shall record a declaration of restrictions, in a form approved by the City Attorney, placing the following restrictions on the property, the property owner, and all successors in interest:
  - (1) The ADU or JADU shall not be sold, transferred, or assigned separately from the Primary Dwelling, but may be rented.
  - (2) The ADU or JADU shall not be used for short term rentals for less than 30 consecutive days.
  - (3) If there is a JADU on the property, either the JADU or Primary Dwelling shall be occupied by the owner of record.
  - (4) The property owner and all successors in interest shall maintain the ADU and/or JADU and the property in accordance with all applicable ADU and/or JADU requirements and standards

- (h) Services, impact fees, and utility connections.
- (1) ADUs shall not be allowed where roadways, public utilities or services are inadequate in accordance with the general plan and zoning designation for the lot.
  - (2) ADUs and JADUs shall have adequate water and sewer services. These services may be provided from the water and sewer points of connection for the Primary Dwelling and not be a separate set of services. For an ADU that is not a conversion of an existing space, a separate utility connection directly between the accessory dwelling unit and the utility may be required. Consistent with Government Code Section 65852.2(f), the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit.
  - (3) The owner of an ADU shall be subject to the payment of all sewer, water and other applicable fees, including impact fees set forth in Government Code Section 66000 et seq., except as follows:
    - (A) ADUs that are less than 750 square feet shall not be subject to impact fees.
    - (B) ADUs that are 750 square feet or more shall be charged impact fees that are proportional in relation to the square footage of the Primary Dwelling unit.
  - (4) The City shall not issue a building permit for an ADU or JADU until the applicant provides a will serve letter from the local water and sewer provider. Notwithstanding the foregoing, if a private sewage disposal system is being used, the applicant must provide documentation showing approval by the Building Official in lieu of the will serve letter by the local sewer provider.
- (i) Fire safety requirements. The construction of all new ADUs and JADUs shall meet minimum standards for fire safety as defined in the Building Code of the City of Davis and the Fire Code of the City of Davis, as the same may be amended by the City from time to time.
- (j) Ownership. No ADU or JADU shall be created for sale or financing pursuant to any condominium plan, community apartment plan, housing cooperative or subdivision map.
- (k) Occupancy. Except as provided elsewhere in this section, ministerial ADUs may be rented or owner occupied.
- (l) Planned Development Districts. In the event that a residential planned development district includes standards that would preclude the construction of a ministerial ADU that would otherwise be permitted under this Section 40.26.450, the requirements of this section shall apply, and shall supersede the planned development standards as applied to ministerial ADUs within the applicable planned development district.”

**SECTION 20.** A new Section 40.26.460 (Non-Ministerial Accessory Dwelling Units) is hereby added to Article 40.26 (Special Uses) of Chapter 40 of the Davis Municipal Code to read as follows:



“Section 40.26.460 Non-Ministerial Accessory Dwelling Units.

- (a) Purpose. The purpose of this section is to allow accessory dwelling units (ADUs) that do not meet the provisions of Section 40.26.450. Non-ministerial ADUs are subject to the regulations of this section and the approval of an administrative use permit.
- (b) The following standards shall apply to non-ministerial accessory dwelling units:
  - (1) The maximum size of a non-ministerial accessory dwelling unit shall be 1,200 square feet.
  - (2) The minimum setbacks shall be:
    - (A) Front yard, the same as is required by the zone where the ADU is located.
    - (B) Street side yard, 15 feet.
    - (C) Interior side yard, five feet.
    - (D) Rear yard, 10 feet.
    - (E) The minimum interior side yard and rear yard shall be three feet if said yards adjoin: an alley, park or greenbelt, or a zoning district that does not principally permit single-family dwellings or two-family dwellings (e.g., districts that permit multiple-family dwellings, nonresidential uses, agriculture, public and semipublic facilities, or similar principal permitted uses). The interior side yard and rear yard for a yard adjoining a zoning district that principally permits single-family or two-family dwellings shall comply with the general requirements in subparagraphs (C) and (D) above.
  - (3) The minimum required distance between the non-ministerial accessory dwelling unit and the primary dwelling unit, and all other structures on the property, shall be in conformance with the California Building Code.
  - (4) The maximum height shall be 30 feet.
  - (5) The maximum lot coverage shall be 50 percent for the primary dwelling and accessory dwelling units and all accessory structures combined.
  - (6) The minimum useable open space is 20 percent.
  - (7) No additional vehicle parking space is required for a non-ministerial ADU.
  - (8) The accessory dwelling unit shall have the same roof pitch as the primary dwelling with matching eave details, but may vary by up to 2/12 more or 2/12 less than the roof pitch of the primary dwelling unit. If the unit is located in a historic conservation zone, it must follow the roof pitch requirements for the design style allowed in that zone or subarea.
  - (9) A garage converted to an ADU that does not proceed under the building permit only approval process shall include removal of the garage door(s) which shall be replaced with architectural features, including walls, doors, windows, trim and accent details to match the primary structure.

- (10) The architecture of the ADU shall use the same architectural features, including walls, doors, windows, trim and accent details to match the primary structure.
  - (11) Fencing or landscaping shall be installed and maintained between the unit and the neighboring property.
  - (12) For an accessory dwelling unit that is constructed as a second story or above a garage, all windows facing the side or rear lot lines shall be made of frosted or etched glass, or otherwise include a privacy film or treatment to ensure privacy for neighboring properties if the lot line abuts another residential property.
  - (13) Adequate open space and landscaping shall be provided for both the primary dwelling unit and the non-ministerial accessory dwelling unit.
- (c) An application for a non-ministerial accessory dwelling unit may be approved only if the Director makes the findings required by Section 40.30A.070.”

SECTION 21. A new Section 40.26.470 is hereby added to Article 40.26 (Special Uses) of Chapter 40 of the Davis Municipal Code to read as follows:

“Section 40.26.470 Guest Houses.

- (a) Purpose. The purpose of this section is to further define and ensure compatibility of small accessory buildings otherwise called guest houses.
- (b) Definitions. For the purposes of this section, the words and phrases shall have the meanings respectively ascribed to them by section 40.01.010.
- (c) The following standards shall apply to guest houses:
  - (1) The maximum lot coverage shall be 50 percent for the total of the primary structure, any accessory dwelling unit, any other accessory structure and the proposed guest house.
  - (2) The maximum total square footage for a guest house is 1,200 square feet or 50 percent of the primary structure, whichever is less.
  - (3) A guest house shall have the same setbacks as an accessory building, pursuant to Section 40.26.010.
  - (4) A guest house shall meet the height requirement for accessory buildings in Section 40.26.010.
  - (5) No parking shall be required for guest houses.
  - (6) Guest houses may have restroom facilities (toilet, sink, bathtub and/or shower) but are prohibited from having a kitchen or cooking facilities.



- (7) Only one guest house is permitted per lot.
- (8) A guest house shall not be rented or leased separate from the principal dwelling unit or otherwise used as a separate dwelling unit.
- (9) A guest house may be rented to a business authorized as a home occupation at the same address.
- (10) Except as otherwise required by Government Code Section 65852.2, no more than one accessory dwelling unit and one guest house may be located on any lot where a single family residence exists on a property.
- (11) A guest house shall comply with all standards applicable to an accessory building/structure in Section 40.26.010, except in the case of a conflict with the provisions herein, in which case the provisions in this section shall govern.

(d) An application for a guest house may be approved only if the Director makes the findings required by Section 40.30A.070.”

SECTION 22. Section 40.30A.070 (Findings for Approval) of Article 40.30A (Administrative Use Permits) of Chapter 40 of the Davis Municipal Code is hereby amended in its entirety to read as follows:

“40.30A.070 Findings for Approval.

An administrative use permit approval shall be approved, conditionally approved, or denied by the Director (or the planning commission or city council if subject to an appeal) pursuant to the requirements of Article 40.39, Administrative Approvals, of this chapter. An administrative use permit shall only be granted for uses that the Zoning Code expressly provides may be authorized upon the approval of an administrative use permit, for example non-ministerial accessory dwelling units, guest houses, and certain cannabis-related uses. Such application may be approved only if the following findings are made:

- (a) Conforms to general plan. The proposed structure or use conforms to the requirements and intent of this chapter and the general plan.
- (b) Conditions and requirements will be met. Any additional conditions and requirements stipulated by the Director (or the planning commission or city council if subject to an appeal) have been or will be met.
- (c) Not detrimental to public welfare. That such use will not, under the circumstances of the particular case, constitute a nuisance or be detrimental to the public welfare of the community.
- (d) Compatible relationship with adjacent properties. That the location and design of the structure or use maintains a compatible relationship with adjacent properties and does not significantly impact the privacy, light, air, solar access or parking of adjacent properties.”

SECTION 23. The City Council determines that this ordinance is exempt from environmental review under the California Environmental Quality Act, (California Public Resources Code §§ 21000, et seq., (“CEQA”) and the CEQA Guidelines (14 California Code of Regulations §§ 15000, et seq.) because this zoning ordinance implements the provisions of Government Code Section 65852.2 and is therefore exempt from CEQA pursuant to Public Resources Code Section 21080.17 and California Code of Regulations Section 15282(h).

SECTION 24. This Ordinance shall take effect and be in full force and effect thirty (30) days from and after the date of its final passage and adoption.

SECTION 25. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

INTRODUCED on the 4th day of May, 2021, and PASSED AND ADOPTED by the City Council of the City of Davis on this 18th day of May, 2021, by the following vote:

AYES: Arnold, Carson, Chapman, Frerichs, Partida

NOES: None

Gloria J. Partida  
Mayor

ATTEST:

Zoe S. Mirabile, CMC  
City Clerk





CONSENT CALENDAR  
Sept. 13, 2022

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Taplin  
 Subject: Resolution in Support of High-Quality, Equitable Healthcare Services at UCSF Children's Hospital Oakland

RECOMMENDATION

Adopt a Resolution in support of patients, nurses, doctors, caregivers and other employees at UCSF Children's Hospital Oakland; and send resolution to the UC Board of Regents, UC Office of the President, and UCSF Health.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

Since the 2014 Affiliation Agreement established Children's Hospital Oakland as a partnering organization and subsidiary of UCSF, patients<sup>1</sup> and caregivers<sup>2</sup> have been raising alarms<sup>3</sup> regarding staff burnout and attrition, loss of critical services, and redirecting East Bay patients from lower-income communities of color to facilities in San Francisco.

According to a 2020 letter from the California Nurses Association, "UCSF took over the leadership and control of Children's Oakland without financial responsibility for the effects of its decisions," which resulted in significant losses to "complex cardiovascular surgery, loss of adolescent medicine, loss of behavior and development specialists, loss of pulmonologists, loss of pediatric surgeons, lack of MRI capability, loss of neurooncologists, and loss of sickle cell clinicians and researchers."

In the letter, CNA made the following requests:

1. Restore high quality, tertiary care for all children at Children's Hospital Oakland.

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<sup>1</sup> Fernandez, L. & Jarosz, B. (2021). Patients, providers say UCSF affiliation with Children's Hospital means worse care for East Bay families. *KTVU*. Retrieved from <https://www.ktvu.com/news/patients-providers-say-ucsf-affiliation-with-childrens-hospital-means-worse-care-for-east-bay-families>

<sup>2</sup> Krans, B. (2021). Patients, workers maintain Children's Hospital still suffers under UCSF. *Oaklandside*. Retrieved from <https://oaklandside.org/2021/12/03/patients-workers-maintain-childrens-hospital-oakland-still-suffers-under-ucsf/>

<sup>3</sup> Kassabian, S. (2021). Children's Hospital Oakland joined UCSF in 2014. Was it a good move? *Oaklandside*. Retrieved from <https://oaklandside.org/2021/02/25/childrens-hospital-oakland-joined-ucsf-7-years-ago-was-it-a-good-move/>

2. Create a Board and Executive Leadership structure at Oakland independent of UCSF.
3. Create a health care system committed to rooting out structural racism and correcting the inequities between Oakland and San Francisco.
4. Commit to respecting and retaining nurses, physicians and other health care workers who have dedicated our careers to care for this community.

This resolution reiterates those requests, and supports a similar resolution issued by the Oakland City Council in January 2022.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-5120

Attachments:  
1: Resolution

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

RESOLUTION IN SUPPORT OF HIGH-QUALITY, EQUITABLE HEALTHCARE SERVICES AT CHILDREN'S HOSPITAL OAKLAND

WHEREAS, the 2014 Affiliation of Children's Hospital Oakland and Children's Hospital Oakland Research Institute with University of California San Francisco (UCSF) was touted as a collaboration of equals—a public-private partnership strengthening both hospitals, with Children's Hospital Oakland retaining its identity and benefiting from additional financial resources; and

WHEREAS, the 2014 Affiliation of Children's Hospital Oakland and Children's Hospital Oakland Research Institute with University of California San Francisco (UCSF) was touted as a collaboration of equals—a public-private partnership strengthening both hospitals, with Children's Hospital Oakland retaining its identity and benefiting from additional financial resources; and

WHEREAS, the vast majority of Children's Hospital Oakland patients come from Alameda, Contra Costa, Solano, and San Joaquin Counties and the patient population at Children's Hospital Oakland reflects the demographics of the East Bay, including many immigrants and children from families of color; and

WHEREAS, costs to patients and families have skyrocketed, with devastating economic impacts often exacerbated by the loss of household income during the recent pandemic; and

WHEREAS, inpatient and surgical volumes at UCSF Oakland have gone down since the affiliation, while UCSF Children's Hospital in San Francisco has increased significantly; and

WHEREAS, as critical services have been adjusted, many of Children's Hospital Oakland's patients have been forced to travel to San Francisco for services that had been provided in Oakland for decades; and

WHEREAS, critical services and health care service providers in Oakland, including complex cardiovascular surgery, adolescent medicine, behavior and development specialists, pulmonologists, pediatric surgeons, MRI capability, neuro-oncologists, have been neglected or cut after UCSF took over the leadership and control of Children's Hospital Oakland; and

WHEREAS, Children's Hospital Oakland remains a separate, not-for-profit children's hospital lacking true representation in the UC system, and with a separate operating budget from UCSF; and

WHEREAS, decreases in Oakland patient volume as well as loss of subspecialty services have decreased revenue for Children's Oakland, further limiting staff and services; and

WHEREAS, loss of radiologists and other subspecialists such as neurologists and pulmonologists has limited the clinical program's ability to provide comprehensive care; and

WHEREAS, since the affiliation, nurses, health care technicians, nurse practitioners, and physicians have strived to address these increasing healthcare disparities and costs, and have attempted to engage the UCSF leadership as partners with limited and inadequate success; and

WHEREAS, the lack of success by UCSF management to fill vacant positions has exacerbated short staffing and called into question the remaining staff's ability to provide high quality care consistent with the Children's Hospital Oakland's long-standing reputation as one of the premier children's hospitals in the country; and

WHEREAS, the transfer of financial resources from Children's Hospital Oakland to UCSF in San Francisco can lead to racial inequity for East Bay families, where people with less access to resources also get more limited access to quality health care.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley respectfully urges UCSF Health, the UC Office of the President, and the UC Board of Regents to restore comprehensive high quality, tertiary care for all children at Children's Hospital Oakland locations;

BE IT FURTHER RESOLVED that the City Council respectfully urges UCSF Health, the UC Office of the President, and the UC Board of Regents to restore comprehensive high quality, tertiary care for all children at Children's Hospital Oakland locations;

BE IT FURTHER RESOLVED that the City Council requests and urges UCSF to create a health care system committed to correcting the inequities between San Francisco and Oakland— as well as the other East Bay and Central Valley communities where the overwhelming majority of Children Hospital's patient population lives;

BE IT FURTHER RESOLVED that the City Council urges UCSF to re-commit to respecting the views of and retaining nurses, doctors, and other health care workers who have dedicated their careers to care to serving children and families in our East Bay community.



CONSENT CALENDAR  
Sept. 13, 2022

To: Honorable Mayor and Members of the City Council  
From: Councilmember Taplin  
Subject: Berkeley Youth Alternatives (BYA) Charity Golf Classic: 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 \$200 from Councilmember Taplin, to support the 4<sup>th</sup> Annual Charity Golf Classic hosted by Berkeley Youth Alternatives (BYA).

FINANCIAL IMPLICATIONS

No General Fund impact. \$200 is available from contributing Councilmember's Council Office Budget discretionary accounts.

BACKGROUND

Berkeley Youth Alternatives (BYA) is hosting its fifth annual Charity Golf Tournament on September 16, 2022.

For over 40 years, BYA has served the children and families of Berkeley and the surrounding cities in Alameda County and Contra Costa Counties by providing comprehensive services in a supportive and bias-free haven. Founded in 1969 as a runaway youth shelter, BYA has since expanded to provide comprehensive youth and family services. Funds raised by this charity event will help support important services such as mental health counseling, case management, academic support, mentoring, health education, sports and fitness programs, recreation, workforce development and youth internships.



**Register Online Today!**  
<https://tinyurl.com/BYAGOLF22>  
 or scan QR code

For more information, please contact  
**Brandon Mason** at (510) 849-1402,  
 email [bmason@byaonline.org](mailto:bmason@byaonline.org).

All funds help promote academic success, economic self-sufficiency, health and wellness for youth of color in the Great East Bay!

**SCHEDULE:**

|                 |                        |
|-----------------|------------------------|
| <b>10:30 AM</b> | <b>REGISTRATION</b>    |
| <b>11:00 AM</b> | <b>LUNCH</b>           |
| <b>12:30 PM</b> | <b>SHOTGUN START</b>   |
| <b>6:00 PM</b>  | <b>TEXAS STYLE BBQ</b> |

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

Attachments:  
 1: Resolution

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

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

WHEREAS, Councilmember Taplin has surplus funds in his office expenditure account (budget code 011-11-102-100-0000-000-411); and

WHEREAS, a California non-profit tax exempt corporation Berkeley Youth Alternatives seeks funds in the amount of \$200 to provide the following public services: BYA 4<sup>th</sup> Annual Charity Golf Classic; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose: providing youth athletic programming and mentorship;

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 \$200 amount per office shall be granted to Berkeley Youth Alternatives to support the BYA Charity Golf Classic.







BERKELEY CITY COUNCILMEMBER  
**TERRY TAPLÍN**  
 DISTRICT 2

CONSENT CALENDAR  
 Sept. 13, 2022

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Taplin, Councilmember Droste (co-sponsor), Councilmember Wengraf (co-sponsor), Councilmember Kesarwani (co-sponsor)  
 Subject: California Marriage Equality Resolution (Prop 8 Repeal)

RECOMMENDATION

Adopt a Resolution Urging the California Legislature to Place a Measure on the Ballot to Repeal Article I Section 7.5 of the State Constitution, a.k.a. Proposition 8; and send copies to the Offices of the Speaker of the Assembly, Senate President Pro Tempore, and Governor.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

Marriage equality and LGBTQ+ rights are under existential threat in the United States. When the US Supreme Court voted to remove essential reproductive rights by overturning *Roe v. Wade* (1973) in *Dobbs v. Jackson* (2022), Justice Clarence Thomas issued a concurring opinion citing *Obergefell v. Hodges* (2015), the historic decision providing marriage equality to same-sex couples, as another judicial precedent that he wished to revisit.<sup>1</sup>

As a nakedly partisan body, the conservative Supreme Court majority is very likely to pursue further action to undermine civil rights. Thus, it is urgent for California to enshrine marriage equality in state law. In order to do so, voters would have to repeal Proposition 8 (2008), which prohibited same-sex marriage. The state legislature has the power to place measures on the ballot without the costly signature-gathering process, and the City of Oakland has already issued a resolution calling for Prop 8 repeal to be placed on the ballot.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Terry Taplin      Council District 2      510-981-7120

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<sup>1</sup> *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, 597 U.S. (2022).

Prop 8 Resolution

CONSENT CALENDAR  
Sept. 13, 2022

Attachments:  
1: Resolution

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

**RESOLUTION URGING THE CALIFORNIA STATE LEGISLATURE TO DEFEND MARRIAGE EQUALITY BY PLACING A MEASURE ON THE BALLOT TO REPEAL ARTICLE I SECTION 7.5 OF THE STATE CONSTITUTION, ALSO KNOWN AS PROPOSITION 8**

WHEREAS, the path to full marriage equality in the United States has been one of the most affirmative social movements fought by the lesbian, gay, bisexual, Transgender, and Queer (LGBTQ+) community over the past century; and

WHEREAS, according to estimates from the 2019 Current Population Survey Annual Social and Economic Supplement (CPS ASEC), there are 543,000 same-sex married households across the US; and

WHEREAS, in California, Proposition 8 was approved by 52% of the voters on November 4, 2008, adding a new section to the state Constitution that “Only marriage between a man and a woman is valid or recognized in California.”; and

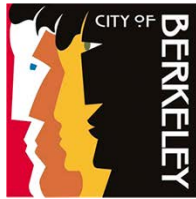
WHEREAS, when Proposition 8 passed in 2008, the State of California reported an increase in depression, anxiety, and suicide in the LGBTQ+ community and in children with LGBTQ+ parents; and

WHEREAS, following the Dobbs v. Jackson (2022) decision overturning abortion rights that had been guaranteed by Roe v. Wade (1973), US Supreme Court Justice Clarence Thomas issued a concurring opinion suggesting further legal challenges to same-sex marriage rights; and

WHEREAS, LGBTQ+ rights are increasingly under threat in the United States and the world at large.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley hereby urges California State Legislature to defend marriage equality by placing a measure to repeal Article I Section 7.5 of the state Constitution, also known as Proposition 8, onto the ballot.





CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 September 13, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson (Author), Councilmember Terry Taplin (Co-Sponsor), Mayor Jesse Arreguín (Co-Sponsor), and Councilmember Kate Harrison (Co-Sponsor)

Subject: Referral: Keep Innovation in Berkeley

RECOMMENDATION

Refer to the City Manager and the Planning Commission to consider and return to Council with Zoning Ordinance amendments, codified performance standards, and other actions to encourage the growth and retention of Research & Development (R&D) in Berkeley. Staff and the Commission should explore:

1. Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C), West Berkeley (C-W), University (C-U), and Downtown Berkeley (C-DMU) with a Zoning Certificate, subject to performance standards.
  - a. Performance standards should regulate and mitigate potential impacts on quality of life, public health, and environmental health, such as noise, odors, fumes, vibrations, dust, light pollution, hours of operation, and disposal and storage protocols for flammable, combustible, chemical, and hazardous substances.
2. Updating the “District Purpose” sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate.
3. Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements.
4. Reviewing Berkeley Municipal Code 23.206.080 to ensure that language regulating Biosafety Level (BSL) Classes 1-4 is clear and consistent with regulations in neighboring jurisdictions and other cities that support a broad range of R&D. Consider repealing the section or amending it to permit BSL-2 in all districts where research and development facilities or laboratories are permitted.
5. Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process.

POLICY COMMITTEE RECOMMENDATION

On July 19, 2022, the Land Use, Housing, & Economic Development Policy Committee adopted the following action: M/S/C (Robinson/Bartlett) to approve the item with a positive recommendation. Vote: All Ayes.

### BACKGROUND

The City of Berkeley has over 400 “innovation sector” businesses in tech, biotech, R&D, and other STEM industries. The 2021 Berkeley Economic Dashboard (published in Q1 2022) reported robust growth opportunities in this sector, with 10 Berkeley-based companies receiving a total of nearly \$9 million in federal and state grants for R&D.<sup>1</sup> 35% of Berkeley’s innovation companies develop software, 31% develop biotechnology and healthcare technologies, and 13% develop clean technologies to support environmental sustainability and address climate change. Nearly 87% of these innovation companies are relatively early stage and take advantage of the city’s coworking spaces, accelerators, and incubators.

It is critical for the City to continue efforts to encourage the growth of R&D in Berkeley. In addition to providing jobs and fueling economic development locally, innovation companies make a global impact across sectors, including in the healthcare field and the fight against climate change. Berkeley benefits from the presence of the University of California, Berkeley and the Lawrence Berkeley National Laboratory (LBNL), whose affiliates go on to found startups supported by the Berkeley Startup Cluster and accelerators or incubators like Berkeley SkyDeck or Bakar Labs.<sup>2</sup> There is a clear demand for R&D space from companies who have grown out of UC Berkeley and are seeking to build their enterprise in Berkeley, close to the talent, facilities, and entrepreneur support programs on campus. If the City’s zoning regulations do not provide sufficient opportunities for emerging growth companies, they have no choice but to leave Berkeley and settle in nearby cities that accommodate them with open arms, such as Oakland, Emeryville, San Leandro, and Alameda.

On March 22, 2022, Council adopted the first reading of a Zoning Ordinance amendment that modified the land use definition of Research and Development (R&D) in Berkeley Municipal Code 23.502.020.R.8.<sup>3</sup> This amendment came to Council as a referral response to a March 20, 2020 referral from Mayor Arreguín and Councilmember Wengraf.

The original definition read:

*Research and Development.* An establishment comprised of laboratory or other non-office space, which is engaged in one or more of the following activities:

<sup>1</sup> <https://berkeleyca.gov/sites/default/files/2022-04/2022-03-22%20Item%2038%20Economic%20Dashboards%20Update.pdf>

<sup>2</sup> <https://berkeleystartupcluster.com/>

<sup>3</sup> <https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-03-22%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf>

industrial, biological or scientific research; product design; development and testing; and limited manufacturing necessary for the production of prototypes.

The updated definition reads:

*Research and Development:* An establishment engaged in the following activities: 1) industrial, biological or scientific research; and/or 2) product or process design, development, prototyping, or testing. This may include labs, offices, warehousing, and light manufacturing functions as part of the overall Research and Development use.

The March 2020 referral observed that the R&D definition in the BMC did not adequately reflect present-day R&D business activities. For example, the definition prohibited R&D establishments from including office space and required the inclusion of a laboratory. The referral requested that the new definition reflect evolving business practices and provide flexibility for R&D establishments to occupy spaces that meet their operating needs. Modifying the R&D definition supported the City's Strategic Plan goal of fostering a dynamic, sustainable, and locally-based economy.

Through that process, additional issues have come to light that have the effect of inhibiting innovation in Berkeley, which this referral aims to address.

***Recommendation #1:*** Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C), West Berkeley (C-W), University (C-U), and Downtown Berkeley (C-DMU) with a Zoning Certificate, subject to performance standards.

BMC 23.204.020.A Table 23.204-1<sup>4</sup> and 23.206.020.A Table 23.206-1<sup>5</sup> lay out allowed land uses for each commercial and manufacturing district, respectively. Currently, R&D is permitted in three districts across the city: C-W (with an Administrative Use Permit) and MM and MU-LI (with a Zoning Certificate if under 20,000 sq. ft. and an AUP if over 20,000 sq. ft.).

Notably, the commercial districts in Southside (C-T), the southern portion of Telegraph (C-C), and the Downtown (C-DMU) do not currently allow R&D. R&D spaces close to campus would be extremely valuable to students, alumni, and others affiliated with UC Berkeley and LBNL. By allowing R&D in these districts, the City would make it easier to keep the innovation and talent that flows from the university in Berkeley. Furthermore, permitting R&D in the University Avenue commercial corridor (C-U) would play an important role in connecting West Berkeley and UC Berkeley, the City's two primary hubs of innovation.

<sup>4</sup> <https://berkeley.municipal.codes/BMC/23.204.020>

<sup>5</sup> <https://berkeley.municipal.codes/BMC/23.206.020>

Startups have expressed that the City's permitting process remains a challenge, particularly if the Zoning Ordinance requires an AUP. This process can take months or even years, which is problematic for R&D companies whose runway for finding a suitable space to develop proof of concept is limited by the funding they have available from early-stage investors. The timelines associated with an AUP provide founders no concrete assurance and can jeopardize operations during the most critical time for startups.

However, noise disruption and biohazard safety are of particular concern when permitting new uses in commercial districts due to their mixed-use residential buildings and proximity to residential districts. It is important that staff and the Planning Commission consider strategies for mitigating any impacts of R&D in C-prefixed districts, including the use of performance standards. Performance standards, which lay out metrics and regulations that the applicant must agree to before being issued a Zoning Certificate, are an important tool to ensure conformance to the neighborhood without imposing lengthy permit approval timelines.

One example that the City of Berkeley can look towards is the City of Fremont. Fremont utilizes performance standards in their industrial districts, which house R&D activities, to ensure that "adjoining properties, persons and the community as well as the region are provided protection against adverse conditions which may be created by the various uses operating within the industrial zoning districts." The performance standards regulate noise, vibration, glare or heat, fire hazards, liquid or solid wastes, fissionable or radioactive material, and aesthetics.<sup>6</sup> See Attachment 1.

The City of San Diego serves as a case study of how R&D can co-exist with commercial and residential uses. In 2019, the San Diego City Council approved the creation of two new mixed-use zones, RMX (Residential Mixed-Use) and EMX (Employment Mixed-Use).<sup>7</sup> The stated purpose of the zones was to "provide housing and jobs near commercial centers and corridors to reduce dependency on the automobile, promote access to transit and multi-modal transportation systems, and to provide for a walkable, pedestrian-oriented setting, including infill of existing development." In both RMX and EMX zones, R&D is permitted by-right alongside multi-family residential development, retail, and most commercial services. San Diego also permits R&D in several of its commercial zones.<sup>8</sup>

***Recommendation #2:*** Updating the "District Purpose" sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate.

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<sup>6</sup> <https://www.codepublishing.com/CA/Fremont/#/html/Fremont18/Fremont1850.html> (18.50.040 Performance Standards)

<sup>7</sup> <https://docs.sandiego.gov/municode/MuniCodeChapter13/Ch13Art01Division07.pdf>

<sup>8</sup> <https://docs.sandiego.gov/municode/MuniCodeChapter13/Ch13Art01Division05.pdf>



The “District Purpose” sections of the Zoning Ordinance determine the purpose of each zoning district, detailing what uses are allowed, welcomed, and explicitly stated to further the City’s goals. R&D applicants need to feel confident that they will have a place in the district if they choose to locate there. In MM and MU-LI, where R&D is currently permitted, the Purpose sections do not mention R&D despite calling out the importance and belonging of similar industries, including manufacturing, industrial use, and laboratories.

Staff and the Commission should consider amending BMC 23.206.070.A and 23.206.080.A with the following language:

**23.206.070 MM Mixed Manufacturing District.**

- A. District Purpose. The purpose of the Mixed Manufacturing (MM) district is to:
1. Implement the West Berkeley Plan MM designation;
  2. Encourage development of a general manufacturing district for the full range of manufacturers, including larger scale materials processing manufacturers sometimes known as heavy manufacturers;
  3. Encourage development of a manufacturing district targeted to manufacturing and industrial uses including research and development, so that manufacturers and industrial businesses will not be interfered with by incompatible uses;
  4. Encourage the creation and continuation of well paid (often unionized) jobs for men and women without advanced degrees;
  5. Provide an appropriate location for the development of compatible industries which can provide high quality employment for people at all educational levels, and add significantly to the tax base, such as the biotechnology industry and other research and development uses;
  6. Allow reuse of upper story industrial space as offices to facilitate use of upper story space;
  7. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of the full range of manufacturers; and
  8. Support the development of industrial businesses which contribute to the maintenance and improvement of the environment.

**23.206.080 MU-LI Mixed Use-Light Industrial District.**

- A. District Purpose. The purpose of the Mixed Use-Light Industrial (MU-LI) district is to:
1. Implement the West Berkeley Plan Light Manufacturing District designation;
  2. Encourage development of a mixed use-light industrial area for a range of compatible uses;

3. Encourage development of an area where light manufacturers can operate free from the economic, physical and social constraints caused by incompatible uses;
4. Encourage the creation and continuation of well-paid jobs which do not require advanced degrees;
5. Provide for the continued availability of manufacturing and industrial buildings for manufacturing uses, especially of larger spaces needed by medium sized and larger light manufacturers;
6. Provide opportunities for office development when it will not unduly interfere with light manufacturing uses and/or the light manufacturing building stock;
7. Provide the opportunity for laboratory development the development of research and development facilities in appropriate locations;
8. Support the development of businesses which contribute to the maintenance and improvement of the environment;
9. Allow on-site ancillary retail as a tool to maintain and enhance the economic viability of manufacturers in the district; and
10. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of light industrial uses.

***Recommendation #3:*** *Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements.*

BMC 23.322.030 details the minimum off-street parking spaces required for each use. Currently, in M-prefixed districts, R&D is not explicitly named in Table 23.322-4, meaning that it is parked under “All non-residential uses except uses listed below” at 2 spaces per 1,000 sq. ft. In contrast, laboratories are parked as 1 space per 650 sq. ft., despite R&D spaces typically accommodating a similar number of people per square foot as laboratories. This disadvantages R&D by requiring them to provide more parking than their laboratory counterparts, which is expensive and creates incentives for employees to drive to work that run counter to the City’s Climate Action Plan goals. For the purposes of consistency, R&D parking requirements should be amended to align with Laboratory parking requirements.

In C-T, off-street parking is not required, so no amendments are needed. In C-prefixed districts excluding C-T, R&D is also not listed in Table 23.322-2. It may be unclear to applicants whether R&D falls under Manufacturing (which requires 1.5 spaces per 1,000 sq. ft. in C-DMU, 1 per 1,000 sq. ft. in C-W, and 2 per 1,000 sq. ft. in all other C-prefixed districts), or under “All non-residential uses except uses listed below,” (which requires 1.5 spaces per 1,000 sq. ft. in C-DMU and 2 per 1,000 in all other C-prefixed districts). This can create confusion for R&D companies looking to locate in C-W. Adding an R&D section here to align parking requirements with Manufacturing would improve clarity and consistency.

In addition to considering the following changes to BMC 23.322.030 Table 23.322-2 and Table 23.322-4, staff and the Commission may take up the R&D parking discussion in concert with other Council referrals that address off-street parking, such as Councilmember Taplin's "Parking Minima for Mixed-Use Projects and Manufacturing Districts" item referred on June 28, 2022.

**Table 23.322-2. REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T)**

| Land Use                                          | Required Parking Spaces                                                                                                                                                                                 |
|---------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Residential Uses</b>                           |                                                                                                                                                                                                         |
| Accessory Dwelling Unit                           | See Chapter <u>23.306</u>                                                                                                                                                                               |
| Dwellings, including Group Living Accommodations  | If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit<br>All Other Locations: None required                                                                            |
| Hotel, Residential                                | None required                                                                                                                                                                                           |
| Mixed-Use Residential (residential use only)      | None required                                                                                                                                                                                           |
| Senior Congregate Housing                         | None required                                                                                                                                                                                           |
| <b>Non-Residential Uses</b>                       |                                                                                                                                                                                                         |
| All non-residential uses except uses listed below | C-DMU District: 1.5 per 1,000 sq. ft.<br>All Other Commercial Districts: 2 per 1,000 sq. ft.                                                                                                            |
| Hospital                                          | 1 per each 4 beds plus 1 per each 3 employees                                                                                                                                                           |
| Library                                           | C-DMU District: 1.5 per 1,000 sq. ft.<br>All Other Commercial Districts: 1 per 500 sq. ft. of publicly accessible floor area                                                                            |
| Nursing Home                                      | 1 per 3 employees                                                                                                                                                                                       |
| Medical Practitioners                             | C-DMU District: 1.5 per 1,000 sq. ft.<br>All Other Commercial Districts: 1 per 300 sq. ft.                                                                                                              |
| Hotels, Tourist                                   | C-DMU District: 1 per 3 guest/sleeping rooms or suites<br>C-C, C-U, C-W Districts: 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees<br>All Other Commercial Districts: 2 per 1,000 sq. ft. |
| Motels, Tourist                                   | C-DMU District: 1 per 3 guest/sleeping rooms or suites                                                                                                                                                  |

|                                 |                                                                                                                                                           |
|---------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                 | C-C, C-U, C-W Districts: 1 per guest/sleeping room plus 1 for owner or manager [1]<br>All Other Commercial Districts: 2 per 1,000 sq. ft.                 |
| Large Vehicle Sales and Rental  | C-DMU District: 1.5 per 1,000 sq. ft.<br>C-SA District: 1 per 1,000 sq. ft.<br>All Other Commercial Districts: 2 per 1,000 sq. ft.                        |
| Small Vehicle Sales and Service | C-DMU District: 1.5 per 1,000 sq. ft.<br>C-SA District: 1 per 1,000 sq. ft.<br>All Other Commercial Districts: 2 per 1,000 sq. ft.                        |
| Manufacturing                   | C-DMU District: 1.5 per 1,000 sq. ft.<br>C-W District: 1 per 1,000 sq. ft [1]<br>All Other Commercial Districts: 2 per 1,000 sq. ft.                      |
| <u>Research and Development</u> | <u>C-DMU District: 1.5 per 1,000 sq. ft.</u><br><u>C-W District: 1 per 1,000 sq. ft [1]</u><br><u>All Other Commercial Districts: 2 per 1,000 sq. ft.</u> |
| Wholesale Trade                 | C-DMU District: 1.5 per 1,000 sq. ft.<br>C-W District: 1 per 1,000 sq. ft<br>All Other Commercial Districts: 2 per 1,000 sq. ft.                          |
| Live/Work                       | If workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area                  |

**Notes:**

[1] Spaces must be on the same lot as building it serves.

**Table 23.322-4. REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS**

| Land Use                    | Required Parking Spaces   |
|-----------------------------|---------------------------|
| <b>Residential Uses</b>     |                           |
| Accessory Dwelling Unit     | See Chapter <u>23.306</u> |
| Dwellings                   | None required             |
| Group Living Accommodation  | None required             |
| <b>Non-Residential Uses</b> |                           |

|                                                   |                                                                                                                                                                                                                                                 |
|---------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| All non-residential uses except uses listed below | 2 per 1,000 sq. ft.                                                                                                                                                                                                                             |
| Art/Craft Studio                                  | 1 per 1,000 sq. ft.                                                                                                                                                                                                                             |
| Community Care Facility                           | 1 per 2 non-resident employees                                                                                                                                                                                                                  |
| Food Service Establishment                        | 1 per 300 sq. ft.                                                                                                                                                                                                                               |
| Library                                           | 1 per 500 sq. ft. of publicly accessible floor area                                                                                                                                                                                             |
| Laboratories                                      | 1 per 650 sq. ft.                                                                                                                                                                                                                               |
| <u>Research and Development</u>                   | <u>1 per 650 sq. ft.</u>                                                                                                                                                                                                                        |
| Nursing Home                                      | 1 per 5 residents, plus 1 per 3 employees                                                                                                                                                                                                       |
| Medical Practitioners                             | One per 300 sq. ft.                                                                                                                                                                                                                             |
| Large Vehicle Sales and Rental                    | MU-LI District: 1.5 per 1,000 sq. ft.<br>All Other Districts: 1 per 1,000 sq. ft. of display floor area plus 1 per 500 sq. ft. of other floor area; 2 per service bay                                                                           |
| Manufacturing                                     | MU-R District: 1.5 per 1,000 sq. ft.<br>All Other Districts: 1 per 1,000 sq. ft. for spaces less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more                                                                     |
| Storage, warehousing, and wholesale trade         | 1 per 1,000 sq. ft. for spaces of less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more                                                                                                                               |
| Live/Work                                         | MU-LI District: 1 per 1,000 sq. ft. of work area where workers/clients are permitted<br>MU-R District: if workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area |

**Notes:**

**[1]** For multiple dwellings where the occupancy will be exclusively for persons over the age of 62, the number of required off-street parking spaces may be reduced to 25% of what would otherwise be required for multiple-family dwelling use, subject to obtaining a Use Permit.

**Recommendation #4:** *Reviewing Berkeley Municipal Code 23.206.080 to ensure that language related to Biosafety Level (BSL) Classes 1-4 is clear and consistent with requirements in neighboring jurisdictions and other cities that support a broad range of*

*R&D. Consider repealing the section or amending it to permit BSL-2 in all districts where research and development facilities or laboratories are permitted.*

BSL lab levels, ranging from BSL-1 to BSL-4, are set by the Centers for Disease Control and Prevention to protect laboratory personnel and the surrounding community. The primary risks that determine levels of containment are infectivity, severity of disease, transmissibility, and the nature of the work conducted.<sup>9</sup>

**Chart of Biosafety Levels<sup>10</sup>**

| Biosafety Level        | BSL-1                                                                                                                                | BSL-2                                                                                                                           | BSL-3                                                                                                                                              | BSL-4                                                                                                                                         |
|------------------------|--------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| Description            | <ul style="list-style-type: none"> <li>· No Containment</li> <li>· Defined organisms</li> <li>· Unlikely to cause disease</li> </ul> | <ul style="list-style-type: none"> <li>· Containment</li> <li>· Moderate Risk</li> <li>· Disease of varying severity</li> </ul> | <ul style="list-style-type: none"> <li>· High Containment</li> <li>· Aerosol Transmission</li> <li>· Serious/Potentially lethal disease</li> </ul> | <ul style="list-style-type: none"> <li>· Max Containment</li> <li>· "Exotic," High-Risk Agents</li> <li>· Life-threatening disease</li> </ul> |
| Sample Organisms       | E.Coli                                                                                                                               | Influenza, HIV, Lyme Disease                                                                                                    | Tuberculosis                                                                                                                                       | Ebola Virus                                                                                                                                   |
| Pathogen Type          | Agents that present minimal potential hazard to personnel & the environment.                                                         | Agents associated with human disease & pose moderate hazards to personnel & the environment.                                    | Indigenous or exotic agents, agents that present a potential for aerosol transmission, & agents causing serious or potentially lethal disease.     | Dangerous & exotic agents that pose a high risk of aerosol-transmitted laboratory infections & life-threatening disease.                      |
| Autoclave Requirements | None                                                                                                                                 | None                                                                                                                            | Pass-thru autoclave with Bioseal required in laboratory room.                                                                                      | Pass-thru autoclave with Bioseal required in laboratory room.                                                                                 |

Another way of classifying biological agents and organisms is using Risk Groups 1-4. While these two classification methods often align (e.g. BSL-2 equals Risk Group 2), they do not always. Biosafety Levels prescribe the work practices, engineering controls, personal protective equipment, and facility requirements required for working with biological agents. The Risk Group classification is only one factor to consider when determining the appropriate Biosafety Level for a particular agent. Other factors to

<sup>9</sup> <https://www.cdc.gov/training/quicklearns/biosafety/>

<sup>10</sup> <https://consteril.com/biosafety-levels-difference/>

consider include the mode of transmission, pathogenicity, manipulations that will be conducted, volume, experience of staff, and more.<sup>11</sup>

| 4 RISK CLASSIFICATIONS OF INFECTIOUS MATERIAL                                                                                                  |            |           |                                                                               |
|------------------------------------------------------------------------------------------------------------------------------------------------|------------|-----------|-------------------------------------------------------------------------------|
| Risk Group                                                                                                                                     | Individual | Community | Examples                                                                      |
| <b>1</b><br><b>(lowest)</b><br>Basic Laboratory, clean open bench, no BSC needed (unlikely to cause disease in healthy workers/animals/plants) | Low        | Low       | -non-infectious bacteria<br>-E. coli<br>-Lactobacillus spp.                   |
| <b>2</b><br>Biological safety cabinet needed<br>Pathogens spread via ingestion, inoculation and mucous membrane routes                         | Moderate   | Low       | -Influenza virus<br>-Herpes simplex<br>-Hepatitis (A, B, C, D, E)<br>-Tetanus |
| <b>3</b><br>Pathogen transmitted by aerosols<br>HEPA filtration required, respiratory protection                                               | High       | Low       | -Hepatitis (some C's)<br>-West Nile<br>-Anthrax<br>-TB                        |
| <b>4</b><br><b>(highest)</b><br>serious human disease that may not be treatable, easily transmitted<br>self-contained lab                      | High       | High      | -Ebola virus<br>-Herpes B                                                     |

BMC 23.206.080.B.5<sup>12</sup> reads:

*Commercial Physical or Biological Laboratories.* Commercial physical or biological laboratories using Class 3 organisms are not permitted in the MU-LI district. Use of Class 2 organisms are permitted only in locations at least 500 feet from a Residential District or a MU-R district.

This section is the only place in the BMC where organism classes, presumably referring to BSL, are mentioned other than in the defined terms. The BMC is silent on BSL regulations in districts other than MU-LI, or for non-laboratory uses such as research and development.

A preliminary review finds that the City of Berkeley is more restrictive than other Bay Area cities in our regulation of Biosafety Levels. For example, the Cities of Emeryville,

<sup>11</sup> <https://www.safetypartnersinc.com/are-biosafety-levels-and-risk-groups-the-same/#:~:text=Biosafety%20levels%20prescribe%20the%20work,level%20for%20a%20particular%20age nt.>

<sup>12</sup> <https://berkeley.municipal.codes/BMC/23.206.080>



San Jose, Mountain View, Alameda, San Leandro, South San Francisco, and San Mateo do not reference BSLs or Risk Groups in their zoning ordinances. The Cities of Fremont, Oakland, Palo Alto, and San Francisco permit BSL-1, BSL-2, and BSL-3 (or the Risk Group equivalents) in varying degrees. See Attachment 2.

Moreover, laboratories that work with Risk Group 1-3 agents are already allowed on the UC Berkeley campus. Most campus experiments use agents classified as Risk Group 1 or 2, although work with Risk Group 3 is permitted with a biological use authorization (BUA) application approved by UC Berkeley's Committee for Laboratory and Environmental Biosafety.<sup>13</sup>

Staff and the Commission should conduct further research into nearby jurisdictions, including Oakland, San Francisco, South San Francisco, Emeryville, Alameda, San Leandro, and Fremont, as well as other cities across the country that support a broad range of R&D, such as Cambridge, MA. This research should provide insight into best practices for BSL zoning regulations that keep the surrounding neighborhood safe while allowing biological research facilities where they make sense, with federally-required protocols and locally-required performance standards or other conditions in place.

Staff and the Commission should return to Council with amendments to this BMC section and other relevant sections that provide clarity for potential applicants, ensure that Biosafety Levels are clearly stated and defined in accordance with the most recent CDC guidelines, and bring the City of Berkeley in alignment with other jurisdictions.

***Recommendation #5:*** *Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process.*

The City Manager and/or Planning Commission may choose to return to Council with additional recommendations that would serve to encourage R&D in Berkeley, in addition to the ones suggested in this item.

#### FINANCIAL IMPLICATIONS

Staff time.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable negative environmental impacts associated with this action.

#### CONTACT PERSON

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

<sup>13</sup> <https://ehs.berkeley.edu/sites/default/files/biosafetymanual.pdf>



Attachments:

- 1: City of Fremont performance standards
- 2: BSL regulations in neighboring jurisdictions

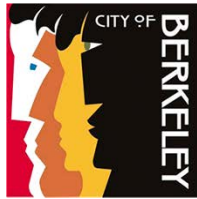


Attachment  
Not Received

This attachment has not been received from the  
submitting office.

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

**The City of Berkeley, City Council's Web site:**  
<https://berkeleyca.gov/your-government/city-council>



CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR

September 13, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson (Author) and Councilmember Ben Bartlett (Author)

Subject: Relinquishment of Council Office Budget Funds to the General Fund and Grant of Such Funds for the Center for Independent Living's 50th Anniversary

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 each from Councilmember Robinson and Councilmember Bartlett, to the Center for Independent Living to fund a Berkeley mural project, street festival, CIL open house, three-day conference on independent living, and other activities for their 50th Anniversary.

BACKGROUND

In 1972, The Center for Independent Living was established in Berkeley, California as the first independent living center in the United States, founded in order to support people with disabilities in living independent and dignified lives. The Center for Independent Living engaged in grassroots advocacy that resulted in the passage of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, in addition to some of the first curb cuts in the nation that were installed here in Berkeley.

Their work became the catalyst of the emerging Independent Living Movement, based on the principle that people with disabilities are entitled to the same civil rights, options, and autonomy over their lives as people without disabilities. The movement grew to over 400 independent living centers in the United States and more in 20 countries across the globe.

From October 19-23, 2022, The Center for Independent Living will hold a week of events to honor their 50th Anniversary, celebrate with the community, and raise funds to continue to advocate for and provide services to support independent living for people with diverse disabilities. The Center for Independent Living is requesting funds from the City of Berkeley to assist with paying for their 50th Anniversary events.

FINANCIAL IMPLICATIONS

No General Fund impact; \$500 each is available from Councilmember Robinson's and Councilmember Bartlett's discretionary accounts.

ENVIRONMENTAL SUSTAINABILITY

No impact.

CONTACT PERSON

Councilmember Rigel Robinson

(510) 981-7170

Councilmember Ben Bartlett

(510) 981-7130

Attachments:

1: Resolution

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

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

WHEREAS, Councilmember Ben Bartlett and Councilmember Rigel Robinson have surplus funds in their office expenditure accounts; and

WHEREAS, a California non-profit tax exempt corporation, The Center for Independent Living, Inc., seeks funds in the amount of \$500 to fund a Berkeley mural project, street festival, CIL open house, three-day conference on independent living, and other activities for their 50th Anniversary; and

WHEREAS, the provision of such services would fulfill the municipal public purpose of supporting and celebrating a treasured disability rights advocacy group that catalyzed the Independent Living Movement and continues to support people with disabilities in the City of Berkeley today.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the \$500 relinquished by Councilmembers Robinson and Bartlett from each of their Council Office Budgets and any other Councilmember who wishes to contribute shall be granted to the Center for Independent Living to fund their 50th Anniversary activities.





Peace and Justice  
Commission

ACTION CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council  
From: Peace and Justice Commission  
Submitted by: George Lippman, Chairperson, Peace and Justice Commission  
Subject: Taking Action on the City of Berkeley's Commitment to Abortion Access

RECOMMENDATION

Adopt a Resolution Taking Action on the City of Berkeley's Commitment to Abortion Access.

FISCAL IMPACTS OF RECOMMENDATION

Minimal impact to staff time.

CURRENT SITUATION AND ITS EFFECTS

Roe v. Wade, the landmark U.S. Supreme Court decision recognizing and confirming the right to privacy in the federal Constitution protects the right for pregnant people to choose to have an abortion prior to viability, is in imminent danger of being overturned

At its regular meeting of June 6, 2022, the Peace and Justice Commission unanimously proposed the attached resolution for the City Council.

M/S/C: (Bohn/Morizawa)

Ayes: Bohn, Gussman, Jacquelin, Lee, Lippman, Maran, Morizawa

Noes: None

Abstain: None

Absent: Leon-Maldonado, Rodriguez

BACKGROUND

On January 18, 2022, the Berkeley City Council adopted a resolution entitled "Reaffirming the City of Berkeley's Commitment to Roe v. Wade and Access to Safe

Reproductive Health Services,” stating its “support for women to be able to exercise their constitutional rights and continue have access to critical health care services, including abortion.”

Limiting access to reproductive healthcare, including systematically stripping pregnant people of access to abortion, is not only a transgression against basic human reproductive rights but is also an assault on dignity.

Dozens of states have already taken legal action to limit or ban abortion, potentially stripping millions of people of reproductive care and endangering thousands of healthcare workers, including nurses and doctors who have dedicated their lives to caring for those in need.

California Governor Gavin Newsom has taken a number of steps, in anticipation of a Supreme Court ruling to overturn *Roe v. Wade*, to protect access to abortion for Californians and others across the country. These actions include the formation of the California Future of Abortion Council (CA-FAB Council), which has issued 45 recommendations including among many others:<sup>1</sup>

- Assistance to the expected up to 1.4 million visitors to the state seeking abortion services, as well as to the providers that will serve them.<sup>2</sup>
- Comprehensive community survey and research to identify unmet educational and health needs of California residents. To accurately assess the needs and preferences of people experiencing barriers to care, a survey must be conducted, and data analyzed on all of the following:
  - The educational and health awareness needs of populations most impacted by lack of access to abortion.
  - Community preferences for types of abortion services and levels of care.
  - How youth/young people access sexual and reproductive health services and education.
  - Access to telehealth and preference for various modalities when receiving sexual and reproductive care, including abortion services.

## ENVIRONMENTAL SUSTAINABILITY

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<sup>1</sup> “California plans to be abortion sanctuary if *Roe* overturned,” AP News, December 8, 2021, <https://apnews.com/article/abortion-california-sanctuary-625a118108bcda253196697c83548d5b>  
> [https://www.plannedparenthoodaction.org/uploads/filer\\_public/d8/e1/d8e17825-72e0-4f6f-9c57-7549bb54261e/ca\\_fab\\_council\\_report\\_.pdf](https://www.plannedparenthoodaction.org/uploads/filer_public/d8/e1/d8e17825-72e0-4f6f-9c57-7549bb54261e/ca_fab_council_report_.pdf)

<sup>2</sup> <https://states.guttmacher.org/>



No significant impacts.

RATIONALE FOR RECOMMENDATION

The East Bay is home to a number of nonprofit healthcare providers that provide free or low-cost reproductive care, including abortion. The demand for abortion access is likely to increase greatly, making cities like Berkeley a destination for individuals seeking care that may be made illegal in their home cities and states.

Research and study that is locally directed, grassroots-oriented, comprehensively diverse, and collaboratively designed by staff, commissions, community members, advocates and other subject matter experts will contribute a great deal to local and state policy-makers.

For this reason the Peace and Justice Commission proposes Council refer to the Commission a request to collaborate with the listed Commissions, Boards, and Departments among others to study what resources exist for reproductive health and educational services, what obstacles residents of Berkeley face in accessing them, and what disparities may exist on the basis of race and class; and give an interim report to the City Council on what actions should be taken to address such limitations on reproductive rights and services for Berkeley's residents, within four months.

ALTERNATIVE ACTIONS CONSIDERED

None

CITY MANAGER

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

CONTACT PERSON

George Lippman, Chair, Peace and Justice Commission

Okeya Vance-Dozier, Commission Secretary, City Manager's Office, (510) 684-0503

Attachments:

1: Resolution

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

Resolution Taking Action on the City of Berkeley's Commitment to Abortion Access

WHEREAS, the Peace and Justice Commission advises the City Council on all matters relating to the City of Berkeley's role in issues of peace and social justice (Berkeley Municipal Code Chapter 3.68.070); and

WHEREAS, limiting access to reproductive healthcare, including systematically stripping pregnant people of access to abortion, is not only a transgression against basic human reproductive rights but is also an assault on dignity;<sup>i</sup> and

WHEREAS, *Roe v. Wade*, the landmark U.S. Supreme Court decision recognizing and confirming the right to privacy in the federal Constitution protects the right for pregnant people to choose to have an abortion prior to viability, is in imminent danger of being overturned; and

WHEREAS, dozens of states have already taken legal action to limit or ban abortion, potentially stripping millions of people of reproductive care and endangering thousands of healthcare workers, including nurses and doctors who have dedicated their lives to caring for those in need; and

WHEREAS, the East Bay is home to a number of nonprofit healthcare providers that provide free or low-cost reproductive care, including abortion; and

WHEREAS, the Berkeley City Council passed a resolution on January 18, 2022, reaffirming Berkeley's commitment to *Roe v. Wade*, stating its "support for women to be able to exercise their constitutional rights and continue have access to critical health care services, including abortion;"<sup>3</sup> and

WHEREAS, the demand for abortion access is likely to increase greatly, making cities like Berkeley a destination for individuals seeking care that may be made illegal in their home cities and states.

THEREFORE BE IT RESOLVED, that the Council of the City of Berkeley declares Berkeley to be a Right-To-Choose Sanctuary City, recognizing that anyone should have a right to abortion, on-demand, and without question.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley urges the State of California and Alameda County to increase funding for reproductive rights and abortion

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<sup>3</sup> <https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-01-18%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf>

Taking Action on the City of Berkeley's Commitment to Abortion Access

Action Calendar  
September 13, 2022

access.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley refers this resolution to the Peace and Justice Commission requesting it to collaborate with the Berkeley Unified School District, the Health Department, the Community Health Commission, and the Commission on the Status of Women to study what resources exist for reproductive health and educational services, what obstacles residents of Berkeley face in accessing them, and what disparities may exist on the basis of race and class; and give an interim report to the City Council on what actions should be taken to address such limitations on reproductive rights and services for Berkeley's residents, within four months.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley reaffirms its support for codifying the right to an abortion into federal law via HR 3755, The Women's Health Protection Act of 2021 (Lee & Chu).<sup>4</sup>

BE IT FURTHER RESOLVED, that the copies of this Resolution be sent to Berkeley's county, state, and federal legislative representatives, Rep. Judy Chu, Governor Newsom, State Senate President Pro Tempore Toni Atkins, and the BUSD.

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<sup>4</sup> <https://www.congress.gov/bill/117th-congress/house-bill/3766>





ACTION CALENDAR  
09/13/2022

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Taplin  
 Subject: Equitable Safe Streets and Climate Justice Resolution

### RECOMMENDATION

Adopt a resolution committing the expenditure of City and state/federal matching/recurring funds on city-maintained roads, sidewalks, and bike lanes to accelerate safety improvements in a manner consistent with City, State, and Federal policy on street safety, equity, accessibility, and climate change; refer to the City Manager fully integrate Complete Streets design as defined by the NACTO Urban Street Design Guide in the default engineering standard for city streets; restrict city use of the Manual on Uniform Traffic Control Devices (MUTCD) to only documented cases that require its use for compliance with Federal/State regulations; in all other cases, restrict use of the MUTCD to “engineering judgment.”

### POLICY COMMITTEE RECOMMENDATION

On June 1, 2022, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Robinson/Taplin) to send the item to Council with a positive recommendation. Vote: Ayes – Taplin, Robinson; Noes – None; Abstain – None; Absent – Harrison.

### FINANCIAL IMPLICATIONS

According to the Federal Highway Administration:

“It is generally significantly less expensive to install safety improvements as part of a resurfacing project than to build it as a standalone project ... The cost for adding bike lanes during a resurfacing project costs approximately 40 percent of the cost of adding the lanes as a standalone project.”<sup>1</sup>

<sup>1</sup> [https://www.fhwa.dot.gov/environment/bicycle\\_pedestrian/publications/resurfacing/page04.cfm#cost\\_a2](https://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/resurfacing/page04.cfm#cost_a2)

This resolution calls for the full integration of safety features at the time of re-paving of all streets in the city, in a manner consistent with City, State,<sup>2</sup> and Federal<sup>3</sup> policy, which will result in substantial material and staff time savings, while also saving the lives of Berkeley residents.

### CURRENT SITUATION AND ITS EFFECTS

Under current practices in Berkeley, safe streets interventions like bikeways, separated lanes, raised pedestrian crossings, and corner bulb-outs are often implemented only after a pedestrian or cyclist has been injured or killed by a driver. Many examples exist of streets that had been recently re-paved without safety features that were then re-designed after residents expressed their anger over pedestrians and cyclists being severely injured or killed by a driver.

According to the Federal Highway Administration, implementing safe streets features at the time of re-paving, rather than as stand-alone, post-facto projects, can significantly cut the costs of these safety interventions.<sup>4</sup> This resolution calls for the full integration of safety features at the time of re-paving of all streets in the city, which will result in substantial material and staff time savings, while also saving the lives of Berkeley residents.

The Equitable Safe Streets and Climate Justice Resolution is a Strategic Plan Priority Project, advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

### BACKGROUND

Personal cars and trucks are the leading source of climate pollution in the City of Berkeley, causing 59% of all greenhouse gasses within city limits – more than all residential and commercial energy use, combined.<sup>5</sup> They are also among the leading causes of violent injury and death in the city, with a growing number of deadly and injurious conflicts between people driving cars and vulnerable road users including pedestrians, the elderly, residents who use mobility devices, and bicyclists. Lower income Berkeley residents and people of color are disproportionately impacted by the risk of traffic injuries and fatalities.<sup>6</sup>

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<sup>2</sup> “Caltrans to Require ‘Complete Streets’ Features in Planning and Design of All New Projects <https://dot.ca.gov/news-releases/news-release-2021-039>

<sup>3</sup> Under the Infrastructure Investment and Jobs Act of 2021, “MPOs must use 2.5 percent of their overall funding to develop and adopt complete streets policies, active transportation plans, transit access plans, transit-oriented development plans, or regional intercity rail plans.” <https://nacto.org/program/state-and-federal-policy/>

<sup>4</sup> [https://www.fhwa.dot.gov/environment/bicycle\\_pedestrian/publications/resurfacing/page04.cfm#cost\\_a2](https://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/resurfacing/page04.cfm#cost_a2)

<sup>5</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/07\\_Jul/Documents/2020-07-21\\_Presentations\\_Item\\_5\\_\(6pm\)\\_Pres\\_CMO\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Presentations_Item_5_(6pm)_Pres_CMO_pdf.aspx)

<sup>6</sup> Berkeley Vision Zero Action Plan, March 10, 2019, page 13.



Berkeley also has among the highest percentages of people who take transit, walk, and ride bicycles of any city of its size in the United States.<sup>7</sup> In spite of this fact, most of our streets are designed in such a way that makes them unsafe for pedestrians, transit users, or for use by people who use mobility devices or bicycles.

This disparity can be resolved through better engineering and design of our city streets, which will save lives and often result in substantial savings for the city. In addition, new state legislation (AB-43, 2021) recognizes that high vehicle speeds are a primary factor in deadly and dangerous street conditions, and empowers California cities to lower speed limits on certain city streets to reduce traffic collisions and protect vulnerable road users.<sup>8</sup>

### Recent History: Safety Measures Follow Tragedy, Increase Costs

According to the Federal Highway Administration:

“It is generally significantly less expensive to install safety improvements as part of a resurfacing project than to build it as a standalone project ... The cost for adding bike lanes during a resurfacing project costs approximately 40 percent of the cost of adding the lanes as a standalone project.”<sup>9</sup>

Over the past several years, safety conditions for Berkeley residents and visitors who do not drive have deteriorated, as evidenced by the growing number of crashes in Berkeley that have resulted in pedestrian and cyclist injury or death.<sup>10</sup> In spite of the deaths and injuries on our streets, these crashes often do not result in safety improvements.

However, when local residents express sufficient outrage to City Hall over deadly conditions, the City sometimes rapidly responds with permanent or semi-permanent safety features – but had these features preceded, rather than followed, the crashes, they would have resulted in both lower costs to the city, and fewer traumatic injuries and deaths.

Examples of recent Berkeley street re-paving projects that led to increased costs due to a lack of safety features include:

- **Fulton (Oxford):** In 2015, Berkeley Public Works repaved Fulton/Oxford Street between Bancroft Way and Dwight, but did not add a safe bikeway as called for in Berkeley’s 2000 Bicycle Plan. Shortly afterward, Megan Schwarzman was hit

<sup>7</sup> <https://www.vitalsigns.mtc.ca.gov/commute-mode-choice>

<sup>8</sup> Assembly Bill 43, Traffic Safety, 2021  
[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB43](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB43)

<sup>9</sup> [https://www.fhwa.dot.gov/environment/bicycle\\_pedestrian/publications/resurfacing/page04.cfm#cost\\_a2](https://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/resurfacing/page04.cfm#cost_a2)

<sup>10</sup> <https://www.sfchronicle.com/local/article/Berkeley-bicycle-activist-struck-by-car-hours-16037329.php>

and severely injured by a driver while bicycling.<sup>11</sup> After being pressured by the community to act, the City Council directed staff to re-stripe the roadway with a safer bikeway, adding 3 months of unplanned work and staff time. Costs would have been lower if the bikeway had been planned and implemented in a manner more consistent with existing city policy, and concurrent with re-paving.

- **Hearst:** After adoption of the 2000 Berkeley Bicycle Plan, Berkeley Public Works repaved Hearst Avenue, but did not include a safe bikeway, as called for in the Bicycle Plan. After years of pressure from residents concerned about street safety, Berkeley finally rebuilt and repaved the street in 2016 with safer facilities, and at significant cost. Costs would have been lower if the bikeway had been planned and implemented in a manner consistent with existing city policy, and concurrent with re-paving.
- **Milvia Street:** Berkeley repaved Milvia Street downtown using Measure BB funds (2014), and then in 2019, repaved Milvia Street in south Berkeley. But neither repaving included safe streets interventions called for in the then-approved bike plans. Berkeley then added extensive safe bicycling facilities in 2021/2022. Costs would have been lower if the bikeway had been planned and implemented in a manner consistent with existing city policy, and concurrent with re-paving.
- **Dwight/California:** In 2021, Berkeley embarked on safety improvements at the corner of Dwight and California, a “bicycle boulevard” and a “safe route to school,” after local residents expressed outrage over two children who were struck by drivers on their way to school. California and Dwight Streets were re-surfaced in 2015, but did not include enhancements to improve pedestrian and cyclist crossing conditions at this intersection.
- **Concrete diagonal diverters:** Berkeley installed many concrete diagonal diverters back in the 1970’s, and had to come back later with separate concrete work to make bicycle cut-throughs in these diverters for bikes to access neighborhood streets. Costs would have been lower if the cut-throughs had been included in the original design.

### Street Safety First: Berkeley City Policy

In recent years, the traffic engineering profession has developed extensive tools and engineering guidelines for cities that seek to safely meet the mobility needs of all residents, including those who drive cars, walk, use mobility devices, ride bicycles, and/or use transit.

Many of these new tools, such as the Urban Streets Design Guide by the National Association of City Transportation Officials (NACTO), provide turnkey solutions for cities seeking to design and engineer roads to improve street safety for all road users. The Design Guide was developed in part to help cities seeking to enhance safety, and in part out of growing concern over the proven inadequacy of the Federal Highway

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<sup>11</sup> Raguso, E. (2016). Bike lane opens by near-fatal crash site. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2016/05/12/bike-lane-opens-in-berkeley-by-near-fatal-crash-site-no-charges-filed-yet-against-driver-who-police-say-was-high>

Administration’s Manual on Uniform Traffic Control Devices (MUTCD), which has led to dangerous and deadly conditions for vulnerable road users.<sup>121314</sup>

In fact, in several cases, the proscriptions of the MUTCD have delayed or precluded street safety improvements in Berkeley.<sup>15</sup> Part of the reason may be that, under current case law, engineers may sometimes be held personally liable for deaths or injuries that can be proven to be the result of street engineering and design.

Over the past year, both the Federal Highway Administration<sup>1617</sup> and Caltrans<sup>18</sup> have issued guidance that allows city traffic engineers to use NACTO’s Urban Streets Design Guide in place of the MUTCD for projects that use Federal or State transportation funds. In addition, FHWA has issued guidance that, in states where vulnerable road users make up 15% or more of the total number of fatalities in a state in a given year, the state is required to dedicate at least 15% of its Highway Safety Improvement Program funds the following fiscal year to projects that address the safety of these road users. Additionally, the new guidance incorporates legislative changes to permit 100% Federal funding for certain pedestrian and bicyclist projects.<sup>19</sup>

### **Adopt New Complete Streets Engineering Guidelines**

This resolution directs all City departments with a role in the design, engineering, maintenance, and administration of Berkeley surface streets to formally adopt the NACTO Urban Streets Design Guide as the primary design and engineering manual for Berkeley city streets.

The resolution further directs all City departments to restrict use of the MUTCD, which has been proven to lead to unsafe street designs,<sup>20</sup> to only those projects where the Public Works Director certifies, in writing, that the MUTCD is better suited to achieving the City’s goal of reducing vehicle speeds, enhancing safety features for pedestrians,

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<sup>12</sup> Schmitt, A. (2021). Let’s Throw Away These Rules of the Road. *Bloomberg*. Retrieved from <https://www.bloomberg.com/news/articles/2021-05-05/it-s-time-to-rewrite-the-road-builders-rule-book>

<sup>13</sup> National Association of City Transportation Officials. (2021). 25,000 Comments Calling for Safety and Equity Reforms to Once-Obscure Federal Street Manual. *NACTO*. Retrieved from <https://nacto.org/2021/05/20/25000-comments-call-for-reforming-mutcd/>

<sup>14</sup> Shill, G. & Bronin, S. (2021). Rewriting Our Nation’s Deadly Traffic Manual. *Harvard Law Review*. Retrieved from <https://harvardlawreview.org/2021/10/rewriting-our-nations-deadly-traffic-manual/>

<sup>15</sup> Harrington, T. (2021). Berkeley’s plans to make Dwight and California safer get mixed reviews. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2021/05/16/berkeleys-plans-to-make-dwight-and-california-safer-get-mixed-reviews>

<sup>16</sup> “National Roadway Safety Strategy,” US Department of Transportation, Jan 2022 <https://www.transportation.gov/NRSS>

<sup>17</sup> “Bicycle and Pedestrian Facility Design Flexibility,” US Department of Transportation - FHWA, Aug 2013 [https://www.fhwa.dot.gov/environment/bicycle\\_pedestrian/guidance/design\\_flexibility.cfm](https://www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/design_flexibility.cfm)

<sup>18</sup> “Caltrans to Require ‘Complete Streets’ Features in Planning and Design of All New Projects,” Dec 20, 2021 <https://dot.ca.gov/news-releases/news-release-2021-039>

<sup>19</sup> [https://safety.fhwa.dot.gov/hsip/rulemaking/docs/BIL\\_HSIP\\_Eligibility\\_Guidance.pdf](https://safety.fhwa.dot.gov/hsip/rulemaking/docs/BIL_HSIP_Eligibility_Guidance.pdf)

<sup>20</sup> See footnote 12.

cyclists, and people who use mobility devices, and ending traffic conflicts between cars and other road users.

In all cases where the MUTCD must be used, all City departments shall first exercise “engineering judgment,” as defined in the MUTCD, to ensure safe street designs, including such judgment as may result in modification or overruling of MUTCD standards. In cases where “engineering judgment” can not be used to reduce vehicle speeds or otherwise enhance street safety conditions for all road users, all City departments shall issue formal findings, approved by the Public Works director, that document why a street can not be made safe for all road users, and vehicle speed and throughput must be prioritized.

The resolution directs city departments to ensure that all requests for funding related to any project, on any surface street, sidewalk, bicycle facility, or other transportation infrastructure within city borders, prioritize and implement designs that ensure the safety of vulnerable users who are not in private automobiles, as established in numerous past policy directives of the Berkeley City Council.<sup>21</sup>

This resolution further prohibits all City departments from spending any city financial resources on any street that does not include the “best in class” design for Complete Streets unless the safety benefits are outweighed by other considerations.

It further prohibits City departments from requiring traffic studies or other measurements related to impacts on “Level of Service” (vehicle speed/throughput) in consideration of street safety improvements, if such improvements will either a) improve safe travel conditions for vulnerable road users, or b) reduce Vehicle Miles Traveled, as established by State of California<sup>22</sup> and City of Berkeley climate and land use policies, or c) if such improvements are otherwise consistent with guidance in the Complete Streets provisions of NACTO and Caltrans.

It further directs all departments to maintain the priority of street safety interventions in situations where budget is a limiting factor in street repair/improvements, by prioritizing the use of “quick build”<sup>23</sup> approaches which improve street safety via rapidly-deployed, lower-cost, temporary measures.

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<sup>21</sup> e.g. Berkeley Bicycle Plan, 2017; Berkeley Pedestrian Plan, 2020; BIBIMBAP [[https://www.cityofberkeley.info/Clerk/City\\_Council/2019/10\\_Oct/Documents/2019-10-29\\_Item\\_31\\_Referral\\_Develop\\_a\\_Bicycle\\_Lane\\_-\\_Rev\\_\(2\).aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/10_Oct/Documents/2019-10-29_Item_31_Referral_Develop_a_Bicycle_Lane_-_Rev_(2).aspx)]; Berkeley Pedestrian Safety Report 1998; Downtown Area Plan, 2012; West Berkeley Plan, 1993; Adeline Corridor Specific Plan (in progress); University Avenue Plan, 1996.

<sup>22</sup> California Senate Bill 743, passed in 2013, mandates that jurisdictions can no longer use automobile delay – commonly measured by Level of Service (LOS) – in transportation analysis under the California Environmental Quality Act (CEQA). Full implementation was delayed until 2019. [<https://www.vta.org/projects/level-service-los-vehicle-miles-traveled-vmt-transition>]

<sup>23</sup>“Quick build” projects are reversible, adjustable traffic safety improvements that can be installed relatively quickly. Unlike major capital projects that may take years to plan, design, bid and construct, quick-build projects are constructed within weeks or months and are intended to be evaluated and

## Definitions:

- **Complete Streets:** On December 11, 2012, Berkeley City Council adopted a Complete Streets Policy (Resolution 65,978-N.S.) to guide future street design and repair activities. “Complete Streets,” describes a comprehensive, integrated transportation network with infrastructure and design that allows safe and convenient travel along and across streets for all users, including pedestrians, bicyclists, persons with disabilities, motorists, movers of commercial goods, users and operators of public transportation, emergency vehicles, seniors, children, youth, and families.<sup>24</sup>
- **NACTO Urban Street Design Guide:** An engineering manual for cities that adopt Complete Streets policies.
- **Level of Service (LOS):** A discontinued method of evaluating transportation infrastructure projects based on vehicle speed and throughput; SB 743, passed in 2013, prohibited LOS in CEQA analysis in the State of California, but the law is under-enforced and LOS is still commonly used.
- **Vehicle Miles Traveled (VMT):** A measure of the impact of car use on air quality and street safety based on the number of miles traveled by car. It is long-standing policy of the City of Berkeley and the State of California to reduce VMT to achieve climate and safe streets policies.
- **MUTCD:** The Manual on Uniform Traffic Control Devices. This controversial manual has been blamed for dangerous street designs throughout the United States. Federal and State transportation authorities are in the process of revising it, and have encouraged jurisdictions that seek to accelerate progress on safe streets to use other engineering and street design guidelines.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

While cars represent the majority of the climate pollution within the city at 59%, Berkeley also has a very high mode share<sup>25</sup> among residents and visitors who walk, ride transit, use mobility devices, and ride bicycles. These modes of travel are the lowest-carbon options available, and the City has many policies focused on incentivizing and increasing their use.

However, abundant research about mode choice shows that people hesitate to shift to more sustainable forms of mobility in areas with deadly and dangerous car traffic – which describes most of the City of Berkeley.<sup>26</sup>

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reviewed within the initial 24 months of construction. <https://www.sfmta.com/vision-zero-quick-build-projects>

<sup>24</sup> <https://www.cityofberkeley.info/completestreetspolicy/>

<sup>25</sup> [https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Transportation/Berkeley-Bicycle-Plan-2017-Executive%20Summary.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley-Bicycle-Plan-2017-Executive%20Summary.pdf)

<sup>26</sup> Raguso, E. (2020). Berkeleyside interactive maps: Cyclist and pedestrian injury crashes in 2019. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2020/01/28/berkeleyside-interactive-maps-cyclist-and-pedestrian-injury-crashes-in-2019>

In addition to having a high mode share for non-car modes, Berkeley also has among the highest rates, per capita, of traffic violence involving people not in cars. The correlation is direct: Our unsafe streets are harming people, and preventing the city from achieving its goals on both climate action, and safe mobility.

CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

ATTACHMENTS

1. Resolution
2. City of Palo Alto resolution adopting the NACTO Urban Bikeway Design Guide
3. City of Oakland Public Works Director letter of endorsement of NACTO Urban Street Design Guide
4. Assembly Bill 43 (2021)



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

EQUITABLE SAFE STREETS AND CLIMATE JUSTICE RESOLUTION

WHEREAS, Berkeley's climate action plan calls for an 80% reduction in climate pollution by 2050, and private automobiles represent 59% of the City's climate pollution; and

WHEREAS, progress on Berkeley's climate action plan will depend in large part on reducing "vehicle miles traveled," or the amount people drive private cars within city limits; and

WHEREAS, Berkeley's bicycle plan proposed in 1971 called for a city-wide network of safe bicycle routes; and

WHEREAS, Berkeley adopted an action plan for Vision Zero in 2019; and

WHEREAS, Berkeley's existing policy on street engineering and safety calls for "Complete Streets" as defined by the National Association of City Transportation Officials (NACTO);

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that any and all funds that are to be used for the design of major roadway projects such as roadway reconstruction/repaving of more than one city block of city streets and related facilities shall only be disbursed for projects that fully integrate Complete Streets (as defined by NACTO) and all feasible safety interventions designed to reduce automobile speed and protect the lives of people outside of automobiles;

BE IT FURTHER RESOLVED that in all cases where Complete Streets can not be fully implemented, or in cases where the MUTCD must be used in place of the NACTO Urban Streets Design Guide, City Staff shall use "engineering judgment" to prioritize the safety of vulnerable road users, and not rely on MUTCD "warrants" and other proscriptions;

BE IT FURTHER RESOLVED that pursuant to AB-43 (2021), no city official shall apply the "85th percentile" rule in the process of setting speed limits on city streets, but rather, determine via safety studies and other documented engineering findings by the Public Works Director, when higher speeds are appropriate and are the safest option for all road users, provided however, that all criteria for setting local speed limits set forth in the California Vehicle Code, including Sections 22358.6 to 22358.9, are complied with in setting speed limits, even if inconsistent with this clause.



## City of Palo Alto City Council Staff Report

(ID # 6222)

**Report Type: Consent Calendar****Meeting Date: 10/26/2015****Summary Title: Adoption of NACTO Design Guidelines****Title: Adoption of a Resolution to Adopt the National Association of City Transportation Officials (NACTO) Design Guidelines****From: City Manager****Lead Department: Planning and Community Environment****Recommendation**

Adopt the proposed Resolution (Attachment A) to adopt the National Association of City Transportation Officials (NACTO) Urban Street Design Guide and Urban Bikeway Design Guide as supplements to the City of Palo Alto Bicycle and Pedestrian Plan.

**Executive Summary**

Adopting the National Association of City Transportation Officials (NACTO) street design guides will provide additional support in the City's efforts to introduce complete street ideas into the design and operation of streets by providing design guidance on transportation infrastructure. City staff will continue to work proactively with the community to provide convenient, safe, and context-sensitive facilities that promote increased use by people who walk and bicycle. When NACTO guidance or other design guidance is used, the City will continue to utilize sound planning and engineering judgment when determining the best solution for a local need.

**Background**

Streets often fail to provide their surrounding communities with a space where people can safely walk, bicycle, drive, take transit, and socialize. Complete Streets integrates people and place in the planning, design, construction, operation, and maintenance of our transportation networks. Cities are leading the movement to redesign and reinvest in our streets as cherished public spaces for people, as well as critical arteries for traffic.

The National Association of City Transportation Officials (NACTO) facilitates the exchange of transportation ideas, insights and best practices among cities, while fostering a cooperative approach to key issues facing cities and metropolitan areas. The NACTO Urban Street Design Guide and Urban Bikeway Design Guide offer a vision for improving the safety and livability of our streets for people who walk, bicycle, drive, and ride transit. The guidance and flexibility

articulated in these guides serve as an additional tool for planning modern city streets to safely accommodate current and future residents, workers and visitors within limited space.

In September 2014, Governor Jerry Brown signed Assembly Bill 1193, the Protected Bikeways Act. AB 1193 eliminates a requirement previously imposed on local agencies to follow Caltrans bikeway design rules on local streets and roads. AB 1193 grants cities flexibility to use alternative design standards, such as those published by the National Association of City Transportation Officials (NACTO), on locally-owned streets and roads. Prior to utilizing alternative designs, the law requires all of the following conditions be met:

- (1) The alternative criteria have been reviewed and approved by a qualified engineer with consideration for the unique characteristics and features of the proposed bikeway and surrounding environs.
- (2) The alternative criteria, or the description of the project with reference to the alternative criteria, are adopted by resolution at a public meeting, after having provided proper notice of the public meeting and opportunity for public comment.
- (3) The alternative criteria adhere to guidelines established by a national association of public agency transportation officials.

## Discussion

The City of Palo Alto Comprehensive Plan, Climate Action Plan, and Bicycle and Pedestrian Transportation Plan establish clear support and priority for investing in non-motorized transportation, improving access to transit, and reducing dependence on single-occupant vehicles to improve the overall efficiency of the transportation system.

The passage of the Protected Bikeways Act in September 2014 requires that if a local agency wishes to use an alternative design standard, that this design standard be adopted by resolution at a public meeting.

Adopting the NACTO street design guides will provide additional support in the City's efforts to introduce complete street ideas into the design and operation of streets by providing design guidance on transportation infrastructure. City staff will continue to work proactively with the community to provide convenient, safe, and context-sensitive facilities that promote increased use by people who walk and bicycle. When NACTO guidance or other design guidance is used, the City will continue to utilize sound planning and engineering judgment when determining the best solution for a local need.

Attachment A provides a proposed Resolution to adopt the NACTO Design Guidelines.

The NACTO Guides may be reviewed or ordered online as outlined in Attachment B. A hardcopy is available *for review only* at the City of Palo Alto Transportation Division, 250 Hamilton Avenue, 5<sup>th</sup> floor.

### NACTO Urban Bikeway Design Guide

The NACTO Urban Bikeway Design Guide is based on the experience of the best cycling cities in the world. To create the guide, the authors conducted a worldwide literature search of design guidelines and real-life experience and worked closely with a panel of planning professionals from NACTO member cities, as well as traffic engineers, planners, and academics.

Most of these treatments are not directly referenced in the current version of the AASHTO Guide to Bikeway Facilities, although they are virtually all (with two exceptions) permitted under the Manual on Uniform Traffic Control Devices (MUTCD). The MUTCD is published by the Federal Highway Administration (FHWA) to define the standards used by road managers nationwide to install and maintain traffic control devices on all public streets, highways, bikeways, and private roads open to public travel. The MUTCD, which has been administered by the FHWA since 1971, is a compilation of national standards for all traffic control devices, including road markings, highway signs, and traffic signals. It is updated periodically to accommodate the nation's changing transportation needs and address new safety technologies, traffic control tools and traffic management techniques.

In August 2013, the Federal Highway Administration issued a memorandum officially supporting use of the NACTO Urban Bikeway Design Guide. All of the NACTO Urban Bikeway Design Guide treatments are in use internationally and in many cities around the United States.

For each treatment in the Urban Bikeway Design Guide, NACTO provides three levels of guidance:

- Required: elements for which there is a strong consensus that the treatment cannot be implemented without.
- Recommended: elements for which there is a strong consensus of added value.
- Optional: elements that vary across cities and may add value depending on the situation.

NACTO emphasizes that treatments must be tailored to the individual situation with thorough documentation of decisions. To assist with this, the NACTO Urban Bikeway Design Guide links to companion reference material and studies.

### Palo Alto Pedestrian and Bicycle Advisory Committee Review

Staff brought a draft proposed Resolution to the Palo Alto Pedestrian and Bicycle Advisory Committee (PABAC) for input on August 4, 2015. PABAC members suggested minor edits to the Resolution which have been incorporated by staff. On September 1, 2015, PABAC reviewed the revised Resolution and passed a unanimous motion recommending adoption of the NACTO guidelines by the City Council.

Planning and Transportation Commission Review

On September 9, 2015, the Planning and Transportation Commission unanimously recommended the City Council adopt the Resolution adopting the NACTO guidelines.

**Resource Impact**

Adopting the NACTO Design Guidelines will give the City flexibility in designing bicycle and pedestrian facilities. There is no definable impact on the cost of future capital projects.

**Policy Implications**

Adoption of the NACTO Design Guides as supplementary guidelines is consistent with the Comprehensive Plan, Bicycle + Pedestrian Transportation Plan, and Climate Action Plan.

**Environmental Review**

Adoption of this resolution does not meet the definition of a project, therefore no environmental review is required.

**Attachments:**

- Attachment A: Resolution to Adopt NACTO Urban Street and Bikeway Design Guidelines (PDF)
- Attachment B: Design Guides (PDF)

NOT YET APPROVED

Resolution No. \_\_\_\_\_

Resolution of the Council of the City of Palo Alto Adopting the National Association of City Transportation Officials Urban Street Design and Bikeway Design Guidelines

**RECITALS**

- A. The City of Palo Alto Comprehensive Plan, Climate Action Plan, and Bicycle and Pedestrian Plan establish clear support and priority for investing in non-motorized transportation, improving access to transit, and reducing dependence on single-occupant vehicles to improve the overall efficiency of the transportation system.
- B. The National Association of City Transportation Officials (NACTO) Urban Street Design Guide available at <http://nacto.org/publication/urban-street-design-guide> and Urban Bikeway Design Guide available at <http://nacto.org/publication/urban-bikeway-design-guide/> offers supplementary guidance on complete streets to cities nationally.
- C. The NACTO Urban Street Design Guide and Urban Bikeway Design Guide offer a vision for improving the safety and livability of our streets for people who walk, bicycle, drive, and ride transit. The guidance and flexibility articulated in these guides serve as an additional tool for planning modern city streets to safely accommodate current and future residents, workers and visitors within limited space.
- D. The State Department of Transportation (Caltrans) has endorsed NACTO guides to “put additional tools in the tool box for both Caltrans staff and local agencies to reference when making project decisions on facilities for which they are responsible.”
- E. The NACTO Urban Street Design Guide and Urban Bikeway Design Guide are intended as supplemental guidelines and do not create mandatory requirements.
- F. The City of Palo Alto will work proactively with the community to provide convenient, safe, and context-sensitive facilities that promote increased use by people who walk and bicycle.
- G. When NACTO guidance or other design guidance is utilized, the City of Palo Alto will continue to utilize sound planning and engineering judgment when determining the best solution for a local need.
- H. The Palo Alto Pedestrian and Bicycle Advisory Committee and Planning and Transportation Commission have transmitted their recommendations.



NOT YET APPROVED

NOW, THEREFORE, the Council of the City of Palo Alto RESOLVES as follows:

SECTION 1. The Council hereby adopts the NACTO Urban Street Design Guide and Urban Bikeway Design Guide referenced in Paragraph B above, and as amended from time to time, as supplements to the City of Palo Alto Bicycle Plan.

SECTION 2. The Council finds that the adoption of this resolution does not meet the definition of a project under Public Resources Code Section 21065, thus, no environmental assessment under the California Environmental Quality Act is required.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

APPROVED:

\_\_\_\_\_  
Senior Assistant City Attorney

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Planning and Community Environment

\_\_\_\_\_  
Director of Administrative Services

## NACTO Urban Street Design Guide

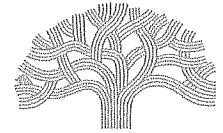
Please visit:

<http://nacto.org/publication/urban-street-design-guide/>

## NACTO Urban Bikeway Design Guide

Please visit:

<http://nacto.org/publication/urban-bikeway-design-guide/>



CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA OAKLAND, CALIFORNIA 94612-2033

Public Works Agency  
Brooke A. Levin  
Interim Agency Director

(510) 238-3961  
FAX (510) 238-6428  
TDD (510) 238-7644

December 16, 2013

Janette Sadik-Khan  
National Association of City Transportation Officials (NACTO)  
55 Water Street, Floor 9  
New York, NY 10041

**RE: Letter of Endorsement for the NACTO Urban Street Design Guide**

Dear Ms. Sadik-Khan:

On behalf of the City of Oakland, I am writing to express support for the National Association of City Transportation Officials (NACTO) *Urban Street Design Guide*, and endorse the Guide's use in the design of Oakland streets.

The Guide represents a vision for world-class city street design that matches Oakland's leadership goals and community desires. Urban transportation is in the midst of unprecedented change as the demands placed upon our streets and the needs of our citizens require an increasingly multimodal transportation network. Pressures, from public health to climate change to mobile technology, are redefining urban streets and opening opportunities for innovation.

The *Urban Street Design Guide* offers concrete guidance to meet these challenges and improve the safety and livability of our streets for pedestrians, bicyclists, drivers, and transit users. City streets demand a unique approach that are often not adequately addressed by conventional design guidelines. In Oakland, we value NACTO's role in developing targeted national guidance that allows local agencies to design and implement more successful projects. The *Urban Street Design Guide* provides a new and important direction for cities, and will be an indispensable tool in planning and designing Oakland's streets.

As such, the City of Oakland officially adopts the NACTO *Urban Street Design Guide* as an integral and effective tool for designing streets and public spaces.

Sincerely,

Brooke A. Levin  
Interim Director, Public Works Agency

cc: Michael J. Neary, Assistant Director, Department of Engineering and Construction

**Assembly Bill No. 43**

CHAPTER 690

An act to amend Sections 627, 21400, 22352, 22354, 22358, and 40802 of, and to add Sections 22358.6, 22358.7, 22358.8, and 22358.9 to, the Vehicle Code, relating to traffic safety.

[Approved by Governor October 8, 2021. Filed with Secretary of State October 8, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 43, Friedman. Traffic safety.

(1) Existing law establishes various default speed limits for vehicles upon highways, as specified. Existing law authorizes state and local authorities to adjust these default speed limits, as specified, based upon certain findings determined by an engineering and traffic survey. Existing law defines an engineering and traffic survey and prescribes specified factors that must be included in the survey, including prevailing speeds and road conditions. Existing law authorizes local authorities to consider additional factors, including pedestrian and bicyclist safety.

This bill would authorize local authorities to consider the safety of vulnerable pedestrian groups, as specified.

(2) Existing law establishes a prima facie speed limit of 25 miles per hour on any highway, other than a state highway, located in any business or residence district, as defined. Existing law authorizes a local authority to change the speed limit on any such highway, as prescribed, including erecting signs to give notice thereof.

This bill would establish a prima facie speed limit of 25 miles per hour on state highways located in any business or residence district and would authorize the Department of Transportation (Caltrans) to change the speed limit on any such highway, as prescribed, including erecting signs to give notice thereof.

(3) Existing law establishes a speed limit of 65 miles per hour on state highways, as specified. Existing law authorizes Caltrans to declare a speed limit on any such highway, as prescribed, of 60, 55, 50, 45, 40, 35, 30, or 25 miles per hour, including erecting signs to give notice thereof. Existing law also authorizes a local authority, on a section of highway, other than a state highway, where the speed limit is 65 miles per hour to declare a lower speed limit, as specified.

This bill would additionally authorize Caltrans and a local authority to declare a speed limit of 20 or 15 miles per hour, as specified, on these highways.

(4) Existing law authorizes a local authority, without an engineering and traffic survey, to declare a lowered speed limit on portions of highway, as

specified, approaching a school building or school grounds. Existing law limits this authority to sections of highway meeting specified requirements relating to the number of lanes and the speed limit of the highway before the school zone.

This bill would similarly authorize a lowered speed limit on a section of highway contiguous to a business activity district, as defined, and would require that certain violations be subject to a warning citation, for the first 30 days of implementation.

(5) Existing law requires Caltrans, by regulation, to provide for the rounding up or down to the nearest 5 miles per hour increment of the 85th percentile speed of free-flowing traffic on a portion of highway as determined by a traffic and engineering survey. Existing law requires the Judicial Council to create and implement an online tool by June 30, 2024, for the adjudication of traffic infractions, among other things.

This bill would authorize a local authority to further reduce the speed limit, as specified, and require that certain violations be subject to a warning citation, for the first 30 days of implementation. The bill would, in some circumstances, authorize the reduction of a speed limit beginning June 30, 2024, or when the Judicial Council has developed an online tool for adjudicating traffic infraction violations, whichever is sooner. The bill would require Caltrans to accordingly revise the California Manual on Uniform Traffic Control Devices, as specified.

(6) Existing law defines a speed trap and prohibits evidence of a driver's speed obtained through a speed trap from being admissible in court in any prosecution against a driver for a speed-related offense. Existing law deems a road where the speed limit is not justified by a traffic and engineering survey conducted within the previous 7 years to be a speed trap, unless the roadway has been evaluated by a registered engineer, as specified, in which case the speed limit remains enforceable for a period of 10 years. Existing law exempts a school zone, as defined, from certain provisions relating to defining a speed trap.

This bill would extend the period that a speed limit justified by a traffic and engineering survey conducted more the 7 years ago remains valid, for purposes of speed enforcement, if evaluated by a registered engineer, as specified, to 14 years.

This bill would also exempt a senior zone and business activity district, as defined, from those provisions.

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

SECTION 1. Section 627 of the Vehicle Code is amended to read:

627. (a) "Engineering and traffic survey," as used in this code, means a survey of highway and traffic conditions in accordance with methods determined by the Department of Transportation for use by state and local authorities.

(b) An engineering and traffic survey shall include, among other requirements deemed necessary by the department, consideration of all of the following:

- (1) Prevailing speeds as determined by traffic engineering measurements.
- (2) Accident records.
- (3) Highway, traffic, and roadside conditions not readily apparent to the driver.

(c) When conducting an engineering and traffic survey, local authorities, in addition to the factors set forth in paragraphs (1) to (3), inclusive, of subdivision (b) may consider all of the following:

(1) Residential density, if any of the following conditions exist on the particular portion of highway and the property contiguous thereto, other than a business district:

(A) Upon one side of the highway, within a distance of a quarter of a mile, the contiguous property fronting thereon is occupied by 13 or more separate dwelling houses or business structures.

(B) Upon both sides of the highway, collectively, within a distance of a quarter of a mile, the contiguous property fronting thereon is occupied by 16 or more separate dwelling houses or business structures.

(C) The portion of highway is longer than one-quarter of a mile but has the ratio of separate dwelling houses or business structures to the length of the highway described in either subparagraph (A) or (B).

(2) Safety of bicyclists and pedestrians, with increased consideration for vulnerable pedestrian groups including children, seniors, persons with disabilities, users of personal assistive mobility devices, and the unsheltered.

SEC. 2. Section 21400 of the Vehicle Code is amended to read:

21400. (a) The Department of Transportation shall, after consultation with local agencies and public hearings, adopt rules and regulations prescribing uniform standards and specifications for all official traffic control devices placed pursuant to this code, including, but not limited to, stop signs, yield right-of-way signs, speed restriction signs, railroad warning approach signs, street name signs, lines and markings on the roadway, and stock crossing signs placed pursuant to Section 21364.

(b) The Department of Transportation shall, after notice and public hearing, determine and publicize the specifications for uniform types of warning signs, lights, and devices to be placed upon a highway by a person engaged in performing work that interferes with or endangers the safe movement of traffic upon that highway.

(c) Only those signs, lights, and devices as are provided for in this section shall be placed upon a highway to warn traffic of work that is being performed on the highway.

(d) Control devices or markings installed upon traffic barriers on or after January 1, 1984, shall conform to the uniform standards and specifications required by this section.

SEC. 3. Section 22352 of the Vehicle Code is amended to read:



22352. The prima facie limits are as follows and shall be applicable unless changed as authorized in this code and, if so changed, only when signs have been erected giving notice thereof:

(a) Fifteen miles per hour:

(1) When traversing a railway grade crossing, if during the last 100 feet of the approach to the crossing the driver does not have a clear and unobstructed view of the crossing and of any traffic on the railway for a distance of 400 feet in both directions along the railway. This subdivision does not apply in the case of any railway grade crossing where a human flagperson is on duty or a clearly visible electrical or mechanical railway crossing signal device is installed but does not then indicate the immediate approach of a railway train or car.

(2) When traversing any intersection of highways if during the last 100 feet of the driver's approach to the intersection the driver does not have a clear and unobstructed view of the intersection and of any traffic upon all of the highways entering the intersection for a distance of 100 feet along all those highways, except at an intersection protected by stop signs or yield right-of-way signs or controlled by official traffic control signals.

(3) On any alley.

(b) Twenty-five miles per hour:

(1) On any highway, in any business or residence district unless a different speed is determined by local authority or the Department of Transportation under procedures set forth in this code.

(2) When approaching or passing a school building or the grounds thereof, contiguous to a highway and posted with a standard "SCHOOL" warning sign, while children are going to or leaving the school either during school hours or during the noon recess period. The prima facie limit shall also apply when approaching or passing any school grounds which are not separated from the highway by a fence, gate, or other physical barrier while the grounds are in use by children and the highway is posted with a standard "SCHOOL" warning sign. For purposes of this subparagraph, standard "SCHOOL" warning signs may be placed at any distance up to 500 feet away from school grounds.

(3) When passing a senior center or other facility primarily used by senior citizens, contiguous to a street other than a state highway and posted with a standard "SENIOR" warning sign. A local authority may erect a sign pursuant to this paragraph when the local agency makes a determination that the proposed signing should be implemented. A local authority may request grant funding from the Active Transportation Program pursuant to Chapter 8 (commencing with Section 2380) of Division 3 of the Streets and Highways Code, or any other grant funding available to it, and use that grant funding to pay for the erection of those signs, or may utilize any other funds available to it to pay for the erection of those signs, including, but not limited to, donations from private sources.

SEC. 4. Section 22354 of the Vehicle Code is amended to read:

22354. (a) Whenever the Department of Transportation determines upon the basis of an engineering and traffic survey that the limit of 65 miles

per hour is more than is reasonable or safe upon any portion of a state highway where the limit of 65 miles is applicable, the department may determine and declare a prima facie speed limit of 60, 55, 50, 45, 40, 35, 30, 25, 20, or 15 miles per hour, whichever is found most appropriate to facilitate the orderly movement of traffic and is reasonable and safe, which declared prima facie speed limit shall be effective when appropriate signs giving notice thereof are erected upon the highway.

(b) This section shall become operative on the date specified in subdivision (c) of Section 22366.

SEC. 5. Section 22358 of the Vehicle Code is amended to read:

22358. (a) Whenever a local authority determines upon the basis of an engineering and traffic survey that the limit of 65 miles per hour is more than is reasonable or safe upon any portion of any street other than a state highway where the limit of 65 miles per hour is applicable, the local authority may by ordinance determine and declare a prima facie speed limit of 60, 55, 50, 45, 40, 35, 30, 25, 20, or 15 miles per hour, whichever is found most appropriate to facilitate the orderly movement of traffic and is reasonable and safe, which declared prima facie limit shall be effective when appropriate signs giving notice thereof are erected upon the street.

(b) This section shall become operative on the date specified in subdivision (c) of Section 22366.

SEC. 6. Section 22358.6 is added to the Vehicle Code, to read:

22358.6. The Department of Transportation shall, in the next scheduled revision, revise and thereafter maintain the California Manual on Uniform Traffic Control Devices to require the Department of Transportation or a local authority to round speed limits to the nearest five miles per hour of the 85th percentile of the free-flowing traffic. However, in cases in which the speed limit needs to be rounded up to the nearest five miles per hour increment of the 85th-percentile speed, the Department of Transportation or a local authority may decide to instead round down the speed limit to the lower five miles per hour increment. A local authority may additionally lower the speed limit as provided in Sections 22358.7 and 22358.8.

SEC. 7. Section 22358.7 is added to the Vehicle Code, to read:

22358.7. (a) If a local authority, after completing an engineering and traffic survey, finds that the speed limit is still more than is reasonable or safe, the local authority may, by ordinance, determine and declare a prima facie speed limit that has been reduced an additional five miles per hour for either of the following reasons:

(1) The portion of highway has been designated as a safety corridor. A local authority shall not deem more than one-fifth of their streets as safety corridors.

(2) The portion of highway is adjacent to any land or facility that generates high concentrations of bicyclists or pedestrians, especially those from vulnerable groups such as children, seniors, persons with disabilities, and the unhoused.

(b) (1) As used in this section, “safety corridor” shall be defined by the Department of Transportation in the next revision of the California Manual

on Uniform Traffic Control Devices. In making this determination, the department shall consider highways that have the highest number of serious injuries and fatalities based on collision data that may be derived from, but not limited to, the Statewide Integrated Traffic Records System.

(2) The Department of Transportation shall, in the next revision of the California Manual on Uniform Traffic Control Devices, determine what constitutes land or facilities that generate high concentrations of bicyclists and pedestrians, as used in paragraph (2) of subdivision (a). In making this determination, the department shall consider density, road use type, and bicycle and pedestrian infrastructure present on a section of highway.

(c) A local authority may not lower a speed limit as authorized by this section until June 30, 2024, or until the Judicial Council has developed an online tool for adjudicating infraction violations statewide as specified in Article 7 (commencing with Section 68645) of Chapter 2 of Title 8 of the Government Code, whichever is sooner.

(d) A local authority shall issue only warning citations for violations of exceeding the speed limit by 10 miles per hour or less for the first 30 days that a lower speed limit is in effect as authorized by this section.

SEC. 8. Section 22358.8 is added to the Vehicle Code, to read:

22358.8. (a) If a local authority, after completing an engineering and traffic survey, finds that the speed limit is still more than is reasonable or safe, the local authority may, by ordinance, retain the current speed limit or restore the immediately prior speed limit if that speed limit was established with an engineering and traffic survey and if a registered engineer has evaluated the section of highway and determined that no additional general purpose lanes have been added to the roadway since completion of the traffic survey that established the prior speed limit.

(b) This section does not authorize a speed limit to be reduced by any more than five miles per hour from the current speed limit nor below the immediately prior speed limit.

(c) A local authority shall issue only warning citations for violations of exceeding the speed limit by 10 miles per hour or less for the first 30 days that a lower speed limit is in effect as authorized by this section.

SEC. 9. Section 22358.9 is added to the Vehicle Code, to read:

22358.9. (a) (1) Notwithstanding any other law, a local authority may, by ordinance, determine and declare a 25 or 20 miles per hour prima facie speed limit on a highway contiguous to a business activity district when posted with a sign that indicates a speed limit of 25 or 20 miles per hour.

(2) The prima facie limits established under paragraph (1) apply only to highways that meet all of the following conditions:

(A) A maximum of four traffic lanes.

(B) A maximum posted 30 miles per hour prima facie speed limit immediately prior to and after the business activity district, if establishing a 25 miles per hour speed limit.

(C) A maximum posted 25 miles per hour prima facie speed limit immediately prior to and after the business activity district, if establishing a 20 miles per hour speed limit.

(b) As used in this section, a “business activity district” is that portion of a highway and the property contiguous thereto that includes central or neighborhood downtowns, urban villages, or zoning designations that prioritize commercial land uses at the downtown or neighborhood scale and meets at least three of the following requirements in paragraphs (1) to (4), inclusive:

(1) No less than 50 percent of the contiguous property fronting the highway consists of retail or dining commercial uses, including outdoor dining, that open directly onto sidewalks adjacent to the highway.

(2) Parking, including parallel, diagonal, or perpendicular spaces located alongside the highway.

(3) Traffic control signals or stop signs regulating traffic flow on the highway, located at intervals of no more than 600 feet.

(4) Marked crosswalks not controlled by a traffic control device.

(c) A local authority shall not declare a prima facie speed limit under this section on a portion of a highway where the local authority has already lowered the speed limit as permitted under Sections 22358.7 and 22358.8.

(d) A local authority shall issue only warning citations for violations of exceeding the speed limit by 10 miles per hour or less for the first 30 days that a lower speed limit is in effect as authorized by this section.

SEC. 10. Section 40802 of the Vehicle Code is amended to read:

40802. (a) A “speed trap” is either of the following:

(1) A particular section of a highway measured as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance.

(2) A particular section of a highway with a prima facie speed limit that is provided by this code or by local ordinance under paragraph (1) of subdivision (b) of Section 22352, or established under Section 22354, 22357, 22358, or 22358.3, if that prima facie speed limit is not justified by an engineering and traffic survey conducted within five years prior to the date of the alleged violation, and enforcement of the speed limit involves the use of radar or any other electronic device that measures the speed of moving objects. This paragraph does not apply to a local street, road, school zone, senior zone, or business activity district.

(b) (1) For purposes of this section, a local street or road is one that is functionally classified as “local” on the “California Road System Maps,” that are approved by the Federal Highway Administration and maintained by the Department of Transportation. It may also be defined as a “local street or road” if it primarily provides access to abutting residential property and meets the following three conditions:

(A) Roadway width of not more than 40 feet.

(B) Not more than one-half of a mile of uninterrupted length. Interruptions shall include official traffic control signals as defined in Section 445.

(C) Not more than one traffic lane in each direction.

(2) For purposes of this section, “school zone” means that area approaching or passing a school building or the grounds thereof that is

contiguous to a highway and on which is posted a standard “SCHOOL” warning sign, while children are going to or leaving the school either during school hours or during the noon recess period. “School zone” also includes the area approaching or passing any school grounds that are not separated from the highway by a fence, gate, or other physical barrier while the grounds are in use by children if that highway is posted with a standard “SCHOOL” warning sign.

(3) For purposes of this section, “senior zone” means that area approaching or passing a senior center building or other facility primarily used by senior citizens, or the grounds thereof that is contiguous to a highway and on which is posted a standard “SENIOR” warning sign, pursuant to Section 22352.

(4) For purposes of this section, “business activity district” means a section of highway described in subdivision (b) of Section 22358.9 in which a standard 25 miles per hour or 20 miles per hour speed limit sign has been posted pursuant to paragraph (1) of subdivision (a) of that section.

(c) (1) When all of the following criteria are met, paragraph (2) of this subdivision shall be applicable and subdivision (a) shall not be applicable:

(A) When radar is used, the arresting officer has successfully completed a radar operator course of not less than 24 hours on the use of police traffic radar, and the course was approved and certified by the Commission on Peace Officer Standards and Training.

(B) When laser or any other electronic device is used to measure the speed of moving objects, the arresting officer has successfully completed the training required in subparagraph (A) and an additional training course of not less than two hours approved and certified by the Commission on Peace Officer Standards and Training.

(C) (i) The prosecution proved that the arresting officer complied with subparagraphs (A) and (B) and that an engineering and traffic survey has been conducted in accordance with subparagraph (B) of paragraph (2). The prosecution proved that, prior to the officer issuing the notice to appear, the arresting officer established that the radar, laser, or other electronic device conformed to the requirements of subparagraph (D).

(ii) The prosecution proved the speed of the accused was unsafe for the conditions present at the time of alleged violation unless the citation was for a violation of Section 22349, 22356, or 22406.

(D) The radar, laser, or other electronic device used to measure the speed of the accused meets or exceeds the minimal operational standards of the National Highway Traffic Safety Administration, and has been calibrated within the three years prior to the date of the alleged violation by an independent certified laser or radar repair and testing or calibration facility.

(2) A “speed trap” is either of the following:

(A) A particular section of a highway measured as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance.

(B) (i) A particular section of a highway or state highway with a prima facie speed limit that is provided by this code or by local ordinance under paragraph (1) of subdivision (b) of Section 22352, or established under Section 22354, 22357, 22358, or 22358.3, if that prima facie speed limit is not justified by an engineering and traffic survey conducted within one of the following time periods, prior to the date of the alleged violation, and enforcement of the speed limit involves the use of radar or any other electronic device that measures the speed of moving objects:

(I) Except as specified in subclause (II), seven years.

(II) If an engineering and traffic survey was conducted more than seven years prior to the date of the alleged violation, and a registered engineer evaluates the section of the highway and determines that no significant changes in roadway or traffic conditions have occurred, including, but not limited to, changes in adjoining property or land use, roadway width, or traffic volume, 14 years.

(ii) This subparagraph does not apply to a local street, road, or school zone, senior zone, or business activity district.

O





Office of the Mayor

CONSENT CALENDAR  
September 13, 2022

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Ordinance Amendment: Correction to the COVID-19 Emergency Response Ordinance, BMC Chapter 13.110.

RECOMMENDATION

Adopt the first reading of an Ordinance correcting BMC Chapter 13.110, the COVID-19 Emergency Response Ordinance, to clarify the effect of Ordinance No. 7,762-N.S. upon tenant protections that were inadvertently omitted during the last update of BMC Chapter 13.110.

BACKGROUND

The City of Berkeley declared a local State of Emergency on March 3, 2020 in response to the COVID-19 pandemic, first detected globally in late December 2019. Shortly thereafter, Council passed BMC Chapter 13.110 - the COVID-19 Emergency Response Ordinance ("Chapter 13.110") - prohibiting most evictions in Berkeley, which has been subsequently updated over the past couple of years. There is currently no timeline as to when the local State of Emergency will end, and even when the health crisis is no longer a significant threat to the community, the economic ramifications of COVID-19 will be felt for some time in the future.

Chapter 13.110 has been updated a total of five times: Ordinance No. 7,693-N.S. approved on March 17, 2020; Ordinance No. 7,698-N.S., approved on April 21, 2020; Ordinance No. 7,704-N.S. approved on May 26, 2020; Ordinance No. 7,743-N.S. approved on December 15, 2020; and Ordinance No. 7,762-N.S. approved on May 11, 2021. The intent of the latest amendment, as mentioned in the report in Attachment 2, was to make just one narrowly tailored amendment to exempt from the provisions of the ordinance commercial leases where the lease has expired and the City has issued a permit for the demolition or substantial alternation of the commercial unit. This was necessary to move forward with existing approved developments that are needed to address the housing affordability crisis and meet the quota of new units as prescribed in the Regional Housing Needs Allocation (RHNA). While the recommendation was clear in the intent of amending Chapter 13.110 for this singular purpose, the amendments made in the ordinance were drafted using an older version of the ordinance, Ordinance 7,698-N.S., as approved on May 26, 2020. Because of this, the amendments that were approved in Ordinance No. 7,704-N.S. on May 26, 2020, and Ordinance No. 7,743-N.S. on December 15, 2020 were inadvertently omitted from the text of Ordinance No. 7,762-N.S.

The amendments made in Ordinance No. 7,743-N.S. were based on recommendations approved by the 4x4 Joint Task Force Committee on Housing. This primarily includes the halting of evictions under the Ellis Act for the duration of the local state of emergency pertaining to the COVID-19 pandemic, in addition to establishment of civil penalties, adding actions that hurt a Resident's credit rating passed on non-payment of rent as a prohibited retaliation, along with general cleanup language. The changes incorporated and approved by the Council through Ordinance No. 7,743-N.S. has been reinstated in this corrected version of the ordinance.

ENVIRONMENTAL SUSTAINABILITY

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

FISCAL IMPACTS OF RECOMMENDATION

None

RATIONALE FOR RECOMMENDATION

This correction is needed to clarify and fully implement the legislative intent of the passage of Ordinance No. 7,762-N.S. This is done by incorporating the changes that were enacted in Ordinance Nos. 7,704-N.S. and 7,743-N.S. and then inadvertently omitted from the text of Ordinance 7,762-N.S.

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: Ordinance (clean)
- 2: Ordinance (track changes)
- 2: May 11, 2021 Council Item: Amending COVID-19 Emergency Response Ordinance Relating to Commercial Leases
- 3: Track changes between Ordinance No. 7,743-N.S. and Ordinance No. 7,762-N.S.

ORDINANCE NO. -N.S.

ORDINANCE AMENDING CHAPTER 13.110 OF THE BERKELEY MUNICIPAL CODE,  
THE COVID-19 EMERGENCY RESPONSE ORDINANCE

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

Section 1. The Berkeley Municipal Code Chapter 13.110 is amended to read as follows:

**Chapter 13.110**  
**COVID-19 EMERGENCY RESPONSE ORDINANCE**

**Sections:**

- 13.110.010 Findings and Purpose**
- 13.110.020 Prohibited Conduct**
- 13.110.030 Definitions**
- 13.110.040 Collection of Back Rent and Late Fees**
- 13.110.050 Application**
- 13.110.060 Implementing Regulations**
- 13.110.070 Waiver**
- 13.110.080 Remedies**
- 13.110.090 Severability**
- 13.110.100 Liberal Construction**

**13.110.010 Findings and Purposes**

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2." And the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the Local Emergency"), which the City Council subsequently ratified on March 10, 2020. 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, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, and July 26, 2022, the council ratified an extension of the local emergency. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

On March 16, 2020, the City of Berkeley Public Health Officer, along with several other neighboring jurisdictions issued a Shelter in Place Order directing all individuals living in the City of Berkeley to shelter at their place of residence except that they may leave to

provide or receive certain essential services or engage in certain essential activities, and prohibiting non-essential gatherings and ordering cessation of non-essential travel. On March 31, 2020 this Shelter in Place Order was extended to May 3, 2020, and restricted activities further.

Furthermore, on March 16, 2020, the Governor issued Executive Order N-28-20, specifically authorizing local governments to halt evictions for commercial tenants, residential tenants, and homeowners who have been affected by COVID-19, emphasizing that the economic impacts of COVID-19 have been significant and could threaten to undermine housing security as many people are experiencing material income loss as a result of business closures, the loss of hours or wages or layoffs related to COVID-19, hindering their ability to keep up with rents, mortgages and utility bills.

The Order also stated that because homelessness can exacerbate vulnerability to COVID-19, Californians must take measures to preserve and increase housing security for Californians to protect public health and specifically stated that local jurisdictions may take measures to promote housing security beyond what the state law would otherwise allow.

On April 21, 2020, Alameda County enacted an urgency ordinance prohibiting eviction for any reason other than withdrawal of rental property under the Ellis Act or court-ordered eviction for public safety. Although the Alameda County ordinance does not have effect within the incorporated area of Berkeley, it is desirable to ensure that Berkeley residents have at least the same level of protection as the residents of unincorporated Alameda County.

During this State of Emergency, and in the interests of protecting the public health and preventing transmission of the COVID-19, it is essential to avoid unnecessary displacement and homelessness. It is the intent of this Ordinance to fully implement the suspension of the statutory bases for eviction for nonpayment of rent and for default in the payment of a mortgage as authorized by Executive Order N-28-20.

At the same time, the Governor, as well as, the Berkeley Health Officer, and those of other jurisdictions ordered the closure of businesses, except those deemed essential. Many businesses, such as restaurants, are open only for take-out or pick up services and face a critical loss of business.

The City Council is aware that some landlords of commercial properties are seeking significant rent increases during the period when many commercial tenants are closed or are experiencing substantial and catastrophic reductions in their business and income. Such rent increases force tenants who are closed or have substantially reduced revenues face the choice of accepting a significant rent increase, moving at a time when it is virtually impossible, or closing altogether. Accepting a rent increase while closed or in a reduced state of operations means that the commercial tenants face even more debt to the landlord when the emergency is over, and may face a substantially increased rent when the tenant returns to normal operations, if ever.

Landlords of commercial property that unreasonably increases rents on tenants of commercial property during the COVID-19 emergency significantly impacts vulnerable small businesses, nonprofits, and artists who form a large part of the backbone of Berkeley's economy, revenue sources, and employment opportunities. These rent increases are coming at a time when the commercial rents are likely falling due to business closures and potential loss of businesses at the end of the emergency. Thus, these rent increases appear as a way of evading the Governor's and Berkeley's commercial tenant eviction moratorium by forcing tenants to agree to rent increases or leave. Such conduct constitutes constructive evictions in contravention of the eviction moratorium. Furthermore, such rent increases may affect businesses providing goods and essential services, resulting in increases in those costs of essential goods and services contravening the intent of anti-price gouging laws.

On expiration of leases when the emergency order is in place, unreasonable rent increases have already forced the closure of businesses and will result in closing of additional business causing loss of income for the business owners, loss of employment for the employees and of revenue to the city, and an increase in homelessness. To reduce the spread of COVID-19, it is essential to avoid unnecessary displacement and homelessness. Because of the emergency restrictions, businesses forced out due to increased rents will be unable to move to new locations and new businesses will be unable to open during this emergency period. During a state of emergency cities have extraordinary powers and jurisdiction to create legislation in order to counteract the effects of the emergency situation on its people and businesses. Protecting tenants from excessive rent increases will prevent additional loss of employment and essential services for Berkeley residents. In order to effectively implement an eviction moratorium, the City Council finds it imperative to prevent constructive eviction through unreasonable rent increases.

Accordingly, the City of Berkeley adopts the following amendments to Berkeley Municipal Code Chapter 13.110.

**13.110.020 Prohibited Conduct**

A. During the Covered Period, no Landlord or Lender shall evict or attempt to evict a Resident of real property, or otherwise require a Tenant to vacate, unless necessary to stop an imminent threat to the health and safety of other occupants. For purposes of this Ordinance, the basis for an exception to this Ordinance cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected.

B. Residential Eviction Moratorium. It shall be a complete defense to any action for unlawful detainer that the notice upon which the action is based was served or expired, or that the complaint was filed or served, during the Covered Period.

C. No landlord of an Impacted Business or Nonprofit may upon expiration of a lease increase rent for an Impacted Business or Nonprofit in an amount greater than ten (10) percent over the rent in effect at the commencement of the local emergency declared by

the Director of Emergency Services. For purposes of this section, rent means all consideration for the use and enjoyment of the rented premises, including base rent and any additional rent or other charges for costs such as utilities, maintenance, cleaning, trash removal, repairs and any other charges to the tenant required under the rental agreement. This section 13.110.020 C. shall expire on May 31, 2020, concurrent with Executive Order N-28-20; provided, however, that this section shall be automatically extended if Executive Order N-28-20 is extended or the tenant protections therein are extended pursuant to another Governor's Executive Order.

D. For the duration of the Covered Period, if a tenant has a Covered reason for delayed payment, the tenant may terminate a lease or rental agreement with 30 days notice without penalty. A tenant may also exercise rights under this subsection if the tenants or roommates of the tenants are or were registered at an educational institution that cancelled or limited in-person classes due to the COVID-19 pandemic.

### **13.110.030 Definitions**

A. "Covered Period" means the period of time beginning with March 17, 2020 and concluding upon the expiration of the local emergency. However, the City Council may vote by resolution to extend the duration of the Covered Period.

B. "Covered Reason for Delayed Payment" means:

(1) The basis for the eviction is nonpayment of rent, arising out of a material decrease in household, business, or other rental unit occupant(s)'s income (including, but not limited to, a material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or to caregiving responsibilities, or a material decrease in business income caused by a reduction in opening hours or consumer demand), or material out-of-pocket medical expenses, or a reduction in the number of tenants living in the unit (including due to difficulty finding new tenants and/or subtenants willing and able to cover a sufficient share of rent) which reduces the ability of the remaining tenants to pay rent, or a rent increase that exceeds the Annual General Adjustment for the current year; and

(2) The decrease in household, business, or other rental unit occupant's income or the expenses or reduction in number of tenants described in subparagraph (1) was caused by the impacts of COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

C. "Delayed Rent Payment Agreement" means a mutual agreement between a landlord and tenant regarding the timing and amount of payments for rent that is delayed by a Covered Reason for Delayed Payment.

D. "Homeowner" means the owner or owners of a Residential Unit subject to a mortgage or similar loan secured by the residential unit. "Homeowner" is limited to owners who reside in the unit and includes the individuals residing in the unit with the homeowner.



E. "Impacted Business or Nonprofit" means a business or nonprofit organization that had a business license in 2019 or 2020 in the City of Berkeley or is a registered nonprofit in either or both of those years and:

1. whose operation has been shut down due to the COVID-19 emergency, or
2. that is unable to accept customers at its location and is open for limited virtual, take-out or pickup services only, or
3. who suffered a material loss of income.

F. "Landlord" includes owners, lessors, or sublessors of either residential or commercial rental property, and the agent, representative, or successor of any of the foregoing.

G. "Lender" means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more units, which person has the right to mortgage or similar payments from the owner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.

H. "Resident" means a Tenant, Homeowner, or their household.

I. "Tenant" includes a tenant, subtenant, lessee, sublessee, lodger or any other person entitled by written or oral rental agreement to use or occupancy of either residential or commercial property.

#### **13.110.040 Collection of Back Rent and Late Fees**

A. Nothing in this Chapter shall relieve the tenant of liability for unpaid rent, which the landlord may seek after expiration of the local State of Emergency. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment. The City will develop standards or guidelines for tenants to repay unpaid rent accrued during the Covered Period course of the local State of Emergency. Landlords are encouraged to work with local agencies that will be making rental assistance available for qualifying tenants.

B.

1. For rent accrued through January 31, 2021, Tenants shall have until March 31, 2022, or the date adopted by state law, as applicable, to pay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

2. For rent accrued beginning February 1, 2021, Tenants shall have until twenty-four (24) months after the conclusion of the Covered Period to pay rent that was delayed by a Covered Reason for Delayed Payment, or the period of time adopted by state law, as applicable, unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

3. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment.

C. A Tenant is not required to provide documentation to the Landlord in advance to qualify for the delayed repayment of rent. However, upon the request of a Landlord, a Tenant shall provide such documentation to the Landlord within forty-five (45) days after the request or within thirty (30) days after the Covered Period, whichever is later. A declaration sworn under penalty of perjury shall constitute documentation for the purpose of this requirement. In the case of nonpayment of rent, the failure of a Tenant to notify the landlord in advance of being delinquent in the payment of rent prior to being served with a notice pursuant to Code of Civil Procedure sections 1161(2) *et seq.* does not waive the Tenant's right to claim this Chapter as a complete defense to nonpayment of rent in an unlawful detainer action.

D. Any medical or financial information provided to the landlord shall be held in confidence, and shall not be disclosed to other entities unless such disclosure is permitted or required by the law, or unless the tenant explicitly authorizes the disclosure of the information in writing.

E. Any relief from the City of Berkeley either directly to a property owner on their own application or as a pass through for City relief payments to the tenant shall directly reduce the amount of any rent that was delayed by a Covered Reason for Delayed Payment. This requirement shall be applied into any Delayed Rent Payment Agreement, regardless of the terms of that agreement.

#### **13.110.050 Application**

A. This Chapter applies to eviction notices and unlawful detainer actions based on notices served, filed, or which expire during the Covered Period. It does not apply to commercial leases where the term has expired and the City has issued a permit for the demolition or substantial alteration of the commercial unit, or to units ordered by the City to be vacated for the preservation of public health, including where the City deems necessary to control the spread of COVID-19.

B. Except where expressly required by state law (such as Assembly Bill 3088 or any subsequent statewide COVID-19 relief legislation), a landlord may seek rent accrued during the Covered Period as set forth in Section 13.110.040, but may not file an action pursuant to Code of Civil Procedure sections 1161(2) *et seq.* or otherwise seek to recover possession of a rental unit based on the failure to pay rent that accrued during the Covered Period. In any action to evict based on alleged nonpayment of rent, it shall be a complete defense to such action if any part of the rent in dispute accrued at any time during the Covered Period, or if the action otherwise demands any fees or amounts contrary to the provisions of this Chapter. A landlord shall not apply any rent payment towards rent that is delayed by a Covered Reason for Delayed Payment before applying it towards any other Rent owed without the explicit written permission of the Tenant.

C. A Landlord or Lender shall not retaliate against a Resident for exercising their rights under this Ordinance, including but not limited to shutting off any utilities reducing services or amenities, refusing to make or delaying repairs to which the Resident would otherwise be entitled, or taking actions which hurt the Resident's credit rating based on non-payment of rent during the Covered Period as allowed under this ordinance.

D. In addition to the affirmative defenses set forth above, in any action to recover possession of a rental unit filed under Berkeley Municipal Code section 13.76.130(A)(1), it shall be a complete defense that the landlord impeded the tenant's effort to pay rent by refusing to accept rent paid on behalf of the tenant from a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party. Acceptance of rental payments made on behalf of the tenant by a third party shall not create a tenancy between the landlord and the third party.

### **13.110.060 Implementing Regulations**

The City Manager may promulgate implementing regulations and develop forms to effectuate this Ordinance. This includes the option of requiring Landlords and Lenders to give a notice to Residents informing them of this Chapter and the right to seek the benefits of this Chapter.

### **13.110.070 Waiver.**

A. By entering into a Delayed Rent Payment Agreement, Tenants do not waive any rights under this Chapter.

B. Any agreement by a Tenant to waive any rights under this ordinance shall be void and contrary to public policy.

### **13.110.080 Remedies**

A. In the event of a violation of this Ordinance, any person or entity aggrieved by the violation may institute a civil proceeding for injunctive relief, and money actual damages as specified below, and whatever other relief the court deems appropriate.

1. An award of actual damages may include an award for mental and/or emotional distress and/or suffering. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the Court outside of the presence, and without the knowledge of, the jury, if any, if a defendant acted in knowing violation of, or in reckless disregard for, the provisions of this Chapter.

2. A defendant shall be liable for additional civil penalties of up to five thousand dollars for each violation of this Chapter committed against a person who is disabled within the meaning of California Government Code section 12926, et seq., or aged sixty-five or over.

3. In addition to the above awards of damages in a civil action under this Chapter, a prevailing plaintiff shall be entitled to an award of reasonable attorney's fees. A prevailing defendant in a civil action under this Chapter shall only be entitled to an award of

attorney's fees if it is determined by the Court the action was wholly without merit or frivolous.

4. In addition, this Chapter grants a complete defense to eviction in the event that an eviction notice or unlawful detainer action is commenced, filed, or served in violation of this Chapter.

B. The protections provided by this ordinance shall be available to all Residents, regardless of any agreement wherein a Resident waives or purports to waive their rights under this Ordinance, with any such agreement deemed void as contrary to public policy.

C. A. Violations of Section 13.110.020(C) - (Commercial rent restrictions).

1. Violations of Section 13.110.020(C) may be enforced by an administrative fine of up to \$1,000 pursuant to Chapter 1.28. Each day a commercial property landlord demands rent in excess of the amount permitted pursuant to Section 13.110.020(C) is a separate violation. The City may also charge the costs of investigating and issuing any notices of violations, and any hearings or appeals of such notices.

2. The City Attorney may refer those violators of Section 13.110.020(C) to the Alameda County District Attorney for redress as a violation of Business and Professions Code section 17200, et seq. or, if granted permission by the District Attorney, may bring an action pursuant to Business and Professions Code section 17200, et seq.

D. Nonexclusive Remedies and Penalties. The remedies provided in this subdivision are not exclusive, and nothing in this Chapter shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

### **13.110.090 Severability.**

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

### **13.110.100 Liberal Construction**

The provisions of this Chapter shall be liberally construed so as to fully achieve its purpose and provide the greatest possible protections to tenants.

### Section 2. Effective Date

This ordinance shall go into effect thirty days from the time of its final passage.

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

ORDINANCE NO. -N.S.

ORDINANCE AMENDING CHAPTER 13.110 OF THE BERKELEY MUNICIPAL CODE,  
THE COVID-19 EMERGENCY RESPONSE ORDINANCE

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

Section 1. The Berkeley Municipal Code Chapter 13.110 is amended to read as follows:

**Chapter 13.110**  
**COVID-19 EMERGENCY RESPONSE ORDINANCE**

**Sections:**

- 13.110.010 Findings and Purpose**
- 13.110.020 Prohibited Conduct**
- 13.110.030 Definitions**
- 13.110.040 Collection of Back Rent and Late Fees**
- 13.110.050 Application**
- 13.110.060 Implementing Regulations**
- 13.110.070 Waiver**
- 13.110.080 Remedies**
- 13.110.090 Severability**
- 13.110.100 Liberal Construction**

**13.110.010 Findings and Purposes**

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2." And the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the Local Emergency"), which the City Council subsequently ratified on March 10, 2020. 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, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, and July 26, 2022 the council ratified an extension of the local state of emergency through June 21, 2020. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

On March 16, 2020, the City of Berkeley Public Health Officer, along with several other neighboring jurisdictions issued a Shelter in Place Order directing all individuals living in the City of Berkeley to shelter at their place of residence except that they may leave to



provide or receive certain essential services or engage in certain essential activities, and prohibiting non-essential gatherings and ordering cessation of non-essential travel. On March 31, 2020 this Shelter in Place Order was extended to May 3, 2020, and restricted activities further.

Furthermore, on March 16, 2020, the Governor issued Executive Order N-28-20, specifically authorizing local governments to halt evictions for commercial tenants, residential tenants, and homeowners who have been affected by COVID-19, emphasizing that the economic impacts of COVID-19 have been significant and could threaten to undermine housing security as many people are experiencing material income loss as a result of business closures, the loss of hours or wages or layoffs related to COVID-19, hindering their ability to keep up with rents, mortgages and utility bills.

The Order also stated that because homelessness can exacerbate vulnerability to COVID-19, Californians must take measures to preserve and increase housing security for Californians to protect public health and specifically stated that local jurisdictions may take measures to promote housing security beyond what the state law would otherwise allow.

On April 21, 2020, Alameda County enacted an urgency ordinance prohibiting eviction for any reason other than withdrawal of rental property under the Ellis Act or court-ordered eviction for public safety. Although the Alameda County ordinance does not have effect within the incorporated area of Berkeley, it is desirable to ensure that Berkeley residents have at least the same level of protection as the residents of unincorporated Alameda County.

During this State of Emergency, and in the interests of protecting the public health and preventing transmission of the COVID-19, it is essential to avoid unnecessary displacement and homelessness. It is the intent of this Ordinance to fully implement the suspension of the statutory bases for eviction for nonpayment of rent and for default in the payment of a mortgage as authorized by Executive Order N-28-20.

At the same time, the Governor, as well as, the Berkeley Health Officer, and those of other jurisdictions ordered the closure of businesses, except those deemed essential. Many businesses, such as restaurants, are open only for take-out or pick up services and face a critical loss of business.

The City Council is aware that some landlords of commercial properties are seeking significant rent increases during the period when many commercial tenants are closed or are experiencing substantial and catastrophic reductions in their business and income. Such rent increases force tenants who are closed or have substantially reduced revenues face the choice of accepting a significant rent increase, moving at a time when it is virtually impossible, or closing altogether. Accepting a rent increase while closed or in a reduced state of operations means that the commercial tenants face even more debt to the landlord when the emergency is over, and may face a substantially increased rent when the tenant returns to normal operations, if ever.

Landlords of commercial property that unreasonably increases rents on tenants of commercial property during the COVID-19 emergency significantly impacts vulnerable small businesses, nonprofits, and artists who form a large part of the backbone of Berkeley's economy, revenue sources, and employment opportunities. These rent increases are coming at a time when the commercial rents are likely falling due to business closures and potential loss of businesses at the end of the emergency. Thus, these rent increases appear as a way of evading the Governor's and Berkeley's commercial tenant eviction moratorium by forcing tenants to agree to rent increases or leave. Such conduct constitutes constructive evictions in contravention of the eviction moratorium. Furthermore, such rent increases may affect businesses providing goods and essential services, resulting in increases in those costs of essential goods and services contravening the intent of anti-price gouging laws.

On expiration of leases when the emergency order is in place, unreasonable rent increases have already forced the closure of businesses and will result in closing of additional business causing loss of income for the business owners, loss of employment for the employees and of revenue to the city, and an increase in homelessness. To reduce the spread of COVID-19, it is essential to avoid unnecessary displacement and homelessness. Because of the emergency restrictions, businesses forced out due to increased rents will be unable to move to new locations and new businesses will be unable to open during this emergency period. During a state of emergency cities have extraordinary powers and jurisdiction to create legislation in order to counteract the effects of the emergency situation on its people and businesses. Protecting tenants from excessive rent increases will prevent additional loss of employment and essential services for Berkeley residents. In order to effectively implement an eviction moratorium, the City Council finds it imperative to prevent constructive eviction through unreasonable rent increases.

Accordingly, the City of Berkeley adopts the following amendments to Berkeley Municipal Code Chapter 13.110.

#### **13.110.020 Prohibited Conduct**

A. During the ~~local State of Emergency~~Covered Period, no Landlord or Lender ~~other entity~~ shall evict or attempt to evict ~~an occupant~~ Resident of real property, or otherwise require a Tenant to vacate, unless necessary to stop an imminent threat to ~~for~~ the health and safety of ~~residents~~other occupants. For purposes of this Ordinance, the basis for an exception to this Ordinance cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected.

B. Residential Eviction Moratorium. It shall be a complete defense to any action for unlawful detainer that the notice upon which the action is based was served or expired, or that the complaint was filed or served, during the ~~local State of Emergency~~Covered Period.

C. No landlord of an Impacted Business or Nonprofit may upon expiration of a lease increase rent for an Impacted Business or Nonprofit in an amount greater than ten (10) percent over the rent in effect at the commencement of the local ~~state-of~~ emergency declared by the Director of Emergency Services. For purposes of this section, rent means all consideration for the use and enjoyment of the rented premises, including base rent and any additional rent or other charges for costs such as utilities, maintenance, cleaning, trash removal, repairs and any other charges to the tenant required under the rental agreement. This section 13.110.020 C. shall expire on May 31, 2020, concurrent with Executive Order N-28-20; provided, however, that this section shall be automatically extended if Executive Order N-28-20 is extended or the tenant protections therein are extended pursuant to another Governor's Executive Order.

D. For the duration of the ~~local State-of-Emergency~~Covered Period, if a tenant has a Covered reason for delayed payment, the tenant may terminate a lease or rental agreement with 30 days notice without penalty. A tenant may also exercise rights under this subsection if the tenants or roommates of the tenants are or were registered at an educational institution that cancelled or limited in-person classes due to the COVID-19 pandemic.

### 13.110.030 Definitions

A. "Covered Period" means the period of time beginning with March 17, 2020 and concluding upon the expiration of the local emergency. However, the City Council may vote by resolution to extend the duration of the Covered Period.

B. "Covered Reason for Delayed Payment" means:

(1) the basis for the eviction is nonpayment of rent, arising out of a material decrease in household, business, or other rental unit occupant(s)'s income (including, but not limited to, a material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or to caregiving responsibilities, or a material decrease in business income caused by a reduction in opening hours or consumer demand), or material out-of-pocket medical expenses, or ~~or, a reduction in the number of tenants living in the unit (including due to difficulty finding new tenants and/or subtenants willing and able to cover a sufficient share of rent) in a group living arrangement wherein all tenants are collectively responsible for payment of the rent to the landlord, a reduction in the number of tenants living in the unit~~ which reduces the ability of the remaining tenants to pay ~~the~~ rent, or a rent increase that exceeds the Annual General Adjustment for the current year; and

(2) The decrease in household, business, or other rental unit occupant's income or the expenses or reduction in number of tenants described in subparagraph (1) was caused by the impacts of COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

**CB.** “Delayed Rent Payment Agreement” means a mutual agreement between a landlord and tenant regarding the timing and amount of payments for rent that is delayed by a Covered Reason for Delayed Payment.

**D.** “Homeowner” means the owner or owners of a Residential Unit subject to a mortgage or similar loan secured by the residential unit. “Homeowner” is limited to owners who reside in the unit and includes the individuals residing in the unit with the homeowner.

**EC.** “Impacted Business or Nonprofit” means a business or nonprofit organization that had a business license in 2019 or 2020 in the City of Berkeley or is a registered nonprofit in either or both of those years and:

1. whose operation has been shut down due to the COVID-19 emergency, or
2. that is unable to accept customers at its location and is open for limited virtual, take-out or pickup services only, or
3. who suffered a material loss of income.

**FD.** “Landlord” includes owners, lessors, or sublessors of either residential or commercial rental property, and the agent, representative, or successor of any of the foregoing.

**G.** “Lender” means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more units, which person has the right to mortgage or similar payments from the owner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.

**H.** “Resident” means a Tenant, Homeowner, or their household.

**IE.** “Tenant” includes a tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement to use or occupancy of either residential or commercial property.

### **13.110.040 Collection of Back Rent and Late Fees**

A. Nothing in this Chapter shall relieve the tenant of liability for unpaid rent, which the landlord may seek after expiration of the local State of Emergency. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment. The City will develop standards or guidelines for tenants to repay unpaid rent accrued during the Covered Period course of the local State of Emergency. Landlords are encouraged to work with local agencies that will be making rental assistance available for qualifying tenants.

~~B. Tenants shall have up to twelve (12) months to pay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement “Delayed Rent Payment Agreement”). Notwithstanding any lease~~

~~provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment.~~

~~1. For rent accrued through January 31, 2021, Tenants shall have until March 31, 2022, or the date adopted by state law, as applicable, to pay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").~~

~~2. For rent accrued beginning February 1, 2021, Tenants shall have until twenty-four (24) months after the conclusion of the Covered Period to pay rent that was delayed by a Covered Reason for Delayed Payment, or the period of time adopted by state law, as applicable, unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").~~

C. A Tenant is not required to provide documentation to the Landlord in advance to qualify for the delayed repayment of rent ~~over the 12 months~~. However, upon the request of a Landlord, a Tenant shall provide such documentation to the Landlord within forty-five (45) days after the request or within thirty (30) days after the ~~local State of Emergency is ended~~Covered Period, whichever is later. In the case of nonpayment of rent, the failure of a Tenant to notify the landlord in advance of being delinquent in the payment of rent prior to being served with a notice pursuant to Code of Civil Procedure sections 1161(2) et seq. does not waive the Tenant's right to claim this Chapter as a complete defense to nonpayment of rent in an unlawful detainer action.

D. Any medical or financial information provided to the landlord shall be held in confidence, and shall not be disclosed to other entities unless such disclosure is permitted or required by the law, or unless the tenant authorizes the disclosure of the information in writing.

E. Any relief from the City of Berkeley either directly to a property owner on their own application or as a pass through for City relief payments to the tenant shall directly reduce the amount of any rent that was delayed by a Covered Reason for Delayed Payment. This requirement shall be applied into any Delayed Rent Payment Agreement, regardless of the terms of that agreement.

### **13.110.050 Application**

A. This Chapter applies to eviction notices and unlawful detainer actions based on notices served, filed, or which expire ~~on or after the effective date of this Chapter through the end of the local State of Emergency during the Covered Period~~. It does not apply ~~to withdrawal of accommodations from the rental market pursuant to Government Code 7060 et seq. ("Ellis Act")~~, commercial leases where the term has expired and the City has issued a permit for the demolition or substantial alteration of the commercial unit, or to units ordered by the City to be vacated for the preservation of public health, including where the City deems necessary to control the spread of COVID-19.

B. ~~Except where expressly required by state law (such as Assembly Bill 3088 or any subsequent statewide COVID-19 relief legislation) With respect to delayed payment covered by this Ordinance,~~ a landlord may seek such rent after the expiration of the local State of Emergency, pursuant to Section 13.110.040, but may not file an action pursuant to Code of Civil Procedure sections 1161(2) *et seq.* or otherwise seek to recover possession of a rental unit based on the failure to pay rent that accrued ~~due to a Covered Reason for Delayed Payment during the term of the local State of Emergency during the Covered Period.~~ In any action to evict based on alleged nonpayment of rent, it shall be a complete defense to such action if any part of the rent in dispute accrued at any time ~~during the Covered Period, or if the action otherwise demands any fees or amounts contrary to the provisions of this Chapter. A landlord shall not apply any rent payment towards rent that is delayed by a Covered Reason for Delayed Payment before applying it towards any other Rent owed without the explicit written permission of the Tenant. from the effective date of this Chapter to the expiration of the local State of Emergency and there exists a Covered Reason for Delayed Payment.~~

C. A Landlord or Lender shall not retaliate against a Tenant for exercising their rights under this Ordinance, including but not limited to shutting off any utilities reducing services or amenities, refusing to make or delaying repairs to which the Tenant would otherwise be entitled, or taking actions which hurt the Resident's credit rating based on non-payment of rent during the Covered Period as allowed under this ordinance.

D. In addition to the affirmative defenses set forth above, in any action to recover possession of a rental unit filed under Berkeley Municipal Code section 13.76.130(A)(1), it shall be a complete defense that the landlord impeded the tenant's effort to pay rent by refusing to accept rent paid on behalf of the tenant from a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party. Acceptance of rental payments made on behalf of the tenant by a third party shall not create a tenancy between the landlord and the third party.

### **13.110.060 Implementing Regulations**

The City Manager may promulgate implementing regulations and develop forms to effectuate this Ordinance. This includes the option of requiring Landlords and Lenders to give a notice to Residents informing them of this Chapter and the right to seek the benefits of this Chapter.

### **13.110.070 Waiver.**

A. By entering into a Delayed Rent Payment Agreement, Tenants do not waive any rights under this Chapter.

B. Any agreement by a Tenant to waive any rights under this ordinance shall be void and contrary to public policy.

### **13.110.080 Remedies**



A. In the event of a violation of this Ordinance, any person or entity aggrieved by the violation-tenant may institute a civil proceeding for injunctive relief, and money actual damages as specified below, and whatever other relief the court deems appropriate.

~~Money damages shall only be awarded if the trier of facts finds that the landlord acted in knowing violation of or in reckless disregard of this Ordinance. The prevailing party shall be entitled to reasonable attorney and costs pursuant to order of the court. The remedy available under this section shall be in addition to any other existing remedies which may be available to the tenant under local, state, or federal law.~~

~~1. An award of actual damages may include an award for mental and/or emotional distress and/or suffering. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the Court outside of the presence, and without the knowledge of, the jury, if any, if a defendant acted in knowing violation of, or in reckless disregard for, the provisions of this Chapter.~~

~~2. A defendant shall be liable for additional civil penalties of up to five thousand dollars for each violation of this Chapter committed against a person who is disabled within the meaning of California Government Code section 12926, et seq., or aged sixty-five or over.~~

~~3. In addition to the above awards of damages in a civil action under this Chapter, a prevailing plaintiff shall be entitled to an award of reasonable attorney's fees. A prevailing defendant in a civil action under this Chapter shall only be entitled to an award of attorney's fees if it is determined by the Court the action was wholly without merit or frivolous.~~

~~4. In addition, this Ordinance-Chapter grants a defense to eviction in the event that an eviction notice or unlawful detainer action is commenced, filed, or served in violation of this OrdinanceChapter.~~

B. The protections provided by this ordinance shall be available to all tenants, regardless of any agreement wherein a tenant waives or purports to waive their rights under this Ordinance, with any such agreement deemed void as contrary to public policy.

CA. Violations of Section 13.110.020(C) - (Commercial rent restrictions).

1. Violations of Section 13.110.020(C) may be enforced by an administrative fine of up to \$1,000 pursuant to Chapter 1.28. Each day a commercial property landlord demands rent in excess of the amount permitted pursuant to Section 13.110.020(C) is a separate violation. The City may also charge the costs of investigating and issuing any notices of violations, and any hearings or appeals of such notices.



2. The City Attorney may refer those violators of Section 13.110.020(C) to the Alameda County District Attorney for redress as a violation of Business and Professions Code section 17200, et seq. or, if granted permission by the District Attorney, may bring an action pursuant to Business and Professions Code section 17200, et seq.

D. Nonexclusive Remedies and Penalties. The remedies provided in this subdivision are not exclusive, and nothing in this Chapter shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

### **13.110.090 Severability.**

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

### **13.110.100 Liberal Construction**

The provisions of this Chapter shall be liberally construed so as to fully achieve its purpose and provide the greatest possible protections to tenants.

### **Section 2. Effective Date**

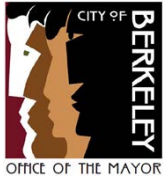
This ordinance shall go into effect thirty days from the time of its final passage.

#### ~~Vote Required, Immediately Effective~~

~~Based upon the findings in Section 13.110.010 of this Ordinance, the Council determines that this Ordinance is necessary for the immediate preservation of the public health, peace and safety in accordance with Article XIV Section 93 of the Charter of the City of Berkeley and must therefore go into effect immediately. This Ordinance shall go into effect immediately upon a seven-ninths vote of the City Council, in satisfaction of the Charter of the City of Berkeley.~~

~~This ordinance shall go into effect thirty days from the time of its final passage.~~

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



CONSENT CALENDAR

May 11, 2021

TO: Members of the City Council

FROM: Mayor Jesse Arreguín

SUBJECT: Amending COVID-19 Emergency Response Ordinance Relating to Commercial Leases

**RECOMMENDATION**

Adopt an urgency ordinance amending Berkeley Municipal Code Section 13.110.050 (COVID-19 Emergency Response Ordinance) to exempt from the provisions of the ordinance commercial leases where the lease term has expired and the City has issued a permit for the demolition or substantial alternation of the commercial unit. The proposed ordinance change reads as follows:

13.110.050 Application

A. This Chapter applies to eviction notices and unlawful detainer actions based on notices served or filed or which expire on or after the effective date of this Chapter through the end of the local State of Emergency. It does not apply to withdrawal of accommodations from the rental market pursuant to Government Code [7060](#) et seq. ("Ellis Act"), commercial leases where the term has expired and the City has issued a permit for the demolition or substantial alteration of the commercial unit, or to units ordered by the City to be vacated for the preservation of public health, including where the City deems necessary to control the spread of COVID-19.

**BACKGROUND**

The City of Berkeley declared a local State of Emergency on March 3, 2020 in response to the COVID-19 pandemic, first detected globally in late December 2019. Shortly thereafter, Council passed BMC 13.110 - the COVID-19 Emergency Response Ordinance - prohibiting most evictions in Berkeley, which has been subsequently updated over the past year. Despite recent data showing a decline in new cases in the Bay Area and progress in the distribution and administration of vaccines, the threat of another wave of infections remains, and cases in other regions continue to rise. There is currently no timeline as to when the local State of Emergency will end, and even when the health crisis is no longer a significant threat to the community, the economic ramifications of COVID-19 will be felt for some time in the future.

The current COVID-19 Emergency Response Ordinance provides a critical lifeline to residential and commercial tenants who have faced financial difficulties as a result of the pandemic. This item makes a very narrow amendment to the ordinance exempting from its provisions a lease termination for a commercial tenant whose lease term has expired and where the City has already approved a permit for demolition or substantial alteration of the unit.

While the City does not want to create an incentive to evict existing commercial tenants. However in limited cases where the lease has already expired and there has been an approved project, the City should enable those housing and mixed-use projects to proceed. Berkeley faces a critical shortage of housing, particularly for low, very-low and extremely-low income households. It was never the intent of the Council to prohibit already entitled projects, where the lease has expired to be stalled due to the commercial eviction moratorium.

This is necessary to move forward with existing approved developments that are needed to address the housing affordability crisis and meet the quota of new units as prescribed in the Regional Housing Needs Allocation (RHNA). Without an end date for when the local State of Emergency will be lifted, clarity in the ordinance language is needed to allow property owners who have already entitled projects to proceed with building needed housing.

**CONTACT**

Mayor Jesse Arreguín  
mayor@cityofberkeley.info | 510-981-7100

Attachments:

1. Urgency Ordinance

ORDINANCE NO. -N.S.

URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BERKELEY AMENDING THE COVID-19 EMERGENCY RESPONSE ORDINANCE; DECLARING THE URGENCY THEREOF; AND DECLARING THAT THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY.

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

Section 1. That Chapter 13.110 of the Berkeley Municipal Code is hereby amended to read as follows:

Chapter 13.110

COVID-19 EMERGENCY RESPONSE ORDINANCE

Sections:

- 13.110.010 Findings and Purpose.
- 13.110.020 Prohibited Conduct.
- 13.110.030 Definitions.
- 13.110.040 Collection of Back Rent and Late Fees.
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- 13.110.090 Severability.

13.110.010 Findings and Purpose.

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2." And the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the State of Emergency"), which the City Council subsequently ratified on March 10, 2020. On April 21, 2020, the council ratified an extension of the local state of emergency through June 21, 2020. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

On March 16, 2020, the City of Berkeley Public Health Officer, along with several other neighboring jurisdictions issued a Shelter in Place Order directing all individuals living in the City of Berkeley to shelter at their place of residence except that they may leave to provide or receive certain essential services or engage in certain essential activities, and prohibiting non-essential gatherings and ordering cessation of non-essential travel. On March 31, this Shelter in Place Order was extended to May 3, 2020, and restricted activities further.

Furthermore, on March 16, 2020, the Governor issued Executive Order N-28-20, specifically authorizing local governments to halt evictions for commercial tenants, residential tenants, and homeowners who have been affected by COVID-19, emphasizing that the economic impacts of COVID-19 have been significant and could threaten to undermine housing security as many people are experiencing material income loss as a result of business closures, the loss of hours or wages or layoffs related to COVID-19, hindering their ability to keep up with rents, mortgages and utility bills.

The Order also stated that because homelessness can exacerbate vulnerability to COVID-19, Californians must take measures to preserve and increase housing security for Californians to protect public health and specifically stated that local jurisdictions may take measures to promote housing security beyond what the state law would otherwise allow.

On April 6, 2020, the Judicial Council of California issued emergency rules suspending court proceedings for unlawful detainer and judicial foreclosures until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted.

On April 21, 2020, Alameda County enacted an urgency ordinance prohibiting eviction for any reason other than withdrawal of rental property under the Ellis Act or court-ordered eviction for public safety. Although the Alameda County ordinance does not have effect within the incorporated area of Berkeley, it is desirable to ensure that Berkeley residents have the same level of protection as the residents of unincorporated Alameda County.

During this State of Emergency, and in the interests of protecting the public health and preventing transmission of the COVID-19, it is essential to avoid unnecessary displacement and homelessness. It is the intent of this Ordinance to fully implement the suspension of the statutory bases for eviction for nonpayment of rent and for default in the payment of a mortgage as authorized by Executive Order N-28-20.

At the same time, the Governor, as well as, the Berkeley Health Officer, and those of other jurisdictions ordered the closure of businesses, except those deemed essential. Many businesses, such as restaurants, are open only for take-out or pick up services and face a critical loss of business.

The City Council is aware that some landlords of commercial properties are seeking significant rent increases during the period when many commercial tenants are closed or are experiencing substantial and catastrophic reductions in their business and income. Such rent increases force tenants who are closed or have substantially reduced revenues face the choice of accepting a significant rent increase, moving at a time when it is virtually impossible, or closing altogether. Accepting a rent increase while closed or in a reduced state of operations means that the commercial tenants face even more debt to the landlord when the emergency is over, and may face a substantially increased rent when the tenant returns to normal operations, if ever.

Landlords of commercial property that unreasonably increases rents on tenants of commercial property during the COVID-19 emergency significantly impacts vulnerable small businesses, nonprofits, and artists who form a large part of the backbone of Berkeley's economy, revenue sources, and employment opportunities. These rent increases are coming at a time when the commercial rents are likely falling due to business closures and potential loss of businesses at the end of the emergency. Thus, these rent increases appear as a way of evading the Governor's and Berkeley's commercial tenant eviction moratorium by forcing tenants to agree to rent increases or leave. Such conduct constitutes constructive evictions in contravention of the eviction moratorium. Furthermore, such rent increases may affect businesses providing goods and essential services, resulting in increases in those costs of essential goods and services contravening the intent of anti-price gouging laws.

On expiration of leases when the emergency order is in place, unreasonable rent increases have already forced the closure of businesses and will result in closing of additional business causing loss of income for the business owners, loss of employment for the employees and of revenue to the city, and an increase in homelessness. To reduce the spread of COVID-19, it is essential to avoid unnecessary displacement and homelessness. Because of the emergency restrictions, businesses forced out due to increased rents will be unable to move to new locations and new businesses will be unable to open during this emergency period. During a state of emergency cities have extraordinary powers and jurisdiction to create legislation in order to counteract the effects of the emergency situation on its people and businesses. Protecting tenants from excessive rent increases will prevent additional loss of employment and essential services for Berkeley residents. In order to effectively implement an eviction moratorium, the City Council finds it imperative to prevent constructive eviction through unreasonable rent increases.

Accordingly, the City of Berkeley adopts the following amendments to Berkeley Municipal Code Chapter 13.110. (Ord. 7704-NS § 1 (part), 2020: Ord. 7698-NS § 1 (part), 2020: Ord. 7693-NS § 1 (part), 2020)

13.110.020 Prohibited Conduct.

A. During the local State of Emergency, no landlord or other entity shall evict or attempt to evict an occupant of real property unless necessary for the health and safety of residents. For purposes of this Ordinance, the basis for an exception to this Ordinance cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected.

B. Residential Eviction Moratorium. It shall be a complete defense to any action for unlawful detainer that the notice upon which the action is based was served or expired, or that the complaint was filed or served during the local State of Emergency.

C. No landlord of an Impacted Business or Nonprofit may upon expiration of a lease increase rent for an Impacted Business or Nonprofit in an amount greater than ten (10) percent over the rent in effect at the commencement of the local state of emergency declared by the Director of Emergency Services. For purposes of this section, rent



means all consideration for the use and enjoyment of the rented premises, including base rent and any additional rent or other charges for costs such as utilities, maintenance, cleaning, trash removal, repairs and any other charges to the tenant required under the rental agreement. This section 13.110.020 C. shall expire on May 31, 2020, concurrent with Executive Order N-28-20; provided, however, that this section shall be automatically extended if Executive Order N-28-20 is extended or the tenant protections therein are extended pursuant to another Governor's Executive Order.

D. For the duration of the local State of Emergency, if a tenant has a Covered reason for delayed payment the tenant may terminate a lease or rental agreement with 30 days' notice without penalty. A tenant may also exercise rights under this subsection if the tenants or roommates of the tenants are or were registered at an educational institution that cancelled or limited in-person classes due to the COVID-19 pandemic. (Ord. 7720-NS § 1, 2020: Ord. 7704-NS § 1 (part), 2020: Ord. 7698-NS § 1 (part), 2020: Ord. 7693-NS § 1 (part), 2020)

#### 13.110.030 Definitions.

A. "Covered Reason for Delayed Payment" means:

(1) the basis for the eviction is nonpayment of rent, arising out of a material decrease in household, business, or other rental unit occupants' income (including, but not limited to, a material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or to caregiving responsibilities, or a material decrease in business income caused by a reduction in opening hours or consumer demand), or material out-of-pocket medical expenses, or, in a group living arrangement wherein all tenants are collectively responsible for payment of the rent to the landlord, a reduction in the number of tenants living in the unit which reduces the ability of the remaining tenants to pay the rent, or a rent increase that exceeds the Annual General Adjustment for the current year; and

(2) the decrease in household, business, or other rental unit occupant's income or the expenses or reduction in number of tenants described in subparagraph (1) was caused by the impacts of COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

B. "Delayed Rent Payment Agreement" means a mutual agreement between a landlord and tenant regarding the timing and amount of payments for rent that is delayed by a Covered Reason for Delayed Payment.

C. "Impacted Business or Nonprofit" means a business or nonprofit organization that had a business license in 2019 or 2020 in the City of Berkeley or is a registered nonprofit in either or both of those years and:

1. whose operation has been shut down due to the COVID-19 emergency, or
2. that is unable to accept customers at its location and is open for limited virtual, take-out or pickup services only, or
3. who suffered a material loss of income.

D. "Landlord" includes owners, lessors, or sublessors of either residential or commercial rental property, and the agent, representative, or successor of any of the foregoing.

E. "Tenant" includes a tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement to use or occupancy of either residential or commercial property. (Ord. 7704-NS § 1 (part), 2020; Ord. 7698-NS § 1 (part), 2020; Ord. 7693-NS § 1 (part), 2020)

#### 13.110.040 Collection of Back Rent and Late Fees.

A. Nothing in this Chapter shall relieve the tenant of liability for unpaid rent, which the landlord may seek after expiration of the local State of Emergency. The City will develop standards or guidelines for tenants to repay unpaid rent accrued during the course of the local State of Emergency. Landlords are encouraged to work with local agencies that will be making rental assistance available for qualifying tenants.

B. Tenants shall have up to twelve (12) months to pay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement"). Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment.

C. A Tenant is not required to provide documentation to the Landlord in advance to qualify for the repayment of rent over the 12 months. However, upon the request of a Landlord, a Tenant shall provide such documentation to the Landlord within forty-five (45) days after the request or within thirty (30) days after the local State of Emergency is ended, whichever is later. In the case of nonpayment of rent, the failure of a Tenant to notify the landlord in advance of being delinquent in the payment of rent prior to being served with a notice pursuant to Code of Civil Procedure section 1161(2) does not waive the Tenant's right to claim this Chapter as a complete defense to nonpayment of rent in an unlawful detainer action.

D. Any medical or financial information provided to the landlord shall be held in confidence, and shall not be disclosed to other entities unless such disclosure is permitted or required by the law, or unless the tenant authorizes the disclosure of the information in writing.

E. Any relief from the City of Berkeley either directly to a property owner on their own application or as a pass through for City relief payments to the tenant shall directly reduce the amount of any rent that was delayed by a Covered Reason for Delayed Payment. This requirement shall be applied into any Delayed Rent Payment Agreement, regardless of the terms of that agreement. (Ord. 7704-NS § 1 (part), 2020: Ord. 7698-NS § 1 (part), 2020: Ord. 7693-NS § 1 (part), 2020)

#### 13.110.050 Application.

A. This Chapter applies to eviction notices and unlawful detainer actions based on notices served or filed or which expire on or after the effective date of this Chapter through the end of the local State of Emergency. It does not apply to withdrawal of accommodations from the rental market pursuant to Government Code 7060 et seq. ("Ellis Act"), commercial leases where the term has expired and the City has issued a permit for the demolition or substantial alteration of the commercial unit, or to units ordered by the City to be vacated for the preservation of public health, including where the City deems necessary to control the spread of COVID-19.

B. With respect to delayed payment covered by this Ordinance, a landlord may seek such rent after the expiration of the local State of Emergency, pursuant to Section

13.110.040, but may not file an action pursuant to Code of Civil Procedure sections 1161(2) et seq. or otherwise seek to recover possession of a rental unit based on the failure to pay rent that accrued due to a Covered Reason for Delayed Payment during the term of the local State of Emergency. In any action to evict based on alleged non-payment of rent, it shall be a complete defense to such action if any part of the rent in dispute accrued at any time from the effective date of this Chapter to the expiration of the local State of Emergency and there exists a Covered Reason for Delayed Payment.

C. A Landlord shall not retaliate against a Tenant for exercising their rights under this Ordinance, including but not limited to shutting off any utilities or reducing services or amenities to which the Tenant would otherwise be entitled.

D In addition to the affirmative defenses set forth above, in any action to recover possession of a rental unit filed under Berkeley Municipal Code section 13.76.130(A)(1), it shall be a complete defense that the landlord impeded the tenant's effort to pay rent by refusing to accept rent paid on behalf of the tenant from a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party. Acceptance of rental payments made on behalf of the tenant by a third party shall not create a tenancy between the landlord and the third party. (Ord. 7704-NS § 1 (part), 2020: Ord. 7698-NS § 1 (part), 2020: Ord. 7693-NS § 1 (part), 2020)

13.110.060 Implementing Regulations.

The City Manager may promulgate implementing regulations and develop forms to effectuate this Ordinance. This includes the option of requiring landlords to give a notice to Tenants informing them of this Chapter and the right to seek the benefits of this Chapter. (Ord. 7704-NS § 1 (part), 2020: Ord. 7698-NS § 1 (part), 2020: Ord. 7693-NS § 1 (part), 2020)

13.110.070 Waiver.

A. By entering into a Delayed Rent Payment Agreement, Tenants do not waive any rights under this Chapter.

B. Any agreement by a Tenant to waive any rights under this ordinance shall be void and contrary to public policy. (Ord. 7704-NS § 1 (part), 2020: Ord. 7698-NS § 1 (part), 2020: Ord. 7693-NS § 1 (part), 2020)

#### 13.110.080 Remedies.

In the event of a violation of this Ordinance, an aggrieved tenant may institute a civil proceeding for injunctive relief, and money actual damages as specified below, and whatever other relief the court deems appropriate. Money damages shall only be awarded if the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of this Ordinance. The prevailing party shall be entitled to reasonable attorney's and costs pursuant to order of the court. The remedy available under this section shall be in addition to any other existing remedies which may be available to the tenant under local, state or federal law. In addition, this Ordinance grants a defense to eviction in the event that an unlawful detainer action is commenced in violation of this Ordinance.

The protections provided by this ordinance shall be available to all tenants, regardless of any agreement wherein a tenant waives or purports to waive their rights under this Ordinance, with any such agreement deemed void as contrary to public policy.

A. Violations of Section 13.110.020(C) - (Commercial rent restrictions:).

1. Violations of Section 13.110.020(C) may be enforced by an administrative fine of up to \$1,000 pursuant to Chapter 1.28. Each day a commercial property landlord demands rent in excess of the amount permitted pursuant to Section 13.110.020(C) is a separate violation. The City may also charge the costs of investigating and issuing any notices of violations, and any hearings or appeals of such notices.

2. The City Attorney may refer those in violators of Section 13.110.020(C) to the Alameda County District Attorney for redress as a violation of Business and Professions Code section 17200, et seq. or, if granted permission by the District Attorney, may bring an action pursuant to Business and Professions Code section 17200, et seq. (Ord. 7704-NS § 1 (part), 2020: Ord. 7698-NS § 1 (part), 2020: Ord. 7693-NS § 1 (part), 2020)

13.110.090 Severability.

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional. (Ord. 7704-NS § 1 (part), 2020: Ord. 7698-NS § 1 (part), 2020: Ord. 7693-NS § 1 (part), 2020)

Section 2. Vote Required, Immediately Effective

Based upon the findings in Section 13.110.010 of this Ordinance, the Council determines that this Ordinance is necessary for the immediate preservation of the public health, peace and safety in accordance with Article XIV Section 93 of the Charter of the City of Berkeley and must therefore go into effect immediately. This Ordinance shall go into effect immediately upon a seven-ninths vote of the City Council, in satisfaction of the Charter of the City of Berkeley.

ORDINANCE NO. -N.S.

ORDINANCE AMENDING CHAPTER 13.110 OF THE BERKELEY MUNICIPAL CODE, THE COVID-19 EMERGENCY RESPONSE ORDINANCE

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

Section 1. The Berkeley Municipal Code Chapter 13.110 is amended to read as follows:

**Chapter 13.110  
COVID-19 EMERGENCY RESPONSE ORDINANCE**

**Sections:**

- 13.110.010 Findings and Purpose**
- 13.110.020 Prohibited Conduct**
- 13.110.030 Definitions**
- 13.110.040 Collection of Back Rent and Late Fees**
- 13.110.050 Application**
- 13. 110.060 Implementing Regulations**
- 13.110.070 Waiver**
- 13.110.080 Remedies**
- 13.110.090 Severability**
- 13.110.100 Liberal Construction**

**13.110.010 Findings and Purposes**

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2." And the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the ~~State of Local~~ Emergency"), which the City Council subsequently ratified on March 10, 2020. On April 21, 2020, ~~June 16, 2020, July 28, 2020, September 22, 2020, and November 17, 2020,~~ the council ratified an extension of the local ~~state-of~~ emergency. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

On March 16, 2020, the City of Berkeley Public Health Officer, along with several other neighboring jurisdictions issued a Shelter in Place Order directing all individuals living in the City of Berkeley to shelter at their place of residence except that they may leave to provide or receive certain essential services or engage in certain essential activities, and prohibiting non-essential gatherings and ordering cessation of non-essential travel. On March 31, ~~2020~~ this Shelter in Place Order was extended to May 3, 2020, and restricted activities further.

Furthermore, on March 16, 2020, the Governor issued Executive Order N-28-20, specifically authorizing local governments to halt evictions for commercial tenants, residential tenants, and homeowners who have been affected by COVID-19, emphasizing that the economic impacts of COVID-19 have been significant and could threaten to undermine housing security as many



people are experiencing material income loss as a result of business closures, the loss of hours or wages or layoffs related to COVID-19, hindering their ability to keep up with rents, mortgages and utility bills.

The Order also stated that because homelessness can exacerbate vulnerability to COVID-19, Californians must take measures to preserve and increase housing security for Californians to protect public health and specifically stated that local jurisdictions may take measures to promote housing security beyond what the state law would otherwise allow.

~~On April 6, 2020, the Judicial Council of California issued emergency rules suspending court proceedings for unlawful detainer and judicial foreclosures until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted.~~

On April 21, 2020, Alameda County enacted an urgency ordinance prohibiting eviction for any reason other than withdrawal of rental property under the Ellis Act or court-ordered eviction for public safety. Although the Alameda County ordinance does not have effect within the incorporated area of Berkeley, it is desirable to ensure that Berkeley residents have at least the same level of protection as the residents of unincorporated Alameda County.

During this State of Emergency, and in the interests of protecting the public health and preventing transmission of the COVID-19, it is essential to avoid unnecessary displacement and homelessness. It is the intent of this Ordinance to fully implement the suspension of the statutory bases for eviction for nonpayment of rent and for default in the payment of a mortgage as authorized by Executive Order N-28-20.

At the same time, the Governor, as well as, the Berkeley Health Officer, and those of other jurisdictions ordered the closure of businesses, except those deemed essential. Many businesses, such as restaurants, are open only for take-out or pick up services and face a critical loss of business.

The City Council is aware that some landlords of commercial properties are seeking significant rent increases during the period when many commercial tenants are closed or are experiencing substantial and catastrophic reductions in their business and income. Such rent increases force tenants who are closed or have substantially reduced revenues face the choice of accepting a significant rent increase, moving at a time when it is virtually impossible, or closing altogether. Accepting a rent increase while closed or in a reduced state of operations means that the commercial tenants face even more debt to the landlord when the emergency is over, and may face a substantially increased rent when the tenant returns to normal operations, if ever.

Landlords of commercial property that unreasonably increases rents on tenants of commercial property during the COVID-19 emergency significantly impacts vulnerable small businesses, nonprofits, and artists who form a large part of the backbone of Berkeley's economy, revenue sources, and employment opportunities. These rent increases are coming at a time when the commercial rents are likely falling due to business closures and potential loss of businesses at the end of the emergency. Thus, these rent increases appear as a way of evading the

Governor's and Berkeley's commercial tenant eviction moratorium by forcing tenants to agree to rent increases or leave. Such conduct constitutes constructive evictions in contravention of the eviction moratorium. Furthermore, such rent increases may affect businesses providing goods and essential services, resulting in increases in those costs of essential goods and services contravening the intent of anti-price gouging laws.

On expiration of leases when the emergency order is in place, unreasonable rent increases have already forced the closure of businesses and will result in closing of additional business causing loss of income for the business owners, loss of employment for the employees and of revenue to the city, and an increase in homelessness. To reduce the spread of COVID-19, it is essential to avoid unnecessary displacement and homelessness. Because of the emergency restrictions, businesses forced out due to increased rents will be unable to move to new locations and new businesses will be unable to open during this emergency period. During a state of emergency cities have extraordinary powers and jurisdiction to create legislation in order to counteract the effects of the emergency situation on its people and businesses. Protecting tenants from excessive rent increases will prevent additional loss of employment and essential services for Berkeley residents. In order to effectively implement an eviction moratorium, the City Council finds it imperative to prevent constructive eviction through unreasonable rent increases.

Accordingly, the City of Berkeley adopts the following amendments to Berkeley Municipal Code Chapter 13.110.

**13.110.020 Prohibited Conduct**

A. During the ~~Covered Period local State of Emergency~~, no Landlord or ~~Lender other entity~~ shall evict or attempt to evict an ~~n-Resident~~ occupant of real property, ~~or otherwise require a Tenant to vacate~~, unless necessary ~~to stop an imminent threat to~~ for the health and safety of ~~other occupants residents~~. For purposes of this Ordinance, the basis for an exception to this

Ordinance cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected.

B. Residential Eviction Moratorium. It shall be a complete defense to any action for unlawful detainer that the notice upon which the action is based was served or expired, or that the complaint was filed or served, during the ~~Covered Period local State of Emergency~~.

C. No landlord of an Impacted Business or Nonprofit may upon expiration of a lease increase rent for an Impacted Business or Nonprofit in an amount greater than ten (10) percent over the rent in effect at the commencement of the local ~~state of~~ emergency declared by the Director of Emergency Services. For purposes of this section, rent means all consideration for the use and enjoyment of the rented premises, including base rent and any additional rent or other charges for costs such as utilities, maintenance, cleaning, trash removal, repairs and any other charges to the tenant required under the rental agreement. This section 13.110.020 C. shall expire on May 31, 2020, concurrent with Executive Order N-28-20; provided, however, that this section shall be automatically extended if Executive Order N-28-20 is extended or the tenant protections therein are extended pursuant to another Governor's Executive Order.

D. For the duration of the ~~Covered Period local State of Emergency~~, if a tenant has a Covered reason for delayed payment, the tenant may terminate a lease or rental agreement with 30 days' notice without penalty. A tenant may also exercise rights under this subsection if the tenants or roommates of the tenants are or were registered at an educational institution that cancelled or limited in-person classes due to the COVID-19 pandemic

**13.110.030 Definitions**

A. "Covered Period" means the period of time beginning with March 17, 2020 and concluding upon the expiration of the local emergency. However, the City Council may vote by resolution to extend the duration of the Covered Period.

B.A.—"Covered Reason for Delayed Payment" means:

- (1) The basis for the eviction is nonpayment of rent, arising out of a material decrease in household, business, or other rental unit occupant(s)'s income (including, but not limited to, a material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or to caregiving responsibilities, or a material decrease in business income caused by a reduction in opening hours or consumer demand), or material out-of-pocket medical expenses, or, ~~in a group living arrangement wherein all tenants are collectively responsible for payment of the rent to the landlord,~~ a reduction in the number of tenants living in the unit (including due to difficulty finding new tenants and/or subtenants willing and able to cover a sufficient share of rent) which reduces the ability of the remaining tenants to pay ~~the~~ rent, or a rent increase that exceeds the Annual General Adjustment for the current year; and
- (2) The decrease in household, business, or other rental unit occupant's income or the expenses or reduction in number of tenants described in subparagraph (1) was caused by the impacts of COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

C.B.—"Delayed Rent Payment Agreement" means a mutual agreement between a landlord and tenant regarding the timing and amount of payments for rent that is delayed by a Covered Reason for Delayed Payment.

D. "Homeowner" means the owner or owners of a Residential Unit subject to a mortgage or similar loan secured by the residential unit. "Homeowner" is limited to owners who reside in the unit and includes the individuals residing in the unit with the homeowner.

E.C.—"Impacted Business or Nonprofit" means a business or nonprofit organization that had a business license in 2019 or 2020 in the City of Berkeley or is a registered nonprofit in either or both of those years and:

1. whose operation has been shut down due to the COVID-19 emergency, or
2. that is unable to accept customers at its location and is open for limited virtual, take-out or pickup services only, or
3. who suffered a material loss of income.

F.D.—"Landlord" includes owners, lessors, or sublessors of either residential or commercial rental property, and the agent, representative, or successor of any of the foregoing.

G. "Lender" means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more units, which person has the right to mortgage or similar payments from the owner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.

H. "Resident" means a Tenant, Homeowner, or their household.

~~I.E.~~ "Tenant" includes a tenant, subtenant, lessee, sublessee, lodger or any other person entitled by written or oral rental agreement to use or occupancy of either residential or commercial property.

#### **13.110.040 Collection of Back Rent and Late Fees**

A. Nothing in this Chapter shall relieve the tenant of liability for unpaid rent, which the landlord may seek after expiration of the local State of Emergency. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment. The City will develop standards or guidelines for tenants to repay unpaid rent accrued during the Covered Period course of the local State of Emergency. Landlords are encouraged to work with local agencies that will be making rental assistance available for qualifying tenants.

B.

1. For rent accrued through January 31, 2021, Tenants shall have until March 31, 2022 up to twelve (12) months to pay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

2. For rent accrued beginning February 1, 2021, Tenants shall have until twenty-four (24) months after the conclusion of the Covered Period to pay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

3. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment.

C. A Tenant is not required to provide documentation to the Landlord in advance to qualify for the delayed repayment of rent over the 12 months. However, upon the request of a Landlord, a Tenant shall provide such documentation to the Landlord within forty-five (45) days after the request or within thirty (30) days after the Covered Period, whichever is later. A declaration sworn under penalty of perjury shall constitute documentation for the purpose of this requirement. In the case of nonpayment of rent, the failure of a Tenant to notify the landlord in advance of being delinquent in the payment of rent prior to being served with a notice pursuant to Code of Civil Procedure sections 1161(2) et seq. does not waive the Tenant's right to claim this Chapter as a complete defense to nonpayment of rent in an unlawful detainer action.

D. Any medical or financial information provided to the landlord shall be held in confidence, and shall not be disclosed to other entities unless such disclosure is permitted or required by the law, or unless the tenant explicitly authorizes the disclosure of the information in writing.

E. Any relief from the City of Berkeley either directly to a property owner on their own application or as a pass through for City relief payments to the tenant shall directly reduce the amount of any rent that was delayed by a Covered Reason for Delayed Payment. This requirement shall be applied into any Delayed Rent Payment Agreement, regardless of the terms of that agreement.

#### **13.110.050 Application**

**A.** This Chapter applies to eviction notices and unlawful detainer actions based on notices served, filed, or which expire during the Covered Period on or after the effective date of this Chapter through the end of the local State of Emergency. It does not apply to withdrawal of

accommodations from the rental market pursuant to Government Code 7060 et seq. (“Ellis Act”) ~~or to~~ units ordered by the City to be vacated for the preservation of public health, including where the City deems necessary to control the spread of COVID-19.

B. ~~Except where expressly required by state law (such as Assembly Bill 3088 or any subsequent statewide COVID-19 relief legislation) with respect to delayed payment covered by this Ordinance,~~ a landlord may seek rent accrued during the Covered Period as set forth in ~~after the expiration of the local State of Emergency, pursuant to~~ Section 13.110.040, but may not file an action pursuant to Code of Civil Procedure sections 1161(2) *et seq.* or otherwise seek to recover possession of a rental unit based on the failure to pay rent that accrued ~~due to a Covered Reason for Delayed Payment~~ during the Covered Period ~~local State of Emergency~~. In any action to evict based on alleged nonpayment of rent, it shall be a complete defense to such action if any part of the rent in dispute accrued at any time during the Covered Period, or if the action otherwise demands any fees or amounts contrary to the provisions of this Chapter. A landlord shall not apply any rent payment towards rent that is delayed by a Covered Reason for Delayed Payment before applying it towards any other Rent owed without the explicit written permission of the Tenant.

C. A Landlord ~~or Lender~~ shall not retaliate against a TenantResident for exercising their rights under this Ordinance, including but not limited to shutting off any utilities, ~~or~~ reducing services or amenities, refusing to make or delaying repairs to which the TenantResident would otherwise be entitled

D. In addition to the affirmative defenses set forth above, in any action to recover possession of a rental unit filed under Berkeley Municipal Code section 13.76.130(A)(1), it shall be a complete defense that the landlord impeded the tenant’s effort to pay rent by refusing to accept rent paid on behalf of the tenant from a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party. Acceptance of rental payments made on behalf of the tenant by a third party shall not create a tenancy between the landlord and the third party.

### **13.110.060 \_\_\_ Implementing Regulations**

The City Manager may promulgate implementing regulations and develop forms to effectuate this Ordinance. This includes the option of requiring Landlords and Lenders to give a notice to TenantsResidents informing them of this Chapter and the right to seek the benefits of this Chapter.

### **13.110.070 Waiver.**

A. By entering into a Delayed Rent Payment Agreement, Tenants do not waive any rights under this Chapter.

B. Any agreement by a Tenant to waive any rights under this ordinance shall be void and contrary to public policy.

### **13.110.080 Remedies**

A. In the event of a violation of this Ordinance, any person or entity aggrieved by the violation may institute a civil proceeding for injunctive relief, and money actual damages as specified below, and whatever other relief the court deems appropriate. ~~Money damages shall only be awarded if the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of this Ordinance. The prevailing party shall be entitled to reasonable attorney’s fees~~

~~and costs pursuant to order of the court. The remedy available under this section shall be in addition to any other existing remedies which may be available to the tenant under local, state or federal law. In addition, this Ordinance grants a defense to eviction in the event that an unlawful detainer action is commenced in violation of this Ordinance.~~

- ~~1. An award of actual damages may include an award for mental and/or emotional distress and/or suffering. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the Court outside of the presence, and without the knowledge of, the jury, if any, if a defendant acted in knowing violation of, or in reckless disregard for, the provisions of this Chapter.~~
- ~~2. A defendant shall be liable for additional civil penalties of up to five thousand dollars for each violation of this Chapter committed against a person who is disabled within the meaning of California Government Code section 12926, et seq., or aged sixty-five or over.~~
- ~~3. In addition to the above awards of damages in a civil action under this Chapter, a prevailing plaintiff shall be entitled to an award of reasonable attorney's fees. A prevailing defendant in a civil action under this Chapter shall only be entitled to an award of attorney's fees if it is determined by the Court the action was wholly without merit or frivolous.~~
- ~~4. In addition, this Chapter grants a complete defense to eviction in the event that an eviction notice or unlawful detainer action is commenced, filed, or served in violation of this Chapter.~~

~~B. The protections provided by this ordinance shall be available to all , regardless of any agreement wherein a waives or purports to waive their rights under this Ordinance, with any such agreement deemed void as contrary to public policy.~~

~~C.A. Violations of Section 13.110.020(C) - (Commercial rent restrictions).~~

~~1. Violations of Section 13.110.020(C) may be enforced by an administrative fine of up to \$1,000 pursuant to Chapter 1.28. Each day a commercial property landlord demands rent in excess of the amount permitted pursuant to Section 13.110.020(C) is a separate violation. The City may also charge the costs of investigating and issuing any notices of violations, and any hearings or appeals of such notices.~~

~~2. The City Attorney may refer those violators of Section 13.110.020(C) to the Alameda County District Attorney for redress as a violation of Business and Professions Code section 17200, et seq. or, if granted permission by the District Attorney, may bring an action pursuant to Business and Professions Code section 17200, et seq.~~

~~D. Nonexclusive Remedies and Penalties. The remedies provided in this subdivision are not exclusive, and nothing in this Chapter shall preclude any person from seeking any other remedies, penalties or procedures provided by law.~~

### **13.110.090 Severability.**

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause,

phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

**13.110.100 Liberal Construction**

The provisions of this Chapter shall be liberally construed so as to fully achieve its purpose and provide the greatest possible protections to tenants.

Section 2. Effective Date

This ordinance shall go into effect thirty days from the time of its final passage or on February 1, 2021, whichever is later.

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





CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin

Subject: Information Report Request: Alternatives to Chemical Agents for Response to Violent Large-Scale Crowd Scenarios

### RECOMMENDATION

Direct the City Manager to study alternatives to chemical agents to improve the Berkeley Police Department's ability and capacity to respond to and de-escalate large-scale crowd scenarios, including violent militias, and return a report to the City Council by the end of Fiscal Year 2023.

Report should include but not be limited to the following factors:

- BPD intelligence-gathering capabilities on potentially violent large crowd scenarios
- BPD response protocols including procedures for protecting bystanders, peaceful protesters, and businesses
- Tools and tactics available for crowd control in potentially violent scenarios
- Mutual aid and support from other local/state/federal agencies
- Applicable state and federal laws on crowd control and First Amendment rights

### FINANCIAL IMPLICATIONS

Staff time.

### CURRENT SITUATION AND ITS EFFECTS

Planning for large-scale crowd scenarios is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city.

As of June 9, 2020, the City of Berkeley has prohibited the use of tear gas, pepper spray, smoke canisters, and other chemical agents for crowd control by the Berkeley Police Department and any other outside agencies providing mutual aid in Berkeley. This prohibition was enacted due to concerns for the health and safety of peaceful protesters, including permanent lung damage and the potential to exacerbate the COVID-19 pandemic (see Attachment 1).

In 2021, the state legislature passed Assembly Bill 48 (see Attachment 2), which imposed restrictions on the use of chemical agents and kinetic energy projectiles by law enforcement officers during protests, including requirements for de-escalation, prohibiting their use for dispersing crowds, and restricting their use to "objectively

reasonable efforts” to only target violent individuals after all other options have been exhausted, while also establishing public reporting requirements.

In June of 2022, the Berkeley Police Department presented to the City Council’s Public Safety Policy Committee on regional best practices and conformance with AB-48 (see Attachment 3).

In August of 2022, the Berkeley City Council was briefly scheduled to discuss potentially lifting the prohibition on chemical agents on a temporary basis in response to reports of violence at protests near People’s Park, due to concerns that the Alameda County Sheriff’s Office would not provide mutual aid. The meeting was canceled, and the prohibition remains in place.<sup>1</sup> UCPD, which is overseeing law enforcement at the park, is permitted to use tear gas in limited situations under its use of force policy.<sup>2</sup> On August 5, 2022, the Sheriff Gregory Ahern clarified on KTVU that the Alameda County Sheriff’s Office would provide mutual aid to the City, not “to assist with the movement of the crowd.”<sup>3</sup>

Due to ongoing concerns regarding violent crowds outlined below, it is in the public interest to study feasible alternatives for responding to potentially violent large gatherings while protecting First Amendment rights, de-escalating and preventing bodily harm for all present pursuant to existing City of Berkeley policies.

## BACKGROUND

The extreme far-right in the US has become increasingly violent since the election of President Donald Trump, with white supremacist propaganda and neo-Nazi rallies consistently condoned by the highest echelons of the Republican Party. Since former President Trump’s well-documented lies about election theft fomented an attempted insurrection and violent invasion of the US Capitol on January 6, 2021, the need to safeguard democratic institutions from violent extremism has only increased, as far-right figures have openly threatened to increase violent demonstrations while pivoting to more local, decentralized actions.<sup>4</sup>

Berkeley has been the site of several violent encounters with far-right militias and counter-protesters. On February 1, 2017, a faction of protesters opposing a UC

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<sup>1</sup> Yelimeli, S. (Aug. 4, 2022). Berkeley City Council will not lift tear gas ban amid People’s Park protests. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2022/08/04/berkeley-city-council-will-not-lift-tear-gas-ban-amid-peoples-park-protests>

<sup>2</sup> [https://newspack-berkeleyside-cityside.s3.amazonaws.com/wp-content/uploads/2022/08/Use\\_of\\_Force-1.pdf](https://newspack-berkeleyside-cityside.s3.amazonaws.com/wp-content/uploads/2022/08/Use_of_Force-1.pdf)

<sup>3</sup> KTVU. (Aug 5, 2022). People’s Park project on hold; debate over tear gas in Berkeley. Retrieved from <https://www.ktvu.com/news/peoples-park-project-on-hold-debate-over-tear-gas-in-berkeley>

<sup>4</sup> Holt, J. (2022). After the insurrection: How Domestic Extremists Adapted and Evolved After the January 6 US Capitol Attack. *Atlantic Council*. Retrieved from <https://www.atlanticcouncil.org/wp-content/uploads/2022/01/After-the-Insurrection.pdf>

Berkeley speaking event by far-right figurehead Milo Yiannopoulos engaged in looting of commercial retailers and injured peaceful protesters.<sup>5</sup> On March 4, 2017, Berkeley police arrested 10 individuals following violent clashes at a “March 4 Trump” rally in Civic Center Park where 7 were injured. In response, then-President Trump praised the rallies and threatened to pull federal funding from UC Berkeley.<sup>6</sup> On April 15, 2017, right-wing protesters (including neo-Nazi militia groups such as Oath Keepers) and counter-protesters fought violently with rocks, sticks, pepper spray, and smoke bombs, resulting in 21 arrests and 11 injuries, including one stabbing.<sup>7</sup>

The City of Berkeley must assess its preparedness for large crowd scenarios in order to prevent future violence.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

#### CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

#### ATTACHMENTS

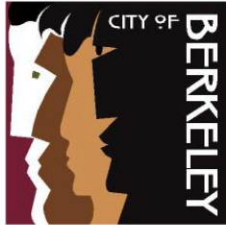
- 1: June 9, 2020: Prohibiting Use of Chemical Agents for Crowd Control During COVID-19 Pandemic
- 2: Assembly Bill 48 (2021)
- 3: June 6, 2022: Berkeley City Council Public Safety Policy Committee presentation

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<sup>5</sup> Bodley, M. (2017, Feb 2). At Berkeley Yiannopoulos protest, \$100,000 in damage, 1 arrest. *SFGate*. Retrieved from <https://www.sfgate.com/crime/article/At-Berkeley-Yiannopoulos-protest-100-000-in-10905217.php>

<sup>6</sup> Wang, A.B. (2017, March 5). Pro-Trump rally in Berkeley turns violent as protesters clash with the president’s supporters. *Los Angeles Times*. Retrieved from <https://www.washingtonpost.com/news/post-nation/wp/2017/03/05/pro-trump-rally-in-berkeley-turns-violent-as-protesters-clash-with-the-presidents-supporters/>

<sup>7</sup> St. John, P. (2017, Apr 15). 21 arrested as hundreds of Trump supporters and counter-protesters clash at Berkeley rally. Retrieved from <https://www.latimes.com/local/lanow/la-me-ln-berkeley-trump-rally-20170415-story.html>



Office of the Mayor

## LATE AGENDA MATERIAL

### Pursuant to Government Code Section 54954.2(b)

**Meeting Date:** June 9, 2020

**Item Description:** Prohibiting the use of Chemical Agents for Crowd Control during the COVID-19 pandemic

**Submitted By:** Mayor Arreguin, Councilmember Harrison, Councilmember Robinson

Pursuant to California Government Code Section 54954.2(b) (2), the Mayor submits the attached item to the City Council for placement on the June 9, 2020 meeting agenda. Gov. Code Section 54954.2(b) (2) states that *“Upon a determination by a two-thirds vote of the members of a legislative body presents at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).”*

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

The City of Berkeley is currently in a declared state of emergency regarding the outbreak of a novel coronavirus, causing the respiratory disease COVID-19. COVID-19 is an acute respiratory illness that affects the lungs in addition to other symptoms. The severity of these symptoms increases based on underlying health conditions including asthma, heart and lung problems, diabetes, and other medical conditions.

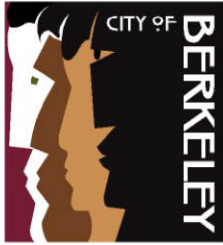
Despite being in a declared public health emergency, the Berkeley Police Department can use chemical agents (tear gas, pepper spray, and smoke canisters) to disperse a crowd, but subject to the authorization and policies outlined in General Order U-2.

Public health experts have concluded that chemical agents like tear gas may make individuals more susceptible to COVID-19 and increase its community spread. Along with the immediate pain that can cause watering eyes and burning throats, tear gas may cause damage to people’s lungs and make them more susceptible to getting a respiratory illness, according to studies on the risks of exposure. The gas and smoke can also incite coughing, which can further spread the virus from an infected person.

On June 1, 2020, in response to a largely peaceful demonstration against the killing of George Floyd, Oakland Police fired tear gas into a crowd of demonstrators. The tear gas not only affected protestors by also bystanders in the immediate area. The police killing of George Floyd on May 25, 2020 and the deaths of other African Americans have sparked nationwide outrage and protests over police brutality, including demonstrations in the City of Berkeley. Additional protests may occur in the coming days and weeks.

***Consideration of late agenda items is subject to approval by a two-thirds vote of the City Council. (California Government Code Section 54954.2(b)(2))***





ACTION CALENDAR  
June 9, 2020

To: Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Kate Harrison and Councilmember Rigel Robinson

Subject: Prohibiting the use of Chemical Agents for Crowd Control during the COVID-19 pandemic

RECOMMENDATION

Adopt a motion to establish an official City of Berkeley policy prohibiting the use of tear gas (CS gas), pepper spray or smoke for crowd control by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, during the COVID-19 pandemic, until such time that the City Council removes this prohibition.

BACKGROUND

The use of tear gas (CS gas) and pepper spray are authorized less-than-lethal uses of force which can be deployed in crowd control situations under Berkeley Police Department policy, with specific conditions (See [General Order U-2](#)).

On June 1, 2020, Oakland police deployed tear gas to disperse protesters who failed to move before a legally established curfew. The tear gas not only affected protestors by also bystanders in the immediate area. This has raised concerns over the police use of tear gas in protests, the chilling effect it has on people engaging in First Amendment activity, and the health impacts of tear gas during a public health emergency. In response to this incident, Oakland City Council President Rebecca Kaplan and Councilmembers Nikki Fortunato Bas and Sheng Thao issued a letter to Oakland City administrators requesting that OPD use of tear gas be immediately suspended and not used during the COVID-19 pandemic. Similarly, on June 5, 2020, Berkeley Councilmembers Harrison, Davila, Bartlett and Robinson made a similar request.

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2." and the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the State of Emergency"), which the City Council subsequently ratified on March 10, 2020. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

During the COVID-19 state of emergency, there is a heightened risk of individuals contracting the virus if they are exposed to tear gas, pepper spray or smoke. This will put people's safety and lives at risk. As a public health strategy, the deployment of tear gas, pepper spray and smoke must be suspended.

According to a June 2, 2020 KTVU article, infectious disease specialists are circulating an online petition calling for police to stop using tear gas to disperse crowds and calling on police to use "public health best practices" during demonstrations.<sup>1</sup>

According to an article in the June 3, 2020, *New York Times*, **“Along with the immediate pain that can cause watering eyes and burning throats, tear gas may cause damage to people’s lungs and make them more susceptible to getting a respiratory illness, according to studies on the risks of exposure. The gas can also incite coughing, which can further spread the virus from an infected person.”**<sup>2</sup>

Researchers are concerned that the use of tear gas in crowds “might catalyze a new wave of Covid-19.”<sup>3</sup>

Data show that African Americans are disproportionately impacted by COVID-19 in Berkeley and Alameda County. In addition, “many black Americans disproportionately have pre-existing conditions like asthma that could make tear gas lethal.”

Tear gas has been banned for use in warfare, but is legal for police to use in the U.S. Yet, experts say it should be a weapon of last resort for crowd control and for addressing violent behavior of specific individuals because it affects everyone in the area including peaceful protestors.

The use of tear gas and other agents for crowd control adversely affects individuals in crowds of protestors as well as residents who are not involved in protesting, and it can have serious effects on medically vulnerable people and increase the spread of COVID-19.

Oakland Police Department’s own police training bulletin (V-F.2. July 26, 2006) states that “Breathing CS (gas) may create a feeling of tightness in the chest, shortness of breath, coughing and/or sneezing.” These are reactions that can spread COVID-19.

In response to mass protests over the killing of George Floyd, on Friday, June 5, 2020, Governor Newsom announced that he would work with the State Legislature, activists, law enforcement officers, and journalists to create new standards for policing protests in California.

**“Protesters have the right not to be harassed,”** he said. **“Protesters have the right to protest peacefully. Protesters have the right to do so without being arrested, gassed, being shot at by projectiles.”**<sup>4</sup>

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<sup>1</sup> Lisa Fernandez, “Infectious disease specialists call for an end to tear gas during COVID-19 pandemic,” KTVU News, June 2, 2020, <https://www.ktvu.com/news/infectious-disease-specialists-call-for-an-end-to-tear-gas-during-covid-19-pandemic>

<sup>2</sup> Mike Baker, “Corrosive Effects of Tear Gas Could Intensify Coronavirus Pandemic,” The New York Times, <https://www.nytimes.com/2020/06/03/us/tear-gas-risks-protests-coronavirus.html>

<sup>3</sup> Hilary Brueck and Canela López, “Tear gas is banned from war — but police still shoot it at protesters, who cough and bleed as a result. At least one has lost an eye,” Business Insider, June 3, 2020, <https://www.insider.com/tear-gas-banned-from-war-why-dangerous-how-to-neutralize-2020-6>

<sup>4</sup> Alexei Koseff, “Gavin Newsom calls for new protest policing standards in California, ban on carotid holds” San Francisco Chronicle, June 5, 2020 <https://www.sfchronicle.com/politics/article/Gavin-Newsom-calls-for-new-protest-policing-15320403.php>



The police killing of George Floyd on May 25, 2020 and the deaths of other African Americans have sparked nationwide outrage and protests over police brutality, including demonstrations in the City of Berkeley. Additional protests may occur in the coming days and weeks. Therefore, the Council should take immediate action to impose this moratorium on the use of chemical agents during the COVID-19 pandemic.

FINANCIAL IMPLICATIONS

None. Prohibiting the use of tear gas, pepper spray and smoke will require the Berkeley Police Department to use other tactics in crowd control situations.

CONTACT PERSONS

|                        |                |
|------------------------|----------------|
| Mayor Jesse Arreguín   | (510) 981-7100 |
| Councilmember Harrison | (510) 981-7140 |
| Councilmember Robinson | (510) 981-7170 |



**Assembly Bill No. 48**

CHAPTER 404

An act to amend Section 12525.2 of the Government Code, and to add Sections 13652 and 13652.1 to the Penal Code, relating to law enforcement.

[Approved by Governor September 30, 2021. Filed with Secretary of State September 30, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 48, Lorena Gonzalez. Law enforcement: use of force.

(1) Existing law authorizes a peace officer to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. Existing law requires law enforcement agencies to maintain a policy on the use of force, as specified. Existing law requires the Commission on Peace Officer Standards and Training to implement courses of instruction for the regular and periodic training of law enforcement officers in the use of force.

This bill would prohibit the use of kinetic energy projectiles or chemical agents by any law enforcement agency to disperse any assembly, protest, or demonstration, except in compliance with specified standards set by the bill, and would prohibit their use solely due to a violation of an imposed curfew, verbal threat, or noncompliance with a law enforcement directive. The bill would include in the standards for the use of kinetic energy projectiles and chemical agents to disperse gatherings the requirement that, among other things, those weapons only be used to defend against a threat to life or serious bodily injury to any individual, including a peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control. The bill would define chemical agents to include, among other substances, chloroacetophenone tear gas or 2-chlorobenzalmalononitrile gas. The bill would make these provisions inapplicable within a county jail or state prison facility.

This bill would also require each law enforcement agency, within a specified timeframe, to post on their internet website a summary, as described, of any incident in which a kinetic energy projectile or chemical agent is deployed by that agency for the purpose of crowd control. The bill would require the Department of Justice to provide a compiled list of links to these reports on its internet website.

(2) Existing law requires each law enforcement agency to annually report specified use of force incidents to the Department of Justice and requires the Department of Justice to annually publish a summary of those incidents, as specified.

This bill would require these reports to be made monthly. By imposing new duties on law enforcement agencies, this bill would create a state-mandated local program.

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

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

SECTION 1. Section 12525.2 of the Government Code is amended to read:

12525.2. (a) Each law enforcement agency shall monthly furnish to the Department of Justice, in a manner defined and prescribed by the Attorney General, a report of all instances when a peace officer employed by that agency is involved in any of the following:

- (1) An incident involving the shooting of a civilian by a peace officer.
- (2) An incident involving the shooting of a peace officer by a civilian.
- (3) An incident in which the use of force by a peace officer against a civilian results in serious bodily injury or death.
- (4) An incident in which use of force by a civilian against a peace officer results in serious bodily injury or death.

(b) For each incident reported under subdivision (a), the information reported to the Department of Justice shall include, but not be limited to, all of the following:

- (1) The gender, race, and age of each individual who was shot, injured, or killed.
- (2) The date, time, and location of the incident.
- (3) Whether the civilian was armed, and, if so, the type of weapon.
- (4) The type of force used against the officer, the civilian, or both, including the types of weapons used.
- (5) The number of officers involved in the incident.
- (6) The number of civilians involved in the incident.
- (7) A brief description regarding the circumstances surrounding the incident, which may include the nature of injuries to officers and civilians and perceptions on behavior or mental disorders.

(c) Each year, the Department of Justice shall include a summary of information contained in the reports received pursuant to subdivision (a) through the department's OpenJustice Web portal pursuant to Section 13010 of the Penal Code. This information shall be classified according to the reporting law enforcement jurisdiction. In cases involving a peace officer who is injured or killed, the report shall list the officer's employing jurisdiction and the jurisdiction where the injury or death occurred, if they are not the same. This subdivision does not authorize the release to the public of the badge number or other unique identifying information of the peace officer involved.

(d) For purposes of this section, “serious bodily injury” means a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

SEC. 2. Section 13652 is added to the Penal Code, to read:

13652. (a) Except as otherwise provided in subdivision (b), kinetic energy projectiles and chemical agents shall not be used by any law enforcement agency to disperse any assembly, protest, or demonstration.

(b) Kinetic energy projectiles and chemical agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

(1) Deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.

(2) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

(3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.

(4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.

(5) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.

(6) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.

(7) An objectively reasonable effort has been made to extract individuals in distress.

(8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.

(9) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.

(10) Kinetic energy projectiles or chemical agents shall not be used by any law enforcement agency solely due to any of the following:

(A) A violation of an imposed curfew.

(B) A verbal threat.

(C) Noncompliance with a law enforcement directive.

(11) If the chemical agent to be deployed is tear gas, only a commanding officer at the scene of the assembly, protest, or demonstration may authorize the use of tear gas.

(c) This section does not prevent a law enforcement agency from adopting more stringent policies.

(d) For the purposes of this section, the following terms have the following meanings:

(1) “Kinetic energy projectiles” means any type of device designed as less lethal, to be launched from any device as a projectile that may cause bodily injury through the transfer of kinetic energy and blunt force trauma. For purposes of this section, the term includes, but is not limited to, items commonly referred to as rubber bullets, plastic bullets, beanbag rounds, and foam tipped plastic rounds.

(2) “Chemical agents” means any chemical that can rapidly produce sensory irritation or disabling physical effects in humans, which disappear within a short time following termination of exposure. For purposes of this section, the term includes, but is not limited to, chloroacetophenone tear gas, commonly known as CN tear gas; 2-chlorobenzalmalononitrile gas, commonly known as CS gas; and items commonly referred to as pepper balls, pepper spray, or oleoresin capsicum.

(e) This section does not apply within any county detention facility or any correctional facility of the Department of Corrections and Rehabilitation.

SEC. 3. Section 13652.1 is added to the Penal Code, to read:

13652.1. (a) Each law enforcement agency shall, within 60 days of each incident, publish a summary on its internet website of all instances in which a peace officer employed by that agency uses a kinetic energy projectile or chemical agent, as those terms are defined in Section 13652, for crowd control. However, an agency may extend that period for another 30 days if they demonstrate just cause, but in no case longer than 90 days from the time of the incident.

(b) For each incident reported under subdivision (a), the summary shall be limited to that information known to the agency at the time of the report and shall include only the following:

(1) A description of the assembly, protest, demonstration, or incident, including the approximate crowd size and the number of officers involved.

(2) The type of kinetic energy projectile or chemical agent deployed.

(3) The number of rounds or quantity of chemical agent dispersed, as applicable.

(4) The number of documented injuries as a result of the kinetic energy projectile or chemical agent deployment.

(5) The justification for using the kinetic energy projectile or chemical agent, including any deescalation tactics or protocols and other measures that were taken at the time of the event to deescalate tensions and avoid the necessity of using the kinetic energy projectile or chemical agent.

(c) The Department of Justice shall post on its internet website a compiled list linking each law enforcement agency’s reports posted pursuant to subdivision (a).

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

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# Berkeley Police Department



## Background

- **June 2020:** City Council enacts a ban on tear gas and a moratorium on the use of smoke and pepper spray for crowd-control events.
- **2021 police reform bill AB 48** signed into law, placing restrictions on the types of force law enforcement can use in response to protests. As a general rule, the bill prohibits the use of “kinetic energy projectiles” and “chemical agents” to disperse any assembly, protest, or demonstration, except in compliance with several requirements.
- **January 1, 2022:** AB 48 codified as PC 13652 Section 2





## Balanced Approach

Important considerations as to the appropriateness of using tear gas for law enforcement purposes:

**Does the use of tear gas have a chilling effect on Free Speech?**

**Is the use of tear gas reasonable?**

- Is the use of tear gas excessive?
- Is there accountability/oversight in its use?
- Is current policy in alignment with AB48?
- What are regional/State best practices?

**Health concerns related to smoke and pepper spray during COVID-19**

- Enacted when infections were up and there was no vaccine.



## Protecting Free Speech

- History of use
- Allows for safe speech:
  - Intervene at lower levels
  - Mitigates co-opting of crowd by bad actors
  - Gives department ability to target individuals committing crimes and violence
  - Smaller contingent of officers able to protect large crowd



## Is the use of tear gas reasonable?

- Allows a small number of officers to regain control over a much larger violent crowd.
- Minimal force used:
  - Consequences and level of force are much lower than all other options.
  - Effects are temporary.
  - Effects end as soon as no longer exposed.
  - Dissipates quickly.



## Accountability and Oversight

New legal requirement created by AB48 aligns with the department's past use and current policy language. Some of the legal requirements are:

- Requires **de-escalation techniques or alternatives** to force before use.
- Limits use to defend against **threats to life, serious bodily injury**, or to bring objectively dangerous and unlawful situations safely and effectively under control.
- Requires **announcement before use**.
- Requires officers to make objectively reasonable efforts to **identify** persons engaged in **violent** acts and target those individuals.



## Accountability and Oversight (continued)

AB48/Penal Code 13652 requirements (continued):

- **Minimize** the possible incidental **impact** on bystanders, medical personnel, journalist, or other unintended targets.
- Use must be **objectively reasonable and proportional** to the threat (including frequency and intensity of use).
- Specifically **prohibited** in response to verbal threats, noncompliance with law enforcement directives, or curfew violations.
- *Note: AB 48 anticipates certain instances where tear gas may be reasonably used and places that responsibility on the commanding officer of the event.*



## Accountability and Oversight (continued)

- Our current Use of Force (Policy 300) and First Amendment Assembly (Policy 428) policies align with requirements set forth in Penal Code section 13652.
- Oversight is required and provided via Police Equipment and Community Safety Ordinance.
- If tear gas ban was removed state reporting requirements would require the department to publish an after-action report documenting the equipment's use and the reasons for it within 60 days of an incident.



## What is the scope of use in Berkeley?

- To resolve a situation involving an armed barricaded person (SWAT call).
- Respond to a medical or fire emergency, or prevent catastrophic damage to critical infrastructure, where a violent crowd is present.
- To protect officers or community from large-scale violent assaults.
- To disburse a violent crowd through a minimal amount of force.





## Regional/State Best Practices

What are other agencies doing?

- Oakland PD has a policy that aligns with State law
- No other local agencies have bans in place
- All agencies in the state are compelled to abide by the requirements and protections outlined in PC 13652.



## Use of smoke and pepper spray

- Smoke has been used before deploying tear gas. Although not an alternative, it gives the department an option to try before deploying tear gas.
- Smoke is often used in conjunction with tear gas, and acts as a visual deterrent.
- Pepper Spray provides officers with an intermediate force option to use in response to an individual violent act.
  - Allows officers to respond to a specific threat up to 15 feet away.
  - Effects are temporary; there are no injuries once spray wears off.



# Questions?

*The mission of the Berkeley Police Department is to preserve the peace and allow for the peaceful expression of First Amendment Rights. These rights include, but are not limited to, assembling, marching, carrying signs, making speeches, or other lawful activity designed to express or advocate political, religious, or social opinions and beliefs.*





Environment and Climate Commission

INFORMATION CALENDAR

September 13, 2022

To: Honorable Mayor and Members of the City Council

From: Environment and Climate Commission (ECC)

Submitted by: Ben Gould, Chairperson, ECC

Subject: Environment and Climate Commission 2022 Work Plan

INTRODUCTION

The Environment and Climate Commission (ECC) is responsible for advising the City Council on matters related to environmental sustainability and climate change. The commission's scope includes work to advance the goals of: advancing green buildings and resource efficiency; decarbonizing buildings and transportation; engaging and educating the community; addressing the impacts and welfare of all species, including animals, insects, and plants; reducing greenhouse gas emissions; reducing toxics and preventing pollution; and supporting environmental justice. The commission works closely with the Planning & Development Department's Office of Energy & Sustainable Development (OESD).

First established in 2022, ECC was formed by merging the Community Environmental Advisory Commission (CEAC) and the Energy Commission (EC). ECC commissioners bring a wide range of expertise, with backgrounds in government, academia, nonprofit, and private sector environmental work. These backgrounds inform ECC's work and help it to consider diverse and equitable approaches to addressing the City's environmental challenges.

This work plan is intended to provide a guide to the work ECC plans to take on in 2022. As additional items or issues arise, or are referred to the Commission from Council, ECC will adjust this plan accordingly.

CURRENT SITUATION AND ITS EFFECTS

The Environment and Climate Commission has a very broad scope and a duty to continue and build upon past work done by both CEAC and EC. However, as a new commission, ECC also has numerous vacancies and limited institutional knowledge.

At its July 27, 2022 meeting the Environment and Climate Commission approved the work plan to send to the City Council as follows: Motion/second to approve the workplan with amendments to add current project for 2022 to explore banning gas delivery vehicles and amend climate literacy description (Gould, Ranney). The motion carried 3-

0-1-2; Ayes: Ranney, McGuire, Gould. Noes: None. Abstain: Guliasi. Absent: Tahara, Lunaparra.

### BACKGROUND

Both CEAC and EC prepared memos for ECC to review past projects and suggest future items. The table below indicates those workplan items to follow up on and suggestions for new projects from the previous commissions:

### **Environment and Climate Commission 2022 Work Plan**

| <b>Project</b>                       | <b>Status</b>                  | <b>Description</b>                                                                                                                                                                                                                                                               | <b>Source</b> |
|--------------------------------------|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| Bird Safety                          | Existing item, needs follow-up | Proposal to require new development to meet bird safety standards for glass. Track progress of item through Planning Commission and back to Council                                                                                                                              | CEAC          |
| Gas Station CO <sub>2</sub> Labeling | Existing item, needs follow-up | Requirement for gas stations to display warning labels notifying buyers that burning gasoline causes climate change. Pending finalization at City Attorney's office                                                                                                              | CEAC          |
| Ban sale of used gas cars            | Existing item, needs follow-up | Proposal to ban the sale of existing (used) gas cars within city limits by 2040 (except to be sold as scrap). Pending finalization at City Attorney's office                                                                                                                     | CEAC          |
| Hazardous Waste                      | Potential new item             | CEAC received multiple emails in 2021-22 about hazardous waste, but there are no drop-off sites within City limits due to BMC 11.50                                                                                                                                              | CEAC          |
| VMT targets                          | Potential new item             | Set specific, measurable VMT reduction targets and identify and implement strategies to achieve them                                                                                                                                                                             | CEAC          |
| Sidewalk Condition Index             | Potential new item             | Adopting a "sidewalk condition index" metric, similar to pavement condition index, to quantify the quality of Berkeley's sidewalks and measure improvements in pedestrian infrastructure                                                                                         | CEAC          |
| Public Space Re-allocation           | Potential new item             | Re-allocate public street space away from auto-centric uses towards pedestrians, bicyclists, and buses, even more than currently envisioned in the bicycle and pedestrian master plans                                                                                           | CEAC          |
| Building Decarbonization             | Potential new item             | Berkeley's building decarbonization plan is only a start; more work is needed to identify and effectively implement strategies to decarbonize: <ul style="list-style-type: none"> <li>- Single-family ownership residences</li> <li>- Single-family rental residences</li> </ul> | CEAC          |

|                                       |                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |      |
|---------------------------------------|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
|                                       |                    | <ul style="list-style-type: none"> <li>- Rent-controlled multifamily residences</li> <li>- Non-rent-controlled multifamily residences</li> <li>- Commercial spaces</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |      |
| De-zoning gas stations                | Potential new item | Berkeley should remove gas stations as a permitted use from all City zoning codes.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | CEAC |
| Banning gas-powered delivery vehicles | Potential new item | The ECC should explore opportunities to require last-mile delivery vehicles to use zero- emission alternatives.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | CEAC |
| OESD input: Transportation            | Potential new item | <p>Ensure the City is adequately staffed to implement transportation-related activities that reduce carbon emissions. Ensure staff:</p> <ul style="list-style-type: none"> <li>- Conducts a mobility needs assessment</li> <li>- Convenes an electric mobility roadmap implementation working group</li> <li>- Pursues discounts and digital access strategies for electric shared mobility options</li> </ul> <p>Track progress and provide input on implementation of the Electric Mobility Roadmap, the Bicycle Master Plan, the Pedestrian Plan, Vision Zero, and other City plans to encourage non-car mobility.</p>                                                                                                                                                                                                                                                                                                                                                | EC   |
| Alternative Transportation            | Potential new item | <ul style="list-style-type: none"> <li>- Study and support expanding transportation measures to reduce GHG emissions associated with car travel.</li> <li>- Promote safe and convenient cycling through a protected and connected bike lane network, docked and dockless bike share systems, public e-bike charging, and secure bike parking.</li> <li>- Promote safe routes to schools, beginning with opportunities for the Energy Commission to contribute to the 2x2 committee (Council and BUSD board).</li> <li>- Research the feasibility of a zero-emissions zone, or a car-free zone for Berkeley.</li> <li>- Investigate opportunities to cut emissions through mass transit, such as more frequent service, new routes, zero-carbon fuels, and lower fare prices.</li> <li>- Investigate new approaches to public, curbside, or neighborhood charging for residents without access to on-site charging, focusing on commercial or public ownership</li> </ul> | EC   |

|                                                 |                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |    |
|-------------------------------------------------|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
|                                                 |                    | of chargers, dedicated street parking spots for EV charging, and/or low-cost connections to the grid. Collaborate with Transportation and Public Works commissions.                                                                                                                                                                                                                                                                                                                                                                                   |    |
| Integrate Climate + Transportation policymaking | Potential new item | Ensure integration of the climate aspects of transportation with other transportation issues in Transportation and Public Works work.                                                                                                                                                                                                                                                                                                                                                                                                                 | EC |
| Bond measure for transportation                 | Potential new item | Engage with Council to include language in City bond measures to finance and build low-carbon, equitable, safe, and convenient transportation infrastructure.                                                                                                                                                                                                                                                                                                                                                                                         | EC |
| OESD input: Buildings                           | Potential new item | <ul style="list-style-type: none"> <li>- Track progress and provide input on implementation of the Berkeley Existing Building Electrification Strategy (BEBES), including funding for the equity pilot program, staffing needs, and renovation reach codes.</li> <li>- Support municipal building electrification and energy efficiency upgrades and development of municipal green building programs, including the City’s work with EBCE to install solar + storage systems on critical facilities to provide resilience during outages.</li> </ul> | EC |
| Electrification cost reduction                  | Potential new item | Develop recommendations to reduce the cost of electrification and for partial electrification measures, such as codes that require two-way heat pumps instead of central air conditioners, deployment of portable heat pumps and low voltage water heaters, and “Watt diet” measures to avoid electrical panel upgrades.                                                                                                                                                                                                                              | EC |
| Building sale requirements                      | Potential new item | Investigate and advance time of sale opportunities for electrification and energy efficiency, including a transfer tax rebate program for energy improvements and the allocation of transfer tax revenues towards expanding building electrification in LMI and renter communities.                                                                                                                                                                                                                                                                   | EC |
| Electrification mandates                        | Potential new item | Investigate and advance electrification mandates, such as through the Building Energy Savings Ordinance (BESO)                                                                                                                                                                                                                                                                                                                                                                                                                                        | EC |
| Defund natural gas                              | Potential new item | Explore ways to redirect funds used to maintain PG&E’s fossil gas distribution network to support building electrification.                                                                                                                                                                                                                                                                                                                                                                                                                           | EC |
| OESD Input: Climate Action                      | Potential new item | Track and provide input on implementation of the Pilot Climate Equity Action Fund and seek funding sources to provide ongoing support. Identify options to support the Fund from existing                                                                                                                                                                                                                                                                                                                                                             | EC |



|                           |                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |    |
|---------------------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
|                           |                    | <p>or expanded City revenues. Solicit input from experts and conduct public meetings to study funding mechanisms, such as a gross-receipts tax, parcel tax, utility users tax, or building emissions tax. Explore options to split the collection of the Utility Users Tax to make it possible to charge separate rates for natural gas and electricity.</p> <p>Review and provide input on staff’s annual report to Council on Climate Action Plan progress and recommend further actions. Explore the feasibility of expanding the Plan to cover “scope 3” or consumption-based emissions that occur outside of city limits, and research policies to reduce them. Work with staff to better measure and track progress and create a public dashboard to report key metrics.</p> |    |
| Renewable energy advocacy | Potential new item | Promote the use of renewable energy by advising Council on EBCE activities including electricity mix, default offerings, local programs, and opportunities to advance City priorities.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | EC |

ECC commissioners, as well as OESD staff, have also proposed other ideas not listed above for items for the commission to work on.

ECC is planning to take on the following projects in 2022:

| Project                                           | Goal                                                                                                                                                               | Outputs                    | Target Date | Lead   |
|---------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|-------------|--------|
| Climate Literacy Advocacy                         | Request for state of CA to fund large \$\$ to do climate education work statewide, and look for opportunities to engage with BUSD colleagues in work of commission | Sign-on letter for Council | Dec 2022    | Ranney |
| Land Use Change for Zero Emission Vehicles (ZEVs) | Provide recommendation to Council and Planning Commission on zoning / land use planning changes to support switching to ZEVs                                       | Rec. for Council           | Dec 2022    | Gould  |

|                                                   |                                                                                                                     |                  |          |         |
|---------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|------------------|----------|---------|
| Building Decarbonization                          | Explore strategies for building decarbonization: point of sale, building code, prescriptive requirements, tax, etc. | Rec. for Council | Dec 2022 | Tahara  |
| Sustainable transport infrastructure              | Allocate public street spaces towards more sustainable uses and away from auto-centrism                             | Rec. for Council | Dec 2022 | Gould   |
| OESD support – Climate Action Plan (CAP) tracking | Work with OESD staff to develop approach to track CAP implementation, based on recommendation under review at FITES | Rec. for Council | Dec 2022 | Gould   |
| Ban gas-powered delivery vehicles                 | Explore opportunities to require last-mile delivery vehicles to use zero-emission alternatives.                     | Rec. for Council | Dec 2022 | McGuire |

*Climate Literacy Advocacy:* A letter in collaboration with other local & statewide advocacy efforts around climate education in K-12 schools.

*Land Use Change for ZEVs:* Provide strategies for changing land use policies to discourage the use of fossil fuels and encourage sustainable transportation alternatives. Possible approaches: removing gas stations from permissible land use, expanding commercial EV charging, density bonus + fee to incentivize conversion of gas, while the help fund just transitions for workers no longer employed in fossil fuels and related industries.

*Building Decarbonization Efforts:* Review & recommend strategies for building decarbonization. Explore point-of-sale requirements, building code update(s), prescriptive requirements, local tax on direct CO<sub>2</sub> emissions, etc.

*Sustainable Transport Infrastructure:* Review & recommend strategies for realigning public right of way / infrastructure to support sustainable transportation. Consider suggestion to reopen the Transportation Element to close streets to cars, add bike lanes to more side streets & bus lanes to more major streets, narrow streets / add parks & parklets & bioswales, etc.

*OESD support - CAP tracking:* Support OESD staff in identifying key performance indicators (KPIs) for tracking CAP implementation & progress.

ENVIRONMENTAL SUSTAINABILITY

The projects which ECC is working on will improve environmental sustainability through a wide variety of methods.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Future action items that ECC may send to City Council could require staff time to develop, finalize, and/or implement. ECC strives to ensure proposals provide significant net triple bottom line benefits to the City when evaluating total costs and benefits across environmental, social, and economic impacts.

CONTACT PERSON

Billi Romain, Secretary, Environment and Climate Commission,  
[BRomain@cityofberkeley.info](mailto:BRomain@cityofberkeley.info).





Planning Commission

## INFORMATION CALENDAR

September 13, 2022

To: Honorable Mayor and Members of the City Council  
 From: Planning Commission  
 Submitted by: Elisa Mikiten, Chairperson, Planning Commission  
 Subject: Planning Commission Fiscal Year 2022-23 Work Plan

### INTRODUCTION

The City of Berkeley Planning Commission (PC) hereby submits a work plan for Fiscal Year 2022-23.

### GOALS

The Planning Commission will focus mainly on issues of housing supply and affordability as dictated by City Council referrals, changes to State law, and planning requirements from the State Department of Housing and Community Development (HCD). Large projects include Objective Standards and Missing Middle Housing (Council referrals), and the update of the Housing Element (HCD requirement).

The attached spreadsheet identifies several other projects that have been assigned to staff, such as a Bird Safe Glass regulations, various fee and nexus studies, and development guidance for San Pablo Avenue.

### RESOURCES

Significant staff time is required to conduct research, prepare reports, and draft zoning language. In some cases, consultants assist staff. Currently, there are only three staff members on the long-range planning team, which makes their productivity level around BART, Objective Standards, the Housing Element, and the Zoning Ordinance Revision Project (ZORP) all the more remarkable.

The Land Use Planning Department has begun recruitment for the two open positions in the Long-Range Policy Group (Principal Planner and Associate Planner), and there were several requests for staff positions and consultant services included the new City budget, which was adopted on June 28, 2022.

Calendar constraints are often imposed by State law and deadlines. BART zoning and the Housing Element Update are just two examples.

COUNCIL REFERRALS

The Planning Department and PC have approximately 54 referrals from Council. The PC's work is almost exclusively dictated by these ranked referrals. Thus, the PC has less latitude than other City commissions in establishing and prioritizing its workload.

The Commission's Work Plan Subcommittee discussed recommending some referrals be deleted from the Work Plan. Council has accepted deletions or closed referrals in the past, although a few have come around again. Nevertheless, here are referrals we have deleted from our Work Plan with explanations for why these referrals should be closed:

1. Lower Discretion for Internal Remodeling: The Housing Element work proposes to lower discretionary permitting generally, which will address this issue.
2. Deny Permits to Code Violators: This referral is from 2014, and would be complicated by property rights issues.
3. Not allowing Cannabis uses in Live Work Unit: Cannabis is highly regulated by the State and the City of Berkeley. Currently, there are no Storefront Retail permits available, and cultivation is restricted to the Manufacturing District. Processing is considered a Light Manufacturing use, and is regulated as such. Test Labs are regulated as any other lab, and Distribution is regulated as Wholesale Trade.

PC ADDITIONS

This year, the PC, at the recommendation of the Chair, has added two items to the Work Plan:

1. Conduct a Zoning Adjustments Board (ZAB) Listening Session. The PC Chair will attend a ZAB meeting to hear from ZAB members what is working, what regulations need clarification, and what regulations, if any, does ZAB recommend that the PC revisit. If appropriate, the PC will discuss the items, and make recommendations to Council for future referrals. The goal is to close the loop between the policy and permit bodies. This will not become a staff work item without a Council referral.
2. Review MUR regulations to identify any barriers to converting space to artists' use. The Chair will undertake this work herself, and submit a memorandum to the PC for consideration. The goal is to better enable the district to satisfy its purpose in the arts. This will not become a staff work item without a Council referral.

STRATEGIC OUTCOME AREAS

Products will include:

1. Recommendation to City Council on Objective Standards.
2. Recommendation to City Council on the Housing Element.
3. Two memos from the Chair to the PC (see PC Additions).

Policy objectives include:

1. *Increased housing options and improved affordability.* Allowing greater density and lower levels of discretionary review in residential districts should have substantial cumulative impacts over the coming decade. The Planning Commission can review the volume of completed projects and the average approval period for applications within two years of revised regulations.
2. *Promote healthy, livable communities.* This includes ensuring Berkeley residents live in safe, healthy, and accessible communities with parks, schools, local businesses, and cultural institutions, and promoting healthy mobility options for all resident.
3. *Support community economic development and commercial vitality.* This includes preserving and enhancing Berkeley's neighborhood commercial areas, and ensuring a vibrant downtown.

### BACKGROUND

The mission of the PC, as outlined in the City Charter, reads:

*"The Commission recommends modifications to the City of Berkeley General Plan and related policy documents. All Zoning Ordinance amendments are developed through this Commission and recommended to the City Council. Other purviews include subdivision map consideration and review and comments on substantial projects from surrounding jurisdictions."*

At its meeting of July 6, 2022, the PC voted to adopt this Work Plan (Vote: 8-0-0-1. Motion/Second: Mikiten/Hauser. Ayes: Ghosh, Hauser, Mikiten, Moore, Oatfield, Twu, Vincent, and Wiblin. Noes: None. Abstain: None. Absent: Kapla.).

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The PC's work plan advances the City's sustainability and greenhouse gas reduction goals by focusing on creating housing and business opportunities in areas of high resources and frequent transit.

### POSSIBLE FUTURE ACTION

Based on recommendations received from PC, City Council may refer additional work to the City Manager.

### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Additional referrals to the City Manager will require staff support.

### CONTACT PERSON

Alene Pearson, Secretary to the Planning Commission, Planning and Development Department, 510-981-7489  
Work Plan Subcommittee of the Planning Commission: Jeff Vincent, Barnali Ghosh, Albert Twu, and Elisa Mikiten, Chair.

Attachments:



1: Planning Commission Work Plan Table 2022-2023

WORKING DOCUMENT -- Planning Commission & Policy Group Work Matrix --- WORKING DOCUMENT

| Grouping Description<br>(Approach/Status/Sequencing)                                                   | Referral                                                                                                                                                | Referral Look Up                                                | Rank                |               | Staff Lead    | 2022       |   |   |   |   | 2023 |   |   |   |   |   |   |   |   |   |   |   |   |   |
|--------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|---------------------|---------------|---------------|------------|---|---|---|---|------|---|---|---|---|---|---|---|---|---|---|---|---|---|
|                                                                                                        |                                                                                                                                                         |                                                                 | RRV (2022)          | HAP           |               | J          | J | A | S | O | N    | D | J | F | M | A | M | J | J | A | S | O | N | D |
| a<br><u>Housing Element Update</u><br><u>Southside Zoning Amendments</u><br><u>Objective Standards</u> | C-T: Community Benefits (focus on Labor Practice and AH)                                                                                                | Referral from 7/12/16                                           | started             | 3             | GW/JH         |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | Increase 20' height and FAR in SS                                                                                                                       | Referral from 10/31/17                                          | started             |               | GW/JH         |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | Convert Groundfloor Com to Res in SS                                                                                                                    | Referral from 4/4/17 & 1/20/15                                  | started             |               | GW/JH         |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | C-T: Pilot Density Bonus (DB Phase 2)                                                                                                                   | Referral from 5/30/17                                           | started             |               | GW/JH         |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | More Student Housing Now & SB1227                                                                                                                       | Referral from 11/27/18                                          | started             | 4             | GW/JH         |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | Housing Element (HE) Update                                                                                                                             | state mandated work                                             | started             |               | Grace Wu      |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | 1. Density by parcel; 2.Healthy/safety detriments; 3.Design review; 4. View-shadow impacts (DB Phase 3/JSISHL)                                          | HAP                                                             | started             | 5             | Grace Wu      |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | Implement State Law HAA & SB-35                                                                                                                         | state mandated work                                             | started             |               | Grace         |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | ZORP Phase 2 - Objective Standards                                                                                                                      | Direction from Council per staff request 1/26/16                | started             |               | Grace Wu      |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | ZORP Phase 2 - Substantive Changes                                                                                                                      | Direction from Council per staff request 1/26/16                | started             |               | Justin Horner |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | Refer to City Manager and PlanComm to include specific concepts to end exclusionary zoning within next Housing Element update                           |                                                                 | started             |               | Grace Wu      |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | Missing Middle                                                                                                                                          | Referral from 3/25/21 Special mtg Item #1; see Supp 3           |                     |               |               |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | Direct City Manager to include Participatory Planning concepts within work to update next Housing Element                                               | Referral from 4/23/19; see annotated agenda for full direction. |                     |               |               |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | b<br><u>Long Range or Mandated Projects</u>                                                                                                             | Adeline Implementation                                          | Plan Implementation | started       |               | Alisa Shen |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
| BART Zoning // AB 2923                                                                                 |                                                                                                                                                         | state mandated work                                             | started             |               | Alisa Shen    |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Guide Development on San Pablo                                                                         |                                                                                                                                                         | COB commitment for designated PDA                               | started             |               | Alisa Shen    |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
| 2022 Annual Progress Report                                                                            |                                                                                                                                                         | state mandated work                                             | state mandate       |               | Zoe Covello   |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
| 2022 DOF Unit Tracking                                                                                 | state mandated work                                                                                                                                     | state mandate                                                   |                     | Zoe Covello   |               |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Housing Pipeline Report                                                                                | council request                                                                                                                                         | CC request                                                      |                     | Zoe Covello   |               |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Parking Reform: TDM/RPP Implementation                                                                 | Ordinance Implementation                                                                                                                                | CC request                                                      |                     | Justin Horner |               |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
| c<br><u>Fees and Nexus Studies</u>                                                                     | Reform AHMF (fees per unit vs gfa)                                                                                                                      | Referral from 4/23/19                                           | started             |               | Alisa Shen    |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | Decrease AHMF (Affordable Housing Mitigation Fee) for TIC (Tenancy-in-Common) conversions                                                               | Referral from 11/27/18. See also annotated agenda               | started             |               | Alisa Shen    |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | Inclusionary Units for Live Work                                                                                                                        | Referral from 9/13/18                                           | started             |               | Alisa Shen    |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | Analyze feasibility of onsite affordable units vs payment of AHMF                                                                                       | Referral from 9/10/19                                           | started             |               | Alisa Shen    |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | Demolition Ordinance                                                                                                                                    | HAP                                                             | started             | 16            | SB            |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
| d<br><u>Business-Related Referrals</u>                                                                 | Sign Ordinance (ZOA Part 1)                                                                                                                             | Referral from 10/15/19                                          | started             |               | TBD           |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | Arcades in the Elmwood                                                                                                                                  | Referral from 6/25/19                                           | started             |               | TBD           |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | Beer and Wine in the M-District                                                                                                                         | Referral from 12/4/18 within action (see annotated agenda)      | 15                  |               |               |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | Refer to PlanComm to consider Zoning Ord modifications to streamline review processes for the benefit of new and existing small businesses (ZOA Part 2) | Referral from 10/15/19                                          | 17                  |               |               |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
| e<br><u>Other Long Range // Special Projects</u>                                                       | Pacific Steel Visioning                                                                                                                                 | Referral from 4/20/21                                           | 1                   |               |               |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | WB Service Center                                                                                                                                       | Referral from 5/28/19.                                          | 5                   |               |               |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | STR Ord Updates                                                                                                                                         | Referral from 7/28/20; see Item 42 on annotated agenda          |                     |               |               |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |
|                                                                                                        | Alta Bates Zoning                                                                                                                                       | dormant                                                         |                     |               |               |            |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |

WORKING DOCUMENT -- Planning Commission & Policy Group Work Matrix --- WORKING DOCUMENT

| Grouping Description<br>(Approach/Status/Sequencing) | Referral                                                    | Referral Look Up                                                                                                                                                                                               | Rank                                                                   |                              | Staff Lead | 2022   |             |   |   |   | 2023 |   |   |   |   |   |   |   |   |   |   |   |   |   |  |  |  |
|------------------------------------------------------|-------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|------------------------------|------------|--------|-------------|---|---|---|------|---|---|---|---|---|---|---|---|---|---|---|---|---|--|--|--|
|                                                      |                                                             |                                                                                                                                                                                                                | RRV (2022)                                                             | HAP                          |            | J      | J           | A | S | O | N    | D | J | F | M | A | M | J | J | A | S | O | N | D |  |  |  |
| <b>e</b>                                             | <u>Other Long Range / Special Projects</u>                  |                                                                                                                                                                                                                | UC Berkeley LRDP (City Attorney lead)                                  | interdepartment coordination |            |        |             |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |  |  |  |
|                                                      |                                                             | Berkeley Marina Master Plan (PRW lead)                                                                                                                                                                         | interdepartment coordination                                           |                              |            |        |             |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |  |  |  |
|                                                      |                                                             | TIF / TSF Nexus Fee (Transportation lead)                                                                                                                                                                      | Special Council 7/7/16.                                                |                              |            |        |             |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |  |  |  |
|                                                      |                                                             | Berkeley Transfer Station (PW lead)                                                                                                                                                                            | interdepartment coordination                                           |                              |            |        |             |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |  |  |  |
| <b>f</b>                                             | <b>Miscellaneous</b>                                        | Bird Safe Construction                                                                                                                                                                                         | Referral from 11/12/19; see also annotated agenda                      |                              | started    |        | Zoe Covello |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |  |  |  |
|                                                      |                                                             | Refer to City Manager to streamline ADU process, inclu Universal checklist and webpage, pre-approved designs, and an "ADU Ally" staff position                                                                 | from 12/14/21.                                                         |                              | 8          |        |             |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |  |  |  |
|                                                      |                                                             | Refer to City Mgr and PlanComm to streamline remediation of toxic sites in manufacturing districts with a single application for Land Use and Toxics, and for PC to reconsider related previous 2012 referral. | Referral from 2/22/22                                                  |                              | 12         |        |             |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |  |  |  |
|                                                      |                                                             | <del>Flex Conversion to Mini Dorms-</del>                                                                                                                                                                      | Referral from 9/13/18; also see supplemental memo.                     |                              | 20         |        |             |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |  |  |  |
|                                                      |                                                             | Refer to CM including environmental mitigations within enhanced Use Permit review process in Manufacturing Zone, e.g. Air Quality monitoring                                                                   | Referral from 9/28/21                                                  |                              | 26         |        |             |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |  |  |  |
|                                                      |                                                             | Refer to CMO, PlannComm and HAC: Civic Arts Comm ideas to promote artists housing, including use of ground floor retail space, and to include it in the Housing Element update process                         | Referral from 1/25/22                                                  |                              | 27         |        |             |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |  |  |  |
|                                                      |                                                             | 100% Sustainable Trips by 2040                                                                                                                                                                                 | Referral from 9/15/20                                                  |                              | 29         |        |             |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |  |  |  |
|                                                      |                                                             | <del>Refer to PlannComm allowing certain internal remodeling activities with an AUP, rather than a UP, when existing non-conforming max lot coverage would not be increased (part 2 re: ZO)</del>              | Referral from 2/27/18.                                                 |                              | 31         |        |             |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |  |  |  |
|                                                      |                                                             | <del>Not allowing Cannabis as a Live/Work Use</del>                                                                                                                                                            | Referral from 4/2/19, under larger cannabis item; see annotated agenda |                              | 36         |        |             |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |  |  |  |
|                                                      |                                                             | <del>Air Pollution Performance Standards</del>                                                                                                                                                                 | Referral from 7/11/17                                                  |                              | 39         |        |             |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |  |  |  |
|                                                      |                                                             | <del>Deny permits to code violators</del>                                                                                                                                                                      | Referral from 9/9/14                                                   |                              | 41         |        |             |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |  |  |  |
| <del>Gentrification/Displacement Study</del>         | Referral from 4/30/19. Duplicate referral also sent to HHCS |                                                                                                                                                                                                                | 43                                                                     |                              |            | HAC/PC |             |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |  |  |  |
| <del>Lower discretion for internal remodeling</del>  | Referral from 2/27/18.                                      |                                                                                                                                                                                                                |                                                                        |                              |            |        |             |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |  |  |  |
| <b>g</b>                                             | <b>PC Additions</b>                                         | ZAB Listening Session                                                                                                                                                                                          | PC Recommendation                                                      |                              |            |        |             |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |  |  |  |
|                                                      |                                                             | MUR's Ability to Support Conversion to Artists' Use                                                                                                                                                            | PC Recommendation                                                      |                              |            |        |             |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |   |   |  |  |  |

**ABBREVIATIONS**

|                                          |                                              |
|------------------------------------------|----------------------------------------------|
| AHMF = Affordable Housing Mitigation Fee | MSHN = More Student Housing Now              |
| cc = City Council                        | NR = not ranked                              |
| EIR = Environmental Impact Report        | pc = Planning Commission                     |
| GF = groundfloor                         | pw = public workshop                         |
| HAA = Housing Accountability Act         | PDA = Priority Development Area              |
| HAP = Housing Action Plan                | ph = public hearing                          |
| HTF = Housing Trust Fund                 | RFP = Request for Proposals                  |
| IHO = Inclusionary Housing Ordinance     | RRV = Reweighted Range Voting                |
| LLA = Lot-line adjustment                | sc = Subcommittee of the Planning Commission |

| Upcoming Worksessions and Special Meetings<br><i>start time is 6:00 p.m. unless otherwise noted</i> |                                                                              |
|-----------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|
| Scheduled Dates                                                                                     |                                                                              |
| Sept. 20                                                                                            | 1. Residential Objective Standards for Middle Housing (start time 4:00 p.m.) |
| October 6                                                                                           | 1. Measure O Report and Update (start time 4:00 p.m.)                        |

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

| Unscheduled Workshops |
|-----------------------|
| None                  |

| Unscheduled Presentations (City Manager)                                                                                                                                                                                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Civic Arts Grantmaking Process &amp; Capital Grant Program</li> <li>2. Fire Facilities Study Report</li> <li>3. African American Holistic Resource Center (November 15)</li> </ol> |

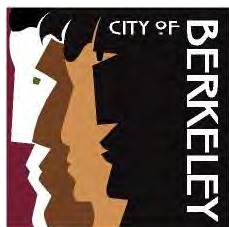
|    | <b>City Council Referrals to the Agenda &amp; Rules Committee and Unfinished Business for Scheduling</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <p><b>31. Placing a Measure on the November 8, 2022 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)</b> <i>(Item contains revised material.)</i><br/> <i>(Referred from the July 26, 2022 agenda.)</i><br/> <b>From: 4 x 4 Joint Committee on Housing City Council/Rent Board</b><br/> <b>Recommendation:</b><br/> 1. Adopt a Resolution placing the proposed amendments to the Rent Stabilization and Eviction for Good Cause Ordinance on the ballot of the November 8, 2022 General Municipal Election.<br/> 2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.<br/> <b>Financial Implications:</b> See report<br/> Contact: Matt Brown, Rent Stabilization Board, (510) 981-7368<br/> <b>Note:</b> Referred to Agenda &amp; Rules for future scheduling.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 2. | <p><b>32. Restoring and Improving Access to City of Berkeley Website and Archival Materials</b> <i>(Item contains revised material.)</i> <i>(Referred from the July 26, 2022 agenda.)</i><br/> <b>From: Councilmember Hahn (Author), Councilmember Taplin (Co-Sponsor), Councilmember Bartlett (Co-Sponsor)</b><br/> <b>Recommendation:</b><br/> 1. Accept the report outlining results from consultation with the City Manager after introduction of this item and thank City Staff for their consideration.<br/> 2. As a means to support transparency and improve ease of access to historical/archival government records for policymakers, the press, and the general public, request that the City Manager continue developing and implementing measures that support efficient and effective searching, sorting, and identification of responsive materials through Records Online.<br/> 3. To support transparency and ease of access to government records, consider creating and disseminating a “style guide” with standards/conventions/protocols for accurately referencing and attaching City materials so they can be properly linked to or easily accessed in Records Online (or a successor/alternative program/database), allowing such materials to be referenced consistently by Councilmembers, Staff, members of the press, and other authors.<br/> 4. Refer to the November 2022 Budget Update up to \$50,000 for staff support for Council/Mayor offices to locate documents previously accessed via now-expired links, and request that the City Manager consult Councilmembers and the Mayor to offer the scope of assistance available and identify potential needs.<br/> 5. As a means to support transparency and restore ease of access to City materials referenced/attached via now-broken links in City reports, plans, items, and other documents created prior to launch of the new City website, request that the City Manager consider updating key plans, programs and reports by creating and linking PDFs of previously linked documents and/or substituting broken links with footnotes/references in a standard format allowing referenced and attached materials to be quickly/directly located through Records Online (or a successor/alternative program/database).<br/> 6. To better fulfill the requirements of the City of Berkeley’s Open Government Ordinance, request the City Manager retain materials such as Council, Committee, and Commission agendas, minutes, recordings, and other official documents on the website for a period at least 4 years, and preferably longer, before retiring them to Records Online.<br/> <b>Financial Implications:</b> Staff time<br/> Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150<br/> <b>Note:</b> Referred to Agenda &amp; Rules for future scheduling.</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>                                            |                      |                       |                   |
| 1201-1205 San Pablo Avenue (construct mixed-use building)                   | ZAB                  |                       | 9/29/2022         |
| 2018 Blake Street (construct multi-family residential building)             | ZAB                  |                       | 10/6/2022         |
| 1643-47 California St (new basement level and second story)                 | ZAB                  |                       | 11/3/2022         |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
| <b>Remanded to ZAB or LPC</b>                                               |                      |                       |                   |
| 1205 Peralta Avenue (conversion of an existing garage)                      |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
| <b>Notes</b>                                                                |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |

8/22/2022







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.

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







## Hybrid Meeting Policies for City Council Meetings Revised May 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. These administrative policies supplement the City Council Rules of Procedure and Order.

City Council policy committees and city boards and commissions will continue to meet in a virtual-only setting until the City Council makes the required findings under state law that in-person meetings may resume.

### 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.

#### *Pre-entry negative testing*

*Definition: Testing must be conducted within one day for an antigen test and within two days for a PCR test prior to entry into an event. Results of the test must be available prior to entry into the facility or venue. Children under 2 years of age are exempt from the testing requirement, consistent with [CDC guidance](#).*

*Verification: See current [CDPH Updated Testing Guidance](#) and [CDPH Over-the-Counter Testing Guidance](#) for acceptable methods of proof of negative COVID-19 test result and information on Over-the-Counter tests. Note: Self-attestation may not be used to verify negative test result, even when using Over-the-Counter (or at home tests) for entry into Indoor Mega Events.*

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Beyond-Blueprint-Framework.aspx>

### II. Health Status Precautions

If a person who desires to attend the meeting in-person 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 are 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).

A voluntary sign in sheet will be available at the meeting entry for in-person attendees. This will assist with contact tracing in case of COVID-19 contact resulting from the meeting.

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

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. Members of the City Council, city staff, and the public are required to wear a mask at all times, except when speaking publicly from the dais or at the public comment podium.

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.

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. The relevant capacity limits will be posted at the meeting location. 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.

Conference room capacity is limited to 15 persons.

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

Distancing is encouraged for the dais and partitions will be used as needed for the seating positions on the dais.

**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, 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**

Berkeley Unified 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 Volatile Organic Compounds, CO<sub>2</sub>, 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 if staff determines that attendance is likely to exceed the capacity of the Boardroom. The capacity of the gymnasium is 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. 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.

**X. In-Meeting Procedures**

**Revised and Supplemental Materials**

All revised and supplemental materials for items on the agenda submitted after 12:00pm (noon) the day prior to the meeting must be submitted to the City Clerk in both paper AND electronic versions.

- Paper: 42 copies delivered to the Boardroom (distributed per normal procedure)
- Electronic: e-mailed to the Agenda Inbox (posted online)

**Communications from the Public**

The public may submit communications in hard copy at the Boardroom or electronically to [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info). To ensure that both in-person and remote Councilmembers receive the communication, the public should submit 10 copies at the Boardroom and send the electronic version to the e-mail listed above.

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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

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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>.

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A voluntary sign in sheet will be available at the meeting entry for in-person attendees. This will assist with contact tracing in case of COVID contact resulting from the meeting.

### **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. 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.

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

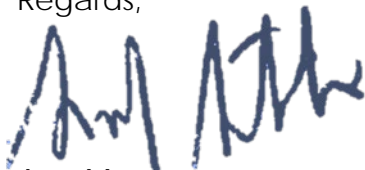
Dear Mr. Knaus, Ms. Miller, Ms. Hurst, Ms. Preston, Ms. Heaton, Ms. King, Ms. Coleman, Ms. Blacet-Hyden, Mr. McCormick, Mr. Anderson, and colleagues,

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

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

We appreciate your partnership throughout the pandemic.

Regards,

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

Ana Matosantos  
Cabinet Secretary



## NEWS RELEASE

Release  
Number: 2021-58

June 4, 2021

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Contact:** Erika Monterroza / Frank Polizzi, [Communications@dir.ca.gov](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, a least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction

are hereby suspended.

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

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

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

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

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

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

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

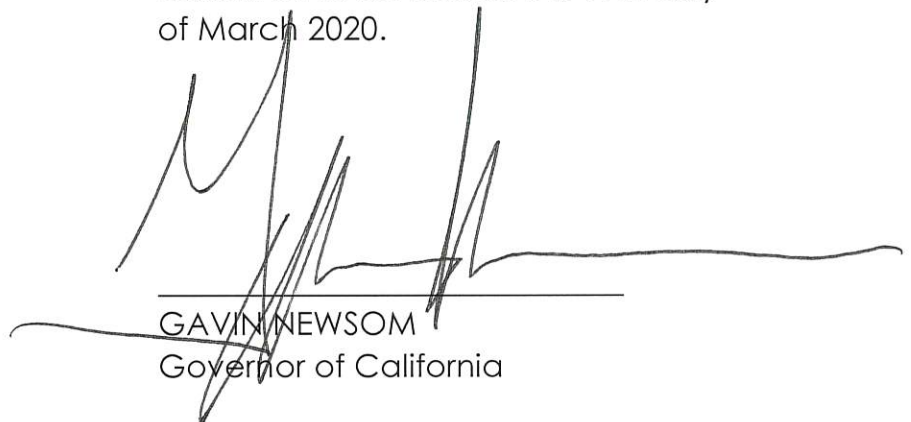


All state and local bodies are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Bagley-Keene Act and the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency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

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

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

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



\_\_\_\_\_  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

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ALEX PADILLA  
Secretary of State

