



Environment & Climate Commission

# AGENDA

## REGULAR MEETING OF THE ENVIRONMENT AND CLIMATE COMMISSION

Please click the link below to join the webinar:

<https://us06web.zoom.us/j/89048281872>

Or Telephone:

US: +1 669 444 9171 or +1 669 900 6833

Webinar ID: 890 4828 1872

**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 of the Environment and Climate Commission 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 attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us06web.zoom.us/j/89048281872>. If you do not wish for your name to appear on the screen, then use the drop-down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen. To join by phone: Dial +1 669 900 6833 and enter Meeting ID 890 4828 1872. 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 official meeting is recorded, and all other rules of procedure and decorum will apply for official meetings conducted by teleconference or videoconference.*

**Wednesday, September 28, 2022, 5:00 PM**

### **PRELIMINARY MATTERS**

**1. Call to Order and Roll Call:**

Vacant	Mayor	Mayor
Ranney, Sarah	Kesarwani	District 1
McGuire, Brianna	Taplin	District 2
Vacant	Bartlett	District 3
Tahara, Daniel	Harrison	District 4
Vacant	Hahn	District 5
Guliasi, Les	Wengraf	District 6
Lunaparra, Cecilia	Robinson	District 7
Gould, Ben	Droste	District 8

**2. Public Comment:** Comments on subjects not included on the agenda (3-minute limit per individual)

**3. Approval of Minutes:** [Approval of Minutes from Last Meeting \(July 27, 2022\)](#)

4. **Agenda Check:** Commissioners may rearrange items on the agenda
5. **Update from Chair** (Chair Gould)
6. **Update from staff** (Sarah Moore & Rebecca Milliken)
7. **Reports from Commission Liaisons**
  - Planning Commission (Ben Gould)
  - Transportation and Infrastructure Commission (Brianna McGuire)
  - Parks, Recreation and Waterfront Commission
  - Zero Waste Commission (Sarah Ranney)
  - Disaster and Fire Safety Commission (Les Guliasi – future liaison)
  - Housing Advisory Commission

### ***DISCUSSION AND ACTION ITEMS***

8. **Update on \$1.5 M Just Transition Healthy Home Electrification Pilot Program (Sarah Moore)**
9. **Local Building Code Amendments (Sarah Moore & Kurt Hurley)**
10. **Recommendation to Revisit Old Energy Commission (EC) and Community Environmental Advisory Commission (CEAC) Items (Ben Gould)**
  - a. **EC Fuel Station Carbon Dioxide Labels – Agenda Packet 11/18/2014**
  - b. **Fuel Station Carbon Dioxide Labels – City Council Minutes 11/18/2014 (see Item 40, pages 14-15)**
  - c. **CEAC Prohibition on Resale of Used Combustion Vehicles – Agenda Packet 12/15/2020**
  - d. **Prohibition on Resale of Used Combustion Vehicles – City Council Minutes 12/15/202 Excerpt (Item 25, page 53)**
  - e. **Lead Paint Companion Report City Council Meeting 4/2/2019**
11. **Proposed Youth Member on Environment and Climate Commission (Ben Gould)**
12. **Items for Future Agenda**
  - Electric Mobility Roadmap and BEBES Implementation Status
  - Gas Decommissioning

### ***INFORMATION ITEMS***

#### **13. Communications**

#### **14. Announcements from Commissioners**

**ADJOURNMENT**

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*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 **Billi Romain**, 510-981-7432, [bromain@cityofberkeley.info](mailto:bromain@cityofberkeley.info).*

*Communications to Berkeley boards, commissions or committees are public record and will become part of the City’s electronic records, which are accessible through the City’s website. Please note: E-mail addresses, names, addresses, and other contact information are not required but, if included in any communication to a City board, commission, or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission, or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission, or committee for further information.*

*Any writings or documents provided to a majority of the commission regarding any item on this agenda will be made available for public inspection at the Planning Department located at 1947 Center Street.*



**COMMUNICATION ACCESS INFORMATION:**

This meeting is being held in a wheelchair-accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

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I hereby certify that the agenda for this regular/special meeting of the Berkeley City Commission on Commissions 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.

Billi Romain, Commission Secretary







Environment & Climate Commission

**ENVIRONMENT AND CLIMATE COMMISSION DRAFT MINUTES**  
**Wednesday, July 27, 2022**

<b>Vacant</b>	Mayor	Mayor
<b>Ranney, Sarah</b>	Kesarwani	District 1
<b>McGuire, Brianna</b>	Taplin	District 2
<b>Vacant</b>	Bartlett	District 3
<b>Tahara, Daniel</b>	Harrison	District 4
<b>Vacant</b>	Hahn	District 5
<b>Guliasi, Les</b>	Wengraf	District 6
<b>Lunaparra, Cecilia</b>	Robinson	District 7
<b>Gould, Ben</b>	Droste	District 8

1. Call to Order and Roll Call

The meeting was called to order by Billi Romain at 5:01 p.m.  
Commissioners Present: Ranney, McGuire, Guliasi, Gould  
Commissioner Leave of Absence: Tahara, Lunaparra  
Commissioner Absent: None  
Staff: Billi Romain, Rebecca Milliken, Jaimie Cooney, Ammon Reagan

2. Public Comments and Announcements:

3 member(s) of the Public  
1 comment(s)

3. Approval of Minutes:

Motion/second to approve the June 22, 2022 Minutes (Guliasi, Gould). The motion carried 4-0-0-2; Ayes: Ranney, McGuire, Guliasi, Gould. Noes: None. Abstain: Absent: Tahara, Lunaparra.

4. Agenda Check

5. Update from Chair

6. Update from Staff

***DISCUSSION AND ACTION ITEMS***

7. Discussion: Tracking Climate Action and Resilience Implementation Progress Indicators

8. Discussion: \$1.5 M Healthy Residential Electrification Just Transition Pilot Program

9. Discussion and Action: Environment and Climate Commission Work Plan

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: Gulasi. Absent: Tahara, Lunaparra.

10. Action: Appointment of Commission Liaisons

11. Discussion: Items for Future Agenda

**INFORMATION ITEMS**

12. Communications

13. Announcements from Commissioners

**ADJOURNMENT**

Motion to adjourn at 7:08 pm (Gould). The motion carried 4-0-0-2; Ayes: Ranney, McGuire, Gulasi, Gould. Noes: None. Abstain: None. Absent: Tahara, Lunaparra.

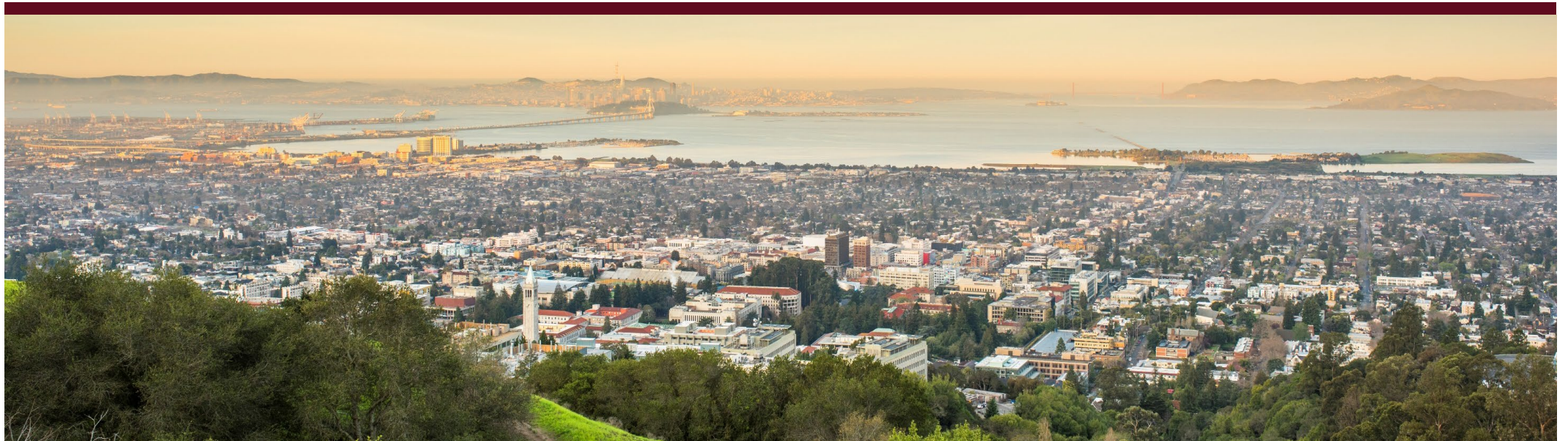
Minutes Approved:

/S/ Billi Romain, Berkeley Energy Commission Secretary



# Office of Energy & Sustainable Development UPDATE

Environment and Climate Commission  
September 28, 2022



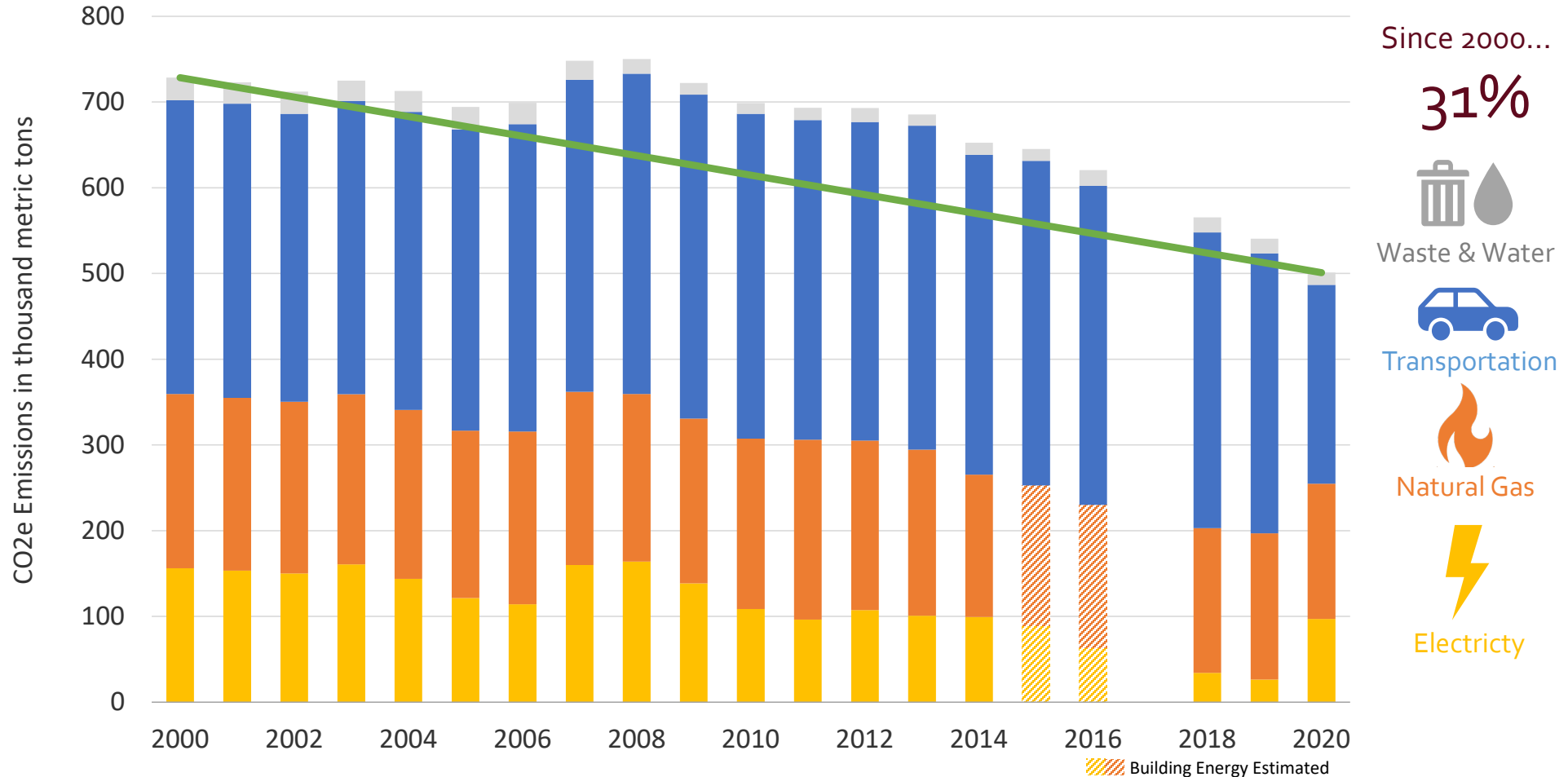


# OESD Council Items for Commission Input

Initiative	Commission	Council
Just Transition Pilot Program	July 2022 (input on funding categories) September 2022 (input on project plan)	FITES October 2022 (input on funding categories and project plan) Mid 2023 (award contract)
Report on GHG Emissions Inventory & Performance Indicators	July 2022 (input Performance Indicators) September 2022 (preview)	November 2022
Local Building Code Amendments	September 2022	November/December 2022
Climate Equity Fund Pilot Programs	2023 Annual report (input)	2023 Annual report
BESO Time of Listing Requirements	December 2022 (input) 2023 (recommendation on ordinance)	2023 (ordinance amendment)
BESO Building Performance Standards	2023 (input) 2024 (recommendation on ordinance)	2024 (ordinance amendment)

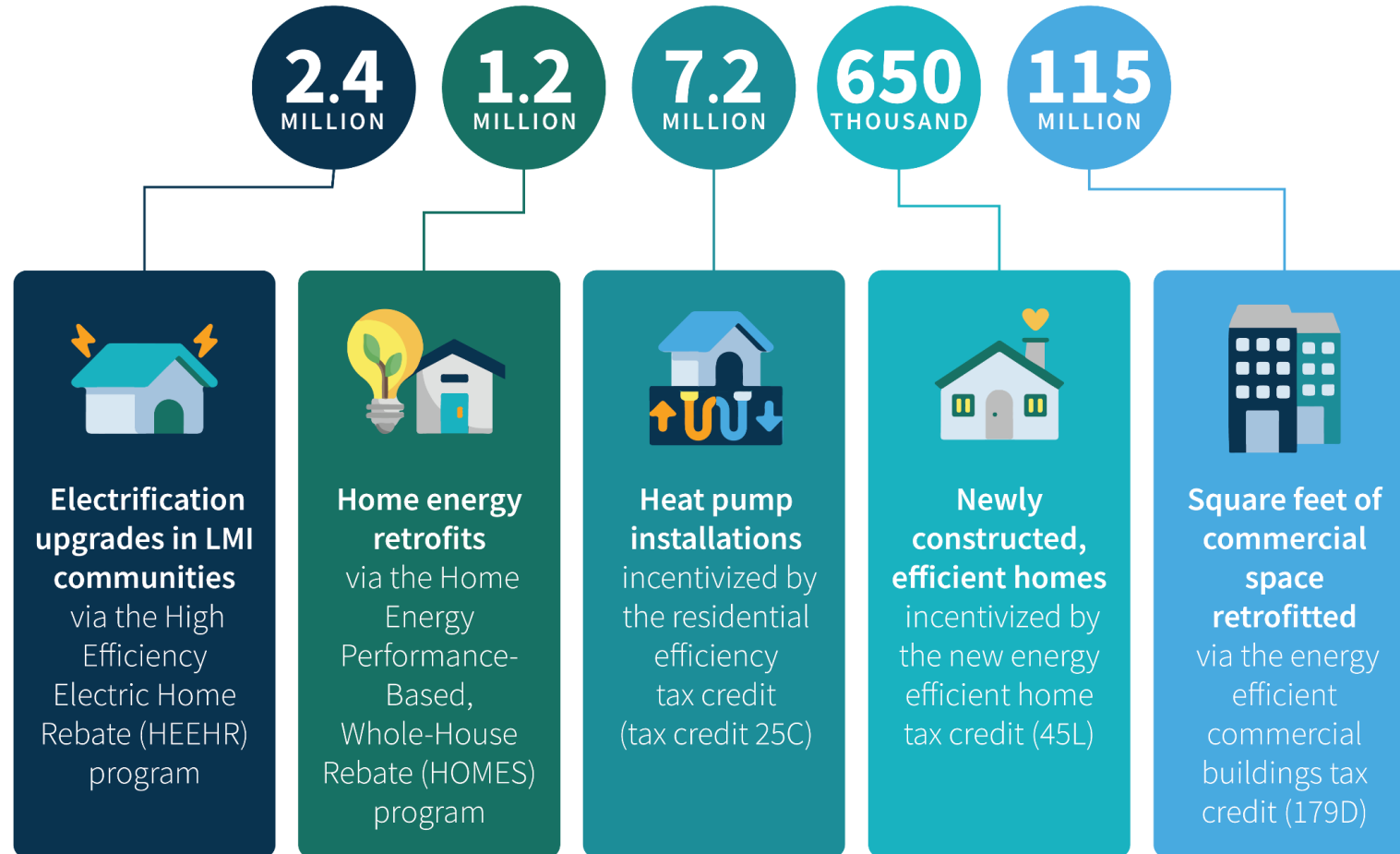


# 2020 Community-Wide GHG Emissions





# Inflation Reduction Act (IRA) Federal Funding



Source: RMI



# IRA HEERA Program

## High-Efficiency Electric Home Rebate Program (HEERA)



2023



DOE to States



\$4.5 billion

This is a 10 year rebate program to help LMI families electrify their homes. \$4.275 billion will be distributed by state energy offices and \$225 million by Tribal governments.

### Income eligibility:

- Low-income: <80% AMI, 100% of costs covered including installation
- Moderate-income: 80-150% AMI, 50% of costs covered including installation
- Rebates extended to multifamily buildings if 50% of residents are LMI

Source: USDN





# IRA HOMES Program

## Home Energy Performance-Based, Whole-House Rebate (HOMES) Program



TBD



DOE to States



\$4.3 billion

\$4.3 billion for energy efficiency and electrification upgrades for LMI and non-LMI homeowners and multifamily buildings based on modeled or measured energy savings. The rebates available are:










- Non-LMI homeowners: Up to \$4,000 or 50% of project cost for a 20-35 percent reduction
- LMI homeowners: Up to \$8000 or 80% of project cost for 20-35 percent reduction
- Multifamily buildings: Up to \$400,000 or 50% of project cost for a 35 percent reduction (buildings with 50 percent LMI residents can claim up to 80% of project cost)

Source: USDN





# IRA Tax Credits

<b>EV Tax Credit (30D)</b>	 2023	 Tax Credits	 Varies
<b>Energy Efficient Home Improvement Credit (25C)</b>	 2023	 Tax Credits	 Varies
<b>Residential Clean Energy Tax Credit (25D)</b>	 2023	 Tax Credits	 Varies

Source: USDN



# IRA Programs for Local Governments

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- Greenhouse Gas Reduction Fund (the Green Bank)
- Energy Efficient Commercial Buildings Deduction
- Climate Pollution Reduction Grants
- Latest and Zero Building Energy Code Adoption
- Improving Energy Efficiency, Water, Resilience of Affordable Housing
- Low Emissions Electricity Program
- Clean Heavy-Duty Vehicles
- Neighborhood Access and Equity Grant Program
- Investing in Coastal Communities and Climate Resilience
- Environmental and Climate Justice Block Grants
- State and Private Forestry Conservation Programs



# IRA Funding Timeline

## Timeline for IRA to Hit the Streets



Source: RMI



# Energy Efficiency Community Block Grant (EECBG)

- Infrastructure Investment and Jobs Act (2021) provides \$550 million for Energy Efficiency & Conservation Block Grants
- Purpose: Assist eligible entities in implementing energy efficiency & conservation strategies to:
  - Reduce fossil fuel emissions created as a result of activities within the jurisdictions of eligible entities
  - Reduce total energy use
  - Improve energy efficiency in the transportation, building, and other appropriate sectors
- Notice of Funding Opportunity from US DOE expected Q4 2022



More information at: <https://www.energy.gov/bil/energy-efficiency-and-conservation-block-grant-program>



# EBCE Commercial R100 Transition

Jurisdiction	Change from early August	
	Opt Out to PG&E	Remain on Bright Choice
Berkeley	0.06%	0.29%
Dublin	0.01%	0.31%
Emeryville	0.01%	0.6%
San Leandro	0.06%	0.12%

## EBCE Outreach

- Email Notices (August & October)
- Print Notice (August & October)
- Webinars (August & September)
- Banner ads in local newspapers
- Events (i.e. Solano Stroll)
- NextDoor

## City Outreach

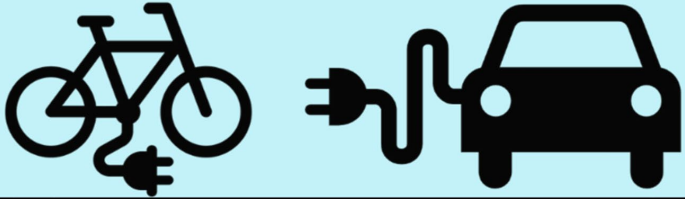

- Emails to grocery, convenience and liquor stores, gas stations, restaurants and hotels, and nursing and residential care
- Business District Meetings & Industry Gatherings
- City News Release
- City Council Newsletters



# Outreach

**RIDE ELECTRIC**

October 15th, 11 AM - 3 PM  
20 Virginia Gardens, Berkeley  
At the Harvest Festival  
<https://tinyurl.com/RideElectric2022>



**Limited time  
discounts on  
solar + battery  
storage!**

SIGN UP BEFORE  
**NOVEMBER 15, 2022**

 **SUNSHARES** [bayareasunshares.org](https://bayareasunshares.org)

DATE: September 28, 2022  
TO: Berkeley Energy Commission  
FROM: Billi Romain, Manager Office of Energy and Sustainable Development, and  
Sarah Moore, Sustainability Program Manager  
SUBJECT: Just Transition Healthy Home Electrification Pilot Program

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### **Overview**

The goals of the Just Transition Healthy Home Electrification Pilot Program (Just Transition Pilot) are to advance economic opportunity for a diverse workforce; promote energy affordability, provide health and resilience benefits for low-moderate income Berkeley residents; and maximize equitable emissions reductions. Over a two-year period, pilot projects will demonstrate how building electrification upgrade programs can advance community equity priorities including improving indoor air quality, creating economic opportunities and family sustaining jobs in the residential building electrification sector, promoting housing affordability, ensuring neighborhood stabilization, and enhancing resilience.

### **Background**

On June 14, 2022, City Council approved a budget referral and Resolution No. 70,414-N.S. establishing a Pilot Existing Building Electrification Installation Incentives and Just Transition Program and referring to staff to develop and implement a direct-install program prioritizing existing affordable housing buildings and low to moderate income households (at or below 120% of the Area Median Income) that uses pre-qualified contractor(s) who meet minimum labor standards to replace gas water heating, HVAC, and cooking equipment with systems that run on clean electricity. See attached Resolution.

The Resolution calls for the establishment of labor standards that provide pathways to high-road careers for workers in residential electrification that include the following:

1. Pre-qualified residential construction contractors that will reliably perform high-quality work and provide high-road careers for workers, and
2. Links to training programs for Berkeley residents who are disadvantaged or disproportionately impacted by climate and environmental injustices to enter and succeed in union construction careers, and
3. Leveraging other local, regional, state and federal energy efficiency and electrification programs.

The objectives of labor standards are to advance high road, family-sustaining jobs that pay living wages, with comprehensive benefits and opportunities for career advancement for a diverse workforce.

Staff will design the program in accordance with the goals of the Equity Guardrails, developed as part of Berkeley's Existing Buildings Electrification Strategy (BEBE Strategy) to serve as standards for any City-sponsored electrification policy or program:



- **Maximize Access to Health & Safety Benefits:** Proposed projects should prioritize the benefits of building electrification including health, safety, and comfort to those most impacted by climate change.
- **Maximize Access to Economic Benefits:** Proposed projects should leverage incentives and financing, reduce costs when possible, and support high-road job opportunities prioritizing disadvantaged communities.
- **Maximize Ease of Participation:** Proposed projects should be easy for all community members to access, and should be integrated with other programs and services when possible.
- **Promote Housing Affordability & Anti-Displacement:** Proposed programs should support housing preservation and tenant protections, and not displace renters or homeowners.

**Just Transition Pilot Budget**

On November 30, 2021, Berkeley City Council approved a budget referral for \$1,500,000 to provide initial funding for the Just Transition Pilot, including \$400,000 for administrative costs to run the program and provide support for implementation of the Berkeley Existing Building Electrification Strategy (BEBES). Staff will monitor opportunities to leverage funding with other sources from rate-payer, local, regional, state and federal funds, including the Inflation Reduction Act.

**Workplan Timeline**

Office of Energy & Sustainable Development (OESD) staff is designing the Just Transition Pilot with input from other City departments and divisions, the Berkeley Environment and Climate Commission (ECC), the City Council Facilities, Infrastructure, Transportation, Environment & Sustainability (FITES) Policy Committee, and external partners including construction trades unions, energy retrofit contractors, workforce development nonprofits and pre-apprenticeship programs, and community organizations serving low-income people and disadvantaged communities. The workplan timeline includes the following:

**Just Transition Pilot Timeline**

	2022					2023				2024/25
	Aug	Sep	Oct	Nov	Dec	Q-1	Q-2	Q-3	Q-4	
Research & assessment	■	■	■	■						
Develop funding categories	■	■	■	■						
Issue Request for Proposals					■	■				
Select projects						■	■			
Execute contracts								■	■	
Implement programs									■	■
Annual evaluation										■



### **Research on Categories of Fund Expenditures**

The Just Transition Pilot resolution stipulates that ECC and FITES, in consultation with community groups, will provide annual input to staff and Council on eligible categories of fund expenditures to maximize equitable emissions reductions and impacts for eligible households.

On June 22, 2022, the ECC provided initial feedback highlighting the need to educate residents and contractors about the opportunities, benefits and process of electrification and suggested prioritizing upgrades for low-income families living in rental units with poor indoor air quality and rent controlled units. Staff has incorporated this initial feedback and plans to provide an updated proposal to the FITES Committee in October.

Staff have been conducting research to inform program design through participation in a regional high road job partnership project and interviews with key stakeholders. The City of Berkeley is a core participant in the High Road to Building Decarbonization in the San Francisco Bay Partnership (H RTP), led by Rising Sun Center for Opportunity and funded through California Climate Investments. This project promotes equitable job access by convening discussions with construction trades labor unions, employers and contractors, including minority-owned contractors, apprenticeship and pre-apprenticeship programs and other public agencies to understand regional decarbonization labor market demand, workforce issues, and training needs, in order to establish and incentivize industry labor standards and develop clear, accessible training pathways to building decarbonization jobs – especially for entry-level and disadvantaged workers. This work is helping to inform the development of the Just Transition Program. In addition, Berkeley staff are interviewing representatives of Alameda County construction trade unions, minority- and women-owned contracting firms, pre-apprenticeship programs, affordable housing, housing rehabilitation and low-income residents. A summary of initial feedback and findings is provided below:

1. Priority Buildings
  - Focus on smaller residential (low-rise) buildings as this sector is generally served by low-road contractor jobs and has individual (versus corporate) building ownership
  - Support subsidized, income-qualified voucher units, such as Section 8 and Shelter+Care, in older/smaller buildings
  - Support Community Resilience Centers and Resilience Hubs
2. Workforce standards and inclusion
  - High road labor standards should apply to all jobs receiving any public funding
  - Prioritize strategies that support union jobs and career pathways to high road jobs as well as opportunities for small minority contractors
  - Support contracting opportunities for women, people-of-color owned firms and high road career pathways for people from underserved/disadvantaged communities
  - Collaborate with community-based pre-apprenticeship programs that serve people with barriers to employment
  - Inconsistent labor standards and prevailing wage exemptions for some low-income rehab and weatherization programs may create barriers to leveraging state and federal resources

Interviews to date include representatives of the following organizations, including partners in High Road Partnership:

- Alameda County Workforce Board
- BayREN
- Berkeley Housing Authority
- Berkeley Youth Alternatives
- City of Berkeley Housing Program
- Construction Trades Workforce initiative (CTWI)
- Cypress Mandela Training Center
- Emerald Cities Collaborative
- Green and Healthy Homes Initiative
- National Association of Minority Contractors
- ReBuilding Together, East Bay North
- Revalue.IO Energy Inc.
- Rising Sun Center for Opportunity
- StopWaste
- Various electrification contractors

#### **Proposed Just Transition Pilot Funding Categories for Consideration and Discussion**

1. Development of Aggerated Electrification Direct Install Program
  - Residential building electrification opportunities assessment
  - Recruitment of buildings that support income qualified units with renter protections
  - Contractor training, recruitment, and qualification
2. Energy Retrofit Implementation
  - Heat pump water heater and HVAC replacement, weatherization, and building envelope improvements
  - Electrical panel/safety upgrades needed for electrification
  - Induction stove replacement
3. Retrofit Management
  - Customer service, trouble shooting, and scheduling
  - Evaluation, measurement, and verification

**Attachment:** Resolution No. 70,414-N.S. “Resolution Establishing a Pilot Existing Building Electrification Installation Incentives and Just Transition Pilot Program”

RESOLUTION NO. 70,414-N.S.

RESOLUTION ESTABLISHING A PILOT EXISTING BUILDING ELECTRIFICATION  
INSTALLATION INCENTIVES AND JUST TRANSITION PILOT PROGRAM

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

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

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

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

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

WHEREAS, by partnering with labor, the City of Berkeley can cost-effectively meet its goals of reducing greenhouse gas emissions while supporting elements of a just transition ensuring that people who live and work in Berkeley—especially those from historically disadvantaged populations—have access to high-road, family-sustaining careers in union construction associated with existing building electrification; and

WHEREAS, the program would help support Pipefitters and other tradespeople who may be acutely impacted by Berkeley's building electrification policies; and

WHEREAS, direct install programs using pre-qualified contractors meeting quality and labor standards eliminate the need for households to find and manage their own contractors, and therefore can achieve significant cost savings and socioeconomic benefits; and

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

WHEREAS, in adopting this building electrification Pilot Program, the City of Berkeley simultaneously supports local and statewide electrification at an emergency pace (2030) and continued safe, affordable, and reliable natural gas service for Berkeley and California customers who remain on gas service in the interim; and

WHEREAS, despite offering opportunities for certain trades, absent state leadership and a statewide just transition framework, electrification can adversely impact the livelihoods of gas utility infrastructure and extraction workers and low-income gas customers; and

WHEREAS, the City of Berkeley urges the State of California, through the California Public Utilities Commission and the California Energy Commission, to adopt a statewide approach to contract the natural gas distribution system in safe and economical way that provides a just transition for gas utility and extraction workers.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager establish an Existing Building Electrification Installation Incentives and Just Transition Program to invest in zero-carbon plumbing, HVAC, cooking, and related electrical system retrofits as follows, to be further defined by staff:

1. a preference first for assisting existing affordable housing buildings and assisting households at or below 120% of the Area Median Income such as:
  - a. transferees of residential property to include appliance retrofits and electrical upgrades as appropriate;
  - b. existing residential property owners and renters, especially tenants in income-restricted units, pursuing electrification retrofits or replacing broken or outdated appliances, to include electrical upgrades as appropriate.
  
2. a nexus with high-road jobs, including:
  - a. use of pre-qualified residential construction contractors to reliably perform high-quality work and provide high-road careers that meet minimum labor standards;
  - b. leveraging other local, regional, state or federal climate or energy efficiency incentives, such as building efficiency, to maximize climate benefits and to include other crafts, including but not limited to Sheet Metal, Electricians, Carpenters, Plumbers and Pipefitters;
  - c. linking Berkeley residents who are disadvantaged or disproportionately impacted by climate and environmental injustices to training programs (including apprenticeships) that prepare them to enter and succeed in union construction careers by working with local Multi-Craft Core Curriculum (MC3) workforce partners, school districts/community colleges and CBOs to develop and sustain a long-term pipeline of work in the residential building retrofit market with high-road labor standards.

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

BE IT FURTHER RESOLVED that any unexpended funds shall carry over from year to year consistent with the biannual budget process.


BE IT FURTHER AND FINALLY RESOLVED that copies of this Resolution and letters will be sent to members of the California Public Utilities and Energy Commissions, Governor Newsom, State Senator Skinner, and Assemblymember Wicks.

The foregoing Resolution was adopted by the Berkeley City Council on June 14, 2022 by the following vote:

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

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Kate Harrison, Mayor Pro Tempore

Attest:   
\_\_\_\_\_  
Rose Thomsen, Deputy City Clerk

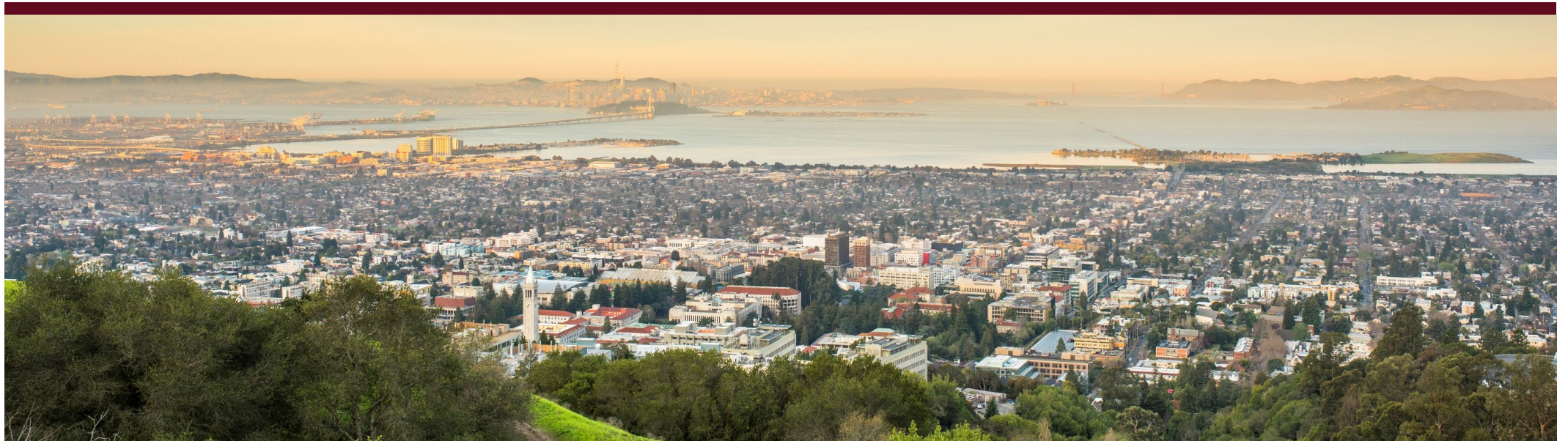




# Local Building Code Amendments

Environment and Climate Commission

September 28, 2022





# Building Code Adoption Process

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- **California Building Standards Code, Title 24, is updated every 3 years**
  - California Energy Code, Title 24, Part 6
  - California Green Building Standards Code (CALGreen), Title 24, Part 11
- **2022 Code becomes effective on January 1, 2023**
  - Local governments may adopt stricter code provisions if justified by findings of local climatic, geological, or topographical conditions
    - Energy Code amendments must also be cost-effective and approved by the California Energy Commission (CEC)
    - Local amendments must be filed with the Building Standards Commission





# 2019 Code Amendments

- **Included amendments to Energy Code, CALGreen & Mechanical Code**
  - Deep Green Building Initiative (City Council referral)
  - Declaration of Climate Emergency
  - Fossil Fuel Free City
- **Prohibition on Natural Gas Infrastructure in New Buildings**



Photo: Emilie Raguso



# Successes

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- **Prohibition on Natural Gas Infrastructure in New Buildings**
  - Inspired over 50 California communities to adopt all-electric new construction requirements
  - Recommended model for all-electric requirements in 2023
- **2019 Energy Code Amendments → 2022 Energy Code**
  - All-electric baseline: heat pump space heating for Climate Zone 3
  - Expands solar PV systems from single family & low-rise residential to solar and storage requirements at new nonresidential and multifamily buildings
  - Energy efficiency improvements
  - Electric readiness requirements for residential buildings



# Maintain and Strengthen

- **Prohibition on Natural Gas Infrastructure in New Buildings**
- **2022 Energy Code**
- **2022 Mechanical Code amendment**
  - Kitchen range hood sound ratings
- **2022 CALGreen amendments**
  - Construction & Demolition debris diversion
  - Low-carbon concrete
  - EV charging readiness and installation
- **New: Green Building Program Manager**



Image: MWA Architects



# 2022 Mechanical Code amendment proposal

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## Kitchen Range Hoods

- Amendment requires in residential units
  - 100 cfm or greater
  - 3 sones maximum sound rating
- Improves likelihood of range hood use, resulting in better air quality





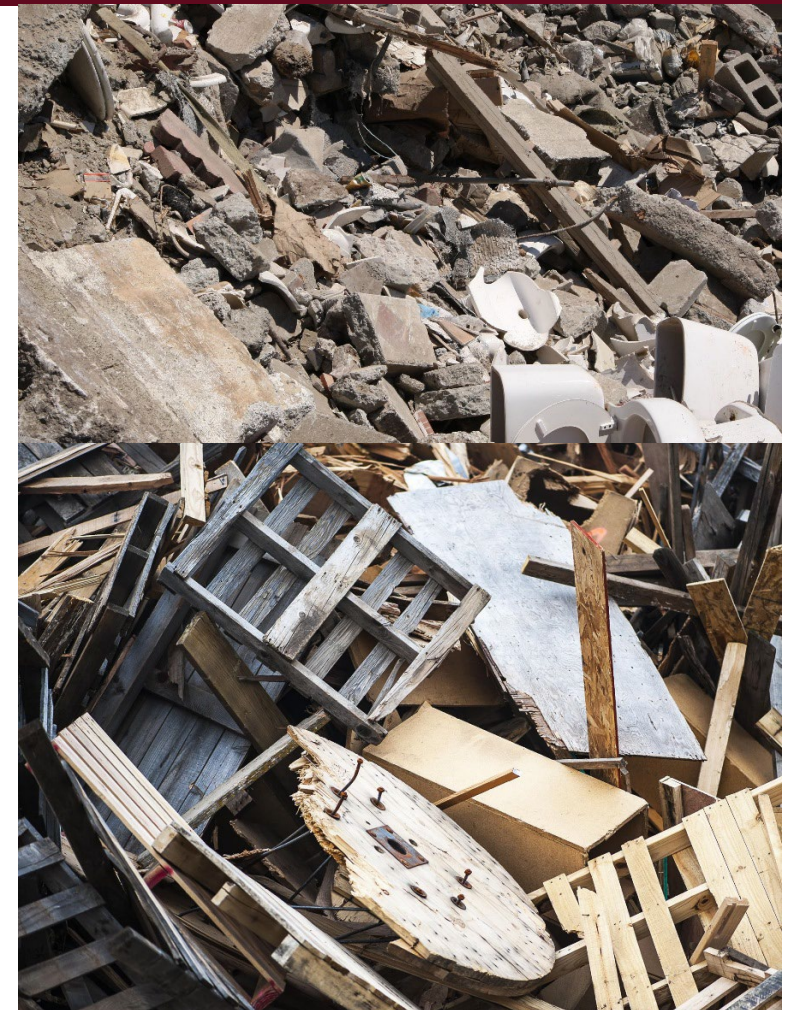


# 2022 CALGreen amendment proposal

## Construction and Demolition (C&D) Waste Management

- Diversion of at least 65% of nonhazardous C&D waste by recycling, reuse, and salvage
- 100% diversion of asphalt, concrete, and land-clearing debris (excavated trees, stumps, rocks, etc.)

**Note:** GreenHalo required for C&D tracking and reporting: [berkeley.wastetracking.com](https://berkeley.wastetracking.com)





# 2022 CALGreen amendment proposal

## Low-Carbon Concrete

- Reduce cement in concrete mix design by at least 25%
  - Cement alternatives include fly ash, slag, silica fume, rice hull ash, etc.
- Cement used in concrete is the single largest material source of embodied emissions in buildings, responsible for 8% of global emissions
- Replacing cement with alternatives can reduce total emissions for concrete by 50%

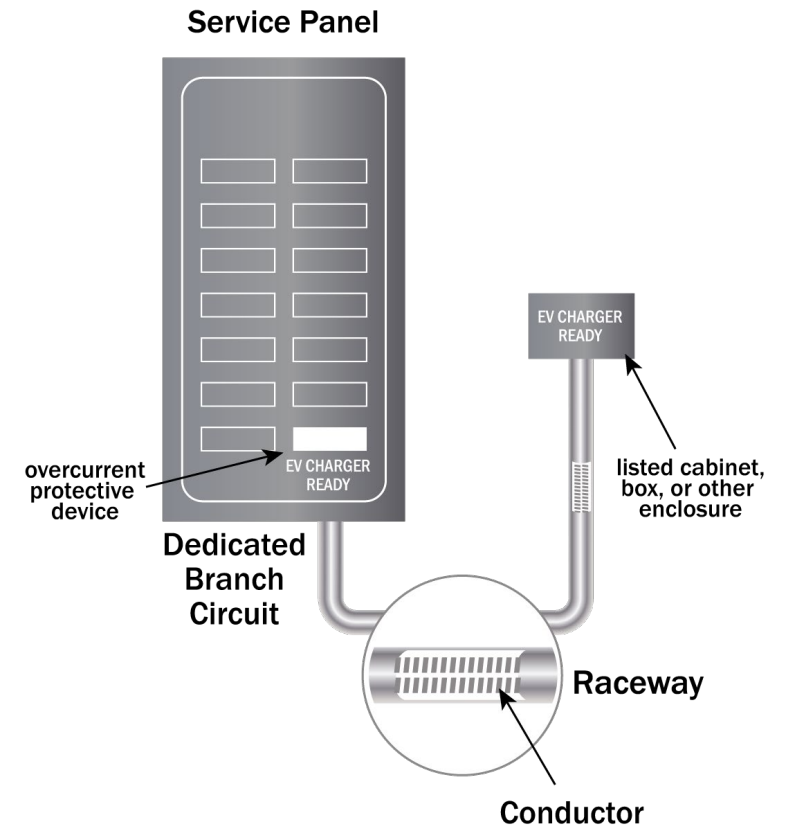




# 2022 CALGreen amendment proposal

## Electric Vehicle (EV) Charging

- Single-family homes, duplexes & townhomes
  - At least one parking space per dwelling unit (with on-site parking) must be equipped with raceway, wiring, and power to support a future Level 2 EV charging station



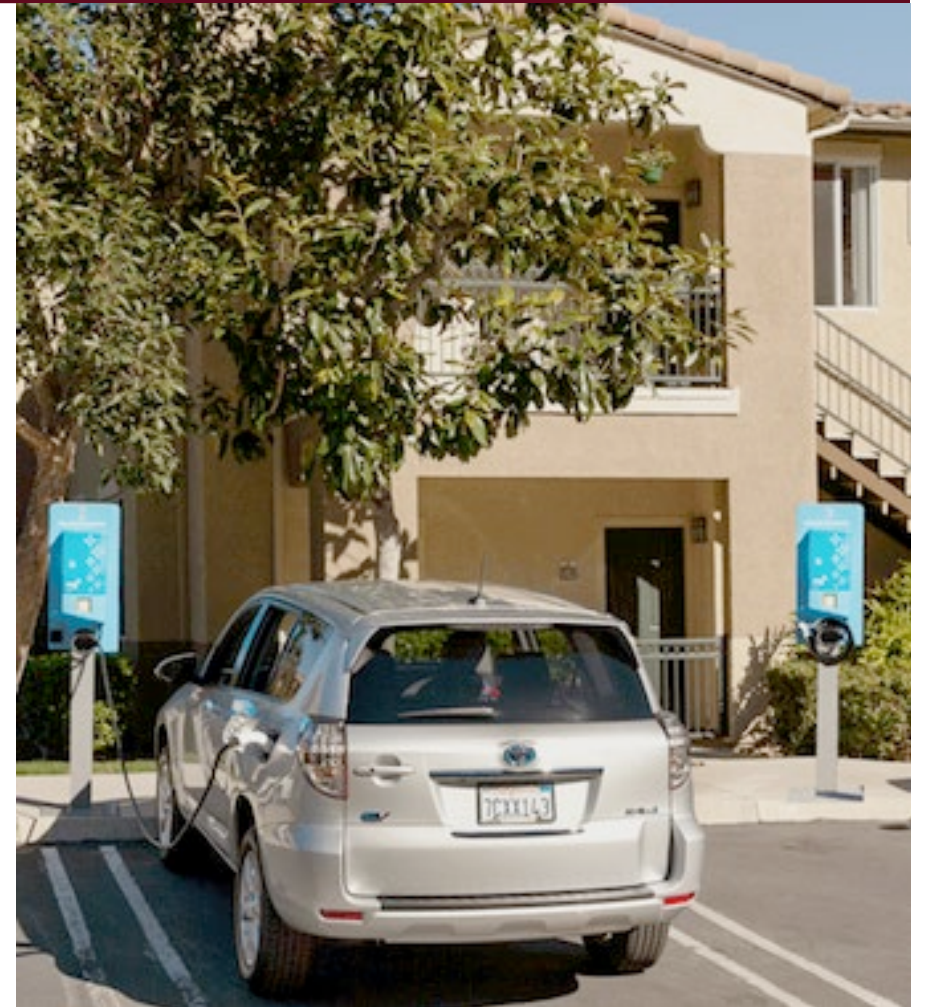




# 2022 CALGreen amendment proposal

## Electric Vehicle (EV) Charging

- Multifamily and Hotel/Motel Buildings
  - **5%** of parking spaces equipped with Level 2 charging stations
  - **20%** of parking spaces as EV Capable to support future Level 2 EV charging stations
  - 25% of parking spaces as EV Ready with low power Level 2 EV charging receptacles







# 2022 CALGreen amendment proposal

## Electric Vehicle (EV) Charging

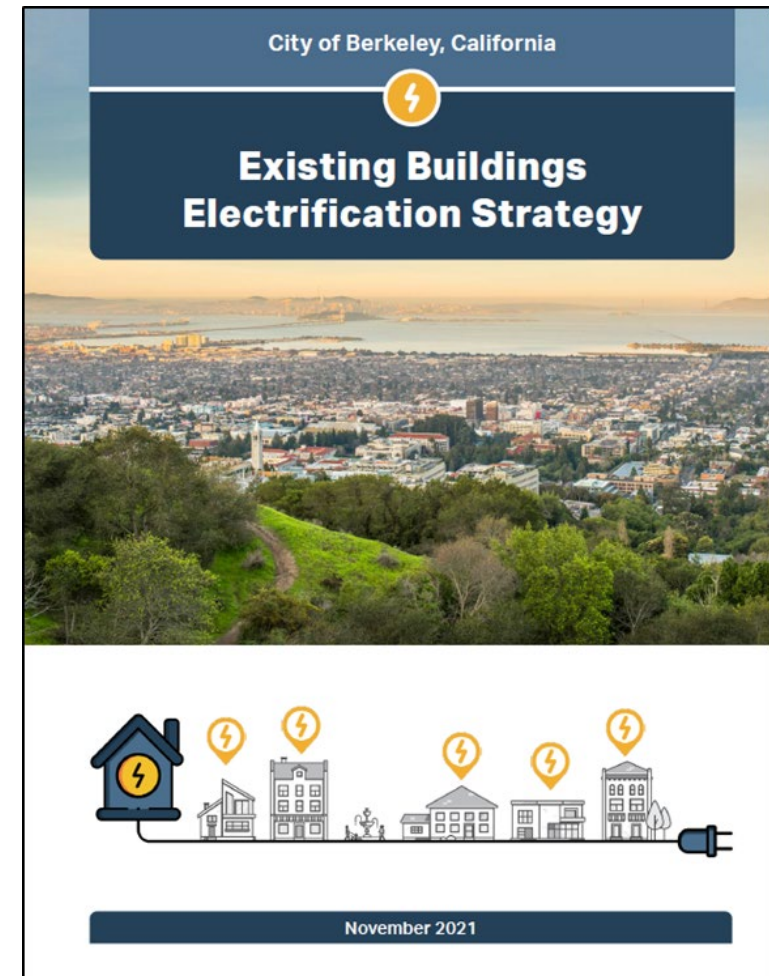
- Nonresidential Buildings
  - **10%** of parking spaces equipped with charging stations (Level 2 or DCFC)
  - **20%** of parking spaces as EV Capable to support future Level 2 EV charging stations





# Additional Opportunities to Advance Building Electrification

- Climate Equity Fund Pilot Projects
- Just Transition Healthy Home Electrification Pilot
- Berkeley Efficient & Resilient Multi-Use Showcase (BERMUS)
  - CEC Grant Award #EPC-21-029
- Natural Gas Prohibition
- Building Emissions Saving Ordinance







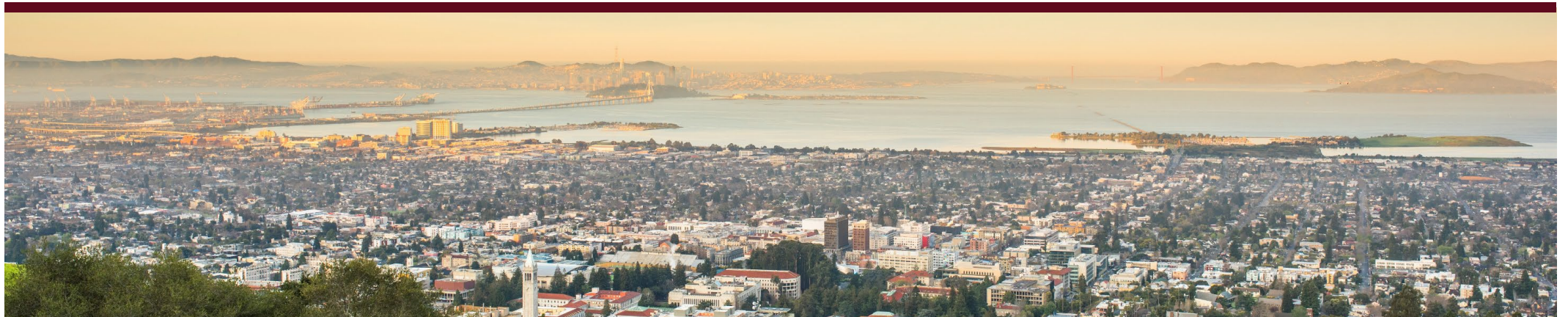
# Thank You!

## **Kurt Hurley**

Green Building Program Manager  
Building & Safety Division  
(510) 981-7501  
[khurley@CityofBerkeley.info](mailto:khurley@CityofBerkeley.info)

## **Sarah Moore**

Sustainability Program Manager  
Office of Energy & Sustainable Development  
(510) 981-7494  
[smoore@CityofBerkeley.info](mailto:smoore@CityofBerkeley.info)







Environment and Climate Commission

[Meeting Date (MM dd, yyyy)]

To: Honorable Mayor and Members of the City Council  
From: Environment and Climate Commission (ECC)  
Submitted by: Ben Gould, Chairperson, ECC  
Subject: Revisiting Old EC/CEAC Items

### RECOMMENDATION

Refer to the City Manager to prepare updates on the following items previously referred by the City Council:

- Gas Station CO<sub>2</sub> labeling
- Ban resale of used gas cars by 2040
- Lead paint initiatives

Request the City Manager to provide status reports on the above items within six months, if feasible.

### SUMMARY

Two previously approved referrals, and an approved companion report, for items from the Community Environmental Advisory Commission (CEAC) and Energy Commission (EC) (both ECC predecessor commissions) remain uncompleted. No update has been provided in the past two (or more) years, for any of these items, whether to Council, any Commissions, or the public.

### FISCAL IMPACTS OF RECOMMENDATION

Some staff time to complete existing referrals.

### BACKGROUND

#### *Fuel Station Warning Labels*

In June 2014, CEAC and EC referred to City council recommendations to require fueling stations (ie gas stations) to display warning labels on gas pumps, informing the public that burning gasoline emits CO<sub>2</sub>, a major contributor to climate change. In October 2014, Council referred the recommendation to staff for development and finalization.

While the referral was being finalized, the City became a defendant in the Supreme Court case *CTIA – The Wireless Association v. City of Berkeley, California*, centered on the City's recently adopted law requiring radiation warning labels at cell phone retailers. Because the gas station warning labels recommendation fell under a similar free speech

**Page 2 of 3**

issue, City staff – with the approval of City Council – held off on preparing gas station warning labels until the outcome of *CTIA v. City of Berkeley*.

*CTIA v. City of Berkeley* was resolved in December 2019, [in Berkeley's favor](#). The Supreme Court upheld existing case law allowing compelled speech “where the disclosure [is] reasonably related to a substantial government interest and [is] purely factual and uncontroversial.”

With *CTIA* resolved, the City Attorney's office should have returned a completed draft ordinance on gas station warning labels to the City Council for adoption. However, shortly following *CTIA*'s resolution, the coronavirus pandemic began, and staff time was necessarily reallocated.

As the city returns to normalcy, and as driving behavior has returned, the need for reducing gasoline consumption has returned as a pressing issue. No update has been provided to Council since at least 2019, if not longer.

***Ban Resale of Used Gas Cars by 2040***

In November 2019, CEAC passed a recommendation to the City Council proposing that the resale of used gas cars be prohibited within City limits beginning in 2040, to help encourage earlier adoption of zero-emission vehicles and discourage the purchase of new gas cars.

Shortly thereafter, the coronavirus pandemic began, and City Council and staff time was necessarily reallocated. In November 2020, the Facilities, Infrastructure, Transportation, Environment & Sustainability (FITES) committee made a positive recommendation to refer to the City Manager, and the item was adopted by City Council in December 2020.

The California Air Resources Board recently finalized the new Advanced Clean Cars II ruling, which will phase out the sale of *new* gas automobiles by 2035. However, *used* gas automobiles will remain on the road and in used for many years, if not decades, afterwards. Berkeley intends to meet the state's 2045 carbon neutrality goal early, but cannot do so with used gas cars driving around on city streets.

With the state clearly failing to take action to quickly remove gas cars from streets, the need for local action remains pressing. No update has been provided to City Council since this item's approval in 2020.

***Lead Paint Referral***

In April 2019, the City Council considered a CEAC recommendation on addressing lead paint, as well as a City Manager's companion report. Council ultimately adopted the City Manager's recommendations, referring to the City Manager to (among other things) coordinate with Alameda County Healthy Homes (ACHH) to explore options for sharing resources to support local extended enforcement, identify staff resources necessary to expand enforcement of lead paint violations, train City inspectors in lead paint safety,

**Page 3 of 3**

and enforce as needed. Under this referral, the City Manager anticipated providing updates to City Council in one year.

Just under one year later, the coronavirus pandemic began and staff time was necessarily reallocated. Since then, lead paint violations have remained a pervasive issue in Berkeley, with multiple residents calling in and posting publicly on social media about egregious and flagrant disregard by contractors for legal requirements around safe lead paint management practices. No update has been provided to City Council on this item since its 2019 adoption.

**ENVIRONMENTAL SUSTAINABILITY**

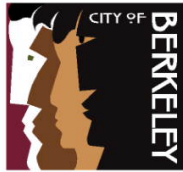
These projects will improve environmental sustainability and public health by discouraging the use of fossil fuels and fossil fuel-powered automobiles, and reducing environmental contamination of, and exposure to, lead paint.

**CONTACT PERSON**

Ben Gould, Chair, Environment and Climate Commission, 510-725-9176







Berkeley Energy Commission

ACTION CALENDAR  
November 18, 2014

To: Honorable Mayor and Members of the City Council  
From: Berkeley Energy Commission  
Submitted by: Neal De Snoo, Secretary, Berkeley Energy Commission  
Subject: Fuel Station Carbon Dioxide Labels

RECOMMENDATION

Adopt a Resolution directing the City Manager to prepare an ordinance requiring climate change labels at fuel dispensing facilities.

FISCAL IMPACTS OF RECOMMENDATION

The costs of this program are expected to be less than \$20,000 in the first year and considerably less thereafter and would be limited to staff time to develop the ordinance, procure and distribute the labels, monitor compliance, and enforce the ordinance, as well as the non-personnel costs for the design, production and mailing of the labels.

Although the City appears to have the legal authority to require labeling, it is highly likely that the Western States Petroleum Association would file a lawsuit. The cost of defending the lawsuit would either be borne by existing staff time or outside Counsel. In the event a court ruled against the City, damages are unknown but could be considerable.

CURRENT SITUATION AND ITS EFFECTS

In 2009, the City Council approved the City's Climate Action Plan (CAP), which aims to reduce GHG emissions by residents, businesses, and institutions in Berkeley. The CAP has a target of reducing emissions by 33% from 2000 levels by 2020. GHG emissions from transportation account for over 50% of GHG emissions in the City. Currently, the community is not on track to meet its 2020 GHG reduction goal for the transportation sector and more action is needed.

BACKGROUND

The non-profit organization 350.org ([www.350bayarea.org](http://www.350bayarea.org)) brought the concept of a warning label at fuel dispensing facilities to the Energy Commission and the Community Environmental Advisory Commission's (CEAC) attention. The CEAC passed a motion recommending the program. A subcommittee of the Energy Commission considered the issue and after careful consideration, the Energy Commission decided that it supports the development of such an ordinance.

Fuel Station Carbon Dioxide Labels

ACTION CALENDAR  
November 18, 2014

The Commission expressed some concerns about the efficacy of the proposal but on September 30, 2014 passed a motion in support of the attached resolution (Motion: Lee. Second: Constantine. Carried: 7-1. Ayes: Bernhardt, Constantine, Hurst, James, Lee, Murray, Wang. Nay: Schlachter). Commissioner Schlachter issued a dissenting opinion as Attachment 2.

#### ENVIRONMENTAL SUSTAINABILITY

Although the link between motorized vehicle use and GHG emissions is widely known, making this information available at the point of purchase is intended to contribute to behavioral changes to reduce motorized vehicle use, thus contributing helping to accomplish the CAP's goals and helping to mitigate impacts on climate. These labels are analogous to the health warnings placed on cigarettes.

#### RATIONALE FOR RECOMMENDATION

Although the Commission has concerns about the potential effectiveness of the ordinance it sees some potential for long-term behavior change, particularly if the ordinance can be implemented in coordination with existing City programs and efforts to reduce CO2 emissions, such as those implemented through the Climate Action Plan. The Commission also recommends that measurement tools be implemented as part of the program, such as pre and post surveys, to determine the efficacy of the labeling program.

#### ALTERNATIVE ACTIONS CONSIDERED

The Commission considered not supporting the initiative and taking no position on the issue.

#### CITY MANAGER

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

As noted above, the Western States Petroleum Association has threatened to file a lawsuit challenging this ordinance on the ground that it violates the First Amendment's prohibition against "compelled speech". This is an evolving theory under the First Amendment, The key principles are summarized below.

"The government may suppress commercial messages that do not accurately inform the public about lawful activity. The government may ban forms of communication more likely to deceive the public than to inform it, or commercial speech related to illegal activity." (*Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York* (1980) 447 U.S. 557, 563-64 [100 S.Ct. 2343, 2350, 65 L.Ed.2d 341], citations and footnote omitted.)

As an alternative to *prohibiting* misleading or deceptive speech, the government may require that such speech be accompanied by additional information that prevents it from being misleading or deceptive, as long as the additional information is reasonably

Fuel Station Carbon Dioxide Labels

ACTION CALENDAR  
November 18, 2014

related to the State's interest in preventing deception of consumers. (*Zauderer v. Office of Disciplinary Counsel of the Sup. Ct. of Ohio* (1985) 471 U.S. 626, 651 [105 S.Ct. 2265, 85 L.Ed.2d 652].)

In *Zauderer*, the Supreme Court relied on the distinction between a fact and a personal or political opinion to distinguish factual, commercial-speech disclosure requirements, to which courts apply a rational-basis rule, from the type of compelled speech on matters of opinion that is not permitted. (*Id.* at 650, citation omitted.) In distinguishing the regulation in *Zauderer* from those involving compelled speech, the Supreme Court stated, "Ohio has not attempted to 'prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.' The State has attempted only to prescribe what shall be orthodox in commercial advertising, and its prescription has taken the form of a requirement that appellant include in his advertising purely factual and uncontroversial information about the terms under which his services will be available." (*Id.* at 651.)

Since *Zauderer* was decided in 1985, lower courts have held that protection of the environment from pollutants (*National Elec. Mfrs. Ass'n v. Sorrell* (2<sup>nd</sup> Cir.2001) 272 F.3d 104, 113–14) and protection of public health and safety (*Discount Tobacco City & Lottery, Inc. v. U.S.* (6th Cir. 2012) 674 F.3d 509, 554 *cert. denied*, (U.S. 2013) [133 S.Ct. 1996, 185 L.Ed.2d 865]), were additional grounds for mandating disclosure of factual information in the context of commercial speech. As the U.S. District Court in San Francisco recently stated:

In the commercial marketplace, the First Amendment permits a government to require businesses to disclose accurate and uncontroversial facts as long as the disclosures are reasonably related to a governmental interest in preventing deception or in protecting public health and safety,

(*CTIA — The Wireless Association v. City and County of San Francisco* (N.D. CA 2011) 827 F.Supp.2d 1054, 1059, *aff'd.* (9<sup>th</sup> Cir. 2012) 494 Fed.Appx. 752

In sum, to "fit within the framework of *Zauderer*" a mandated disclosure or warning must be: (1) *factual*; and (2) reasonably related to a state interest that is recognized under *Zauderer* and its progeny.

The issue posed by the proposed ordinance is whether the specific message to be included on the climate change labels satisfies these legal requirements.

#### CONTACT PERSON

Neal De Snoo, Secretary, 981-7439

#### Attachments:

- 1: Resolution
- 2: Dissenting Opinion



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

GAS PUMP LABELING

WHEREAS, the State of California has determined that global warming caused by CO2 emissions poses a serious threat to the economic well-being, public health, natural resources and the environment of California; and

WHEREAS, gasoline consumption is the leading source of greenhouse gases in California and gas use is the largest component of a typical household's carbon footprint; and

WHEREAS, many Americans do not associate their own energy use with climate change and thus this connection must be made to move beyond awareness into understanding before individual action will be taken; and

WHEREAS, informational gas pump labels can be one tool toward increasing understanding of the link between driving, CO2 emissions and global warming and this understanding can help reduce greenhouse gas emissions.

NOW THEREFORE, BE IT RESOLVED that the Berkeley Energy Commission recommends that the Berkeley City Council request the City Manager to draft an ordinance to require climate change labels at fuel dispensing facilities, in compliance with applicable laws.

BE IT FURTHER RESOLVED that this labeling program should be implemented in coordination with existing City programs and efforts to reduce CO2 emissions, such as those implemented through the Climate Action Plan, and that measurement tools be implemented as part of the program, such as pre and post surveys, to determine the efficacy of the labeling program.

## **Fuel-Station Carbon-Dioxide Labels**

### **A minority dissenting opinion from the Berkeley Energy Commission**

The proposal to place climate-change labels on fuel-dispensing facilities in Berkeley is a well-meaning and sincere attempt to increase social awareness of the well-known link between combustion of gasoline and the release of carbon dioxide into the atmosphere.

There is considerable room for doubt as to whether this measure will change public awareness. Berkeley residents are generally well informed about the link between combustion of fossil fuel, release of carbon dioxide, and global climate change. The most likely result will be that the public ignores the labels, as is generally the case for similar labels--think Prop. 65. There is a possibility of an adverse reaction, as some citizens will no doubt not like being preached to when fueling their cars.

A bigger criticism is that the act of fueling a car is not generally a moment of choice, as it is a matter of either fueling the car or running out of gas. There is no other option possible at that moment. One cannot simply leave the SUV at the gas pump and drive away in a Prius. A better choice for labeling and information would be in automobile showrooms, where one is there to make a choice of vehicle, and the buyer might benefit from information or at least a reminder that a Volt may be a better choice than a Suburban, assuming price and utility needs could be met by either.

In fact not everyone is in a position to change vehicles, at least not in the short term. A new more-energy-efficient car may be too expensive or not meet the owner's needs. He/she may need a truck or large vehicle for work or to transport a large family. A driver may not be able to get to work on a bicycle or on public transportation. There are many reasons why guilt-induction (ignoring a warning or informative label) may not be appropriate to many poor or working-class people, or in fact to anyone who has a good reason for driving the vehicle they are driving.

Berkeley drivers may have a negative reaction to being lectured at the gas pump, and might choose to fill their tank in El Cerrito or Albany or Oakland, thus possibly reducing income for local businesses. The converse is unlikely, that a driver may choose to fill his/her tank in Berkeley just to be reminded of the link of gasoline with global climate change.

The *350bayarea* group presents, as an argument in favor of labeling, the labels on cigarette packages, "click-it-or-ticket" billboards for use of seat belts, alcohol consumption, and nutrition labels on packaged food. Their arguments are specious at best. There is no evidence which was presented that cigarette labels themselves are responsible or even contribute to the long-term trend of reduction of smoking in the US, even when the purchaser of a package of cigarettes can make the choice of leaving the point of sale without the cigarettes, unlike leaving the gas station without purchasing

gas. Additionally, smoking cigarettes damages the health of the individual, rather than is the case of global climate change, which affects everyone on the planet. Similarly, seat-belt-use ads contain a direct threat of issuance of a costly ticket, and the life you save may be your own. A consumer in a grocery store can choose organic granola rather than Sugar-Pops. Again there is a choice at the moment of selection, and the health improved is that of the purchaser and his/her family.

There are dozens or even hundreds of socially worthwhile causes, whose proponents will likely want to emulate gas-pump labels to promote their own favorite causes. Consider Coke/Pepsi machines, dispensing sugary drinks which contribute to obesity and eventually to the widespread incidence of diabetes in the US. Will Berkeley require warning labels on food-vending machines urging a healthy choice? At least one might opt for a healthier beverage at the point of sale, unlike the lack of choice at a filling station. How about requiring labels on mobile phones warning of the dangers of texting while driving? Signs in grocery and liquor stores warning that alcoholic beverages can lead to intoxication, drunk driving, and/or make a girl/woman vulnerable to rape or sexual assault in case of intoxication? The list is long, and it will be difficult to say no to any sincere well-meaning group once the Pandora's Box for fuel-dispensing labels is opened.

There is of course the risk of a lawsuit by gasoline companies, who are known to be litigious and who have deep pockets. Berkeley could end up spending a considerable sum defending a law suit, even if the City were to prevail. Look at the money being spent by the American Beverage Association opposing Measure D. Fear of law suits should not deter us from doing the right thing. The issue is whether a measure unlikely to have significant beneficial effect will be worth the price of a potential legal battle.

Summary: this is a well-meaning sincere proposal to do something which is unlikely to change behavior or awareness, and is likely to be ignored. Some people will react negatively to being preached to at a gas pump. And there is no choice at the point of sale, as filling the tank is the only option to get the driver and car home or to wherever is his/her destination. The risk of a costly legal battle to install labels of questionable value is not a prudent course of action for the City of Berkeley.

FS 30sept2014



**MINUTES**  
**BERKELEY CITY COUNCIL MEETING**  
**TUESDAY, NOVEMBER 18, 2014**  
**7:00 P.M.**

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

TOM BATES, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO  
DISTRICT 2 – DARRYL MOORE  
DISTRICT 3 – MAX ANDERSON  
DISTRICT 4 – JESSE ARREGUIN

DISTRICT 5 – LAURIE CAPITELLI  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – KRISS WORTHINGTON  
DISTRICT 8 – GORDON WOZNIAK

**Preliminary Matters**

**Roll Call:** 7:06 p.m.

**Present:** Councilmembers Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Mayor Bates.

**Absent:** None.

**Ceremonial Matters:**

1. Recognition of Sharon Kidd, BART Citizen Review Board Citizen of the Year
2. Recognition of Carl Anthony, Community Activist

**City Manager Comments:** None.

**Public Comment on Non-Agenda Matters:** 2 speakers.

**Public Comment on Consent Calendar and Information Items Only:** 5 speakers.

**Consent Calendar**

**Action:** M/S/C (Moore/Worthington) to adopt the Consent Calendar in one motion except as indicated.

**Vote:** All Ayes.

**1. Lease Agreement: Moe's Flowers at 2446 Durant Avenue**

**From:** City Manager

**Recommendation:** Adopt second reading of Ordinance No. 7,380-N.S. authorizing the City Manager to execute a lease agreement with Mohammad Mohayedj, dba Moe's Flowers, for an initial term of 5 years with an option to extend for two additional 5-year periods for the purpose of operating a retail flower store located at 2446 Durant Avenue in the Telegraph Channing Mall.

**First Reading Vote:** All Ayes.

**Financial Implications:** See report

Contact: Andrew Clough, Public Works, 981-6300

**Action:** Adopted second reading of Ordinance No. 7,380-N.S.

## Consent Calendar

- 2. Lease Agreement: Mohammad Mohayedji DBA Moe's Flowers for a Flower Stand and Storage Area at Telegraph Channing Mall**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,381-N.S. authorizing the City Manager to execute a lease agreement with Mohammad Mohayedj, dba Moe's Flowers Shop, for the purpose of operating a retail flower stand and storage area at Telegraph Channing Mall. The lease is for an initial term of 5 years with an option to extend for two additional 5-year periods.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Andrew Clough, Public Works, 981-6300  
**Action:** Adopted second reading of Ordinance No. 7,381-N.S.
- 3. Lease Agreement: Michelle's Yogurt & Sweets at 2430 Durant Avenue**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,382-N.S. authorizing the City Manager to execute a lease agreement with Charles Lee, dba Michelle's Yogurt & Sweets, for an initial term of 5 years with an option to extend for two additional 5-year periods, located at 2430 Durant Avenue in the Telegraph Channing Mall.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Andrew Clough, Public Works, 981-6300  
**Action:** Adopted second reading of Ordinance No. 7,382-N.S.
- 4. Modifying Findings in BMC Section 23E.16.040, Alcoholic Beverages**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,383-N.S. modifying the findings for Berkeley Municipal Code Section 23E.16.040, Alcoholic Beverages.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** None  
Contact: Eric Angstadt, Planning and Development, 981-7400  
**Action:** Adopted second reading of Ordinance No. 7,383-N.S.
- 5. Amendment: FY 2015 Annual Appropriations Ordinance**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance amending the FY 2015 Annual Appropriations Ordinance No. 7,357-N.S. for fiscal year 2015 based upon recommended re-appropriation of committed FY 2014 funding and other adjustments authorized since July 1, 2014, in the amount of \$52,984,910 (gross) and \$48,838,985 (net).  
**Financial Implications:** See report  
Contact: Teresa Berkeley-Simmons, Budget Manager, 981-7000  
**Action:** Adopted first reading of Ordinance No. 7,384-N.S. Second reading scheduled for December 9, 2014.

## Consent Calendar

- 6. Minutes for Approval**  
**From: City Manager**  
**Recommendation:** Approve the minutes for the Council meetings of October 7, 2014 (special and regular), October 21, 2014 (special and regular), and October 28, 2014 (special and regular).  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, 981-6900  
**Action:** Approved minutes as submitted.
- 7. Berkeley Tourism Business Improvement District Annual Report and Contract**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions:  
1. Approving the Annual Report and preliminary budget for the Berkeley Tourism Business Improvement District (BTBID) for FY 2015 as recommended by the BTBID Owners' Association.  
2. Authorizing the City Manager to execute a sole source contract and any amendments with the Berkeley Convention and Visitors' Bureau, d.b.a. Visit Berkeley, for \$248,212 of BTBID funds to support tourism marketing and promotion for the period of January 1, 2015 to June 30, 2015.  
**Financial Implications:** See report  
Contact: Michael Caplan, Economic Development, 981-7530  
**Action:** Adopted Resolution No. 66,837–N.S. (Annual Report) and Resolution No. 66,838–N.S. (Visit Berkeley)
- 8. Revision of BMC 20.64.020 Alterations of Nonconforming Signs**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance amending Berkeley Municipal Code Section 20.64.020 to allow for alterations of nonconforming signs in cases where such alterations may facilitate preservation and maintenance.  
**Financial Implications:** See report  
Contact: Michael Caplan, Economic Development, 981-7530  
**Action:** Adopted first reading of Ordinance No. 7,385–N.S. Second reading scheduled for December 9, 2014.
- 9. Formal Bid Solicitation and Request for Proposal Scheduled for Possible Issuance After Council Approval on November 18, 2014**  
**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 - \$3,415,000  
Contact: Christine Daniel, Finance, 981-7300  
**Action:** Approved recommendation.

## Consent Calendar

10. **Contract: First Alarm Security and Patrol, Inc. dba: First Security Services (FSS) for Citywide Security Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with First Security Services to provide Security services at various City locations and facilities for an amount not to exceed \$1,297,110 for the period of January 1, 2015 through June 30, 2017 with the option to extend for two additional 1 year periods for a total of 5 years for a total not to exceed \$2,334,798 subject to the City's annual budget appropriation process.  
**Financial Implications:** Various Funds - \$2,334,798  
Contact: Henry Oyekanmi, Finance, 981-7300  
**Action:** Adopted Resolution No. 66,839–N.S. amended to change “5 years” to “4.5 years” in the Resolved clause.
11. **Contract: Freitas Landscape and Maintenance for Public and Private Property Abatement Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to enter into a three year contract with Freitas Landscape and Maintenance for the period of December 1, 2014 to November 30, 2017, in an amount not to exceed \$15,000 for necessary abatement services related to public nuisance and/or an immediate and severe health hazard as determined by the Environmental Health Division.  
**Financial Implications:** Various Funds - \$15,000  
Contact: Jane Micallef, Health, Housing and Community Services, 981-5400  
**Action:** Adopted Resolution No. 66,840–N.S.
12. **Contracts: Alameda County Housing and Community Development Department and Dorothy Day House for Winter Homeless Shelter Programs**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions authorizing the City Manager to execute resultant contracts and amendments with:  
1. Alameda County Housing and Community Development Department (ACHCD) in the amount of \$60,000 to augment an existing contract with Bay Area Community Services (BACS) to expand outreach and engagement, case management and housing navigation services tied to clients served through the North County inclement weather homeless response ("North County Housing Connect Project"); and  
2. Dorothy Day House (DDH) in the amount of \$13,895 for expanded bed capacity at the Berkeley Emergency Storm Shelter (BESS).  
**Financial Implications:** See report  
Contact: Jane Micallef, Health, Housing and Community Services, 981-5400  
**Action:** Adopted Resolution No. 66,841–N.S. (ACHCD) and Resolution No. 66,842–N.S. (DDH)

## Consent Calendar

- 13. Donation: Trust Gift from Ms. Muriel Minnis from the Leona M. Brown Revocable Trust**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting a \$31,530 trust donation to the South Berkeley Senior Center for trips from Ms. Muriel Minnis and the Leona M. Brown Revocable Trust.  
**Financial Implications:** \$31,530.23 (Donation)  
Contact: Jane Micallef, Health, Housing and Community Services, 981-5400  
**Action:** Adopted Resolution No. 66,843–N.S.
- 14. Oxford Retail - BEDI Loan Modifications**  
**From: City Manager**  
**Recommendation:** Direct the City Manager to prepare and execute an amendment to the City's Brownfields Economic Development Initiative (BEDI) loan to the Oxford Plaza and David Brower Center projects which retroactively reduces the loan's interest rate to 0%.  
**Financial Implications:** See report  
Contact: Jane Micallef, Health, Housing and Community Services, 981-5400  
**Action:** Approved recommendation.
- 15. Grant Application: America's Promise Alliance for a GradNation Community Summit Grant**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to apply to the America's Promise Alliance for a GradNation Community Summit grant for up to \$15,000 to convene a summit in FY 2015.  
**Financial Implications:** \$15,000 (Revenue)  
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700  
**Action:** Adopted Resolution No. 66,844–N.S.
- 16. Funding Agreement: Priority Development Area (PDA) Planning Grant for Adeline Corridor and South Shattuck**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a funding agreement and any amendments with the Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) and accepting the \$750,000 Priority Development Area (PDA) grant award from Cycle Six of the PDA Planning Program for the period of January 2015 to June 2017.  
**Financial Implications:** See report  
Contact: Eric Angstadt, Planning and Development, 981-7400  
**Action:** Adopted Resolution No. 66,845–N.S.

## Consent Calendar

- 17. Contract: MIG for Professional Planning Services for the Adeline Corridor Specific Plan**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manger to execute a contract and any amendments with MIG to perform professional planning services for the Adeline Corridor Specific Plan for an amount not to exceed \$750,000 for the period January 1, 2015 to June 30, 2017.  
**Financial Implications:** See report  
Contact: Eric Angstadt, Planning and Development, 981-7400  
**Action:** Adopted Resolution No. 66,846–N.S.
- 18. Contract: Ecology Center for Community Choice Aggregation Outreach and Education**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a sole source contract with the Ecology Center for the period from January 1, 2015 through December 31, 2015 in the amount of \$8,600 for education and outreach related to community choice aggregation.  
**Financial Implications:** See report  
Contact: Eric Angstadt, Planning and Development, 981-7400  
**Action:** Adopted Resolution No. 66,847–N.S.
- 19. Mills Act Contracts: 2506 Dwight Way, 2501 Telegraph Avenue, and 2509 Telegraph Avenue**  
**From: City Manager**  
**Recommendation:** Adopt three Resolutions directing the City Manager to enter into Mills Act contracts for the properties located at 2506 Dwight Way, 2501 Telegraph Avenue, and 2509 Telegraph Avenue.  
**Financial Implications:** See report  
Contact: Eric Angstadt, Planning and Development, 981-7400  
**Action:** Adopted Resolution No. 66,848–N.S. (2506 Dwight); Resolution No. 66,849–N.S. (2501 Telegraph); and Resolution No. 66,850–N.S. (2509 Telegraph)
- 20. Revenue Grant: Urban Areas Security Initiative Grant Program (UASI) to Fund Acquisition of Specially Equipped Panel Van**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to apply for and accept a grant, and any amendments, from the Department of Homeland Security Bay Area Urban Areas Security Initiative (UASI) Grant Program in the amount of \$149,000, to fund the purchase of a Panel Van equipped with internal ballistic-grade steel panels, and ballistic grade windows.  
**Financial Implications:** See report  
Contact: Michael Meehan, Police, 981-5900  
**Action:** Moved to Action Calendar. 8 speakers. M/S/C (Capitelli/Arreguin) to adopt Resolution No. 66,851–N.S. authorizing the City Manager to apply for and accept a grant, and any amendments, from the Department of Homeland Security Bay Area Urban Areas Security Initiative (UASI) Grant Program in the amount of \$149,000, to fund the purchase of a Panel Van equipped with internal ballistic-grade steel panels, and ballistic grade windows.



## Consent Calendar

**Vote:** All Ayes.

- 21. Lease Agreement: University Copy Service at 2425 Channing Way**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement with Choonghoon Lim and Dongwook Rhim dba University Copy Service, for an initial term of 5 years with an option to extend for 2 additional 5-year periods, located at 2425 Channing Way in the Telegraph Channing Mall.  
**Financial Implications:** See report  
Contact: Andrew Clough, Public Works, 981-6300  
**Action:** Adopted first reading of Ordinance No. 7,386–N.S. Second reading scheduled for December 9, 2014.
- 22. Contract No. 9555 Amendment: Traffic Development Services for Electronic Traffic Calming Devices Replacement Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9555 with Traffic Development Services for the Electronic Traffic Calming Devices Replacement Project, increasing the contract amount by an additional \$21,743 for a total contract amount not to exceed \$200,000.  
**Financial Implications:** Special Gas Tax Improvement Fund - \$21,743  
Contact: Andrew Clough, Public Works, 981-6300  
**Action:** Adopted Resolution No. 66,852–N.S.
- 23. Expansion of Medical Cannabis Cultivation Beyond the Manufacturing (M) District**  
**From: Medical Cannabis Commission**  
**Recommendation:** Request the Planning Commission consider amending the Zoning Ordinance to allow for medical cannabis cultivation in zoning districts beyond the Manufacturing (M) District.  
**Financial Implications:** See report  
Contact: Elizabeth Greene, Commission Secretary, 981-7400  
**Action:** Moved to Action Calendar. 1 speaker. M/S/C (Worthington/Moore) to request the Planning Commission consider amending the Zoning Ordinance to allow for medical cannabis cultivation in zoning districts beyond the Manufacturing (M) District and give consideration to the MUR district and impacts on residential areas..  
**Vote:** All Ayes.
- 24. Leave of Absence Request for Cameron Silverberg**  
**From: Mental Health Commission**  
**Recommendation:** Approve a leave of absence for Cameron Silverberg from the Mental Health Commission for the period January 1, 2015 through March 31, 2015.  
**Financial Implications:** None  
Contact: Carol Patterson, Commission Secretary, 981-5100  
**Action:** Approved recommendation.

## Council Consent Items

25. **Referral to the Commission of the Status of Women: Letter of Support for the Work of Anita Sarkeesian**  
**From: Councilmembers Maio and Wengraf**  
**Recommendation:** Refer the issue to the Commission of the Status of Women of sending a letter of support to Anita Sarkeesian's organization Feminist Frequency, in support of her work, and her campaign against misogyny and the harassment of women.  
**Financial Implications:** Staff time  
Contact: Linda Maio, Councilmember, District 1, 981-7110  
**Action:** Approved recommendation.
26. **Urge the Federal Government to Provide Additional Aid to Stem Ebola Outbreak**  
**From: Councilmember Moore**  
**Recommendation:** Adopt a Resolution urging President Obama and Congress to provide additional foreign aid to West African countries to contain the current Ebola outbreak.  
**Financial Implications:** None  
Contact: Darryl Moore, Councilmember, District 2, 981-7120  
**Action:** Adopted Resolution No. 66,853–N.S.
27. **Refer \$3,000 to the FY 2015/2016 Budget Process for a Security Camera System for Berkeley Youth Alternatives**  
**From: Councilmember Moore**  
**Recommendation:** Refer \$3,000 to the FY 2015/2016 budget process for a security camera system for Berkeley Youth Alternatives.  
**Financial Implications:** \$3,000  
Contact: Darryl Moore, Councilmember, District 2, 981-7120  
**Action:** Approved recommendation.
28. **Refer \$25,000 to the FY 2015/2016 and FY 2016/17 Biennial Budget Process, \$50,000 Total, to Continue K to College Service in Berkeley**  
**From: Councilmember Moore**  
**Recommendation:** Refers the following to the budget process: A request for \$25,000 for each year of the FY 2015/2016 and FY 2016/2017 biennial budget, a total of \$50,000, for continued service of K to College in Berkeley.  
**Financial Implications:** \$25,000  
Contact: Darryl Moore, Councilmember, District 2, 981-7120  
**Action:** Approved recommendation.

**29. Measure D Panel of Experts**

**From: Councilmembers Capitelli and Maio**

**Recommendation:**

1. The Mayor to establish a subcommittee of three Councilmembers to draft application for membership to a Panel of Experts. Two members of the Healthy Children's Coalition shall advise the council subcommittee.
2. This recommendation is conditioned upon the passage of measure D on the November 4, 2014 ballot.

**Financial Implications:** Minimal

Contact: Laurie Capitelli, Councilmember, District 5, 981-7150

**Action:** Moved to Action Calendar. 3 speakers. M/S/C (Capitelli/Maio) to approve the recommendation amended to specify a subcommittee of four Councilmembers.

**Vote:** All Ayes.

**30. City Manager Referral: Implement the PayByPhone Parking Technology as Used by San Francisco and UC Berkeley**

**From: Councilmembers Worthington and Wozniak**

**Recommendation:** Refer to the City Manager to examine the feasibility of implementing the PayByPhone parking technology as used by the City of San Francisco and UC Berkeley.

**Financial Implications:** \$1,500

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

**Action:** Approved recommendation.

**Action Calendar – Appeals**

**31. Appeal: Imposition of Lien; Maxaco LLC, Property Owner of 3049 Adeline/1909 Essex Street, Berkeley CA**

**From: City Manager**

**Recommendation:** Conduct a hearing and, upon its conclusion, adopt a Resolution rejecting the property owner's objection to the \$26,600 in administrative fines issued for failure to comply with Notices of Violation and Orders to Correct dated January 7, 2013 and January 16, 2013 at 3049 Adeline / 1909 Essex Street and allowing the special assessment lien to be recorded as written.

**Financial Implications:** See report

Contact: Eric Angstadt, Planning and Development, 981-7400

**Action:** Moved to Consent Calendar and held over to January 27, 2015.

## Action Calendar – Appeals

**32. Appeal: Imposition of Liens to Recover Housing Code Enforcement Fees at 2243 and 2245 Ashby Avenue**

**From: City Manager**

**Recommendation:** Conduct a hearing and, upon its conclusion, adopt a Resolution denying the appeal of Dominion Associates LLC, owned by Kariv & Martha Zafrir (owner) and rejecting the objection to the proposed liens of \$22,175 for unpaid Housing Code Enforcement (HCE) re-inspection fees and costs associated with the enforcement of housing code violations at the rental property located at 2243 and 2245 Ashby Avenue (APN 052-1580-013-00), and approving the special assessment liens on the property to be filed with the County of Alameda in order to collect the outstanding debt.

**Financial Implications:** See report

Contact: Eric Angstadt, Planning and Development, 981-7400

**Action:** 0 speakers. M/S/C (Bates/Wozniak) to adopt Resolution No. 66,854–N.S. denying the appeal of Dominion Associates LLC, owned by Kariv & Martha Zafrir (owner) and rejecting the objection to the proposed liens of \$22,175 for unpaid Housing Code Enforcement (HCE) re-inspection fees and costs associated with the enforcement of housing code violations at the rental property located at 2243 and 2245 Ashby Avenue (APN 052-1580-013-00), and approving the special assessment liens on the property to be filed with the County of Alameda in order to collect the outstanding debt.

**Vote:** Ayes – Moore, Anderson, Arreguin, Capitelli, Wengraf, Worthington, Wozniak, Bates; Noes – None; Abstain – None; Absent – Maio.

Councilmember Maio absent 8:40 p.m. – 8:47 p.m.

## Action Calendar – Public Hearing

**33. Public Hearing and Levying of Assessments in the Elmwood Business Improvement District for 2015**

**From: City Manager**

**Recommendation:** Conduct a public hearing and, upon conclusion, adopt a Resolution confirming the Annual Report and Budget for the Elmwood Business Improvement District (hereafter, "the District", "the Elmwood BID" or "the BID") for 2015 and, if no majority protest exists, levy annual assessments in the District for calendar year 2015 to finance services and improvements and authorize a fiscal agency contract with Elmwood Business Association for receipt and expenditure of District funds.

**Financial Implications:** See report

Contact: Michael Caplan, Economic Development, 981-7530

**Public Testimony:** The Mayor opened the public hearing. 1 speakers.

M/S/C (Moore/Wengraf) to close the public hearing.

**Vote:** Ayes – Moore, Anderson, Arreguin, Wengraf, Worthington, Wozniak, Bates; Noes – None; Abstain – None; Absent – Maio, Capitelli (recused).

## Action Calendar – Public Hearing

**Action:** M/S/C (Worthington/Moore) to adopt Resolution No. 66,855–N.S. confirming the Annual Report and Budget for the Elmwood Business Improvement District (hereafter, "the District", "the Elmwood BID" or "the BID") for 2015 and, if no majority protest exists, levy annual assessments in the District for calendar year 2015 to finance services and improvements and authorize a fiscal agency contract with Elmwood Business Association for receipt and expenditure of District funds.

**Vote:** Ayes – Moore, Anderson, Arreguin, Wengraf, Worthington, Wozniak, Bates; Noes – None; Abstain – None; Absent – Maio, Capitelli (recused).

### 34. Public Hearing and Levying of Assessments in the Solano Avenue Business Improvement District for 2015

**From:** City Manager

**Recommendation:** Conduct a public hearing and, upon conclusion, adopt a Resolution confirming the Annual Report and Budget for the Solano Avenue Business Improvement District (hereafter, "the District", "the Solano BID" or "the BID") for 2015 and, if no majority protest exists, levy annual assessments in the District for calendar year 2015 to finance services and improvements and authorize a fiscal agency contract with Livable Berkeley for receipt and expenditure of District funds.

**Financial Implications:** See report

Contact: Michael Caplan, Economic Development, 981-7530

**Public Testimony:** The Mayor opened the public hearing. 0 speakers.

M/S/C (Anderson/Worthington) to close the public hearing.

**Vote:** Ayes – Moore, Anderson, Arreguin, Capitelli, Wengraf, Worthington, Wozniak, Bates; Noes – None; Abstain – None; Absent – Maio.

**Action:** M/S/C (Moore/Worthington) to adopt Resolution No. 66,856–N.S. confirming the Annual Report and Budget for the Solano Avenue Business Improvement District (hereafter, "the District", "the Solano BID" or "the BID") for 2015 and, if no majority protest exists, levy annual assessments in the District for calendar year 2015 to finance services and improvements and authorize a fiscal agency contract with Livable Berkeley for receipt and expenditure of District funds.

**Vote:** Ayes – Moore, Anderson, Arreguin, Capitelli, Wengraf, Worthington, Wozniak, Bates; Noes – None; Abstain – None; Absent – Maio.

### 35. Fees for Medical Cannabis Dispensary Applications

**From:** City Manager

**Recommendation:** Conduct a public hearing and upon conclusion, adopt a Resolution establishing two separate fees: 1. A graduated fee schedule for Medical Cannabis Dispensary applications ranging from \$878 for Round 1, \$2,948 for consideration in Round 2, and \$2,948 for consideration in Round 3. An additional fee of \$2,000 would be required in Round 2 for each additional location submitted with an application; and 2. A fee of \$71 for the Police Department review of the Live Scan criminal record reports.

**Financial Implications:** See report

Contact: Eric Angstadt, Planning and Development, 981-7400

## Action Calendar – Public Hearing

**Public Testimony:** The Mayor opened the public hearing. 1 speakers.  
M/S/C (Moore/Anderson) to close the public hearing.  
**Vote:** All Ayes.

**Action:** M/S/C (Moore/Worthington) to adopt Resolution No. 66,857–N.S. establishing two separate fees: 1. A graduated fee schedule for Medical Cannabis Dispensary applications ranging from \$878 for Round 1, \$2,948 for consideration in Round 2, and \$2,948 for consideration in Round 3. An additional fee of \$2,000 would be required in Round 2 for each additional location submitted with an application; and 2. A fee of \$71 for the Police Department review of the Live Scan criminal record reports.  
**Vote:** All Ayes.

**36. Extend Residential Preferential Parking Permit Program on Four Streets  
From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion, adopt a Resolution amending Sections 25E and 25L of Resolution No. 56,508-N.S. by adding subsections to extend Residential Preferential Permit Parking on four (4) streets.

**Financial Implications:** General Fund - \$3,341  
Contact: Andrew Clough, Public Works, 981-6300

**Public Testimony:** The Mayor opened the public hearing. 0 speakers.  
M/S/C (Capitelli/Worthington) to close the public hearing.  
**Vote:** All Ayes.

**Action:** M/S/C (Worthington/Capitelli) to adopt Resolution No. 66,858–N.S. amending Sections 25E and 25L of Resolution No. 56,508-N.S. by adding subsections to extend Residential Preferential Permit Parking on four (4) streets.  
**Vote:** All Ayes.

## Action Calendar – Old Business

**37. City Manager Referral: Cell Phone Ordinance Referral to City Manager  
(Continued from October 28, 2014)**

**From: Councilmember Anderson**

**Recommendation:** Refer to City Manager for the creation of an ordinance to have cell phone retailers give to consumers who purchase a phone, a factual, informational handout referring the user to their cell phone manufacturers' disclosure regarding the recommended separation distance for use against the body.

**Financial Implications:** See report  
Contact: Max Anderson, Councilmember, District 3, 981-7130

**Action:** M/S/C (Worthington/Wengraf) to accept revised material from Councilmember Maio on Item 37.

**Vote:** Ayes – Maio, Moore, Anderson, Capitelli, Wengraf, Worthington, Wozniak, Bates; Noes – None; Abstain – None; Absent – Arreguin.



## Action Calendar – Old Business

Councilmember Arreguin absent 8:51 p.m. – 8:53 p.m.

**Action:** 29 speakers. M/S/Failed (Bates/Wengraf) to refer to the City Attorney and Professor Lessig to draft language that is more positive in nature taking into to consideration the language proposed by Councilmember Maio and Councilmember Anderson.

**Vote:** Ayes – Maio, Wengraf, Bates; Noes – Worthington; Abstain – Moore, Anderson, Arreguin, Capitelli, Wozniak.

**Action:** M/S/C (Anderson/Worthington) to refer the items from Councilmember Anderson and Councilmember Maio to the City Attorney to confer with Professor Lessig on drafting the ordinance and disclosure language that is the most defensible and effective as possible.

**Vote:** Ayes – Maio, Moore, Anderson, Arreguin, Capitelli, Wengraf, Worthington; Noes – Wozniak, Bates.

**38. Replace the Residential and Commercial Energy Conservation Ordinances, BMC Chapters 19.16 and 19.72, with a Building Energy Saving Ordinance, BMC Chapter 19.81**

**From:** Energy Commission

**Recommendation:**

1. Adopt first reading of an Ordinance repealing the Residential and Commercial Energy Conservation Ordinances (RECO and CECO), BMC Chapters 19.16 and 19.72, and adding the Building Energy Saving Ordinance, BMC Chapter 19.81.
2. Direct the City Manager to establish incentives for energy efficiency improvements equivalent to one-third of the property transfer tax, but no more than \$3,000 per building, to encourage improvements in residential buildings.

**Financial Implications:** See report

Contact: Neal DeSnoo, Commission Secretary, 981-7400

**Action:** 0 speakers. M/S/C (Capitelli/Worthington) to:

1. Adopt first reading of Ordinance No. 7,387–N.S. amended to change “April” to “May” in Section 19.81.050.C. Second reading scheduled for December 16, 2014.
2. Direct the City Manager to establish incentives for energy efficiency improvements equivalent to one-third of the property transfer tax, but no more than \$3,000 per building, to encourage improvements in residential buildings.

**Vote:** All Ayes.

**39. a. Update of the 5-Year Street Paving Plan for FY 2016**

**From:** Public Works Commission

**Recommendation:** Adopt a Resolution updating the City's 5-Year Street Paving Plan for FY 2016, including two new areas of green infrastructure.

**Financial Implications:** See report

Contact: Sean Rose, Commission Secretary, 981-6300

## Action Calendar – New Business

### b. City Repaving Plan and Green Infrastructure

**From: Community Environmental Advisory Commission**

**Recommendation:** Require the Department of Public Works to install an equivalent to one or more green infrastructure elements in every block of street that receives a paving or reconstruction treatment, except for minor repairs and slurry seals, beginning in 2016. Exceptions for streets where green infrastructure installations are infeasible shall require approval of the Public Works Commission as part of its approval of the five year paving plan.

**Financial Implications:** See report

Contact: Nabil Al-Hadithy, Commission Secretary, 981-7400

**Action:** M/S/C (Bates/Maio) to suspend the rules and extend to meeting to 11:30pm.

**Vote:** All Ayes.

**Action:** M/S/Failed (Worthington/Arreguin) to adopt 39.a. and 39.b. amended to delete "block of" and change "2016" to "2017".

**Vote:** Ayes – Anderson, Arreguin, Worthington; Noes – Wengraf, Bates; Abstain – Maio, Moore, Capitelli, Wozniak.

**Action:** 4 speakers. M/S/C (Wengraf/Moore) to adopt Resolution No. 66,859-N.S. updating the City's 5-Year Street Paving Plan for FY 2016, including two new areas of green infrastructure.

**Vote:** All Ayes.

### 40. a. Fuel Station Carbon Dioxide Labels

**From: Community Environmental Advisory Commission**

**Recommendation:** Request that the City Manager draft an ordinance within the next three months, enforceable under Berkeley Codes, to require climate change labels at fuel dispensing facilities, in compliance with applicable laws. The draft ordinance should be submitted to Community Environmental Advisory Commission and Energy Commission for review.

**Financial Implications:** See report

Contact: Nabil Al-Hadithy, Commission Secretary, 981-7400

### b. Fuel Station Carbon Dioxide Labels

**From: Energy Commission**

**Recommendation:** Adopt a Resolution directing the City Manager to prepare an ordinance requiring climate change labels at fuel dispensing facilities.

**Financial Implications:** See report

Contact: Neal DeSnoo, Commission Secretary, 981-7400

**Action:** M/S/C (Bates/Maio) to suspend the rules and extend to meeting to 11:45pm.

**Vote:** Ayes – Maio, Anderson, Arreguin, Capitelli, Worthington, Wozniak, Bates; Noes – Moore, Wengraf.

## Action Calendar – New Business

**Action:** 12 speakers. M/S/C (Capitelli/Worthington) to:

1. Adopt items 40.a. and 40.b. directing the City Manager to prepare an ordinance requiring climate change labels at fuel dispensing facilities and submit the draft ordinance to the commissions for review.
2. Review the implementation of the ordinance in one year.
3. Direct the Community Environmental Advisory Commission and the Energy Commission to explore the idea of climate change labels at the point of sale of automobiles.

**Vote:** Ayes – Maio, Moore, Anderson, Arreguin, Capitelli, Worthington, Bates; Noes – Wengraf, Wozniak.

### 41. a. Centralize Services for Homeless Transition Age Youth

**From:** Homeless Commission

**Recommendation:** Adopt a Resolution directing the City Manager to issue a Request For Proposals (RFP) for a centralized transition-age youth center, proposals to be submitted with other applications for funding for homeless services during the December 2014 funding cycle. The RFP should state that substantial consideration should be given to applicants qualified to provide services to transition-age youth who provide evidence of measurable outcomes.

**Financial Implications:** See report

Contact: Andrew Wicker, Commission Secretary, 981-5400

### b. Centralize Services for Transition Age Youth

**From:** City Manager

**Recommendation:** Incorporate services for transition age youth (TAY) between the ages of 18 – 25 into the proposed Housing Crisis Resolution Center which was identified following a comprehensive analysis of current homeless services provided in Berkeley.

**Financial Implications:** See report

Contact: Jane Micallef, Health, Housing and Community Services, 981-5400

**Action:** Item held over to December 9, 2014.

## Council Action Items

### 42. Future Development of the 4th Street Area

**From:** Councilmembers Maio and Capitelli

**Recommendation:** Request that the Planning Commission return to Council with possible options to ensure that future development of the 4th Street area is harmonious with the successful existing retail district.

**Financial Implications:** Staff time

Contact: Linda Maio, Councilmember, District 1, 981-7110

**Action:** Moved to Consent Calendar. Approved recommendation.

## Information Reports

43. **FY 2014 Year End Review and FY 2015 First Quarter Review**  
**From: City Manager**  
Contact: Teresa Berkeley-Simmons, Budget Manager, 981-7000  
**Action:** Received and filed.
44. **Condominium Conversion Program - Annual Report**  
**From: City Manager**  
Contact: Jane Micallef, Health, Housing and Community Services, 981-5400  
**Action:** Received and filed.
45. **Open Data Portal (ODP) Pilot: December 15, 2014 - June 30, 2015**  
**From: City Manager**  
Contact: Donna LaSala, Information Technology, 981-6500  
**Action:** Received and filed.
46. **LPC-NOD: 2503, 2509, 2511 Regent Street**  
**From: City Manager**  
Contact: Eric Angstadt, Planning and Development, 981-7400  
**Action:** Received and filed.
47. **LPC-NOD: 1861-1877 Solano Avenue**  
**From: City Manager**  
Contact: Eric Angstadt, Planning and Development, 981-7400  
**Action:** Received and filed.
48. **LPC-NOD: 1025 Ashby Avenue**  
**From: City Manager**  
Contact: Eric Angstadt, Planning and Development, 981-7400  
**Action:** Received and filed.

**Public Comment – Items Not Listed on the Agenda – 1 speakers.**

## Adjournment

Adjourned at 11:45 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the regular meeting of November 18, 2014 as approved by the Berkeley City Council.

  
\_\_\_\_\_  
Mark Numainville, CMC, City Clerk

## **Communications**

### **Item 18: Contract: Ecology Center for Community Choice Aggregation Outreach and Education**

1. Erica Etelson
2. Asa Kamer
3. Amy Kiser, on behalf of the Ecology Center

### **Item 38: Replace the Residential and Commercial Energy Conservation Ordinances, BMC Chapters 19.16 and 19.72, with a Building Energy Saving Ordinance, BMC Chapter 19.81**

4. Erica Etelson

### **Item 40: Fuel Station Carbon Dioxide Labels**

5. James Brooks

### **Ebola**

6. Sybil Hatch

### **Disaster Preparedness**

7. Antone Braga

### **Measure S Arguments**

8. League of Women Voters of Berkeley, Albany and Emeryville

### **CNA Newsletter**

9. Ted Edlin

### **Smokefree Ordinance**

10. Carol Denney

### **Public Health Division Health Priorities**

11. Community Health Commission

### **Taser Usage**

12. Community Health Commission

## **Supplemental Communications and Reports 1**

### **Item 20: Revenue Grant: Urban Areas Security Initiative Grant Program (UASI) to Fund Acquisition of Specially Equipped Panel Van**

13. Police Review Commission

### **Item 36: Extend Residential Preferential Parking Permit Program on Four Streets**

14. Glenn Alex

## **Supplemental Communications and Reports 2**

### **Item 29: Measure D Panel of Experts**

15. Poki Namkung

### **Item 37: City Manager Referral: Cell Phone Ordinance Referral to City Manager**

16. Phoebe Sorgen
17. Mandy Lee, on behalf of the California Retailers Association
18. Berkeley Citizens Action Steering Committee
19. Cynthia Franklin

## **Supplemental Communications and Reports 2**

### **Item 38: Replace the Residential and Commercial Energy Conservation Ordinances, BMC Chapters 19.16 and 19.72, with a Building Energy Saving Ordinance, BMC Chapter 19.81**

20. Nancy Bickel, on behalf of the League of Women Voters Berkeley, Albany, Emeryville

### **Item 39: Update of the 5-Year Street Paving Plan for FY 2016**

21. Ann-Marie Hogan

### **Item 40: Fuel Station Carbon Dioxide Labels**

22. Gabriela Mota

23. Catherine Reheis-Boyd, on behalf of the Western States Petroleum Association

## **Supplemental Communications and Reports 3**

### **Item 18: Contract: Ecology Center for Community Choice Aggregation Outreach and Education**

24. Jack Chai

### **Item 23: Expansion of Medical Cannabis Cultivation Beyond the Manufacturing (M) District**

25. Presentation, submitted by the Medical Cannabis Commission

### **Item 37: City Manager Referral: Cell Phone Ordinance Referral to City Manager**

26. Gerard Keegan, on behalf of CTIA-The Wireless Association

27. Linda Maio, District 1

28. Joel Maskowitz

29. Lisa Bailey

30. Traci Frantz

31. John West

32. Dmitri Belser

33. Unknown

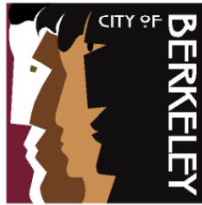
### **Item 40: Fuel Station Carbon Dioxide Labels**

34. Unknown (2)

### **Policy Issues**

35. Mansour Id-Deen, on behalf of the Berkeley NAACP





Community Environmental  
Advisory Commission

CONSENT CALENDAR  
December 15, 2020

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

RECOMMENDATION

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

POLICY COMMITTEE

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

SUMMARY

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

FISCAL IMPACTS OF RECOMMENDATION

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

CURRENT SITUATION AND ITS EFFECTS

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

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

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

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

#### BACKGROUND

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

#### ENVIRONMENTAL SUSTAINABILITY

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

#### CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

#### RATIONALE FOR RECOMMENDATION

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



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

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

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

#### ALTERNATIVE ACTIONS CONSIDERED

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

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

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

#### CITY MANAGER

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

#### CONTACT PERSON

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

#### Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

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

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

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

**Chapter 9.97**  
**RESALE OF USED COMBUSTION VEHICLES**

**Sections:**

<b>9.97.010</b>	<b>Findings</b>
<b>9.97.020</b>	<b>Purpose</b>
<b>9.97.030</b>	<b>Definitions</b>
<b>9.97.040</b>	<b>Prohibition</b>
<b>9.97.050</b>	<b>Exemptions</b>

9.97.010 Findings

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

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

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

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

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

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

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



9.97.020 Purpose

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

9.97.030 Definitions

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

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

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

9.97.040 Prohibition

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

9.97.050 Exemption

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



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## Consent Calendar

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

**From: Community Environmental Advisory Commission**

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

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

**Financial Implications:** See report

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

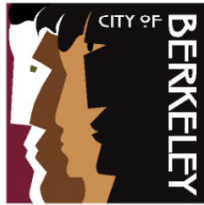
**Action:** Approved the recommendation of the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee with the referral modified to provide two options of the ordinance: 1) as proposed by the policy committee, and 2) with the proposed additions below:

1. *Replace the word "vehicle" with "passenger vehicle" throughout the Resolution*
2. *Add a section that requires that all purchasers of combustion passenger vehicles in Berkeley be notified of this regulation at point of sale starting 60 days after the passage of this ordinance. (request that Legal craft the language to be used in the disclosure)*
3. *In 0.97.030 Definitions, include "Passenger Vehicle" shall be used as defined in California Vehicle Code 465*
4. *In Section, 9.97.040 Prohibition, clarify that exceptions shall include sales for trade-in and for sales as scrap metal.*

Tuesday, December 15, 2020 ANNOTATED AGENDA Page 11

Item 10d - Discussion and Action Items  
Environment and Climate Commission  
September 28, 2022





Office of the City Manager

ACTION CALENDAR  
April 2, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Timothy Burroughs, Director, Planning and Development  
Kelly Wallace, Interim Director, Health, Housing, and Community Services  
Subject: Companion Report: Effective Enforcement of Safe Lead-Paint Practices

RECOMMENDATION

Based on the intent of the recommendation from the Community Environmental Advisory Commission (CEAC) for the City to expand enforcement of unsafe lead paint practices, refer to the City Manager to:

- Coordinate with the Alameda County Healthy Homes Program to clearly identify roles and responsibilities for expanding enforcement of unsafe lead practices, and to explore options for sharing resources that can support expanded local enforcement;
- Identify what resources, staff capacity, and program structure would be required to expand City enforcement of unsafe lead practices;
- Continue current work to educate building permit applicants and contractors about safe lead paint practices; train and certify all City of Berkeley Building and Housing Inspectors in lead paint safety; respond to, investigate, and enforce safe lead paint practices as needed; and administer the Public Health Division's Childhood Lead Poisoning Prevention Program; and
- Provide an update to City Council within one-year that identifies progress and next steps for expanding enforcement of unsafe lead practices

FISCAL IMPACTS OF RECOMMENDATION

Adopting the recommendation in the City Manager's companion report would not result in any immediate fiscal impacts, but may ultimately result in a need for additional resources in order to expand enforcement of unsafe lead practices. One of the objectives of the City Manager's recommendation is to identify what additional resources will be required, and to identify potential sources of those additional funds and technical assistance. Expanded enforcement and other related efforts are not possible without additional resources.

CURRENT SITUATION AND ITS EFFECTS

CEAC's recommendation is that the City Manager develop ordinances to add safe lead paint practice requirements to the Berkeley Municipal Code (BMC) to facilitate City



enforcement of those requirements, and to authorize the recovery of City costs and imposition of penalties for violations, which CEAC asserts would result in a net savings to the City.

Staff from the Planning Director's Office, the Building and Safety Division and Toxics Management Division, the Public Health and Environmental Health Divisions of HHCS, the Public Works Department, and the City Attorney's Office met several times to consider CEAC's recommendations and possible next steps. There was consensus that it is critical to protect Berkeley community members, particularly children, from the harmful effects of lead paint chips entering the environment. The challenge is identifying and securing the resources that would be required to expand and continually improve enforcement, outreach, and education.

The City already has authority under state law and the BMC to conduct enforcement of unsafe lead practices. Next steps are to determine resources and to refine City protocols for responding to reports of potential violations.

**CURRENT AUTHORITY TO ENFORCE AND LIMITATIONS TO ENFORCEMENT:**

Enforcement Authority Under State Law

State law provides the City with broad authority to require abatement of lead paint hazards and punish unsafe lead handling practices. The State Housing Law makes it unlawful for any dwelling unit to contain "lead hazards," which are defined to include "deteriorated lead-based paint, lead-contaminated dust, lead-contaminated soil, or disturbing lead-based paint without containment." (Health & Safety Code, § 17920.10.) Statue Housing Law expressly authorizes city building and health departments to enforce its provisions and further authorizes cities to designate a department or office to carry out enforcement of the statute. (*Id.*, §§ 17960, 17961, 17964.)

The Housing Law provides that the City may issue notices to abate violations within 30 days, or within a shorter period of time if "deemed necessary by the enforcement agency to prevent or remedy an immediate threat to the health and safety of the public or occupants of the structure." (Health & Safety Code, § 17980.) The City may also seek to enjoin violations of the Housing Law in court and seek court orders to abate violations of the statute. (*Id.*, §§ 17980-17982.) Violations of the Housing Law may also be prosecuted as a misdemeanor. (*Id.*, § 17995.)

Similarly, state legislation implementing the federal Residential Lead-Based Paint Hazard Reduction Act charges the State Department of Health Services with enforcement authority, which can then be delegated to the local "health department, environmental agency, housing department, or building department of any city, county, or city and county." (Health & Safety Code, § 10520, 105251(c).) Among other things, the statute requires certification for lead abatement work, and prohibits construction work "on any residential or public building in a manner that creates a lead hazard." (*Id.*,



§§ 105254-105255.) The Residential Lead-Based Paint Hazard Reduction Act authorizes the State Department of Health Services or the local enforcement agency to issue administrative orders to abate lead hazards and makes the violation of such an order an infraction punishable by a fine not to exceed \$1,000 per violation. (*Id.*, § 105256.)

#### Enforcement Authority Under BMC

Under the BMC, the Environmental Health Division, the Health Officer, the Building and Safety Division, and the centralized Code Enforcement Unit have authority to seek abatement of lead paint hazards under various City ordinances as well as the authority to seek abatement of lead paint hazards as a nuisance. (See, e.g., BMC § 11.36.020.E [Environmental Health Code, designating the “keeping of any building . . . which on account of its dilapidated condition . . . may endanger the life or health of residents therein” as a health and safety hazard subject to abatement]; BMC § 13.79.060.C.7 [tenant protection provisions requiring landlords to perform repairs to minimize exposure to lead paint]; BMC Chapter 19.40 [Berkeley Housing Code defining nuisance as “whatever is dangerous to human life or detrimental to health, as determined by the health officer; whatever renders air . . . unwholesome or detrimental to the health of human beings, as determined by the health officer].) These provisions can be enforced through abatement orders and the City’s existing administrative citation process. In addition, the City Attorney is authorized to initiate civil actions to abate public nuisances attributable to lead based hazards. (BMC §§ 1.26.010-.020.)

#### City of Emeryville Approach

CEAC recommends that Berkeley adopt an ordinance based on one used in the City of Emeryville, which adopted its Lead-Safe Renovation, Repair and Painting (RRP) Ordinance 17-004 on May 2, 2017. The Emeryville ordinance requires that any contractor working on a structure which falls under the federal Lead-Based Paint Poisoning Prevention In Certain Residential Structures requirements (40 CFR §745.82) submits a statement under penalty of perjury, including a valid RRP certificate number, that they are properly trained and certified, and will comply with safe lead-based paint practices. In this respect Emeryville’s practices match those used in Berkeley, but cite federal rather than state requirements.

In Emeryville as in Berkeley, however, no permit is required for the majority of painting activities. Painting, sanding, surface restoration, and similar maintenance-based repair activities do not require City permits. Further, many permits are issued to property owners acting as “owner-builders;” such owner-builder permits are also exempt from California State Licensing Board requirements and from EPA Lead Safe RRP certification requirements.

When Emeryville staff observe a possible violation of safe paint practice requirements, they generally refer the matter to the state for follow-up enforcement.

Role of Alameda County Healthy Homes Program

The Alameda County Healthy Homes Program has funding for education and testing, through an annual fee of \$10 on all residential dwellings built before 1978. Berkeley was one of the first cities to participate in Healthy Homes, which is governed by a Joint Powers Authority (JPA). Berkeley's representative on the JPA is Councilmember Wengraf.

Despite collecting annual fees from Berkeley homeowners, Healthy Homes largely does not deploy its education and testing capacity in the City, as Berkeley receives funding from the state to support its own Childhood Lead Poisoning Prevention Program, in the Public Health Division.

More generally, throughout Alameda County the program provides customized allergen reduction services and minor home repairs to improve ventilation, in-home educational visits to reinforce asthma trigger reduction and injury prevention, lead-hazard control services, and assistance with other housing-related issues that impact health. Through the *No Cost Lead Paint Repair Funds* program, property owners in Alameda County can apply to receive funding to address lead hazards (qualification based on tenant's household income).

In the past, the Healthy Homes Program provided in-home consultations to identify lead hazards in the homes of Alameda County residents, including Berkeley residents. With reductions in funding in recent years, they have decreased capacity to provide this service.

Further, while in the past Alameda County Healthy Homes Program assisted the City of Berkeley in enforcement activities pertaining to unsafe lead work practices, it no longer enforces against such violations.

CURRENT RESOURCES, STAFFING, AND APPROACH TO ENFORCEMENT

The City currently works in numerous ways to promote safe lead paint practices and compliance with regulations, and to investigate alleged violations.

Planning's Building and Safety Division educates every permit applicant about lead safe work practices with flyers and guides titled "Regulations on Lead," "Lead Safe During Renovation," and "Renovate Right," and by affixing stamps to all construction drawings which notify applicants of their legal responsibility for following Renovation, Repair and Painting certification practices. At permit issuance applicants are required to sign a Lead Hazard Declaration, under penalty of perjury, confirming that they understand their responsibility to implement lead-safe work practices and that that any paint disturbing activities are to be performed by or supervised by RRP certified individuals. All City Building Inspectors have attended lead safety training and received RRP certification. When violations of safe lead paint practices are observed on permitted projects by



Building or Housing Inspectors, they issue Notices of Correction to require immediate redress of any issues. All City Housing Inspectors are also RRP certified and inspect for lead safe work practices during the housing compliance inspections.

Despite these efforts, Building and Safety staff note that the RRP certification requirement is no guarantee that safe practices are actually used on the job site. Many of the largest cases of unsafe practices observed in Berkeley in recent years occurred on projects where contractors held proper certifications yet chose not to utilize the more costly safe lead paint practices.

Planning's Toxics Management Division (TMD) responds to allegations of unsafe lead paint practices, including on projects which do not require building permits (which are the majority of house painting projects). When TMD staff observe potential lead paint contamination, the painting contractor is required to provide proof of current RRP certification, and if the contractor lacks certification they are informed that paint removal must cease. Paint chips are assumed to be leaded if a home was built before 1978. The site is inspected for visible signs of paint chip contamination and, if paint chips are found, the contractor will be instructed to immediately collect all paint chips and then to properly dispose of lead containing paint chips at the Alameda County Household Hazardous Waste collection location. The contractor must also provide disposal records. After the contractor cleans the site TMD staff do a follow-up site inspection to ensure the site is free of paint debris and the contractor is continuing to follow proper RRP requirements for any further painting activities.

The City of Berkeley Public Health Division's Childhood Lead Poisoning Prevention Program (CLPPP) provides education and outreach to community members and service providers supporting children, consultations for families who are concerned with their child's blood lead level, and public health nursing case management for children whose blood lead level falls within the California Department of Public Health's defined case range (over 5 micrograms per deciliter of blood, or lower levels if found in very young children or those in publicly funded programs for low income clients). Berkeley's CLPPP also coordinates with Alameda County Healthy Homes on lead education efforts such as the *No Cost Lead Paint Repair Funds* and community outreach efforts. For families that qualify for nursing case management services, an in-home consultation is conducted during the intake process. This includes an environmental visual review for issues that could negatively impact the health of the child and family members such as flaking and peeling paint in a house built before 1978. Education and referrals are provided when health and safety concerns are identified through the visit. Referrals to City of Berkeley programs have included the Rent Stabilization Board, the Rental Housing Safety Program, and TMD.

The City of Berkeley's approach to Code Enforcement is designed to encourage voluntary compliance, working with homeowners to address violations by making consistent progress in a financially feasible manner. Berkeley has consciously chosen

not to pursue a more punitive approach, because it is itself costly to administer and usually does not result in costs being fully recovered. Further, the burdens from a more punitive approach tend also to fall hardest on long-time and/or older homeowners who are least able to afford them. This explains why the City so rarely pursues nuisance penalties already available under the Municipal Code, as it largely proves counter-productive to the goal of achieving cooperative compliance.

### **PROPOSED NEXT STEPS**

Staff does not recommend drafting and adopting the two ordinances proposed by CEAC. The City already has authority to enforce lead paint requirements, and to levy fines and penalties as described above.

However, CEAC is correct that additional work is required to clearly articulate roles and responsibilities within the City for responding to concerns regarding unsafe lead practices and providing ongoing outreach and education. Additional resources are also required if enforcement and other activities are to be expanded. Here are two examples to further illustrate this point:

- While the Planning Department's Building and Safety Division regularly enforces safe practice requirements on projects with building permits, such projects represent a small fraction of maintenance-based house painting and similar repair work throughout the City. Additional efforts are required to address painting projects that are not subject to building permits.
- While the Planning Department's Toxics Management Division and the City's Public Health Division also respond to complaints regarding unsafe lead practices, neither division has sufficient resources or staff capacity to expand existing efforts.

Coordination with the County's Healthy Homes Program and discussions of the use of its Berkeley-specific resources must also be included in the development of an effective, comprehensive approach. Since cost-recovery through fines and penalties is not a practical method of funding comprehensive City enforcement work, a more thorough examination of staffing, costs and program structure would be required, as well as identification of an adequate revenue source.

### **BACKGROUND**

At its meeting of April 25, 2017, the City Council reviewed a proposal from CEAC to expand City enforcement of unsafe lead paint practices, particularly in households where children reside. The City Manager's April 25, 2017 companion report recommended a presentation to the City Council in coordination with the Alameda County Healthy Homes Programs to help educate Council and the community on existing efforts and potential next steps.



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Companion Report: Effective Enforcement of Safe Lead-Paint Practices

ACTION CALENDAR  
April 2, 2019

On July 18, 2017, the City Council convened a Worksession at which Healthy Homes, CEAC, and City staff were represented. Council expressed the need for the City and partners to identify opportunities for improved coordination and enforcement.

The March 26, 2019 CEAC recommendations and this companion report from the City Manager represent an effort to make progress toward identifying the necessary coordination and resources to expand enforcement of unsafe lead practices.

ENVIRONMENTAL SUSTAINABILITY

The recommendation is consistent with the City's environmental sustainability goals.

RATIONALE FOR RECOMMENDATION

The City already has authority to enforce lead paint practices under the various regulations cited above, so no new ordinance would be required.

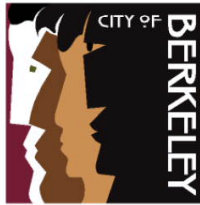
The City Manager's recommendation would set in motion steps to improve and clarify coordination with the Healthy Homes Program, identify resources and next steps required to expand enforcement and other activities, and return to Council with an update within one year.

CONTACT PERSON

Timothy Burroughs, Director, Planning and Development Department, 510-981-7437  
Kelly Wallace, Interim Director, Health, Housing, and Community Services Department, 510-981-5107

Attachment 1: CEAC lead paint report, April 25, 2017

Attachment 2: City Manager lead paint Companion Report, April 25, 2017



Community Environmental Advisory Committee

ACTION CALENDAR  
April 25, 2017

To: Honorable Mayor and Members of the City Council  
From: Community Environmental Advisory Commission (CEAC)  
Submitted by: Michael Goldhaber, Chairperson, CEAC  
Subject: Berkeley Lead Poison Prevention and Control

RECOMMENDATION

Direct the City Manager to:

1. Implement an enforcement program as authorized by the state for lead paint hazards, at least when either:
  - a. A child under the age of four<sup>1</sup> occupies the residence or other building where lead paint hazard reduction practices are required; or
  - b. When a risk of soil contamination occurs as a result of failure to follow appropriate lead paint hazard reduction practices, including during remodels and demolition; and
2. Evaluate the program after one year of implementation and present the findings to the Community Environmental Advisory Commission, including total cost of the program, total value of fines enforced, and recent history of reported lead paint violations.<sup>2</sup>

SUMMARY

Lead is a very serious, permanently-damaging neurotoxin, especially for growing brains. Lead paint, banned federally only in 1978, is up to 60% pure lead. Most Berkeley housing was built before the ban. The city should enforce state standards for the proper treatment of lead paint so as to keep children safe. At present, Berkeley does not.

FISCAL IMPACTS OF RECOMMENDATION

Staff time to implement and evaluate program and costs related to enforcement. Penalties may offset some costs. In addition, CEAC would like to point out an example that Berkeley could follow:

The lead enforcement ordinance enacted by the City of San Diego implements a re-inspection fee, allowing the enforcer to assess a fee when re-inspecting a

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<sup>1</sup> A typical age for children to spend most of their play time outside the home and to be less likely to ingest dirt.

<sup>2</sup> In 2004, the City received a grant from the California Department of Health Services, Childhood Lead Poisoning Prevention Branch for funds to enforce lead hazard reduction compliance through June 30, 2006. In 2012, the City of Berkeley again received a grant to prevent and address lead hazards from unsafe renovations in Berkeley. The City of Berkeley has recognized how important lead hazard abatement is and previously applied for and received a grant for lead hazard enforcement.



building to determine compliance. Moreover, fees can be included in building permits and demolition/removal permits for the purpose of cost recovery.

#### CURRENT SITUATION AND ITS EFFECTS

At present, purely out of fiscal concerns, the City does not enforce State requirements to deal with existing lead paint in such a way as to mitigate possible harms. It is known that painters, even those trained and certified, do not always comply with the rules regarding lead. An unknown number of members of sensitive groups are therefore very likely exposed and can suffer permanent, possibly severe damage.

#### BACKGROUND

As recent national scandals remind us, such as in Flint, Michigan, lead is a neurotoxin and carcinogen that is harmful to everyone, especially infants, preschool children, and pregnant women. Even small amounts of lead can impact a child's learning ability, physical growth, and cause other long term issues. Aside from the tragic damage to children who are exposed to lead, the societal costs of lead poisoning are far from negligible. Although Oakland, California did not receive extensive media coverage, the lead contamination in some of its neighborhoods is far worse than that of Flint, Michigan.<sup>3</sup>

In 1978, lead was banned nationally in house paint, leaving 85% of Berkeley's current housing stock, which was built pre-1970, very likely to have lead. Lead paint, which is as much as 60% pure lead, remains in many older buildings; improper removal creates a lead hazard as defined by California Health and Safety Code §17920.<sup>4</sup>

State and Federal codes provide proper and safe procedures to remove lead paint and reduce exposure; these procedures help in reducing the release of lead paint dust or chips into living space and soils where children are at a high risk of being exposed to lead. California HSC 105255(c) authorizes the local enforcement agency to issue a cease and desist order if a lead hazard is determined to exist. Failure to comply with such an order is punishable with a fine not to exceed \$1,000. The local enforcement agency may also order the property owner to abate the lead hazard. Failure to comply is punishable with a fine not to exceed \$1,000. Subsequent violations are a misdemeanor punishable by \$5,000 fine or imprisonment for not more than 6 months. However, **there is currently no enforcement in the City of Berkeley** to ensure proper procedures are taken by workers, whether the workers even know about the procedures, or if the procedures are completely ignored, nor is there any type of recourse for those who report it.

In 2003, Senate Bill (SB) 460 took effect in California, amending State Housing Laws regarding lead hazards and enabling local jurisdictions to use any enforcement

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<sup>3</sup> Nathan McClintock, "Assessing soil lead contamination at multiple scales in Oakland, California: Implications for urban agriculture and environmental justice" Department of Geography, 507 McCone Hall, #4740, University of California, Berkeley, CA 94720, USA, 2012.

<sup>4</sup> Lead hazards are defined as a potential substandard building condition in California Department of Housing and Community Development Codes (California Health & Safety Code §17920.10). However, this designation of substandard-building condition should not be used as a reason to evict residents from their housing.

department to enforce the law. Local jurisdiction has not yet been exercised. Instead, residents continue to get ill from lead poisoning, as a dispute transpires between the city and state in regards to whose responsibility it is to enforce the law.

In 2004, the CEAC supported a staff report to the City Manager proposing a reduced enforcement plan for lead paint (Attachment 1). The City determined the economic environment were not conducive to initiating the program. In 2008 the CEAC evaluated the Alameda County Lead Poison Prevention Program (ACLPPP) and wrote the report intended for City Council (Attachment 2). The ACLPPP objected to the City Manager about the findings of the CEAC report. The CEAC report found the ACLPPP started as a successful program but due to underfunding, it had become ineffectual. The CEAC report did not go to Council. On October 13, 2015, the CEAC submitted a report to Council requesting a reduced lead paint enforcement program. The accompanying staff report recommended that CEAC review the county lead paint program and that Council should take no action at the time. The Council referred the report to the Agenda Committee for future scheduling.

The City of Berkeley Permit Service Center stamps all building permits that have plans with an electronic stamp that states:

*“Lead Hazard Warning: Due to the possible presence of lead-based paint, leadsafe work practices are required by law for all repairs that disturb paint in pre-1979 buildings. Failure to do so could create lead hazards that violate California Health and Safety Code, Sections 17920.10 and 105256 with potential fines for violations up to \$5,000 (Section [d] amended) or imprisonment for not more than 6 months in the county jail or both. For more information, visit [www.aclppp.org](http://www.aclppp.org)”*

Although the City is a member of a joint powers Lead Abatement District (LAD), the district has no enforcement powers, since it is funded by parcel fees, not taxes, and fees may not be used for enforcement. LAD correctly assumes that enforcement powers are within the authority of its member agencies. To explain, in 1991 the Cities of Berkeley, Alameda, and Oakland entered into an agreement to create an LAD, later joined by Emeryville. The member cities are severely underfunded<sup>5</sup> and provide outreach and education only when they receive lead hazard complaints. The City of Berkeley generally does not stop contractors from creating a lead hazard. When a lead hazard is reported as a complaint, no cease and desist orders are issued, allowing contractors and property owners to continue with violations. Rarely has any enforcement action been taken against a lead hazard using lead hazard laws. In the absence of a lead enforcement program, City inspectors who witness a lead hazard on the job are not required to abate the violation or issue any enforcement. It is crucial for the City of Berkeley to establish a local enforcement program that will reduce and ultimately prevent lead poisoning and environmental contamination.

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<sup>5</sup> Since LAD’s creation, the \$10 per pre-1978 dwelling fee has not been increased despite the Consumer Price Index rising by 76.8%. As a consequence, services provided by LAD have suffered dramatically, especially for lead abatement. LAD services are now mostly educational and are provided by Alameda County Healthy Homes Department (ACHHD). Currently, the ACHHD offers the City’s Public Health Division funding of around \$10,000 to assist the City’s Public Health division in casework management for high blood lead levels in children.



#### ENVIRONMENTAL SUSTAINABILITY

By far the most cost-effective way to prevent environmental contamination from improper removal of lead paint in renovations or demolitions is to ensure that proper procedures are followed, including by enforcement of existing state codes. Failure to employ proper procedures very likely will adversely impact the property, the soils, the workers and the tenants.

#### RATIONALE FOR RECOMMENDATION

Common sense requires the City enforce laws to prevent lead-paint contamination, especially when clear dangers to young children, who are otherwise likely to ingest lead in the course of normal play in exposed areas. Without enforcement, the natural inclination of many workers is to ignore or skirt sensible requirements in order to save time or money. The threat of enforcement and possible loss of certification or substantial fines can alter economic assumptions. Even one child's life ruined is too steep a price for saving the City enforcement costs.

#### ALTERNATIVE ACTIONS CONSIDERED

In 2003 the CEAC considered adopting these codes but the costs were considered too high. In 2008, the CEAC requested a pared-down version of the lead paint codes and council referred the recommendation to the budget process. CEAC also made a similar recommendation in 2015 and that was referred to the budget process. CEAC also considered merely posting notices of lead danger, which is already done. However, without enforcement, that is simply not enough.

On February 9, 2017, CEAC adopted this recommendation unanimously as follows: Motion/Seconded/Carried. Goldhaber/Ticconi. Ayes: Goldhaber, Varnhagen, Maslanka, Delfin-Polk and Ticconi. Noes: None. Absent: Kim Abstain: None.

#### CITY MANAGER

See companion report.

#### CONTACT PERSON

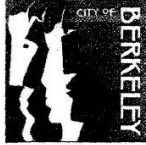
Nabil Al-Hadithy, Hazardous Materials Manager, Toxics Management, 510-981-7461

#### Attachments:

1. June 4, 2004 Staff report to City Manager on Lead-Based Paint Mitigation Program.
2. February 2008 Draft CEAC report on Lead Poison Prevention Program.
3. October 13, 2015 CEAC and Staff reports on Berkeley Lead Poison Prevention and Control.

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Attachment 1




Planning and Development Department

June 4, 2004

MEMORANDUM

To: Philip Kamlarz, City Manager

From: Daniel S. Marks, Director of Planning and Development  
Nabil Al-Hadithy, on behalf of Lead Hazard Working Group 

Subject: Lead-Based Paint Mitigation Program

Senate Bill 460 (SB460) provides local jurisdictions with the authority to enforce codes and work practices regarding hazards from lead-based paint as established by Department of Health Services (DHS) *CCR Title 17, Housing Code* and Occupational Safety and Health codes. Implementation of these codes would create an intensive program that regulates lead hazards inside and outside buildings. The Toxics Management Division (TMD) and Health and Human Services' (HHS) Childhood Lead Poisoning Prevention program concur that lead can present a highly significant risk. HHS has an independent program that responds to children with known high lead blood levels. TMD has a program that responds to complaints prior to detection of high lead blood levels. The current TMD level of response, however, is far below what can be provided pursuant to SB460. As described in more detail below, while staff would like to do more, existing staff resources preclude establishment of a new program and increased enforcement. We would like to meet with you to discuss this further, after which a report can be prepared for the Community Environmental Advisory Commission and Councilmember Betty Olds (liaison with lead hazard joint powers association).

The TMD helped organize interdepartmental meetings to discuss the feasibility of responding to SB460. During these meetings, the City Attorney's office clarified that SB460 does not require local jurisdictions to conduct enforcement on lead hazards; rather it grants them authority, should the City choose to pursue this program.

The TMD analyzed the requirements for a lead-based paint mitigation program and outlined the attached detailed work program, which identifies response and enforcement responsibilities for staff from the following divisions and departments: TMD, Building and Safety, HHS, Housing, and Code Enforcement. The attached outline is significantly less than SB460 proposes, but meets the basic requirements of the SB460 program. Essentially, it does not require staff to purchase expensive equipment and be certified in various activities. The key to the proposed staff approach was to spread response and enforcement responsibilities between existing field staff, rather than have one department take on the entire program. Lead hazards, such as paint removal in violation of State codes, could be recognized in the field, stop work orders issued, information provided, and Notices of Violation issued if necessary by any field staff from the agencies listed above. Attachment 1 provides more information about the impact of the program to individual agencies.

Lead-Based Paint Mitigation Program  
Page 2

June 4, 2004

The estimated cost of this program in staff time is \$80,000 to \$120,000. This is equivalent to about 600 responses annually, some of which will take no more than 30 minutes to resolve, others will take 10 hours with enforcement. Existing staff cannot absorb the added work that would be generated by the new program. We are very concerned about taking on additional responsibilities that we believe we cannot fully carry out, and this expanded program would increase existing workloads. While we will continue to respond to complaints as much as possible, the proposed loss of 1 FTE to TMD in FY06 may mean that the current level of lead related responses, which is funded from the General Fund, will be curtailed in the future.

While the lead-hazard working group has concluded the program cannot be absorbed at this time, it recommends revisiting the issue if funds become available. In addition, we can provide more information about lead-based paint hazards to contractors and homeowners at the Permit Service Center.

The City's Childhood Lead Poisoning Prevention program in HHS will continue to facilitate lab reporting requirements as mandated by SB460 as well as help coordinate remediation and enforcement activities on cases that are associated with a child who has lead poisoning. HHS has also received a grant from DHS to develop the framework for a Lead Hazard Reduction Compliance and Enforcement Program. The first year of the three-year grant (\$15,000/year) is to fund planning a program for increased enforcement related to children with elevated blood levels.

SB460 Working Group included HHS, Housing, City Attorney, Planning, Code Enforcement, Building & Safety, and Toxics Management. Contacts include Vicki Alexander, Lyn Dailey, Alex Schneider, Wendy Cosin, Nabil Al-Hadithy, Drew Lerer, Greg Daniels, Joan MacQuarrie, Zach Cowan, and Carlos Romo.



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**ATTACHMENT 1**

**Lead Based Paint Mitigation Program - Cost Impact to City of Berkeley**

**Housing.** It is anticipated that Housing may be adversely impacted when a tenant landlord dispute requires greater time to resolve than other lead-hazard responses. The number of complaints will depend on the amount of outreach and education on this subject. It is important to inform tenants and landlords of the limited scope of this program. Clearance testing and remediation will not normally be required and most cases will end when the housing inspector has agreed to a visual clean up of the hazard.

**Code Enforcement.** The additional work on Code Enforcement is not expected to be significant. Most cases will be identified in the field or by complaint response. Most of these cases will not be high risk and can be closed after a visual inspection.

**Permit Service Center.** There will be a new signature line required for most building contracts and in addition, the PSC will provide the developer with best management and safe work guidelines as well as a list of certified contractors. The additional workload on PSC is thus limited for a couple of minutes per building permit.

**Building & Safety.** When an inspector observes a lead hazard, it will not usually be a high-risk hazard and hence can be corrected quickly. If a hazard is observed during construction and also involves children, then a high-risk condition may be present. In such cases, the Building Official may be required to issue a stop work order and a notice of substandard conditions and coordinate with PHD, EHD, and Toxics.

**Environmental Health.** The EHD will be impacted when division field inspectors observe a lead hazard in their course of work. These hazards, handled as visual corrections, will involve additional work as will referrals from another agencies which have already identified as a high-risk situation, requiring higher standards for clean up or clearance testing.

**Public Health.** The PHD will incur more work as additional sites where children are affected by lead will be identified.

**Toxics Management.** TMD will correct most lead hazards to a visual standard in industry in the course of its inspections. Where TMD will incur more work is referrals of high-risk sites. These will be managed with higher clearance testing and possibly clean up of surfaces and soils. TMD will also get its usual complaint response for such items. TMD will also be providing technical assistance for other departments. Finally, TMD will provide the necessary leaflets for identification of lead hazards, best management and safe work practices and some training for other departments.

**City Attorney.** Assistance with write-up of new lead-hazard municipal code based on SB460.



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## **ATTACHMENT 2**

### **Senate Bill 460: Draft Outline of City of Berkeley Lead Based Paint Mitigation Program**

#### **Background**

The Childhood Lead Poisoning Prevention programs in place at the City of Berkeley and in Alameda County currently focus primarily on intervention when the Public Health Division (PHD) establishes a child lead poisoning case. SB 460 was written to give local jurisdictions the ability act proactively by preventing lead hazards from becoming lead poisoning cases. The City of Berkeley has had a limited lead hazard response for some years, through the Toxics Management Division. This document outlines an SB460 Lead Hazard Enforcement program that involves Health, Planning, Housing and Enforcement (481) departments.

Over the last year, several departments have met and agreed that even in an era of shrinking resources the pollution prevention goals of a lead enforcement program are necessary to consider. The goal is not to disproportionately impact any one division. This compromise creates a simple program where a large number of field staff and front desk staff, with minimal training, can provide education, mitigations and issue citations.

Code Enforcement will act as lead enforcement coordinating agency; but not all complaints or enforcements will be forwarded to Code Enforcement. Any cooperating agency taking a complaint call or finding a violation during their normal course of business is empowered to take corrective or enforcement actions and not involve Code Enforcement.

The Lead Enforcement program will require adoption of new municipal codes that will reference the relevant state codes and regulations. The proposed codes will deviate from the state in some areas where the City needs to simplify the program, such as assuming that all construction older than 1978 contains lead paint. These codes will be enforced administratively in most cases.

This proposed program outlined below attempts to break down the work expected for various City agencies.

#### **Lead Hazard Identification:**

Deteriorating lead based paint, lead contaminated dust, lead contaminated soil, or disturbing lead based paint without using safe work practices constitutes a lead hazard.

*For practical purposes, the City assumes that all structures built before 1978 contain lead-based paint. A contractor or property owner who disputes this may choose to conduct a lead paint investigation by state certified third party inspector/assessor.*

A lead hazard is present if any of the following occurs:

1. Uncontained lead chips or dust.
2. Use of the following prohibited methods:
  - Pressure washing without proper containment

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Open flame burning or torching  
Machine sanding or grinding without a HEPA exhaust tool  
Abrasive blasting or sandblasting  
Dry scraping

3. Work during adverse conditions which prohibit containment of lead chips and dust.
4. Work area not cleaned at end of each shift.

An inspector may issue a notice of violation (NOV) if a lead hazard is observed.

**Enforcement Response**

A. Work on pre-1978 owner-occupied properties by homeowner.

1. Primarily complaint driven.
  2. Must implement safe work practices according to BMPs.
  3. Must not create impact on children, pregnant women, neighbors or right of way.

*Inspector will distribute safe work practice leaflet and advise homeowner on corrections. Owner is required to clean up to a visual standard, see definition. Paint contaminated waste must be properly disposed of at Household Hazardous Waste facility and documentation made available to inspectors upon request.*

B. Exterior Work on Non-Owner Occupied Dwellings

1. Windows in work area must be covered with double-ply 6 mm poly to prevent dust entering building;
2. Occupants must be notified prior to commencement of work;
3. At least one lead safe entry way must be made available to occupants;
4. Workers must use proper personal protective equipment (PPE).
5. If the dwelling is a housing unit that receives federal assistance than the appropriate HUD Lead Safe Housing Rules must be followed.

*Inspector is required to issue an NOV if violations of the above are observed. In most cases, this requires a stop-work order issued by the inspector observing the violation. Penalties can be imposed if the violation is egregious or recurring. Worker protection issues should be referred to Cal OSHA.*

C. Interior Work on Non-Owner Occupied Property

1. Post "No Entry" signage in appropriate language
2. Close off work area by covering entryways with 6mm poly.
3. Remove furniture from work area.
4. Any item that cannot be removed should be wrapped in 6mm poly and sealed with duct tape.
5. Cover all carpets with 6mm poly.
6. Turn off all forced air HVAC.
7. Cover vents with 6mm poly.
8. Cover any gaps between boards or pipes in work area.
9. Clean up by HEPA vacuuming and triple rinse any solid non-porous surface with detergent and water.

5/7/04

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10. Dispose of properly collected waste to household hazardous waste or hazardous waste contractor.

11. Retain shipping or other proof of proper disposal. Make available for City inspector on demand.

*If interior work is not carried out in the manner above, a stop work order in addition to the inspector issuing a NOV, will be ordered. The NOV will outline the work and timeline for corrections. For egregious or repeat violations, the inspector may impose a penalty*

**D. Existing Lead Hazard Conditions (Deteriorating Paint) - Rentals**

1. Inspectors will take action if they identify deteriorated paint in excess of 2 square feet in the interior, or 20 square feet on the exterior of a pre-1979 structure. Photograph for the record.

*In a dispute, the property owner may want to conduct a 3<sup>rd</sup> party investigation to determine if lead paint exists. If lead paint exists and a hazard is evident, then an NOV is issued and the owner must abate the hazard. Inspector may cite owners with egregious or recurring violations.*

If the violation is significant and if children are present the site should be referred to the TMD, Environmental Health Division (EHD), PHD, and the Building Official for a review of the case and necessary follow up.

*Serious visual contamination may require relocation and clearance before the dwelling can be reoccupied.*

**Notice of Violation**

The inspector will issue a Notice of Violation (NOV) to specify work to be done. An NOV will indicate the violation(s), and the corrective actions necessary and the time to comply. This suggests that there is follow-up by the inspector to confirm the corrections are done in a timely manner. The NOV may specify the requirement for the use of a state certified lead abatement contractor, the implementation of safe work practices, proper clean up procedures, and clearance testing. An NOV can be pre-formatted and check boxes will indicate the specific actions required. Alternatively, an NOV can be a written document to the violator. Failure to implement the NOV requirements within the specified time limit can result in citation and penalty.

**Visual Clearance**

Before completion of a job the inspector will insure that no paint debris, chips or dust is visible to the naked eye. If a neighbor's property has been contaminated then the inspector will use his/her judgment to discern between the responsible party's contamination and pre-existing contamination.

**Clearance Testing**

Interior clearance testing is a high priority activity for health professionals where there is a high risk of exposure to at risk individuals (pregnant women and children). Where a high risk



has been determined, clearance testing is recommended. The City may require a third party state certified inspector/assessor or clearance testing technician to conduct such tests. For purposes of this program, a clean up to visual clean up can be adopted for most sites that appear to be lower risk. Higher risk sites, such as a multiunit residential dwelling with children or where the lead paint has been powdered, will be referred to HHS or TMD for review and may require clearance testing.

**Other Duties**

**A. Permit Service Center**

The PSC will add a sign-off for contractors on permits that may create lead hazards such as demolition work. The contractor will be advised of the City's requirements and will provide best management practices (BMPs) and list of certified lead paint or other appropriate contractors.

**B. TMD, Building Official, and EHD.**

TMD, Building Official, and EHD would take on high risk lead enforcement referrals from other departments to consider requirements for clean up, clearance testing, and appropriate enforcement avenues. The City will use the services of the County lead program, in-house expertise, as well as third party consultants to make these determinations. Responsible party pays for third party consultants.

**Questions**

A. Should City invest in XRF? No. Even though this tool will provide a quick and cheap turnover for lead determination, it was determined that the staff time for operating and maintaining is too costly. The responsible party would either assume lead is present in a pre-1978 property or conduct a lead investigation by a state certified third party inspector.

Note: TMD posed this question to the Alameda County Childhood Lead Poisoning Prevention Program and the EHD posed the question to several county Environmental Health Divisions. They strongly advised against the city purchase of an XRF. The California Department of Health services has yet to authorize the use of an XRF to conduct clearance testing or soil sampling.

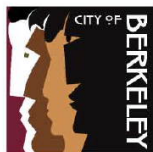
B. Should City invest in HEPA vacuum for the Tool Lending Library? No. The City should not purchase and maintain HEPA vacuums. Again this gives a great service to the community but it requires training and proper disposal of lead dust.

Note: Alameda County provides this service currently to the Berkeley Community. At this time there is no waiting period for their use. They currently maintain 8 HEPA vacuums to loan to the public.

C. Under what conditions, if any, shall the City require a lead certified painting contractor or certified inspector/assessor to conduct clearance sampling?

TMD in cooperation with PHD and EHD will make this decision on a case-by-case basis. Factors that influence the need for clearance is if children or pregnant woman are occupants, the extent of the contamination and the compliance history of the violator.

Attachment 2



Community Environmental Advisory Commission

ACTION CALENDAR  
February, 2008

To: Honorable Mayor and  
Members of the City Council  
From: Community Environmental Advisory Commission (CEAC)  
Submitted by: Nabil A Al-Hadithy, Secretary, CEAC  
Subject: City of Berkeley Lead Poison Prevention Program

RECOMMENDATION

CEAC recommends that :

- i. City Manager evaluates the effectiveness of the County Lead Poison Prevention Program (ACLPPP) and prepares a report to Council. If the report finds the program ineffective, the City must consider an alternative program such as a City lead poison prevention, education, and enforcement program in the Toxics Management Division.
- ii. Council approve a half time equivalent position in the mid term budget for Toxics Management Division to re-establish the Lead Poison Prevention Program and to service equipment to test for lead in toys, lunchboxes etc.

CURRENT SITUATION AND ITS EFFECTS

Millions of children have some elevated lead level due to exposure from lead paint in homes older than 1979. Poisoning often occurs with no obvious symptoms, it frequently goes unrecognized. Lead poisoning can cause learning disabilities, behavioral problems, and, at very high levels, seizures, coma, and even death. Health experts say there is no lower acceptable level of lead body burden.

City staff and the CEAC have studied the ACLPP Program over the past two years and found the services offered to the City have declined severely because of the Howard Jarvis proposition (Prop 218). The table below shows the decreased level of services provided to the City, based on input from the Alameda County LPPP.

The Joint Powers Association (JPA) exists only for the Cities of Oakland, Emeryville, Berkeley, and Alameda. The rest of county does not pay a \$10 per parcel as a property tax. The taxes collected since 1991 have not increased with cost of living and no longer pay for a reasonable level of service.

The JPA only requires a notification from the City to withdraw from the agreement.

2118 Milvia Street, Suite 300, Berkeley, CA 94704 TEL: (510) 981-7460 TDD: (510) 981-7474 FAX: (510) 981-7470

email: toxics@ci.berkeley.ca.us



City Lead Poison Prevention Program  
 Page 2 of 3

February , 2008

CSA Funded Services in City of Berkeley	FY 03-04 Provided		FY 04-05 Provided		FY 05-06 Provided	FY 06-07 Projected Without Fee Increase
Comprehensive Site Visit with Lead Evaluation and Lab Analysis	184		134- error		Eliminated	Eliminated
	101 Risk Asses.	83 Clearances.	47 Risk Asses.	91 Clearance	Eliminated	
Basic Site Visit and/or Test Kit (In House Consultation)	N/A		N/A		110	At Risk
Lead Safe Painting Prep Kit	410		135		66	At Risk
Lead Safe Painting Class	3		2		3	At Risk
Technical Assistance to property Owners with lead Poisoned child*	25		32		32	At Risk

\* Represents the total number for all four CSA Cities. Risk Asses is the performance of a detailed risk assessment. Clearances refers to work provided to clear lead paint. At Risk means that the services are only provided to children identified in the Health & Human Services as having high blood lead.

**BACKGROUND**

The adverse health effects of lead on children are one of the most severe public health impacts Berkeley faces. Berkeley has an older housing stock and the majority of housing units are considered to have some lead paint. Improper management or removal of the paint, or even natural aging and erosion of the paint, results in exposure to children and the environment. Normal weathering of outdoor lead paint results in leaching of lead into garden soils. Many homes have lead levels in soils within 3 feet of a lead paint exterior at or above hazardous waste levels. These soils present additional health impacts to children and adults.

In 2003, the legislature passed a law to make sure that children were protected from lead paint. This law allows environmental and other agencies to issue a cease and desist order and enforce against anyone creating a lead health hazard. It also allows municipalities to abate or otherwise correct the hazard. The City considered this law but decided on a fiscal conservative decision to delay the decision until the City budget improved. Staff has not considered this vital human health problem since 2003.

Recently, ACLPPP, assisted by member cities, approved hiring of a contractor to conduct a survey to gauge the support for two options that would increase the fee from \$10, per year per unit to \$30. The findings were that a \$30 increase was unlikely to win a 66.7% vote of the electorate.

City Lead Poison Prevention Program  
Page 3 of 3

February , 2008

On March 1, 2007, the Community Environmental Advisory Commission voted to fund a ¼ FTE to reestablish the Lead Poison Prevention Program Toxics Management Division that was cut over the past few years as a general fund cost saving.

The CEAC action was delayed to take input from council members. We received additional input to address other lead poison issues such as toxic toys. Since most inexpensive test sticks that test for lead are based on a colorimetric evaluation of a chemical reaction, it has been generally assumed that these tools do not work. Hence, we updated the CEAC position to include equipment for TMD staff and enough time to test non paint toxic issues. This requires an additional half FTE to include use of equipment to test toys, lunchboxes etc.

RATIONALE FOR RECOMMENDATION

The City has not voluntarily returned to the lead poison prevention issues it initiated in 2003 and we are learning that lead poison is much worse for human health and is now found in many more media, other than older paint. Waiting any longer would be to accept the adverse health effects on children and others.

FISCAL IMPACT

The cost of equipment and half time position would require a restoration of \$65,000 to TMD from General Funds.

### Attachment 3

October 13, 2015 CEAC and Staff reports on Berkeley Lead Poison Prevention and Control (Items 10a and 10b from the City Council Regular Meeting Agenda):

#### Action Calendar – New Business

10. a. [Berkeley Lead Poison Prevention and Control](#)

( [http://www.cityofberkeley.info/Clerk/City\\_Council/2015/10\\_Oct/Documents/2015-10-13\\_Item\\_10a\\_Berkeley\\_Lead\\_Poison\\_CEAC.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2015/10_Oct/Documents/2015-10-13_Item_10a_Berkeley_Lead_Poison_CEAC.aspx) )

**From: Community Environmental Advisory Commission**

**Recommendation:** Adopt a Resolution directing the City Manager to (1) implement an enforcement program per SB 460 of 2002 for lead paint hazards; (2) annually remind pediatricians and other medical providers to regularly test children between the ages of one and six for blood lead levels, and to report all blood lead levels above 5 microgram per deciliter, or if there is an increase of 1 microgram per deciliter to City Public Health for further investigation; and (3) evaluate the program after a year of implementation and present the findings to the Community Environmental Advisory Commission (CEAC).

**Financial Implications:** See report

Contact: Nabil Al-Hadithy, Commission Secretary, 981-7400

b. [Berkeley Lead Poison Prevention and Control](#)

( [http://www.cityofberkeley.info/Clerk/City\\_Council/2015/10\\_Oct/Documents/2015-10-13\\_Item\\_10b\\_Berkeley\\_Lead\\_Poison\\_CM.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2015/10_Oct/Documents/2015-10-13_Item_10b_Berkeley_Lead_Poison_CM.aspx) )

**From: City Manager**

**Recommendation:** Refer to the Community Environmental Advisory Commission (CEAC) a request to conduct a thorough review of the Alameda County Healthy Homes Department (ACHHD) Lead Poisoning Prevention Program performance measures and budget for 2010-2015 for their services in Berkeley as well as their projected activities and budget for the 2015/16 year. Take no action at this time on CEAC's recommendation in the October 13, 2015 report to implement an enforcement program per SB 460 of 2002 for lead paint hazards. In lieu of CEAC's second recommendation:

A. Annually remind Berkeley health care providers of the importance of regularly screening children between the ages of 6 months and 6 years for risk of lead poisoning, and obtaining blood lead levels at 12 and 24 months of age for those at risk, in accordance with guidelines of the American Academy of Pediatrics (AAP), Centers for Disease Control and Prevention (CDC), and California Department of Public Health (CDPH) Childhood Lead Poisoning Prevention Branch (CLPPB).

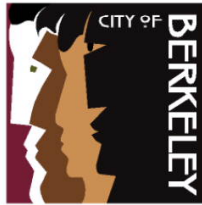
B. Continue providing public health lead poisoning prevention information, education, and evaluation by a Public Health Nurse for families of all children whose blood lead level exceeds the CDC's reference level (currently 5 µg/dL).

**Financial Implications:** See report

Contact: Eric Angstadt, Planning and Development, 981-7400







Office of the City Manager

ACTION CALENDAR  
April 25, 2017

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Carol Johnson, Director, Planning and Development Department  
Subject: Companion Report: Berkeley Lead Poison Prevention and Control

RECOMMENDATION

Refer to the City Manager the proposal from the Community Environmental Advisory Commission (CEAC) to evaluate the costs and feasibility of the lead paint enforcement proposal. In addition, staff will communicate with the Alameda County Healthy Homes Department on alternative ways to address enforcement and cleanup associated with lead paint hazards, and will work with Alameda County Healthy Homes Department to schedule a presentation before the City Council.

FISCAL IMPACTS OF RECOMMENDATION

The proposal is complex and not clearly defined. Staff need time to evaluate a cost effective program. Staff will report back to Council and CEAC within 90 days.

CURRENT SITUATION AND ITS EFFECTS

The CEAC proposes to establish an enforcement program for lead paint hazards, which are recognized as an important public health concern. Currently, lead paint violations are being handled either as a complaint response where staff give information and advice, or during inspections. Inspection staff has training on lead paint hazards and the City issues notices on permits to comply with lead paint laws.

The City rarely takes enforcement action on lead paint violators. Alameda County Healthy Homes Department is not authorized to enforce lead paint violations, and the U.S. Environmental Protection Agency (EPA) only issues violations to large contractors in the Bay Area.

The City relies on technical assistance and educational materials from the Alameda County Healthy Homes Department. If inspection staff finds lead paint hazards, they identify the hazard and require corrections during building and housing inspections. Lead paint enforcement is rarely done by the City or the EPA. The Alameda County Healthy Homes Department runs a lead paint advisory and assistance program funded by a special assessment for each unit in the cities of Oakland, Berkeley, Alameda and Emeryville, which was authorized by a joint powers agreement enacted in 1991.



The Alameda County Lead Poisoning Prevention Program was created in 1991 as a joint powers authority, prior to the state lead paint codes of SB 460 of 2002. Since 1991, the County program has not increased the \$10 per residential unit assessment fee to keep up with inflation.

On March 7, 2017 the Healthy Homes Department of Alameda County proposed to the City of Emeryville a simple enforcement process that does not require collection of evidence and laboratory analyses. The County proposes that a contractor without a Renovation, Repair and Painting Certification (RRP), that is working on a home constructed prior to 1979, will be in immediate violation and subject to a City citation. A contractor may choose to take representative samples of paint from the pre-1979 home to determine that it is not leaded paint. Homeowners are encouraged to attend RRP classes, but are not required to hold an RRP certification. Berkeley could adopt a similar ordinance to make it easier to issue citations to contractors for violations of these requirements.

#### BACKGROUND

The CEAC proposal would have staff take enforcement action if a child aged four years or less resides at the location of the lead paint hazard, to limit the impact on staff time. In general, the at-risk population from lead exposure is not limited to children aged four and under. Pregnant women, children under six, and people with compromised immunity such as the sick and elderly are all at risk.

Staff requests time to review appropriate enforcement actions and make recommendations on appropriate parameters for enforcement.

#### ENVIRONMENTAL SUSTAINABILITY

A properly outlined lead paint enforcement protocol will result better compliance with state laws and this will contribute to a continuation of the reduction in childhood lead poisoning.

#### RATIONALE FOR RECOMMENDATION

While well-motivated, the CEAC recommendation for an immediate penalties for lead paint violations requires more analysis, within the larger context of the City budget and referral prioritization processes. To enact any such program, the City would need better defined roles among City departments which could potentially conduct enforcement activities, a fully developed program budget, and an enacted fee structure to allow the City to recoup its costs.

#### CONTACT PERSON

Carol Johnson, Director, Planning and Development Department, 510-981-7401  
Nabil Al-Hadithy, Hazardous Materials Manager, Planning and Development, 510 981 7461

#### Attachment:

1. Alameda County Proposal for Lead Enforcement Ordinance to the City of Emeryville, March 7, 2017.



City of Emeryville  
CALIFORNIA

MEMORANDUM

**DATE:** March 7, 2017  
**TO:** Carolyn Lehr, City Manager  
**FROM:** Vice Mayor John J. Bauters  
Sheri Hartz, City Clerk  
**SUBJECT:** Discussion Regarding Whether To Consider The Addition Of A  
Proposed Ordinance Related To Lead Safety

**RECOMMENDATION**

This item has been placed on the agenda at the request of Vice Mayor Bauters and is for discussion only. Following its discussion and consideration, Council may either take no action or may direct staff to bring the item forward for action at a subsequent meeting. Since the potential action contemplates either a new ordinance or the amendment of an existing ordinance, it would come back for a first reading and introduction at a future meeting to be determined, and then for second reading and adoption at the meeting following that.

**BACKGROUND**

At the City Council regular meeting on January 17, 2017, Vice Mayor Bauters requested and received majority support to add a presentation on lead safety by the Alameda County Healthy Homes Department to the March 7<sup>th</sup> agenda. He also requested a companion item for the Council to consider and determine whether it wishes to direct staff to prepare an ordinance or ordinance amendment related to lead safety regulations. This is that item.

**DISCUSSION**

As stated above, this item is meant for discussion only and no staff analysis has been performed at this time. Vice Mayor Bauters has submitted draft language that he proposes could be added to the Emeryville Municipal Code, along with other materials that are included as attachments to this staff report.

Included with the draft language submitted are some additional points that Vice Mayor Bauters requests be incorporated into the legislation, pending Council's concurrence.

If approved, Vice Mayor Bauters is recommending that the new requirements not be implemented for one year in order to allow sufficient time for owners of subject properties to be notified and provided with information, to ensure that any projects

Discussion - Proposed Ordinance Related To Lead Safety  
City Council Meeting | March 7, 2017  
Page 2 of 2

already in process are not delayed, and to give renovators the opportunity to get the necessary training in advance, if desired.

The draft ordinance references the Code of Federal Regulations where the full rule is located. The section that applies is 40 CFR 745, Part E, which can be found here:

[40 CFR Part 745, Subpart E - Residential Property Renovation](#)

**FISCAL IMPACT**

Fiscal impact, if any, is not known at this time.

**PREPARED BY:** Sheri Hartz, City Clerk

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



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Carolyn Lehr, City Manager

**ATTACHMENTS**

1. 2014 Letter from the EPA, Region 9, to local jurisdictions regarding the Lead-Based Paint Renovation, Repair and Painting (RRP) Rule
2. RRP Certified Renovator Training Information
3. Draft Language for possible inclusion into Emeryville's Municipal Code

Proposed addition to the Emeryville Municipal Code:

**Lead-Safe Renovation, Repair and Painting Certification Required.** No renovation of a building, facility or other structure shall be initiated within the city if such renovation is regulated under 40 CFR §745.82, unless the applicant for the renovation complies with all of the following:

- (1) submits and complies with a sworn written statement, on a form prescribed by the Building Code Inspector, stating that:
  - a. individuals performing the renovation are properly trained in accordance with 40 CFR Part 745, Subpart E;
  - b. renovators and firms performing the renovation are certified in accordance with 40 CFR Part 745, Subpart E; and
  - c. the work practices in 40 CFR 745.85 will be followed during the renovation; and
- (2) submits a copy of the certifications issued to renovators and firms performing renovations pursuant to 40 CFR Part 745, Subpart E.

Additional Recommendations:

1. Delay the date of effectiveness to May 1, 2018. The purpose would be to allow ample time for property owners, contractors and others impacted by this legislation to acquire any necessary certification prior to putting forth a project application.
2. Provide explicitly that any application for a renovation of a structure covered by the ordinance that was received prior to the date of effectiveness be exempted from this requirement, even if the actual renovation itself takes place after the date of effectiveness.
3. Require that the Building & Planning Division post and share information about this ordinance in City Hall, with relevant associations or trades, and with any person who inquires about renovations to a structure subject to the ordinance between the date of adoption and the date of effectiveness.
4. Instruct staff to mail a courtesy copy of the ordinance to the registered property owners of all residential structures constructed prior to 1978 within 120 days of adoption.
5. Coordinate 1-2 additional RRP Trainings with the Alameda County Healthy Homes Department so that interested parties can receive this training when the ordinance takes effect and help publicize the training on city media.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

Building Official

Dear

On April 22, 2008, the U.S. Environmental Protection Agency (EPA) published a final regulation, the Lead-Based Paint Renovation, Repair and Painting (RRP) Rule, aimed at protecting the public from lead-based paint hazards associated with renovation, repair and painting activities. These activities can create hazardous lead dust when surfaces with lead paint, even from many decades ago, are disturbed. The rule requires that firms performing renovation, repair, and painting projects that disturb lead-based paint in homes, child care facilities and pre-schools built before 1978 have their firm certified by EPA (or an EPA authorized state), use certified renovators who are trained by EPA-approved training providers and follow lead-safe work practices. These requirements became fully effective April 22, 2010.

EPA and the 14 authorized states have certified more than 135,000 renovation firms that are qualified to conduct lead-safe renovations. EPA has accredited 566 RRP training providers, who have trained more than 600,000 individuals in lead-safe work practices. Despite these successes, EPA is concerned that there is a lack of public awareness of the benefits and requirements of the regulation. Many homeowners and property owners are still unaware of the dangers of lead contaminated dust that renovations can generate and many contractors continue to operate out of compliance with the regulation.

One initiative that EPA has begun to address this issue is to work with local building permitting officials to educate them about the rule and to seek their assistance in increasing compliance with the regulation. EPA is requesting permitting officials to require proof of RRP firm certification as a condition of issuing a permit for renovations of homes built before 1978. This simple requirement for renovators seeking permits to conduct renovations in pre-1978 housing benefits both consumers and contractors. Contractors benefit by our providing a fair and level playing field for contractors who are complying with the law by being certified. Homeowners and their families benefit by the reduction of lead contaminated dust generated during renovations.

It is important to note that EPA is not requesting that building codes be updated to include the lead-safe work practices from the EPA RRP regulation, nor is EPA asking code officials to enforce or interpret the EPA RRP regulations. EPA is solely responsible for providing detailed guidance to contractors who are seeking training, certification or clarifications on when and how the RRP rule is applicable.

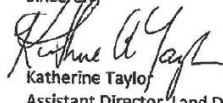
One way to easily alert contractors to this requirement is to provide an additional box to check on an application for a permit to renovate, repair or paint a pre-1978 residence, childcare facility or preschool, which requests verification of a contractor's certified status before issuing a permit.

*Printed on Recycled Paper*



Please let us know whether you are interested in working with us on this matter. Feel free to call our Regional Lead Coordinator, Nancy Kain (415-947-4280) or [kain.nancy@epa.gov](mailto:kain.nancy@epa.gov), with your comments and questions. Thank you for your consideration.

Sincerely,



Katherine Taylor  
Assistant Director, Land Division







Environment and Climate Commission

[Meeting Date (MM dd, yyyy)]

To: Honorable Mayor and Members of the City Council  
From: Environment and Climate Commission (ECC)  
Submitted by: Ben Gould, Chairperson, ECC  
Subject: Support for Pilot Youth Appointee to Environment and Climate Commission

### RECOMMENDATION

Refer to the City Manager to evaluate the feasibility of, and subsequently prepare draft legal language to enable, a tenth voting Environment & Climate Commission (ECC) member, representing youth, nominated by a suitable body or individual and confirmed by a suitable board of elected officials.

The feasibility analysis and draft language should consider existing law in BMC 2.04.030 through 2.04.120, including the following:

- BMC 2.04.050, which establishes commissions at nine members,
- BMC 2.04.060 and related provisions, which restricts appointments to individual City Council members,
- BMC 2.04.140 and 2.04.145, which requires affidavits of residency for all commissioners, and
- BMC 2.04.040 (B) (2), which provides provisions for City Council majority appointment where the number of commission members is greater than nine.

If feasible, the ECC recommends that a youth representative be nominated by the Youth Commission and confirmed by the full City Council, in accordance with BMC 2.04.040(B)(2). The ECC also recommends the draft legislation have a two-year sunset provision, which can be extended or removed by City Council at a later date.

### FISCAL IMPACTS OF RECOMMENDATION

Some staff time to review existing law and develop proposal. If enacted, having an additional ECC commissioner could result in slightly increased demands on staff time for ECC.

### BACKGROUND

The City of Berkeley established a Youth Commission in 1979, with the stated goal of “giv[ing] youth a voice in effecting City policy and services.” However, environment and climate change issues are critical matters affecting all youth, yet the Youth Commission has no institutionalized process for interacting or engaging with City environmental policy, and City Council has consistently failed to appoint any individuals under the age

**Page 2 of 3**

of 18 to the Environment and Climate Commission (ECC) or its predecessor commissions (the Energy Commission [EC] and the Community Environmental Advisory Commission [CEAC]). To date, the Youth Commission is the primary, and possibly only, City body to which individuals under 18 are appointed on a regular basis.

In May 2022, the Youth Commission passed a recommendation to establish a youth appointee to the ECC. However, the item has not yet been taken up by City Council.

**CURRENT SITUATION AND ITS EFFECTS**

With no youth voice on the Environment and Climate Commission, City staff and commissioners lack valuable perspective and insight into the perspectives of an important community demographic, which stands to be the most significantly impacted by the Commission's recommendations and City action (or lack thereof) on climate and environmental issues.

Historically, the ECC's predecessor commissions have been unsuccessful in engaging youth constituencies and stakeholders. Without youth perspectives, City policymaking is biased towards community members who have the time and resources to engage in local governance – typically older, wealthier residents, who are unlikely to directly experience some of the longer-term environmental consequences of climate policy.

**RATIONALE FOR RECOMMENDATION**

The proposal would expand youth involvement in city policymaking and allow ECC to better reflect and represent the broad interests of the community, without imposing an undue burden on City staff, Council, or otherwise impairing the functioning of the commission.

**ALTERNATIVE ACTIONS CONSIDERED**

The ECC considered asking the Youth Commission to send a nonvoting liaison to bridge the two commissions, but determined that the Youth Commission's infrequent meetings (four meetings per year) would prevent the Youth Commission from weighing in on important matters in a timely fashion, and a nonvoting position limited to public comment was unlikely to be effective at recruiting and sustaining interest from young people.

The ECC considered the Youth Commission's recommendation to have the youth member be appointed by BUSD, but determined that having the City Council approve the youth nominee would better ensure that Councilmembers would accept the recommendations of the youth member.

The ECC considered the Youth Commission's recommendation to have the youth member be nominated by the BUSD Student Director, but determined that engaging the Youth Commission in the nomination process would open the opportunity to a wider swathe of the community, better serve to connect the Youth Commission with other city



policymaking efforts, and help maintain institutional knowledge through the Youth Commission and its secretary.

The ECC considered making the seat permanent from the outset, but determined that due to the administrative overhead associated with managing an additional position, it would be best to test out the youth seat for a limited period of time and return with a recommendation for extension or amendments to the nomination process after working with a youth appointee for at least two years.

ENVIRONMENTAL SUSTAINABILITY

Supporting greater engagement of marginalized non-voting community members in environmental policymaking will result in more diverse perspectives and likely to produce better policymaking and feedback for staff, improving environmental sustainability overall.

CONTACT PERSON

Ben Gould, Chair, Environment and Climate Commission, 510-725-9176

DRAFT



Recreation

## Youth Commission

### Youth Commission Meeting

Monday, May 9, 2022 at 6:30pm

#### Zoom Webinar

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone,  
or Android device, please use this URL to join the meeting: <https://us06web.zoom.us/j/85925075321>

Passcode: 621930

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: +16699006833, or

+13462487799

If you wish to comment during the public comment portion of the agenda, Press \*9 and

## Draft Agenda

The Commission may discuss any items listed on the agenda but may take action only on items  
identified as Action.

1. Call to Order (Chair)
2. Roll Call (Secretary)
3. Approval of Agenda (Chair)
4. Approval of Minutes for April 11, 2022 (Chair)
5. Public Comments
6. Chair's Announcements
7. Director's Report
8. Land Acknowledgment (Schlosberg)
9. 2022 Re-election for Chair and Vice-Chair
10. Introductions
11. Action: Finalize and approve workplan
12. Action: Form mental health subcommittee
13. Action: (Replace with Sam's action item)
14. Adjourn

Commission Information: The Youth Commission packet is available for review at both the Berkeley Main Library and the Parks Recreation & Waterfront Department Office at 2180 Milvia Street –3rd Floor, during normal business hours. If you have questions, contact Commission Secretary, Ginsi K. Bryant, at 981-6678 or by email at [gbryant@cityofberkeley.info](mailto:gbryant@cityofberkeley.info)

ADA Disclaimer: This meeting is being held in a wheelchair accessible location. To request disability-related accommodations to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

SB343 Disclaimer: Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at Parks Recreation & Waterfront Department Office at 2180 Milvia Street, 3rd Floor, Berkeley CA.

Communications Disclaimer: Communications to Berkeley boards, commissions or committees are public record and will become part of the City’s electronic records, which are accessible through the City’s website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. All communications to the Commission should be received at least 10 days before the meeting date. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the commission or committee for further information.

### **Commission Members**

<u>District</u>	<u>Name</u>	<u>District</u>	<u>Name</u>
Mayor	Hannah Slattery Weisberg	BUSD/Brown	Khalil Powell
Kesarwani	Vacant	BUSD/Vasudeo	Vacant
Taplin	Vacant	BUSD/Babbitt	Nicholas Sanders
Bartlett	Vacant	BUSD/Student Director	Max Schlosberg
Harrison	Vacant	BUSD/Sinai	Vacant
Hahn	Vacant	BUSD	Vacant
Wengraf	Samuel Kaplan-Pettus	BUSD/Alper	Vacant
Robinson	Anjani Chokkalingam	BUSD	Nina Thompson
Droste	Vacant	BUSD/Cutler	Annabel Jay

### **Mission Statement**

The Berkeley Youth Commission identifies the needs of youth, reviews and recommends youth services and programs.



Recreation

## Youth Commission

### Youth Commission Meeting

Monday, April 11, 2022 at 6:30pm

#### Zoom Webinar

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

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To join by phone: Dial: +16699006833, or

+13462487799

If you wish to comment during the public comment portion of the agenda, Press \*9 and

## Draft Minutes

The Commission may discuss any items listed on the agenda but may take action only on items identified as Action.

1. Call to Order (Chair) 6:39pm
2. Roll Call (Secretary) Present: Weisberg, Kaplan-Pettus, Chokkalingam, Sanders, Schlosberg, Thompson and Jay. Late: Powell
3. Approval of Agenda (Chair) M/S/Thompson/Kaplan-Pettus. Aye's: Weisberg, Kaplan-Pettus, Sanders, Chokkalingam, Schlosberg, Thompson and Jay. Late: Powell. Noe's: None. Abstain: None. Absent: None
4. Approval of Minutes for March 14, 2022 (Chair) M/S/Thompson/Sanders. Aye's: Weisberg, Kaplan-Pettus, Sanders, Schlosberg, Thompson and Jay. Late: Powell. Noe's: None. Abstain: Chokkalingam. Absent: None
5. Public Comments
6. Chair's Announcements
7. Director's Report
8. Land Acknowledgment (Schlosberg)
9. Introductions
10. Discussion of recruitment
11. Discussion of work plan
12. Update on independent projects (Kaplan-Pettus)
13. **Adjourn 7:23pm** M/S/Thompson/Sanders. Aye's: Weisberg, Kaplan-Pettus, Sanders, Chokkalingam, Schlosberg, Thompson, Powell and Jay. Noe's: None. Abstain:None. Absent: None

City of Berkeley Youth Commission Work Plan

Mission: Identifies the needs of youth, reviews, and recommends youth services and programs.

Activity	Resources	Outputs (What's Happened So Far)	Next Step	Goal
Microgrants	Members of council School board City staff	Discussion with council members		Provide funds to youth lead organizations to increase their opportunities
Mental health (survey at BUSD)	BHS student leadership Wellness and Support Project BHS	N/A	Draft survey to send out to BUSD students to assess needs	Increase quality of mental health care and resources at Berkeley Schools
Youth getting spots in other commissions	Members of council School board City staff	Discussion with council members		Have space in various commissions in Berkeley for Youth Commission members to be appointed
Title Nine training for students	Title IX coordinator Principal Raygoza	Discussion with admin		
Improving vegetarian school lunch within BUSD	Meatless Mondays Club Meal coordinator within BUSD	N/A	Contact meal coordinator	Vegetarian students having sufficient access to healthy school lunch.
Expanding access to free meals		N/A		





CONSENT CALENDAR  
June 14, 2022

To: Honorable Mayor and Members of the City Council  
From: Youth Commission  
Submitted by: Samuel Kaplan Pettus, Chair, Youth Commission  
Subject: Adding a youth member to the Environment and Climate Commission

RECOMMENDATION

That Council adds a seat on the Environment and Climate Commission for a person under 18 years of age; and that Student Director on the Berkeley Unified School Board nominates the new youth commissioner and that the full board confirms the appointment.

FISCAL IMPACTS OF RECOMMENDATION

No fiscal impact.

CURRENT SITUATION AND ITS EFFECTS

Currently, the only youth involvement in city policymaking is the Youth Commission. The Youth Commission is an important and powerful voice for youth in our city. Youth are affected by every policy decision made by the City Council, in particular, decisions to do with climate change. Youth will be affected by the decisions we make now for the rest of their lives, but are not seriously involved in making those decisions. The current Climate and Environment Commission has no designated seat for youth. This means that the commission lacks the valuable lived experience and perspectives of youth. It is imperative that youth's voices are considered when addressing climate change.

BACKGROUND

In 1979 the City Council, by establishing the Youth Commission, recognized the importance of elevating the voices of young people in the city policy process. The enabling legislation of the Youth Commission states that the goal of the commission is to "give youth a voice in effecting City policy and services". Since that time, the Youth Commission has done its best to navigate city policy bureaucracy and elevate the needs of youth in our city. However, youth voices have been lacking in the majority of city policy decisions.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE CHANGE

There are no direct environmental impacts of this proposal. However, youth have the most to lose from the future of our environment and decisions about sustainability, and hence should have a seat at the table when discussing environmental policy.

### RATIONALE FOR RECOMMENDATION

The proposal would expand youth involvement in city policymaking and better fulfill the vision laid out in the enabling legislation of the Youth Commission. The Environment and Climate Commission will benefit from the youth perspective. The youth member will help the commission understand the needs and capabilities of youth in our city. The youth member will help the commission to harness the power of young people's experiences to better fulfill their mission. Young people will need to be part of our city's, and our world's, long-term environmental approach. This young person should not be tokenized but should be a full voting member of the commission. The commission should be required to fully engage youth in their planning process. The only way to ensure youth have a fair voice on the commission is if they are treated with respect and dignity by being allowed to fully participate and vote on all matters before the commission. If the city fails to give the youth member of the commission a full vote they risk the commission ignoring young people's perspectives on this critical issue.

We recommend that the Student Director on the Berkeley Unified School Board nominates the youth commissioner and that the full board confirms their choice. This will better ensure that the representative is in line with the interests of the youth and reduce the risk of over politicization of the appointee.

### ALTERNATIVE ACTIONS CONSIDERED

We also considered the City of Berkeley Youth Commission appointing the new youth commissioner to the Environment and Climate Commission. We would support this if council feels it is a better approach.

### CONTACT PERSONS

Samuel Kaplan Pettus, Commissioner, Youth Commission  
Ginsi Byrant, Secretary, Youth Commission

### Attachments:

1: Resolution

RESOLUTION NO. ##-###

AMENDING THE ENABLING LEGISLATION OF THE ENVIRONMENT AND CLIMATE  
COMMISSION (3.82) TO: ADD A SEAT TO THE ENVIRONMENT AND CLIMATE  
COMMISSION

WHEREAS, Youth (persons under 18 years of age) are unable to vote in council or mayoral elections; and

WHEREAS, youth (persons under 18) are not represented in the City of Berkeley Environment and Climate Commission; and

WHEREAS, the voices of youth (persons under 18) have valuable ideas for policy; and

WHEREAS, youth (persons under 18) are capable of serving and participating in city commissions; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Berkeley amends the enabling legislation of the Environment and Climate Commission (Section 3.82) to:

1. Add a seat to the Environment and Climate Commission.
2. The Berkeley Unified School District Board of Directors Student Director shall nominate the new youth commissioner.
3. The Berkeley Unified School District Board of Directors shall confirm the appointment to the Environment and Climate Commission,
4. The following desirable criteria may guide, but not restrict, the Berkeley Unified School District Board of Directors in making appointments:
  - a) To be residents of the City;
  - b) To be between the ages of twelve and eighteen;
5. The youth commissioner shall serve for no more than two years on the Environment and Climate Commission as the appointee of the Berkeley Unified School District.
6. The youth commissioner may continue to serve on the Environment and Climate Commission in the event they are no longer between the ages of 12-18.
7. The youth commissioner may be re-appointed in accordance with the provisions of Sections [2.04.030](#) through [2.04.130](#).
8. The youth commissioner shall be a fully-appointed member of the Environment and Climate Commission.