



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

**WEDNESDAY, JANUARY 4, 2023
2:30 P.M.**

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf
Alternate: Councilmember Ben Bartlett

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

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of the attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL <https://cityofberkeley-info.zoomgov.com/j/1605904304>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and Enter Meeting ID: **160 590 4304**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Agenda & Rules Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

AGENDA

Roll Call

Public Comment

Review of Agendas

1. **Approval of Minutes: November 28, 2022**
2. **Review and Approve Draft Agenda:**
 - a. 1/17/23 – 6:00 p.m. Regular City Council Meeting
3. **Selection of Item for the Berkeley Considers Online Engagement Portal**
4. **Adjournments In Memory**

Scheduling

5. **Council Worksessions Schedule**
6. **Council Referrals to Agenda Committee for Scheduling**
7. **Land Use Calendar**

Referred Items for Review

- 8a. **Discussion Regarding Impact of COVID-19 (novel coronavirus) on Meetings of Legislative Bodies**
- 8b. **Analysis of Return to In-Person Meetings of City Legislative Bodies**
9. **Amending City Council Rules of Procedure & Order to Allow Policy Committee Track Items with Budget Referrals to be Referred to the Budget & Finance Committee and one Subject Matter Policy Committee**
From: Councilmember Hahn (Author)
Referred: November 21, 2022
Due: May 15, 2023
Recommendation: Adopt a resolution amending the City Council Rules of Procedure & Order to allow Policy Committee Track Items that include a Budget Referral to be assigned by the Agenda Committee to the Budget & Finance Committee and one additional Policy Committee.
Financial Implications: None
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

Unscheduled Items

10. Discussion Regarding Design and Strengthening of Policy Committee Process and Structure (Including Budget Referrals)
11. Strengthening and Supporting City Commissions: Guidance on the Development of Legislative Proposals
12. Discussion of Potential Changes and Enhancements to the City Council Legislative Process

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment – Next Meeting Tuesday, January 17, 2023

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

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

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

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

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

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

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



#### COMMUNICATION ACCESS INFORMATION:

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

\* \* \*

I hereby certify that the agenda for this special meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on Thursday, December 29, 2022.



Mark Numainville, City Clerk

## **Communications**

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

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

**MONDAY, NOVEMBER 28, 2022**

**2:30 P.M.**

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Kate Harrison

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

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of the attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL <https://us02web.zoom.us/j/89020212227>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial **1-669-900-9128** or **1-877-853-5257** (Toll Free) and Enter Meeting ID: **890 2021 2227**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Agenda & Rules Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

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

**Public Comment** – 2 speakers

## **Review of Agendas**

**1. Approval of Minutes: November 21, 2022**

**Action:** M/S/C (Hahn/Wengraf) to approve the minutes of 11/21/22.

**Vote:** All Ayes.

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

a. 12/13/22 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Hahn/Wengraf) to approve the 12/13/22 agenda with the changes noted below.

- *Item 19 Holiday Fund (Arreguin) – Councilmember Hahn added as a co-sponsor*
- *Item 20 BUSD Parking Project (Taplin) – Moved to Action Calendar*
- *Item 23 Bus Rapid Transit (Taplin) – Revised item submitted; referred to Facilities, Infrastructure, Transportation, Environment & Sustainability Committee*
- *Item 24 Song, Motto, and Flag (Bartlett) – Referred to Civic Arts Commission*
- *Item 25 Airplane Bottles of Alcohol (Bartlett) – Referred to Community Health Commission; Councilmember Hahn added as a co-sponsor*
- *Item 26 Year End Status (City Manager) – Moved to Action Calendar*
- *Item 27 Financial Condition (City Manager) – Moved to Action Calendar*

Order of Action Calendar

Item 21 Zoning Ordinance

Item 26 Year End Status

Item 22 Annual Appropriations Ordinance

Item 27 Financial Condition

Item 20 BUSD Parking Project

**Vote:** All Ayes.

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

– None Selected

**4. Adjournments In Memory** – None

## **Scheduling**

**5. Council Worksessions Schedule**

- Special meeting for election and appointments called for 12/13/22 at 5:00pm
- Special virtual meeting for Housing Element called for 1/18/23 at 4:00pm

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

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

## Referred Items for Review

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

8b. **Analysis of Return to In-Person Meetings of City Legislative Bodies**

**Action:** 1 speaker. No action taken.

9. **Amending City Council Rules of Procedure & Order to Allow Policy Committee Track Items with Budget Referrals to be Referred to the Budget & Finance Committee and one Subject Matter Policy Committee**

**From:** Councilmember Hahn (Author)

**Referred:** November 21, 2022

**Due:** May 15, 2023

**Recommendation:** Adopt a resolution amending the City Council Rules of Procedure & Order to allow Policy Committee Track Items that include a Budget Referral to be assigned by the Agenda Committee to the Budget & Finance Committee and one additional Policy Committee.

**Financial Implications:** None

Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

**Action:** 1 speaker. Discussion held regarding options for short term fixes including definition of “budget referral,” changes to Agenda & Rules procedures, and referring the budget portion of a “hybrid” item to the City Manager for tracking. Item continued to January 4, 2023.

10. **Discussion Regarding Design and Strengthening of Policy Committee Process and Structure (Including Budget Referrals)**

**Action:** 0 speakers. Item continued to the January 4, 2023 meeting as unscheduled business.

## Unscheduled Items

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

12. **Discussion of Potential Changes and Enhancements to the City Council Legislative Process**

## Items for Future Agendas

- **None**

## Adjournment

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

**Vote:** Ayes – Hahn, Arreguin; Noes – None; Abstain – None; Absent – Wengraf.

Councilmember Wengraf absent at 3:38 p.m.

Adjourned at 3:48 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on November 28, 2022.

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Mark Numainville, City Clerk

## Communications

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**DRAFT AGENDA**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, January 17, 2023**  
**6:00 PM**

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
 DISTRICT 2 – TERRY TAPLIN  
 DISTRICT 3 – BEN BARTLETT  
 DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN  
 DISTRICT 6 – SUSAN WENGRAF  
 DISTRICT 7 – RIGEL ROBINSON  
 DISTRICT 8 – MARK HUMBERT

***PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION***

*For in-person attendees, face coverings or masks that cover both the nose and the mouth are required. Physically distanced seating will be available. If you are feeling sick, please do not attend the meeting in person.*

*Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at [http://berkeley.granicus.com/MediaPlayer.php?publish\\_id=1244](http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244).*

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

*To join by phone: Dial **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and enter Meeting ID: <<INSERT MEETING ID HERE>>. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*Please be mindful that the meeting will be recorded and all rules of procedure and decorum apply for in-person attendees and those participating by teleconference or videoconference.*

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

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

## Preliminary Matters

### Roll Call:

**Land Acknowledgement Statement:** *The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.*

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

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

**Public Comment on Non-Agenda Matters:** *Persons will be selected to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons attending the meeting in-person and wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

## Consent Calendar

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

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

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

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

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

## Consent Calendar

### 1. **Zoning Ordinance Amendments Making Technical Edits and Corrections to Berkeley Municipal Code (BMC) Title 23**

**From: City Manager**

**Recommendation:** Adopt second reading of Ordinance No. 7,850-N.S. containing technical edits, corrections and other non-substantive amendments to the following sections of the Zoning Ordinance:

- BMC Section 23.108.020 (Zoning Districts)
- BMC Section 23.202.020 (Allowed Land Uses)
- BMC Section 23.202.140 (R-SMU District)
- BMC Section 23.204.150 (R-BMU District)
- BMC Section 23.204.020 (Allowed Land Uses)
- BMC Section 23.204.060 (C-U District)
- BMC Section 23.204.080 (C-E District)
- BMC Section 23.204.100 (C-SA District)
- BMC Section 23.206.040 (Use-Specific Regulations)
- BMC Section 23.406.050 (Variances)
- BMC Section 23.502.020 (Glossary)

**First Reading Vote:** All Ayes.

**Financial Implications:** None

Contact: Jordan Klein, Planning and Development, (510) 981-7400

### 2. **Amendment: FY 2023 Annual Appropriations Ordinance**

**From: City Manager**

**Recommendation:** Adopt second reading of Ordinance No. 7,851-N.S. amending the FY 2023 Annual Appropriations Ordinance No. 7,828-N.S. for fiscal year 2023 based upon recommended re-appropriation of committed FY 2022 funding and other adjustments authorized since July 1, 2022, in the amount of \$178,289,951 (gross) and \$172,028,412 (net).

**First Reading Vote:** All Ayes.

**Financial Implications:** See Report.

Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000

## Consent Calendar

### 3. Minutes for Approval

**From: City Manager**

**Recommendation:** Approve the minutes for the Council meetings of November 3 (regular), November 14 (closed), November 15 (special and regular), November 21 (special), November 28 (closed), November 29 (regular), December 6 (regular), December 12 (closed), and December 13, 2022 (special and regular)

**Financial Implications:** None

Contact: Mark Numainville, Commission Secretary, (510) 981-6900

### 4. Approval of donated sculpture gift, Queen Shamiram by Fred Parhad, valued at \$225,000, for inclusion in the City of Berkeley's Public Art Collection

**From: City Manager**

**Recommendation:** Adopt a Resolution approving the gift of a sculpture by artist Fred Parhad titled Queen Shamiram, valued at \$225,000, donated by Narsai and Venus David to the City of Berkeley's Public Art Collection. The artwork will be installed for permanent display along the pedestrian path at the southeast corner of Maudelle Shirek Building at Martin Luther King Jr. Way and Allston Way as approved by the Civic Arts Commission.

**Financial Implications:** See report

Contact: Eleanor Hollander, Economic Development, (510) 981-7530

### 5. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on January 17, 2023

**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:** \$3,506,000

Contact: Henry Oyekanmi, Finance, (510) 981-7300

### 6. Amendment of Aramark Contract for Uniforms and Laundering

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to amend the City's contract with Aramark (contract #32000146) through FY 2025, and to approve additional appropriations related for performance of this contract.

**Financial Implications:** \$1,017,000

Contact: Henry Oyekanmi, Finance, (510) 981-7300

## Consent Calendar

- 7. Contract No. 32300064 Amendment: Tiana Sanchez International, LLC for HHCS Equity Consultant**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 32300064 with Tiana Sanchez International, LLC to add \$21,078 and extend the term of the Health, Housing, and Community Services (HHCS) Equity Consultant contract to January 31, 2024 with a not to exceed amount of \$141,077.73.  
**Financial Implications:** One-Time Grant Fund - \$21,078  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 8. Revenue Grant Agreement: Funding Support from the State of California: California Home Visiting Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to submit a grant agreement to the State of California, to accept the grants, and execute any resultant revenue agreements and amendments to conduct public health promotion, protection, and prevention services for the California Home Visiting Program in the projected total amount of \$2,473,611 for July 1, 2022 to June 30, 2028.  
**Financial Implications:** See report.  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 9. Contract No. 32000226 Amendment: MidAmerica Administrative & Retirement Solutions, Third Party Administrator for SRIP I Disability, Police Employees Retiree Income Plan, and Health Reimbursement Accounts for Retiree Health Premium Assistance Plan Reimbursements**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract amendment to Contract No. 32000226 with MidAmerica Administrative & Retirement Solutions for administration of the SRIP I Disability, Health Reimbursement Account (HRA), and Police Employees Retiree Income Plans (PERIP) for the period covering October 1, 2018, through December 31, 2022; for a total cost not to exceed \$125,000.  
**Financial Implications:** See report  
Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800
- 10. Establish Classification and Salary – Medical Director**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution to establish the represented classification of Medical Director with a monthly salary range of \$15,671.76 – \$17,802.72.  
**Financial Implications:** See report  
Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800

## Consent Calendar

- 11. Contract: Presidio for Micro-Segmentation**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to award a contract to Presidio for implementing micro-segmentation for a total not to exceed amount of \$822,512, from January 18, 2023 to June 30, 2028.  
**Financial Implications:** See report  
Contact: Kevin Fong, Information Technology, (510) 981-6500
- 12. Lease Agreement: Bay Area Hispano Institute for Advancement (BAHIA) at building 1718 8th Street, at James Kenney Park**  
**From: City Manager**  
**Recommendation:** Adopt the first reading of an Ordinance authorizing the City Manager to execute a lease agreement with Bay Area Hispano Institute for Advancement (BAHIA) to use the building at 1718 8th Street, adjacent to James Kenney Community Center, in James Kenney Park for a 15-year lease term anticipated to begin March 1, 2023 and ending February 1, 2038, with one 5-year option to renew.  
**Financial Implications:** See report.  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

## Council Consent Items

- 13. Support for SB 4: Affordable Housing on Faith Lands Act**  
**From: Mayor Arreguin (Author)**  
**Recommendation:** Adopt a Resolution in support of Senate Bill 4 with amendments, the Affordable Housing on Faith Lands Act, introduced by Senator Scott Weiner. Send a copy of the Resolution to Governor Gavin Newsom, State Senators Nancy Skinner and Scott Weiner, and Assemblymember Buffy Wicks.  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 14. Twelfth Annual Martin Luther King Jr. Celebration: City Sponsorship and Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Fund**  
**From: Mayor Arreguin (Author)**  
**Recommendation:**  
1. Adopt a Resolution retroactively co-sponsoring the 12th Annual Martin Luther King Jr. Celebration Breakfast on January 16, 2023.  
2. Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$250 from Mayor Arreguin, to the Berkeley Rotary Endowment, the fiscal sponsor of the 12th Annual Martin Luther King Jr. celebration, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguin and any other Councilmembers who would like to contribute.  
**Financial Implications:** Mayor's Discretionary Funds - \$250  
Contact: Jesse Arreguin, Mayor, (510) 981-7100

## Council Consent Items

**15. Resolution in Support of SB-36 (Skinner)**

**From: Councilmember Wengraf (Author)**

**Recommendation:** Adopt a Resolution in support of SB-36: Out-of-state criminal charges: prosecution related to abortion and gender-affirming care (Skinner) and send copies to Senator Skinner, Assembly Member Wicks and Governor Newsom.

**Financial Implications:** None

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

**16. Relinquishment of Council Office Budget Funds to the General Fund and Grant of Such Funds for Pacific Center for Human Growth**

**From: Councilmember Robinson (Author)**

**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$1,000 per Councilmember, including \$1,000 from Councilmember Robinson, to Pacific Center for Human Growth to assist with urgent lease signing and renovation costs.

**Financial Implications:** Councilmember's Discretionary Funds - \$1,000

Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

## Action Calendar

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

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

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

## Action Calendar – Public Hearings

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

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

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

## Action Calendar – Public Hearings

### 17. Changes to Selected Camps Program Fees

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion, adopt a Resolution approving new fees and increasing current fees for select recreation programs and facility rentals; and rescinding Resolution No. 70,193 N.S. and all amendatory resolutions.

**Financial Implications:** See report

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

### 18. Citywide Affordable Housing Requirements

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion:

1. Adopt first reading of an Ordinance to amending the Berkeley Municipal Code Chapter 23.328, updating the citywide Affordable Housing Requirements (AHR) in the Zoning Ordinance, repealing existing administration and zoning code sections that refer to affordable housing requirements, BMC Section 22.20.065, and Section 23.312.040(A)(6), and updating references to BMC Chapter 23.328 throughout the Berkeley Municipal Code, to become effective on April 1, 2023.

2. Adopt a Resolution establishing regulations for a voucher program and establishing an in-lieu fee pursuant to BMC Section 23.328.020(A)(2) upon the effective date of contemporaneously adopted amendments to BMC Section 23.328, and rescind Resolution No. 68,074-N.S. related to fees, exemptions, and administration of inclusionary affordable housing and in-lieu programs upon the effective date of contemporaneously adopted amendments to BMC Section 23.328.

**Financial Implications:** See report

Contact: Jordan Klein, Planning and Development, (510) 981-7400, Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

## Action Calendar – Old Business

### 19. Status Report - Berkeley's Financial Condition (FY 2012 - FY 2021): Pension Liabilities and Infrastructure Need Attention *(Continued from December 13, 2022)*

**From: City Manager**

Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000

### 20. Resolution Supporting Trip Reduction Alternative for BUSD Berkeley High School Tennis and Parking Structure Project *(Continued from December 13, 2022)*

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

**Recommendation:** Adopt a Resolution in support of a Trip Reduction Alternative to be included in the scope of the Environmental Impact Report for the Berkeley High School Tennis and Parking Structure Project at 2000 Bancroft Way, and send a copy of Resolution to the Berkeley Unified School District (BUSD) Board of Directors.

**Financial Implications:** None

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



## Action Calendar – New Business

### 21a. Allocation of \$3 Million Over Two Years, FY 2024 and FY 2025, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs). From: Sugar Sweetened Beverage Product Panel of Experts

#### **Recommendation:**

Adopt a Resolution allocating \$3 million from the General Fund in FY24 (July 1, 2023 through June 30, 2024) and FY25 (July 1, 2024 through June 30, 2025) that shall be invested in a grant program administered and coordinated by the Department of Health, Housing, and Community Services' (HHCS) Public Health Division (HHCS/PHD) consistent with the Sugar-Sweetened Beverage Product Panel of Experts (SSBPPE) Commission's goals to reduce the consumption of sugar sweetened beverages (SSB) in Berkeley and to address the health effects of SSB consumption. The total of \$3 million will be distributed in two installments of \$1.5 million per year for FY24 and FY25. In each of these years, the funds will be distributed as follows:

- a. Direct the City Manager to award up to 42.5% of the allocated funds to Berkeley Unified School District (BUSD) through a grant proposal to reduce the consumption of sugar-sweetened beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs. The BUSD funding process is separate from the RFP process for the general community-based organization funding process and shall be guided by the SSBPPE Commission's Criteria for BUSD Funding.
- b. Direct the City Manager to award at least 42.5% of the allocated funds through an RFP process managed by HHCS/PHD for grants to community-based organizations consistent with the SSBPPE Commission's goals to reduce the consumption of SSBs and to address the effects of SSB consumption. The community-based organization funding RFP process is separate from the BUSD funding process and shall be guided by the SSBPPE Commission's Criteria for Community Agency Grants.
- c. Direct the City Manager to utilize up to 15% of the allocated funds to support HHCS/PHD to coordinate and monitor the grant process, coordinate the overall program evaluation, and produce an annual report that disseminates process and outcome data from the epidemiologist resulting from the SSBPPE Commission funding program as well as pay certain City of Berkeley Finance Department costs related to the sugary drink tax.

**Financial Implications:** See report

Contact: Roberto Terrones, Commission Secretary, (510) 981-5400

## Action Calendar – New Business

### 21b. Companion Report: Allocation of \$3 Million Over Two Years, FY24 and FY25, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs).

**From: City Manager**

**Recommendation:** Adopt a Resolution allocating \$2 million from the General Fund in FY24 (July 1, 2023 through June 30, 2024) and FY25 (July 1, 2024 through June 30, 2025) that shall be invested in a grant program administered and coordinated by the Department of Health, Housing, and Community Services' (HHCS) Public Health Division (HHCS/PHD) consistent with the Sugar-Sweetened Beverage Product Panel of Experts (SSBPPE) Commission's goals to reduce the consumption of sugar sweetened beverages (SSB) in Berkeley and to address the health effects of SSB consumption. The total of \$2 million will be distributed in two installments of \$1 million per year for FY24 and FY25. The funds will be distributed as follows:

a. Direct the City Manager to award up to \$712,000 of the allocated funds to Berkeley Unified School District (BUSD) for the period, July 1, 2023 to June 30, 2025 through a grant proposal to reduce the consumption of sugar-sweetened beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs. The BUSD funding process is separate from the RFP process for the general community-based organization funding process and shall be guided by the SSBPPE Commission's Criteria for BUSD Funding.

b. Direct the City Manager to award at least \$712,000 of the allocated funds for the period, July 1, 2023 to June 30, 2025 through an RFP process managed by HHCS/PHD for grants to community-based organizations consistent with the SSBPPE Commission's goals to reduce the consumption of SSBs and to address the effects of SSB consumption. The community-based organization funding RFP process is separate from the BUSD funding process and shall be guided by the SSBPPE Commission's Criteria for Community Agency Grants.

c. For the period, July 1, 2023 to June 30, 2025, direct the City Manager to allocate \$125,000 to fund Finance Department costs for staffing and MuniServices fees and \$451,000 to HHCS/PHD for staffing, operating and consulting costs to coordinate and monitor the grant process, manage resulting contracts awarded, support activities aligned with the goal of the sugary beverage tax, including the Healthy Retail Checkout ordinance, and provide an annual presentation to the SSBPPE Commission that includes process and outcome data and updates on Finance Department fees related to the sugary drink tax for the SSBPPE Commission to inform the development of the Commission's annual report.

d. Carryover any sugary drink tax revenue received in excess of \$2 million during FY24 and FY25 to be awarded for related services in FY25 – FY27.

**Financial Implications:** See report

Contact: Henry Oyekanmi, Finance, (510) 981-7300, Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

## Action Calendar – New Business

- 22a. Adding a Youth Member to the Environment and Climate Commission**  
**From: Youth 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.  
**Financial Implications:** None  
Contact: Ginsi Bryant, Commission Secretary, (510) 981-6700
- 22b. Support for Youth Appointee to Environment and Climate Commission**  
**From: 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.  
If feasible, the ECC recommends that a youth representative be nominated by the BUSD Student Director and confirmed by the full BUSD Board of Directors, in alignment with the recommendation passed by the Youth Commission.  
**Financial Implications:** See report  
Contact: Billi Romain, Commission Secretary, (510) 981-7400

## Action Calendar – Policy Committee Track Items

- 23. Amend Contract No. 32200161 with Community Development Partners to extend consulting work associated with Equitable Black Berkeley Initiative**  
**From: Mayor Arreguin (Author)**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200161 with Community Development Partners (CDP) to add \$75,000 to the existing ideation facilitator contract supporting the Equitable Black Berkeley Initiative for a total contact amount not to exceed \$125,000.  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 24. Referral for a Security Assessment of the 1700 and 1600 Blocks of San Pablo Avenue**  
**From: Councilmember Kesarwani (Author)**  
**Recommendation:** Refer to the City Manager to conduct a security assessment of the 1700 and 1600 blocks of San Pablo Avenue two months after the City of Berkeley has entered into a lease of real property located at 1720 San Pablo Avenue (hereafter referred to as Berkeley Inn, a 27-room motel). Additional security measures deemed necessary should be implemented as soon as practicable after the security assessment is completed. Recommended aspects of the security assessment and possible security measures are described in the report.  
**Financial Implications:** See report  
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

## Action Calendar – Policy Committee Track Items

25. **Adopt an Ordinance Amending Berkeley Municipal Code Chapter 3.82 Modifying Membership and Appointment Procedures for the Environment and Climate Commission**  
**From: Councilmember Harrison (Author)**  
**Recommendation:** Adopt an Ordinance Amending Berkeley Municipal Code Chapter 3.82 Modifying Membership and Appointment Procedures for the Environment and Climate Commission  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

## Action Calendar – Policy Committee Track Items

### 26. **Bureaucratic Effectiveness and Referral Improvement and Prioritization Effort (BE RIPE)**

**From: Councilmember Droste (Author)**

**Recommendation:** In order to ensure that the City focuses on high-priority issues, projects, and goals and affords them the resources and funding such civic efforts deserve, the City Council should consult with the City Manager's Office to develop and adopt a suite of revisions to the City Council Rules of Procedure and Order that would implement the following provisions:

1. Beginning in 2023, Councilmembers shall submit no more than one major legislative proposal or set of amendments to any existing ordinance per year, with the Mayor permitted to submit two major proposals, for a maximum of ten major Council items per year.
2. In 2023 and all future years, Councilmembers shall be required to submit major items before an established deadline. Council shall then prioritize any new legislative items as well as any incomplete major items from the previous year using the Reweighted Range Voting (RRV) process. This will help establish clear priorities for staff time, funding, and scheduling Council work sessions and meetings. For 2023 alone, the RRV process should include outstanding/incomplete Council items from all previous years. In 2024 and thereafter, the RRV process should only incorporate outstanding/incomplete major items from the prior year. However, Councilmembers may choose to renominate an incomplete major policy item from an earlier year as their single major item.
3. During deliberations at a special worksession, Council retreat, and/or departmental budget presentations, Council and the City Manager should develop a work plan that establishes reasonable expectations about what can be accomplished by staff given the list of priorities as ranked by RRV. Council should also consult with the City Manager and department heads, particularly the City Attorney's office, Planning Department, and Public Works Department on workload challenges (mandates outside Council priorities, etc.), impacts, reasonable staff output expectations, and potential corrective actions to ensure that mandated deadlines are met, basic services are provided, and policy proposals are effectively implemented.
4. Budget referrals and allocations from City Council must be explicitly related to a previously established or passed policy/program, planning/strategy document, and/or an external funding opportunity related to one of these. As a good government practice, councilmembers and the Mayor may not submit budget referrals which direct funds to a specific organization or event. Organizations which receive City funding must submit at least annually an application detailing, at a minimum: the civic goal(s)/purpose(s) for which City funds are used, the amount of City funding received for each of the preceding five years, and quantitative or qualitative accounting of the results/outcomes for the projects that made use of those City funds. Organizations receiving more than \$20,000 in City funds should be required to provide quantitative data regarding the number of individuals served and other outcomes.
5. Ensuring that any exceptions to these provisions are designed to ensure flexibility in the face of an emergency, disaster, or urgent legal issue/liability and narrowly tailored to be consistent with the goals of enhanced efficiency, effectiveness, fairness, and focus.

**Financial Implications:** See report

Contact: Lori Droste, Councilmember, District 8, (510) 981-7180

## Action Calendar – Policy Committee Track Items

### 27. Reforms to Public Comment Procedures at meetings of the Berkeley City Council

**From: Councilmember Droste (Author)**

**Recommendation:** Adopt a Resolution revising the City Council Rules of Procedure and Order: Section IV. Conduct of the Meeting and Appendix C Temporary Rules for The Conduct of City Council Meetings Through Video Conference During The Covid-19 Emergency to:

1. Consolidate non-agenda public comment, public comment on the Consent Calendar, and public comment on Action Items into a single public comment period toward the start of the Council meeting (consistent with the Berkeley Unified School District's public comment procedure), and continue to provide for additional time for public comment at the end of meetings;
2. Adopt reasonable limits on the overall number of public speakers (consistent with rulings from the Second District Court of Appeal) with a mechanism for the City Council to extend public comment; and
3. Rescind Resolution No. 70,091– N.S

**Financial Implications:** See report

Contact: Lori Droste, Councilmember, District 8, (510) 981-7180

## Public Comment – Items Not Listed on the Agenda

### Adjournment

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

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

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City Clerk Department - 2180 Milvia Street, First Floor  
Tel: 510-981-6900, TDD: 510-981-6903, Fax: 510-981-6901  
Email: [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info)

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

**COMMUNICATION ACCESS INFORMATION:**

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 (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

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Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.

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Office of the Mayor

CONSENT CALENDAR
January 17, 2023

To: Honorable Members of the City Council
 From: Mayor Jesse Arreguín
 Subject: Support for SB 4: Affordable Housing on Faith Lands Act

RECOMMENDATION

Adopt a Resolution in support of Senate Bill 4 with amendments, the Affordable Housing on Faith Lands Act, introduced by Senator Scott Weiner. Send a copy of the Resolution to Governor Gavin Newsom, State Senators Nancy Skinner and Scott Weiner, and Assemblymember Buffy Wicks.

BACKGROUND

Development of new affordable housing is essential for meeting our goals of creating a more equitable and accessible city. In a 2020 community survey, 80% of respondents said that affordable housing and homeless services are either extremely or very important. Under the 2023-2031 Regional Housing Needs Allocation (RHNA) cycle, almost 9,000 units of housing is needed to be constructed in Berkeley, with almost 4,000 of those available to those at low and very low-income levels. Despite the need and desire to create affordable housing, restrictive zoning rules, bureaucratic regulations, and increased construction costs have made it increasingly difficult to identify and finance such development. Under the draft Housing Element for the City of Berkeley, infill developments will play a key role in meeting RHNA numbers.

A 2020 report by UC Berkeley's Terner Center for Housing Innovation revealed that around 38,800 acres of land in California, or an area slightly larger than the City of Oakland, is used for religious purposes and potentially developable. Much of this land is located in urban counties and areas the State had identified as high resource opportunity areas. There is a growing trend of religious institutions wanting to develop lots owned by them into affordable housing, but are often met with barriers that significantly limit the size and scope of such developments or makes it financially infeasible altogether.

SB 4, the Affordable Housing on Faith Lands Act, introduced by State Senator Scott Weiner, would streamline the building process for religious institutions and independent institutions of higher education that want to build 100% affordable housing on their land. Qualified proposals, as outlined in the bill, would be eligible for a use by right, and would require construction workers receive prevailing wages. However, to help increase opportunities for employment in the construction industry which is currently experiencing

shortages, the bill should be amended to include apprenticeship and training programs at such projects.

Berkeley is home to an extensive number of religious institutions, with multiple examples of such organizations providing land to create affordable housing. In 2022, Jordan Court opened, providing 34 units of affordable housing for seniors, in partnership with All Souls Episcopal Parish. Also in 2022, a vacant eight unit apartment was renovated and converted into permanently affordable housing under the Small Sites Program, in partnership with the McGee Avenue Baptist Church, which owns the property. Two other projects currently under development that involve partnerships with local religious institutions. St. Paul Terrace, which will provide 49 units at 30-60% AMI near Ashby BART, will be built on land owned by the St. Paul African Methodist Episcopal Church. Another South Berkeley development, the Ephesian Legacy Court will provide 79 one-bedroom units at 30-60% AMI on land owned by the Ephesian Church of God in Christ. These projects, many of which are infill developments would not have been able to go forward without significant support from the City, including funding from Measures O and U1 and zoning changes to enable these developments to move forward.

FINANCIAL IMPLICATIONS

Not applicable.

ENVIRONMENTAL SUSTAINABILITY

Creating infill housing developments, especially in areas near public transit, is a vital goal of the Berkeley Climate Action Plan, as it will help reduce greenhouse gas emissions from transportation, which remains a significant source of the City's emissions.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1: Resolution

2: Text of SB 4

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

IN SUPPORT OF SB 4 – THE AFFORDABLE HOUSING ON FAITH LANDS ACT

WHEREAS, development of new affordable housing is essential for meeting our goals of creating a more equitable and accessible city; and

WHEREAS, 38,800 acres of land across California, an area slightly larger than the City of Oakland, is used for religious purposes and potentially developable; and

WHEREAS, despite the need and desire to create affordable housing, restrictive zoning rules, bureaucratic regulations, and increased construction costs have made it increasingly difficult to identify and finance such development; and

WHEREAS, under the 2023-2031 Regional Housing Needs Allocation (RHNA) cycle, almost 9,000 units of housing is needed to be constructed in Berkeley, with almost 4,000 of those available to those at low and very low-income levels; and

WHEREAS, under the draft Housing Element for the City of Berkeley, infill developments will play a key role in meeting RHNA numbers; and

WHEREAS, Berkeley is home to many religious institutions, with multiple examples of such organizations providing land to create affordable housing with City support, with 42 units being created in 2022 and 128 units in the pipeline; and

WHEREAS, creating policies that streamline the creation of affordable housing on lots owned by religious institutions will make it easier to meet RHNA goals and create opportunities for low-income families to live in Berkeley; and

WHEREAS, SB 4, the Affordable Housing on Faith Lands Act, introduced by State Senator Scott Weiner, would streamline the building process for religious institutions and independent institutions of higher education that want to build 100% affordable housing on their land; and

WHEREAS, qualified proposals, as outlined in the bill, would be eligible for a use by right, and would require construction workers receive prevailing wages.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports SB 4 with an amendment to include apprenticeship and training programs.

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

SENATE BILL

No. 4

Introduced by Senator Wiener

(Principal coauthor: Assembly Member Wicks)

(Coauthors: Senators Eggman and Gonzalez)

(Coauthors: Assembly Members Gabriel, McKinnor, and Ward)

December 5, 2022

An act to add Section 65913.16 to the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 4, as introduced, Wiener. Planning and zoning: housing development: higher education institutions and religious institutions.

The Planning and Zoning Law requires each county and city to adopt a comprehensive, long-term general plan for its physical development, and the development of certain lands outside its boundaries, that includes, among other mandatory elements, a housing element. That law allows a development proponent to submit an application for a development that is subject to a specified streamlined, ministerial approval process not subject to a conditional use permit, if the development satisfies certain objective planning standards.

Existing law, the Zenovich-Moscone-Chacon Housing and Home Finance Act, establishes the California Tax Credit Allocation Committee within the Department of Housing and Community Development. Existing law requires the committee to allocate state low-income housing tax credits in conformity with state and federal law that establishes a maximum rent that may be charged to a tenant for a project unit constructed using low-income housing tax credits.

This bill would require that a housing development project be a use by right upon the request of an applicant who submits an application for streamlined approval, on any land owned by an independent

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institution of higher education or religious institution on or before January 1, 2024, if the development satisfies specified criteria, including that the development is not adjoined to any site where more than one-third of the square footage on the site is dedicated to industrial use. The bill would define various terms for these purposes. Among other things, the bill would require that 100% of the units, exclusive of manager units, in a housing development project eligible for approval as a use by right under these provisions be affordable to lower income households, except that 20% of the units may be for moderate-income households, provided that all of the units are provided at affordable rent, as set in an amount consistent with the rent limits established by the California Tax Credit Allocation Committee, or affordable housing cost, as specified. The bill would authorize the development to include ancillary uses on the ground floor of the development, as specified.

This bill would specify that a housing development project that is eligible for approval as a use by right under the bill is also eligible for a density bonus or other incentives or concessions, except as specified. The bill would require a development subject to these provisions to provide off-street parking of up to one space per unit, unless a local ordinance provides for a lower standard of parking, in which case the ordinance applies. The bill would prohibit a local government from imposing any parking requirement on a development subject to these provisions if the development is located within one-half mile walking distance of a high-quality transit corridor or major transit stop, as those terms are defined, and within one block of a car share vehicle.

This bill would require a local government that determines a proposed development is in conflict with any objective planning standards, as specified, to provide the developer with written documentation explaining those conflicts under a specified timeframe. The bill would require a local government to approve a development if the local government fails to provide the requisite documentation explaining any conflicts. The bill would authorize a local government to conduct a design review, as described, only if the design review focuses on compliance with the requisite criteria of a streamlined, ministerial review process. The bill would prohibit a local government from using a design review, as specified, from inhibiting, chilling, or precluding a streamlined, ministerial approval. The bill would require a local government to issue a subsequent permit for developments approved under the provisions of this act.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA does not apply to the ministerial approval of projects.

This bill, by requiring approval of certain development projects as a use by right, would expand the exemption for ministerial approval of projects under CEQA.

By adding to the duties of local planning officials with respect to approving certain development projects, this bill would impose a state-mandated local program.

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

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

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

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

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

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

- 1 SECTION 1. Section 65913.16 is added to the Government
- 2 Code, to read:
- 3 65913.16. (a) For purposes of this section:
- 4 (1) "Applicant" means a qualified developer who submits an
- 5 application for streamlined approval pursuant to this section.
- 6 (2) "Independent institution of higher education" has the same
- 7 meaning as defined in Section 66010 of the Education Code.
- 8 (3) "Local government" means a city, county, or city and county,
- 9 whether general law or chartered.

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1 (4) “Qualified developer” means any of the following:

2 (A) A local public entity, as defined in Section 50079 of the
3 Health and Safety Code.

4 (B) (i) A developer that is a nonprofit corporation, a limited
5 partnership in which the managing general partner is a nonprofit
6 corporation, or a limited liability company in which the managing
7 member is a nonprofit corporation.

8 (ii) The developer, at the time of submission of an application
9 for development pursuant to this section, owns or manages housing
10 units located on property that is exempt from taxation pursuant to
11 the welfare exemption established in subdivision (a) of Section
12 214 of the Revenue and Taxation Code.

13 (C) A developer that contracts with a nonprofit corporation that
14 has received a welfare exemption under Section 214.15 of the
15 Revenue and Taxation Code for properties intended to be sold to
16 low-income families with financing in the form of zero interest
17 rate loans.

18 (5) “Religious institution” means an institution owned,
19 controlled, and operated and maintained by a bona fide church,
20 religious denomination, or religious organization composed of
21 multidenominational members of the same well-recognized
22 religion, lawfully operating as a nonprofit religious corporation
23 pursuant to Part 4 (commencing with Section 9110) of Division 2
24 of Title 1 of the Corporations Code.

25 (6) “Use by right” means that the local government’s review of
26 the development project under this section may not require a
27 conditional use permit, planned unit development permit, or other
28 discretionary local government review or approval that would
29 constitute a “project” for purposes of Division 13 (commencing
30 with Section 21000) of the Public Resources Code. Any subdivision
31 of the sites shall be subject to all laws, including, but not limited
32 to, the local government ordinance implementing the Subdivision
33 Map Act (Division 2 (commencing with Section 66410)).

34 (b) Notwithstanding any inconsistent provision of a local
35 government’s general plan, specific plan, zoning ordinance, or
36 regulation, upon the request of an applicant, a housing development
37 project shall be a use by right, if all of the following criteria are
38 satisfied:

39 (1) The development is located on land owned on or before
40 January 1, 2024, by an independent institution of higher education

1 or a religious institution, including ownership through an affiliated
2 nonprofit public benefit corporation organized pursuant to the
3 Nonprofit Corporation Law (Part 2 (commencing with Section
4 5110) of Division 2 of Title 1 of the Corporations Code).

5 (2) The development is located on a parcel that satisfies the
6 requirements specified in subparagraphs (A) and (B) of paragraph
7 (2) of subdivision (a) of Section 65913.4.

8 (3) The development is located on a parcel that satisfies the
9 requirements specified in subparagraphs (B) to (K), inclusive, of
10 paragraph (6) of subdivision (a) of Section 65913.4.

11 (4) The development is located on a parcel that satisfies the
12 requirements specified in paragraph (7) of subdivision (a) of
13 Section 65913.4.

14 (5) The development is not adjoined to any site where more
15 than one-third of the square footage on the site is dedicated to
16 industrial use. For purposes of this subdivision, parcels separated
17 by only a street or highway shall be considered to be adjoined.

18 (6) The development project is located on a site that is
19 one-quarter acre in size or greater.

20 (7) One hundred percent of the development project's total units,
21 exclusive of a manager's unit or units, are for lower income
22 households, as defined by Section 50079.5 of the Health and Safety
23 Code, except that up to 20 percent of the total units in the
24 development may be for moderate-income households, as defined
25 in Section 50053 of the Health and Safety Code. Units in the
26 development shall be offered at affordable housing cost, as defined
27 in Section 50052.5 of the Health and Safety Code, or at affordable
28 rent, as set in an amount consistent with the rent limits established
29 by the California Tax Credit Allocation Committee. The rent or
30 sales price for a moderate-income unit shall also be at least 20
31 percent below the market rate for a unit of similar size and bedroom
32 count in the same ZIP Code in the city, county, or city and county
33 in which the housing development is located. The applicant shall
34 provide the city, county, or city and county with evidence to
35 establish that the units meet the requirements of this paragraph.
36 All units, exclusive of any manager unit or units, shall be subject
37 to a recorded deed restriction as provided in this paragraph for at
38 least the following periods of time:

39 (A) Fifty-five years for units that are rented. However, the local
40 government may require that the rental units in the housing

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1 development project be restricted to lower income and
2 moderate-income households for a longer period of time if that
3 restriction is consistent with all applicable regulatory requirements
4 for state assistance.

5 (B) Forty-five years for units that are owner occupied. However,
6 the local government may require that owner-occupied units in
7 the housing development project be restricted to lower income and
8 moderate-income households for a longer period of time if that
9 restriction is consistent with all applicable regulatory requirements
10 for state assistance.

11 (8) The development project complies with all objective
12 development standards of the city or county that are not in conflict
13 with this section.

14 (9) If the housing development project requires the demolition
15 of existing residential dwelling units, the applicant shall comply
16 with subdivision (d) of Section 66300, as that section read as of
17 January 1, 2024.

18 (10) The applicant certifies to the local government that either
19 of the following is true for the housing development project, as
20 applicable:

21 (A) The entirety of the development project is a public work
22 for purposes of Chapter 1 (commencing with Section 1720) of Part
23 7 of Division 2 of the Labor Code.

24 (B) A development that contains more than 10 units and is not
25 in its entirety a public work for purposes of Chapter 1 (commencing
26 with Section 1720) of Part 7 of Division 2 of the Labor Code and
27 approved by a local government pursuant to Article 2 (commencing
28 with Section 65912.110) of, or Article 3 (commencing with Section
29 65912.120) of, Chapter 4.1 shall be subject to all of the following:

30 (i) All construction workers employed in the execution of the
31 development shall be paid at least the general prevailing rate of
32 per diem wages for the type of work and geographic area, as
33 determined by the Director of Industrial Relations pursuant to
34 Sections 1773 and 1773.9 of the Labor Code, except that
35 apprentices registered in programs provided by the Chief of the
36 Division of Apprenticeship Standards may be paid at least the
37 applicable apprentice prevailing rate.

38 (ii) The development proponent shall ensure that the prevailing
39 wage requirement is included in all contracts for the performance

1 of the work for those portions of the development that are not a
2 public work.

3 (iii) All contractors and subcontractors for those portions of the
4 development that are not a public work shall comply with both of
5 the following:

6 (I) Pay to all construction workers employed in the execution
7 of the work at least the general prevailing rate of per diem wages,
8 except that apprentices registered in the programs approved by the
9 Chief of the Division of Apprenticeship Standards may be paid at
10 least the applicable apprentice prevailing rate.

11 (II) Maintain and verify payroll records pursuant to Section
12 1776 of the Labor Code and make those records available for
13 inspection and copying as provided in that section. This
14 subparagraph does not apply if all contractors and subcontractors
15 performing work on the development are subject to a project labor
16 agreement that requires the payment of prevailing wages to all
17 construction workers employed in the execution of the development
18 and provides for enforcement of that obligation through an
19 arbitration procedure. For purposes of this subparagraph, “project
20 labor agreement” has the same meaning as set forth in paragraph
21 (1) of subdivision (b) of Section 2500 of the Public Contract Code.

22 (c) (1) The obligation of the contractors and subcontractors to
23 pay prevailing wages pursuant to this section may be enforced by
24 any of the following:

25 (A) The Labor Commissioner, through the issuance of a civil
26 wage and penalty assessment pursuant to Section 1741 of the Labor
27 Code, that may be reviewed pursuant to Section 1742 of the Labor
28 Code, within 18 months after the completion of the development.

29 (B) An underpaid worker through an administrative complaint
30 or civil action.

31 (C) A joint labor-management committee through a civil action
32 pursuant to Section 1771.2 of the Labor Code.

33 (2) If a civil wage and penalty assessment is issued pursuant to
34 this section, the contractor, subcontractor, and surety on a bond or
35 bonds issued to secure the payment of wages covered by the
36 assessment shall be liable for liquidated damages pursuant to
37 Section 1742.1 of the Labor Code.

38 (3) This subdivision does not apply if all contractors and
39 subcontractors performing work on the development are subject
40 to a project labor agreement that requires the payment of prevailing

1 wages to all construction workers employed in the execution of
2 the development and provides for enforcement of that obligation
3 through an arbitration procedure. For purposes of this subdivision,
4 “project labor agreement” has the same meaning as set forth in
5 paragraph (1) of subdivision (b) of Section 2500 of the Public
6 Contract Code.

7 (d) Notwithstanding subdivision (c) of Section 1773.1 of the
8 Labor Code, the requirement that employer payments not reduce
9 the obligation to pay the hourly straight time or overtime wages
10 found to be prevailing does not apply to those portions of a
11 development that are not a public work if otherwise provided in a
12 bona fide collective bargaining agreement covering the worker.

13 (e) The requirement of this section to pay at least the general
14 prevailing rate of per diem wages does not preclude use of an
15 alternative workweek schedule adopted pursuant to Section 511
16 or 514 of the Labor Code.

17 (f) In addition to the requirements of Section 65912.130, a
18 development of 50 or more housing units approved by a local
19 government pursuant to Article 2 (commencing with Section
20 65912.110) of, or Article 3 (commencing with Section 65912.120)
21 of, Chapter 4.1 shall meet all of the following labor standards:

22 (1) The development proponent shall require in contracts with
23 construction contractors and shall certify to the local government
24 that each contractor of any tier who will employ construction craft
25 employees or will let each subcontracts for at least 1,000 hours
26 shall satisfy the requirements in paragraphs (2) and (3). A
27 construction contractor is deemed in compliance with paragraphs
28 (2) and (3) if it is signatory to a valid collective bargaining
29 agreement that requires use of registered apprentices and
30 expenditures on health care for employees and dependents.

31 (2) A contractor with construction craft employees shall either
32 participate in an apprenticeship program approved by the Division
33 of Apprenticeship Standards pursuant to Section 3075 of the Labor
34 Code, or request the dispatch of apprentices from a state-approved
35 apprenticeship program under the terms and conditions set forth
36 in Section 1777.5 of the Labor Code. A contractor without
37 construction craft employees shall show a contractual obligation
38 that its subcontractors comply with this subdivision.

39 (3) Each contractor with construction craft employees shall
40 make health care expenditures for each employee in an amount

1 per hour worked on the development equivalent to at least the
2 hourly pro rata cost of a Covered California Platinum-level plan
3 for two 40 years of age and two dependents 0 to 14 years of age
4 for the Covered California rating area in which the development
5 is located. A contractor without craft employees shall show a
6 contractual obligation that its subcontractors comply with this
7 subdivision. Qualifying expenditures shall be credited toward
8 compliance with prevailing wage payment requirements set forth
9 in Section 65912.130.

10 (4) (A) The development proponent shall provide to the local
11 government, on a monthly basis while its construction contracts
12 on the development are being performed, a report demonstrating
13 compliance with paragraphs (2) and (3). The report shall be
14 considered public records under the California Public Records Act
15 (Division 10 (commencing with Section 7920.000) of Title 1), and
16 shall be open to public inspection.

17 (B) A development proponent that fails to provide the monthly
18 report shall be subject to a civil penalty for each month for which
19 the report has not been provided, in the amount of 10 percent of
20 the dollar value of construction work performed by that contractor
21 on the development in the month in question, up to a maximum
22 of ten thousand dollars (\$10,000). Any contractor or subcontractor
23 that fails to comply with paragraph (2) or (3) shall be subject to a
24 civil penalty of two hundred dollars (\$200) per day for each worker
25 employed in contravention of paragraph (2) or (3).

26 (C) Penalties may be assessed by the Labor Commissioner
27 within 18 months of completion of the development using the
28 procedures for issuance of civil wage and penalty assessments
29 specified in Section 1741 of the Labor Code, and may be reviewed
30 pursuant to Section 1742 of the Labor Code. Penalties shall be
31 deposited in the State Public Works Enforcement Fund established
32 pursuant to Section 1771.3 of the Labor Code.

33 (5) Each construction contractor shall maintain and verify
34 payroll records pursuant to Section 1776 of the Labor Code. Each
35 construction contractor shall submit payroll records directly to the
36 Labor Commissioner at least monthly in a format prescribed by
37 the Labor Commissioner in accordance with subparagraph (A) of
38 paragraph (3) of subdivision (a) of Section 1771.4 of the Labor
39 Code. The records shall include a statement of fringe benefits.
40 Upon request by a joint labor-management cooperation committee

1 established pursuant to the federal Labor Management Cooperation
2 Act of 1978 (29 U.S.C. Sec. 175a), the records shall be provided
3 pursuant to subdivision (e) of Section 1776 of the Labor Code.

4 (6) All construction contractors shall report any change in
5 apprenticeship program participation or health care expenditures
6 to the local government within 10 business days, and shall reflect
7 those changes on the monthly report. The reports shall be
8 considered public records pursuant to the California Public Records
9 Act (Division 10 (commencing with Section 7920.000 of Title 1))
10 and shall be open to public inspection.

11 (7) A joint labor-management cooperation committee established
12 pursuant to the federal Labor Management Cooperation Act of
13 1978 (29 U.S.C. Sec. 175a) shall have standing to sue a
14 construction contractor for failure to make health care expenditures
15 pursuant to subdivision (c) in accordance with Section 218.7 or
16 218.8 of the Labor Code.

17 (g) Notwithstanding any other provision of this section, a
18 development project that is eligible for approval as a use by right
19 pursuant to this section may include the following ancillary uses,
20 provided that those uses are limited to the ground floor of the
21 development:

22 (1) In a single-family residential zone, ancillary uses shall be
23 limited to uses that provide direct services to the residents of the
24 development and have a community benefit, including childcare
25 centers and community centers.

26 (2) In all other zones, the development may include commercial
27 uses that are permitted without a conditional use permit or planned
28 unit development permit.

29 (h) A housing development project that qualifies as a use by
30 right pursuant to subdivision (b) shall be allowed the following
31 density, as applicable:

32 (1) (A) If the development project is located in a zone that
33 allows residential uses, the development project shall be allowed
34 a density of the applicable density deemed appropriate to
35 accommodate housing for lower income households identified in
36 subparagraph (B) of paragraph (3) of subdivision (c) of Section
37 65583.2.

38 (B) If the local government allows for greater residential density
39 on that parcel, or greater residential density or building heights on

1 an adjacent parcel, than permitted in subparagraph (A), the greater
2 density or building height shall apply.

3 (C) A housing development project that is located in a zone that
4 allows residential uses shall be eligible for a density bonus or other
5 incentives or concession pursuant to Section 65915.

6 (2) (A) If the development project is located in a zone that does
7 not allow residential uses, the development project shall be allowed
8 a density of 40 units per acre and a height of one story above the
9 maximum height otherwise applicable to the parcel.

10 (B) If the local government allows for greater residential density
11 or building heights on that parcel, or an adjacent parcel, than
12 permitted in subparagraph (A), the greater density or building
13 height shall apply. A development project shall not use an
14 incentive, waiver, or concession to increase the height of the
15 development to greater than the height authorized under this
16 subparagraph.

17 (C) Except as provided in subparagraph (B) a housing
18 development project that is located in a zone that does not allow
19 residential uses shall be eligible for a density bonus or other
20 incentives or concession pursuant to Section 65915.

21 (i) (1) Except as provided in paragraph (2), the proposed
22 development shall provide off-street parking of up to one space
23 per unit, unless a local ordinance provides for a lower standard of
24 parking, in which case the ordinance shall apply.

25 (2) A local government shall not impose a parking requirement
26 if either of the following is true:

27 (A) The parcel is located within one-half mile walking distance
28 of public transit, either a high-quality transit corridor as defined
29 in subdivision (b) of Section 21155 of the Public Resources Code
30 or a major transit stop as defined in Section 21064.3 of the Public
31 Resources Code.

32 (B) There is a car share vehicle located within one block of the
33 parcel.

34 (j) (1) If the local government determines that the proposed
35 development is in conflict with any of the objective planning
36 standards specified in this section, it shall provide the development
37 proponent written documentation of which standard or standards
38 the development conflicts with, and an explanation for the reason
39 or reasons the development conflicts with that standard or
40 standards, within the following timeframes:

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1 (A) Within 60 days of submittal of the development proposal
2 to the local government if the development contains 150 or fewer
3 housing units.

4 (B) Within 90 days of submittal of the development proposal
5 to the local government if the development contains more than
6 150 housing units.

7 (2) If the local government fails to provide the required
8 documentation pursuant to paragraph (1), the development shall
9 be deemed to satisfy the required objective planning standards.

10 (3) For purposes of this section, a development is consistent
11 with the objective planning standards if there is substantial
12 evidence that would allow a reasonable person to conclude that
13 the development is consistent with the objective planning standards.

14 (4) The determination of whether a proposed project submitted
15 pursuant to this section is or is not in conflict with the objective
16 planning standards is not a “project” as defined in Section 21065
17 of the Public Resources Code.

18 (5) Design review of the development may be conducted by the
19 local government’s planning commission or any equivalent board
20 or commission responsible for review and approval of development
21 projects, or the city council or board of supervisors, as appropriate.
22 That design review shall be objective and be strictly focused on
23 assessing compliance with criteria required for streamlined,
24 ministerial review of projects, as well as any reasonable objective
25 design standards published and adopted by ordinance or resolution
26 by a local jurisdiction before submittal of the development to the
27 local government, and shall be broadly applicable to developments
28 within the jurisdiction. That design review shall be completed as
29 follows and shall not in any way inhibit, chill, or preclude the
30 ministerial approval provided by this section or its effect, as
31 applicable:

32 (A) Within 90 days of submittal of the development proposal
33 to the local government pursuant to this section if the development
34 contains 150 or fewer housing units.

35 (B) Within 180 days of submittal of the development proposal
36 to the local government pursuant to this section if the development
37 contains more than 150 housing units.

38 (6) The local government shall ensure that the project satisfies
39 the requirements specified in subdivision (d) of Section 66300,

1 regardless of whether the development is within or not within an
2 affected city or within or not within an affected county.

3 (7) If the development is consistent with all objective
4 subdivision standards in the local subdivision ordinance, an
5 application for a subdivision pursuant to the Subdivision Map Act
6 (Division 2 (commencing with Section 66410)) shall be exempt
7 from the requirements of the California Environmental Quality
8 Act (Division 13 (commencing with Section 21000) of the Public
9 Resources Code).

10 (8) A local government's approval of a development pursuant
11 to this section shall, notwithstanding any other law, be subject to
12 the expiration timeframes specified in subdivision (f) of Section
13 65913.4.

14 (9) Any proposed modifications to a development project
15 approved pursuant to this section shall be undertaken pursuant to
16 subdivision (g) of Section 65913.4.

17 (10) A local government shall not adopt or impose any
18 requirement, including, but not limited to, increased fees or
19 inclusionary housing requirements, that applies to a project solely
20 or partially on the basis that the project is eligible to receive
21 streamlined, ministerial review pursuant to this section.

22 (11) A local government shall issue a subsequent permit required
23 for a development approved under this section pursuant to
24 paragraph (2) of subdivision (h) of Section 65913.4.

25 (12) A public improvement that is necessary to implement a
26 development that is approved pursuant to this section shall be
27 undertaken pursuant to paragraph (3) of subdivision (h) of Section
28 65913.4.

29 (k) The Legislature finds and declares that ensuring residential
30 development at greater density on land owned by independent
31 institutions of higher education and religious institutions is a matter
32 of statewide concern and is not a municipal affair as that term is
33 used in Section 5 of Article XI of the California Constitution.
34 Therefore, this section applies to all cities, including charter cities.

35 SEC. 2. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 a local agency or school district has the authority to levy service
38 charges, fees, or assessments sufficient to pay for the program or

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- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

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Office of the Mayor

CONSENT CALENDAR
January 17, 2023

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Twelfth Annual Martin Luther King Jr. Celebration: City Sponsorship and Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Fund

RECOMMENDATION

1. Adopt a Resolution retroactively co-sponsoring the 12th Annual Martin Luther King Jr. Celebration Breakfast on January 16, 2023.

2. Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$250 from Mayor Arreguin, to the Berkeley Rotary Endowment, the fiscal sponsor of the 12th Annual Martin Luther King Jr. celebration, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguin and any other Councilmembers who would like to contribute.

BACKGROUND

The annual Martin Luther King Jr Celebration, which first started in 2012, strives to bring together a diverse group of East Bay residents to celebrate and continue the work of Dr. Martin Luther King Jr. The purpose of this event is to bring the faith based, business, university, youth and civic communities together to celebrate the life and dreams of Dr. King and to honor adult and youth leaders in our community.

We are proposing that City Councilmembers make individual grants of up to \$250 to the Berkeley Rotary Endowment to commemorate and honor Dr. Martin Luther King Jr. The event is being held on January 16, 2023.

FINANCIAL IMPLICATIONS

No General Fund impact; \$250 is available from Mayor Arreguin's Office Budget discretionary accounts.

ENVIRONMENTAL SUSTAINABILITY

There are no environmental impacts associated with the recommendations in this report.

11th Annual MLK Jr. Celebration

CONSENT CALENDAR
January 17, 2023

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

- 1: Resolution for City Sponsorship
- 2: Resolution for Council Expenditures

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

CITY SPONSORSHIP OF THE 12TH ANNUAL DR. MARTIN LUTHER KING JR.
CELEBRATION

WHEREAS, the Twelfth Annual Dr. Martin Luther King Jr. Celebration will take place on January 16, 2023; and

WHEREAS, the purpose of this event is to bring the faith based, business, university, youth and civic communities together to celebrate the life and dreams of Dr. King and to honor adult and youth leaders in our community; and

WHEREAS, historically the Berkeley City Council has generously provided sponsorship for this event.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley hereby co-sponsors the 12th Annual Dr. Martin Luther King Jr. Celebration, has permission to use the City's name and logo in the event's promotional materials and signage naming the City of Berkeley as a co-sponsor solely for the purpose of the City indicating its endorsement of the event.

BE IT FURTHER RESOLVED that this co-sponsorship does not: (1) authorize financial support, whether in the form of fee waivers, a grant or provision of City services for free; (2) constitute the acceptance of any liability, management, or control on the part of the City for or over the MLK Jr Celebration; or (3) constitute regulatory approval of the event.

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

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

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

WHEREAS, a California non-profit tax exempt corporation, the Berkeley Rotary
Endowment, seeks funds in the amount of \$250 to provide the following public services
to publicly commemorate and honor the contributions of Dr. Martin Luther King
Jr.; and

WHEREAS, the provision of such services would fulfill the following municipal public
purpose of bringing the communities across the City, including, but not limited to faith
based, business, university, youth and civic communities, together to celebrate the life
and dreams of Dr. King and to honor adult and youth leaders in our community.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that
funds relinquished by the Mayor and Councilmembers from their Council Office Budget
up to \$250 per office shall be granted to the Berkeley Rotary Endowment to fund the
following services of bringing the communities across the City, including, but not limited
to faith based, business, university, youth and civic communities, together to celebrate
the life and dreams of Dr. King and to honor adult and youth leaders in our community.



Susan Wengraf
Councilmember District 6

CONSENT CALENDAR

Jan 17, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Wengraf

Subject: Resolution in Support of SB-36 (Skinner)

RECOMMENDATION

Adopt a Resolution in support of SB-36: Out-of-state criminal charges: prosecution related to abortion and gender-affirming care (Skinner) and send copies to Senator Skinner, Assembly Member Wicks and Governor Newsom.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

Since the Supreme Court overturned Roe v. Wade on June 24, 2022 at least 13 states passed laws that make seeking or providing an abortion a felony offense. Four states have enacted laws or regulations banning gender-affirming care and 15 additional states are considering legislation to do so. California, on the other hand, has passed a package of bills that establish it as a safe haven for those fleeing prosecution for seeking abortion and gender-affirming care in other states.

SB-36 seeks to provide protections and supports in California to any person fleeing a felony prosecution, conviction, or sentence in another state for seeking an abortion or gender-affirming care, and to anyone assisting them with getting that care.

The bill would make it illegal for bounty hunters and bail agents to apprehend people who fled criminal prosecution or imprisonment for providing, receiving or supporting abortion or gender-affirming care. Bounty hunters and bail agents who violate the new statute would be guilty of a misdemeanor and face up to a year in jail and forfeiture of their license to operate in California.

SB-36 author Senator Nancy Skinner stated, “My ‘Safe Haven’ law will send a message to any bounty hunter who tries to enforce another states’ reactionary law: Do so and you’ll face jail time and lose your license.”

ENVIRONMENTAL SUSTAINABILITY

No direct impact.

Resolution in Support of SB-36

CONSENT CALENDAR

Jan 17, 2023

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

1: Resolution

2: [SB-36](#)

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

SUPPORT FOR SB-36 (SKINNER)

WHEREAS, Since the Supreme Court overturned Roe v. Wade on June 24, 2022 at least 13 states passed laws that make seeking or providing an abortion a felony offense; and

WHEREAS, four states have enacted laws or regulations banning gender-affirming care and 15 additional states are considering legislation to do so; and

WHEREAS, SB-36 seeks to provide protections and supports in the state of California to any person fleeing a felony prosecution, conviction, or sentence in another state for seeking an abortion or gender-affirming care and to anyone assisting them with getting that care; and

WHEREAS, SB-36 would make it illegal for bounty hunters and bail agents to apprehend people who fled criminal prosecution or imprisonment for providing, receiving or supporting an abortion or gender-affirming care; and

WHEREAS, those who violate the new statute would be guilty of a misdemeanor and face up to a year in jail and forfeiture of their license to operate in California, sending a strong message to anyone trying to enforce another states' reactionary law.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council supports SB-36.

BE IT FURTHER RESOLVED that the Berkeley City Council thanks Senator Skinner for her leadership in crafting this legislation.

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

SENATE BILL**NO. 36****Introduced by Senator Skinner****December 05, 2022**

An act to amend Sections 847.5 and 1299.02 of the Penal Code, and to amend Section 11486.5 of, and to add Section 18901.33 to, the Welfare and Institutions Code, relating to out-of-state criminal charges.

LEGISLATIVE COUNSEL'S DIGEST

SB 36, as introduced, Skinner. Out-of-state criminal charges: prosecution related to abortion and gender-affirming care.

Existing law authorizes a magistrate to issue a warrant, upon application by a bail bondsman, as described, for an individual fleeing bail in another state and found in this state upon a finding of probable cause for believing that the person is a fugitive. Existing law makes it a misdemeanor to take a person who is a fugitive admitted to bail in another state into custody, except pursuant to a magistrate's order.

This bill would prohibit a magistrate from issuing a warrant for the arrest of an individual whose alleged offense or conviction is for the violation of law of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care if the abortion or care is lawful under the laws of this state, regardless of the recipient's location. The bill would make a bail bondsman who takes such an individual into custody without a warrant guilty of a misdemeanor and ineligible for and subject to forfeiture of specified licenses. The bill would create a civil cause of action for an individual taken

into custody in violation of this provision. By creating a new crime, this bill would create a state-mandated local program.

Existing law, the Bail Fugitive Recovery Persons Act, prohibits a person, other than a certified law enforcement officer, to apprehend, detain, or arrest a bail fugitive unless the person is a licensed a bail fugitive recovery agent, or both a bail licensee and private investigator who are also bail fugitive recovery agents. Existing law makes a violation of the Bail Fugitive Recovery Persons Act a misdemeanor.

This bill would prohibit a person authorized under the act from apprehending, detaining, or arresting a bail fugitive who has been admitted to bail in another state and whose alleged offense or conviction is for the violation of a law of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care, if the abortion or care is lawful under the laws of this state, regardless of the recipient's location. The bill would make a violation of this provision a misdemeanor and make the authorized individual ineligible for and subject to forfeiture of specified licenses. The bill would create a civil cause of action for an individual taken into custody in violation of this provision. By expanding the application of a crime, this bill would create a state-mandated local program.

Existing law provides for the California Work Opportunity and Responsibility to Kids (CalWORKs) program, under which each county provides cash assistance and other benefits to qualified low-income families and individuals. Existing federal law establishes the federal Supplemental Nutrition Assistance Program (SNAP), known in California as CalFresh, under which supplemental nutrition assistance benefits allocated to the state by the federal government are distributed to eligible individuals by each county. Existing federal regulations disqualify a fleeing felon, as defined, from receiving benefits under the CalFresh program.

This bill would require that the determination of whether a person is fleeing to avoid prosecution for purposes of eligibility in the Calworks program be made pursuant to a specified federal regulation. The bill would also make a person who is fleeing to avoid prosecution, or custody and confinement after conviction, whose alleged offense or conviction is for the violation of a law of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care, if the abortion or care is lawful under the laws of this state, regardless of the location of the patient, eligible for benefits under these programs. Because this would expand the eligibility requirements for these programs, this bill would create a state-mandated local program.

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

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

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

DIGEST KEY

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

BILL TEXT**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT
AS FOLLOWS:****SECTION 1.**

The Legislature finds and declares all of the following:

- (a) In 2022, following the United States Supreme Court decision overturning Roe v. Wade, California's legislature passed and Governor Gavin Newsom signed a package of bills, led by members of the Legislative Women's Caucus, and complimentary budget actions that established the state as a haven for those fleeing prosecution for seeking abortion and gender-affirming care in other states.
- (b) At least 13 states have passed laws that make seeking or providing an abortion a felony offense.
- (c) Four states have enacted laws or regulations banning gender-affirming care and 15 additional states are considering legislation to do so.
- (d) It is the intent of the legislature to pass legislation to provide protections and supports to any person fleeing a felony prosecution, conviction, or sentence in another state for seeking an abortion or seeking gender-affirming care and to any person assisting the person seeking that care.

SEC. 2.

Section 847.5 of the Penal Code is amended to read:

847.5.

*If (a) Except as provided in subdivision (b), if a person has been admitted to bail in another state, escapes bail, and is present in this State, the bail bondsman or other person who is bail for such fugitive, may file with a magistrate in the county where the fugitive is present an affidavit stating the name and whereabouts of the fugitive, the offense with which the alleged fugitive was charged or of which ~~he was~~ *they were* convicted, the time and place of same, and the particulars in which the fugitive has violated the terms of ~~his~~ *their* bail, and may request the issuance of a warrant for arrest of the fugitive, and the issuance, after hearing, of an order authorizing the affiant to return the fugitive to the jurisdiction from which ~~he~~ *they* escaped bail. The magistrate may require such additional evidence under oath as ~~he deems~~ *they deem* necessary to decide the issue. If ~~he~~ *the magistrate* concludes that there is probable cause for believing that the person alleged to be a fugitive is such, ~~he~~ *the magistrate* may issue a warrant for ~~his~~ *the person's* arrest. The magistrate shall notify the district attorney of such action and shall direct ~~him~~ *the district attorney* to investigate the case and determine the facts of the matter. When the fugitive is brought before ~~him~~ *the magistrate* pursuant to the warrant, the magistrate shall set a time and place for hearing, and shall advise the fugitive of ~~his~~ *their* right to counsel and to produce evidence at the hearing. ~~He~~ *The magistrate* may admit the fugitive to bail pending the hearing. The district attorney shall appear at the hearing. If, after hearing, the magistrate is satisfied from the evidence that the person is a fugitive ~~he~~ *the magistrate* may issue an order authorizing affiant to return the fugitive to the jurisdiction from which ~~he~~ *they* escaped bail.*

(b) A magistrate shall not issue a warrant for the arrest of an individual whose alleged offense or conviction is for the violation of laws of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care if the abortion or care is lawful under the laws of this state, regardless of the recipient's location.

(c) A bondsman or person authorized, pursuant to subdivision (a) of Section 1299.02, to apprehend, detain, or arrest a fugitive admitted to bail in another state who takes into custody a fugitive admitted to bail in another state whose alleged offense or conviction is for the violation of laws of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care if the abortion or care is lawful under the laws of this state, regardless of the recipient's location, without a magistrate's order, is ineligible for a license issued pursuant to Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code or Section 1800 of the Insurance Code, and shall forfeit any license already obtained pursuant to those laws.

(d) A person who is taken into custody by a bail agent in violation of subdivision (b) may institute and prosecute a civil action for injunctive, monetary, or other appropriate relief against the bondsman and bond company within three years after the cause of action accrues.

A

(e) A bondsman or other person who is bail for a fugitive admitted to bail in another state who takes the fugitive into custody, except pursuant to an order issued under this section, is guilty of a misdemeanor.

SEC. 3.

Section 1299.02 of the Penal Code, as added by Section 21 of Chapter 768 of the Statutes of 2022, is amended to read:

1299.02.

(a) No person, other than a certified law enforcement officer, shall be authorized to apprehend, detain, or arrest a bail fugitive unless that person meets one of the following conditions:

(1) Is a bail as defined in paragraph (2) of subdivision (a) of Section 1299.01 who is also a bail fugitive recovery agent as defined in paragraph (4) of subdivision (a) of Section 1299.01.

(2) Is a bail fugitive recovery agent as defined in paragraph (4) of subdivision (a) of Section 1299.01.

(3) Is a licensed private investigator as provided in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code who is also a bail fugitive recovery agent as defined in paragraph (4) of subdivision (a) of Section 1299.01.

(b) This article shall not prohibit an arrest pursuant to Sections 837, 838, and 839, provided that no consideration is paid or allowed, directly or indirectly, to any person effecting an arrest pursuant to Sections 837, 838, and 839.

(c) Individuals who hold a bail license, bail fugitive recovery license, bail enforcer license, bail runner license, or private investigator license issued by another state shall not apprehend, detain, or arrest bail fugitives in California, unless that individual obtains a bail fugitive recovery agent license issued in this state and complies with California law.

(d) A person authorized, pursuant to subdivision (a), to apprehend, detain, or arrest a bail fugitive shall not apprehend, detain, or arrest a bail fugitive admitted to bail in another state whose alleged offense or conviction was for the violation of laws of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care if the abortion or care is lawful under the laws of this state, regardless of the recipient's location. A person who violates this subdivision is guilty of a misdemeanor punishable by a fine of five thousand dollars (\$5,000) or by imprisonment in a county jail not to exceed one year, or by both that imprisonment and fine, is ineligible for a license issued pursuant to Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code or Section 1800 of the Insurance Code, and shall forfeit any license already obtained pursuant to those laws. A person who is taken into custody by a bail agent in violation of this subdivision may institute and

prosecute a civil action for injunctive, monetary, or other appropriate relief against the bail fugitive recovery agent within three years after the cause of action accrues.

~~(d)~~

(e) This section shall become operative on July 1, 2023.

SEC. 4.

Section 11486.5 of the Welfare and Institutions Code is amended to read:

11486.5.

(a) An individual shall not be eligible for aid under this chapter if ~~he or she is~~ *the individual is* either:

(1) Fleeing to avoid prosecution, or custody and confinement after conviction, under the laws of the place from which the individual is fleeing, for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual is fleeing, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that state. *For the purposes of this section, except as provided in subdivision (c), an individual shall be determined to be fleeing to avoid prosecution, or custody and confinement after conviction, pursuant to Sections 273.11(n)(1)(ii) and 273.11(n)(2) of Title 7 of the Code of Federal Regulations.*

(2) Violating a condition of probation or parole imposed under federal law or the law of any state.

(b) Subdivision (a) shall not apply with respect to conduct of an individual for any month beginning after the President of the United States grants a pardon with respect to the conduct.

(c) For the purposes of this section, an individual is not considered fleeing to avoid prosecution if the felony offense with which the person is charged or convicted is as a result of performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care if the abortion or care is lawful under the laws of this state, regardless of the recipient's location.

SEC. 5.

Section 18901.33 is added to the Welfare and Institutions Code, to read:

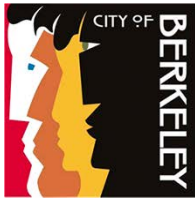
18901.33.

A person who is fleeing to avoid prosecution, or custody and confinement after conviction, whose alleged offense or conviction is for the violation of laws of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of an abortion or gender-affirming care is eligible for benefits pursuant to this chapter, if the abortion or care is lawful under the laws of this state, regardless of the recipient's location.

SEC. 6.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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



CITY COUNCILMEMBER
RIGEL ROBINSON
DISTRICT 7

CONSENT CALENDAR

January 17, 2023

To: Honorable Mayor and Members of the City Council
From: Councilmember Rigel Robinson (Author)
Subject: Relinquishment of Council Office Budget Funds to the General Fund and Grant of Such Funds for Pacific Center for Human Growth

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$1,000 per Councilmember, including \$1,000 from Councilmember Robinson, to Pacific Center for Human Growth to assist with urgent lease signing and renovation costs.

BACKGROUND

Founded in 1973, Pacific Center for Human Growth is the oldest LGBTQIA+ center in the Bay Area, the third oldest in the nation, and operates the only sliding scale mental health clinic for LGBTQIA+ and QTBIPOC people and their families in Alameda County.

Utilizing nearly 200 volunteers and 11 staff members, Pacific Center provides culturally-responsive therapy, peer-to-peer support groups, community outreach services, and facilitated workshops for Alameda County and the greater Bay Area LGBTQIA+ communities. They currently serve over 3,000 people a year through their programs.

Pacific Center is relocating from their Berkeley location on Telegraph Avenue due to the property being sold to a new owner. After months of searching and negotiating, they have successfully secured a space that fits their needs and are signing the new lease on February 1, 2023. They need to raise funds for signing costs, as well as additional funds for the installation of a wheelchair lift to make the space fully accessible.

FINANCIAL IMPLICATIONS

No General Fund impact; \$1,000 is available from Councilmember Robinson’s discretionary account.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

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

Attachments:

1: Resolution

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

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

WHEREAS, Councilmember Rigel Robinson has surplus funds in his office expenditure account; and

WHEREAS, a California non-profit tax exempt corporation, Pacific Center for Human Growth, seeks funds in the amount of \$1,000 to assist with urgent needs, including lease signing costs and the installation of a wheelchair lift for ADA accessibility; and

WHEREAS, the provision of such services would fulfill the municipal public purpose of supporting the Bay Area's oldest LGBTQIA+ center and enabling them to continue serving the Berkeley community.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the \$1,000 relinquished by Councilmember Robinson from his Council Office Budget and any other Councilmember who wishes to contribute shall be granted to Pacific Center for Human Growth for lease signing and renovation costs.



ACTION CALENDAR

January 17, 2023

(Continued from December 13, 2022)

To: Honorable Mayor and Members of the City Council
 From: Councilmember Taplin and Councilmember Harrison
 Subject: Resolution Supporting Trip Reduction Alternative for BUSD Berkeley High School Tennis and Parking Structure Project

RECOMMENDATION

Adopt a Resolution in support of a Trip Reduction Alternative to be included in the scope of the Environmental Impact Report for the Berkeley High School Tennis and Parking Structure Project at 2000 Bancroft Way, and send a copy of Resolution to the Berkeley Unified School District (BUSD) Board of Directors.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

On September 7, 2022, the Berkeley Unified School District (BUSD) Board of Directors voted to remove plans for a new operations facility at 2000 Bancroft Way, at the intersection of Milvia Street. This would leave only a new parking garage and tennis course in this project, with a proposed \$27 million expenditure of funds from Measure G, the 2020 BUSD facilities bond measure. Due to a number of CEQA challenges, while the operations facility “was originally the most economical option, it is the opinion of the [BUSD] staff and the District’s consultants that this is no longer the best course of action to take.”¹

However, mitigation of community impacts from a new parking garage would still be substantial, for benefits that remain uncertain. For example, the new Center Street Garage offers 720 parking spaces, but has been unable to provide sufficient revenue to fully cover revenue bond debt servicing and operational costs without additional subsidy. In Fiscal Year 2021, the City of Berkeley allocated \$1,910,250 from the General Fund and \$1,915,050 from the Rate Stabilization Fund to balance the Off-Street Parking Fund. Daytime vacancy rates remain in the double digits for parking garages in downtown Berkeley. This suggests that parking is currently over-supplied in the downtown area at current prices.

Increasing the supply of parking risks increasing Vehicle Miles Traveled (VMT), undermining both the City and District’s stated goals on promoting emissions reductions to mitigate climate change. According to research by UCLA parking scholar Donald Shoup, motorists searching for underpriced or free parking can increase the average

¹ BUSD Board of Directors Meeting. September 7, 2022.

VMT of a local trip by as much as 0.5 miles per trip, or 5 additional miles per day per curb space.²

The BUSD Sustainability Plan, approved in 2019, states: “Single family car trips shall be reduced to less than 20% by 2025, with 80% of students who live within a 2-mile radius getting to school via Active Transportation (walking and bicycling).”³ The BUSD Climate Literacy Resolution No. 22-018, passed in 2021, states that “transportation is the number one source of climate emissions in the City of Berkeley.” Because the proposed parking garage site on Milvia Street would be at the intersection of two protected bike lanes—the completed Milvia Bikeway and planned lanes on Bancroft—while adjacent intersections at Durant and Shattuck are identified as high-risk intersections in Berkeley’s Vision Zero Action Plan.⁴ The intersection of Bancroft and Shattuck was the site of a recent tragic fatality earlier this year.⁵ Concentrating parking at this site could increase the risk of collisions for vulnerable road users, particularly cyclists and pedestrians, at a time when it is the stated policy of the City and District to encourage these modes of transportation.

In addition to the Build Alternative, the Environmental Impact Report could include a Trip Reduction Alternative, as outlined in a comment letter by the advocacy group Walk Bike Berkeley.⁶

Consistent with existing City and District policies aiming to reduce Vehicle Miles Traveled, a Trip Reduction Alternative may include three basic elements:

- Transportation Demand Management (TDM)
- Leasing of existing garage space
- Workforce housing

All of these policies can be used in tandem to mitigate transportation challenges for BUSD staff by shortening commutes with transit-oriented housing; filling up vacant parking spaces in adjacent garages; and providing commute allowances, pre-tax transit benefits, and other sustainable transportation incentives as part of a TDM program.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

In its 2018 Progress Report, the California Air Resources Board stated: “Even if the share of new car sales that are [electric] grows nearly 10-fold from today, California

² Shoup, D. C. (2006). Cruising for parking. *Transport policy*, 13(6), 479-486.

³ <https://www.berkeleyschools.net/wp-content/uploads/2019/10/BUSD-Sustainability-Plan.pdf>

⁴ <https://berkeleyca.gov/sites/default/files/2022-02/Berkeley-Vision-Zero-Action-Plan.pdf>

⁵ Raguso, E. (2022, Oct. 20). Man struck by dump truck driver dies after Berkeley crash. *The Berkeley Scanner*. Retrieved from <https://www.berkeleyscanner.com/2022/10/20/traffic-safety/truck-driver-strikes-person-wheelchair-berkeley/>

⁶ https://drive.google.com/file/d/18wp_g5Y6K-g2jnfSnvZqGFn_NO-i-Rfn/view

would still need to reduce [Vehicle Miles Traveled] per capita [by] 25 percent to achieve the necessary [emissions] reductions for 2030.”⁷

Because of its proximity to jobs and public transit, climate scholars at UC Berkeley have identified infill housing as Berkeley’s most impactful local policy lever for reducing greenhouse gas emissions.⁸ Workforce housing could thus reduce emissions while also reducing demand for parking at BUSD facilities.

CONTACT PERSON

Councilmember Taplin Council District 2 510-981-7120

Attachments:

1: Resolution

⁷ California Air Resources Board. (2018). 2018 Progress Report: California’s Sustainable Communities and Climate Protection Act. CARB. Retrieved from https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report_SB150_112618_02_Report.pdf

⁸ Wheeler, S. M., Jones, C. M., & Kammen, D. M. (2018). Carbon footprint planning: quantifying local and state mitigation opportunities for 700 California cities. *Urban Planning*, 3(2), 35-51.

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

RESOLUTION SUPPORTING TRIP REDUCTION ALTERNATIVE FOR BERKELEY
HIGH SCHOOL PARKING GARAGE AND TENNIS COURT PROJECT

WHEREAS, transportation accounts for the majority of greenhouse gas emissions in the City of Berkeley; and

WHEREAS, the Berkeley Unified School District's Sustainability Plan calls for reducing the share of school commutes by single-occupancy motor vehicles to less than 20% by 2025; and

WHEREAS, the intersections of Bancroft, Durant, and Shattuck are identified as high-risk intersections for traffic collisions in the City of Berkeley's Vision Zero Action Plan; and

WHEREAS, the Center Street Garage still has substantial weekday vacancies, and has necessitated over \$3.8 million in City expenditures to cover debt servicing and operational costs, suggesting a glut of parking supply in the downtown area; and

WHEREAS, the City of Berkeley is committed to eliminating traffic fatalities and greenhouse gas emissions by enabling car-free and car-light commuting, reducing Vehicle Miles Traveled, promoting safe streets and walkable, transit-accessible urban design; and

WHEREAS, the City of Berkeley greatly values the essential public service of Berkeley Unified School District educators, staff, and administrators in educating the future leaders of Berkeley; and

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley supports the study of a Trip Reduction Alternative within the scope of the Environmental Impact Review for the Berkeley High School Parking Garage and Tennis Courts Project, including the study of a Transportation Demand Management (TDM) program, garage leasing, and workforce housing development;

BE IT FURTHER RESOLVED that the City of Berkeley welcomes a continued partnership with the Berkeley Unified School District in promoting environmental justice and providing the best possible working conditions for BUSD staff.



Sugar-Sweetened Beverage
Product Panel of Experts (SSBPPE)

ACTION CALENDAR

January 17, 2023

To: Honorable Mayor and Members of the City Council

From: Sugar-Sweetened Beverage Product Panel of Experts Commission

Submitted by: Joy Moore, Chairperson, SSBPPE Commission

Subject: Allocation of \$3 Million Over Two Years, FY 2024 and FY 2025, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs).

RECOMMENDATIONS

Adopt a Resolution allocating \$3 million from the General Fund in FY24 (July 1, 2023 through June 30, 2024) and FY25 (July 1, 2024 through June 30, 2025) that shall be invested in a grant program administered and coordinated by the Department of Health, Housing, and Community Services' (HHCS) Public Health Division (HHCS/PHD) consistent with the Sugar-Sweetened Beverage Product Panel of Experts (SSBPPE) Commission's goals to reduce the consumption of sugar sweetened beverages (SSB) in Berkeley and to address the health effects of SSB consumption. The total of \$3 million will be distributed in two installments of \$1.5 million per year for FY24 and FY25. In each of these years, the funds will be distributed as follows:

- a. Direct the City Manager to award up to 42.5% of the allocated funds to Berkeley Unified School District (BUSD) through a grant proposal to reduce the consumption of sugar-sweetened beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs. The BUSD funding process is separate from the RFP process for the general community-based organization funding process and shall be guided by the SSBPPE Commission's Criteria for BUSD Funding (Attachment 2).
- b. Direct the City Manager to award at least 42.5% of the allocated funds through an RFP process managed by HHCS/PHD for grants to community-based organizations consistent with the SSBPPE Commission's goals to reduce the consumption of SSBs and to address the effects of SSB consumption. The community-based organization funding RFP process is separate from the BUSD funding process and shall be guided by the SSBPPE Commission's Criteria for Community Agency Grants (Attachment 3).
- c. Direct the City Manager to utilize up to 15% of the allocated funds to support HHCS/PHD to coordinate and monitor the grant process, coordinate the overall program evaluation, and produce an annual report that disseminates

Allocation of \$3 Million Over Two Years, FY24 and FY25, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs)

process and outcome data from the epidemiologist resulting from the SSBPPE Commission funding program as well as pay certain City of Berkeley Finance Department costs related to the sugary drink tax.

FISCAL IMPACTS OF RECOMMENDATION

Measure D, passed in November of 2014, created two provisions, namely: a) a 1 cent per ounce tax on sugary drinks distributed in Berkeley and b) creation of a Panel of Experts Commission. The collection of this tax commenced in May of 2015 and is being deposited into the City's General Fund. The SSBPPE Commission's recommendation to Council for allocation of \$3 million for FY24 and FY25 is independent of the amount of tax collected from the distribution of SSB in Berkeley. This request will create a liability of \$3 million for the City's General Fund in FY24 and FY25.

CURRENT SITUATION AND ITS EFFECTS

On October 20, 2022, the SSBPPE Commission approved the recommendation to the Berkeley City Council for allocation of \$3 million for the period FY24 and FY25, to be made available to invest in grants programs to reduce the consumption of sugary drinks and address the health consequences of the consumption of sugary drinks and moved to adopt their recommendation to Council as follows:

Key elements of the resolution include:

- 1) Direct the City Manager to award up to 42.5% of the allocated funds to BUSD through a grant proposal to reduce the consumption of SSBs.
- 2) Direct the City Manager to award at least 42.5% of the allocated funds through an RFP process managed by the HHCS/PHD for grants to community-based organizations consistent with the SSBPPE Commission's goals.
- 3) Direct the City Manager to utilize up to 15% of the allocated funds to support HHCS/PHD to:
 - a. Coordinate and monitor the grant process,
 - b. coordinate the overall program evaluation, and
 - c. produce an annual report that disseminates process and outcome data from the epidemiologist resulting from the SSBPPE Commission funding program as well as,
 - d. pay certain City of Berkeley Finance Department costs related to the sugary drink tax.

Action: Motion to update the SSBPPE Commission City Council recommendation from December 15th, 2020: 1) update dates; 2) background as needed, and recommendations; 3) maintain the same recommendation for funding; 4) and recommending the City Manager to utilize up to 15% of the allocated funds to support the COB Public Health Division and Finance Department fees related to the Sugar-Sweetened Beverage Soda Tax.

Votes: Ayes – Rose, Moore, Hecht, Morales, Scheider; Noes – None; Abstain – None; Absent – Browne, Crawford, Rodriguez.

Allocation of \$3 Million Over Two Years, FY24 and FY25, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs)

BACKGROUND

A Brief History of Measure D

In November of 2014, the Berkeley voters passed Measure D, which requires both the collection of a 1 cent per ounce tax on the distribution of sugary drinks in the City of Berkeley AND the convening of a Panel of Experts (the Sugar Sweetened Beverage Products Panel of Experts--SSBPPE) to recommend investments to both reduce the consumption of sugary drinks as well as to address the health consequences of the consumption of sugary drinks.

In addition to nearly three years of a global pandemic, our nation, our state, and our community face a major public health crisis. Diabetes, obesity, and tooth decay have been on the rise for decades. Although no group has escaped these epidemics, children, as well as low income communities and communities of color have been and continue to be disproportionately affected. While there is no single cause for the rise in diabetes, obesity, and tooth decay, there is overwhelming evidence of the link between the consumption of sugary drinks and the incidence of diabetes, obesity, heart disease, and tooth decay.

Sugary drinks such as soft drinks, energy drinks, sweetened teas, and sport drinks offer little or no nutritional value, but contribute massive quantities of added sugar. A single 20-ounce bottle of soda, for instance, typically contains the equivalent of approximately 16 teaspoons of sugar. Before the 1950s, the standard soft-drink bottle was 6.5 ounces. In the 1950s, larger size containers were introduced, including the 12-ounce can, which became widely available in 1960. By the early 1990s, 20-ounce plastic bottles had become the norm. At the same time, hundreds of millions of dollars have been spent in an ongoing massive marketing campaign, which particularly targets children and people of color. In 2006 alone, nearly \$600 million was spent in advertising to children under 18. African American and Latinx children are also aggressively targeted with advertisements to promote sugar-laden drinks.

The resulting impact on consumption should not be surprising. The average American now drinks nearly 40 gallons of sugary drinks a year. In the past 20 years, the prevalence of obesity in adults increased from 30.5% to 42.4%, and the prevalence of severe obesity increased from 4.7% to 9.2%. During this time, the prevalence of obesity among youth (aged 2–19 years) increased from 13.9% to 19.3%, and the prevalence of severe obesity increased from 3.6% to 6.1%. The problem is especially acute with children in California. From 1989 to 2008, the percentage of children consuming sugary drinks increased from 79% to 91% and the percentage of total calories obtained from sugary drinks increased by 60% in children ages 6 to 11. This level of consumption has had tragic impacts on community health. Type 2 Diabetes –previously only seen among adults –is now increasing among children. If the current obesity trends are not reversed, it is predicted that one in three children and nearly one-half of Latinx and

Allocation of \$3 Million Over Two Years, FY24 and FY25, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs)

African American children born in the year 2000 will develop type 2 diabetes in their lifetimes.

Our community has not been immune to the challenge of unhealthy weight gain and obesity. According to the 2018 City of Berkeley Health Status Report, over a quarter of Berkeley's 5th and 7th grade students (all race/ethnicities) are overweight or obese. Berkeley has a lower proportion of 5th and 7th grade children who are overweight or obese (29.4%) compared to children in Alameda County (35.3%) but has a higher proportion compared to California (26.8%). However, a higher proportion of African-American children are overweight or obese in Berkeley compared to Alameda County or California.

Tooth decay has meaningful impact on health, especially for children. In fact, tooth decay is the most common childhood disease, experienced by over 70% of California's 3rd graders. Children who frequently or excessively consume beverages high in sugar are at increased risk for dental cavities. Dental problems are a major cause of missed school days and poor school performance as well as pain, infection, and tooth loss in California.

COVID-19

Of relevance today are the jarring statistics on the higher risk and severity of COVID-19 related to the social determinates of health for persons of color. Latinx and Black communities are disproportionately affected by COVID-19. Health disparities, as documented in the Annual Health Reports from the Berkeley Health Department, were an important impetus in the rationale for Measure D as well as the proposed use of revenues from Measure D. SSB consumption is directly related to the health conditions observed with higher rates of COVID-19. The link between SSB consumption and diabetes, obesity and heart disease and the relationship of these conditions to increased risk of COVID-19 makes heightens the critical nature of the SSB tax and its revenues to the reduction of health disparities in Berkeley.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

When sugary drink consumption decreases due to the direct investments in programs and activities, the SSBPPE Commission expects that there will be a reduction to the City's waste stream.

RATIONALE FOR RECOMMENDATION

This two-year grant period supports comprehensive strategies to: a) reduce access to SSBs, b) improve access to water, c) limit marketing of SSBs to children, and d) implement education and awareness campaigns with specific populations. The two-year grant period will also indicate the City of Berkeley's commitment to reducing the consumption of SSBs and improving the health of Berkeley residents, particularly those most impacted by obesity, diabetes, tooth decay, and heart disease. The funding will allow grantees to develop interventions that include education, policy, systems and

Allocation of \$3 Million Over Two Years, FY24 and FY25, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs)

environmental changes with measurable outcome data and evaluation to show the rise in public awareness about the harmful impacts of SSBs, reduce consumption of SSBs over time, and decrease the health risks among residents of Berkeley.

To have the greatest impact, the SSBPPE Commission recommends that the following populations be prioritized:

- a) Children and their families with a particular emphasis on young children who are in the process of forming lifelong habits,
- b) Children and young adults living in households with limited resources,
- c) Groups exhibiting higher than average population levels of type 2 diabetes, obesity, heart disease, and tooth decay rates,
- d) Groups that are disproportionately targeted by the beverage industry marketing,
- e) Pregnant women,
- f) Berkeley-based organizations that serve any or all of the above populations.

ALTERNATIVE ACTIONS CONSIDERED

The Commission did not identify an alternative action which is consistent with the City's

CITY MANAGER

See City Manager companion report.

CONTACT PERSON

Roberto Terrones, MPH, Commission Secretary, HHCS, (510) 510-981-5324

ATTACHMENTS

1. Resolution
2. SSBPPE Commission's Criteria for BUSD Funding
3. SSBPPE Commission's Criteria for Community Agencies Funding

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

ALLOCATION: \$3 MILLION TOTAL FOR SUGAR-SWEETENED BEVERAGE CONSUMPTION AND REDUCTION GRANT PROGRAM IN FY24 AND FY25

WHEREAS, the consumption of sugar-sweetened beverages (“SSB”) in Berkeley is impacting the health of the people in Berkeley; and

WHEREAS, in FY24 and FY25, the City Council awarded a total of \$3 million upon the recommendation of the SSBPPE Commission to demonstrate the City’s long-term commitment to decreasing the consumption of SSB and mitigate the harmful impacts of SSB on the population of Berkeley; and

WHEREAS, many studies demonstrate that high intake of SSB is associated with risk of Type 2 Diabetes, obesity, tooth decay, and coronary heart disease; and

WHEREAS, the above conditions are all demonstrated to increase both the severity of COVID19 related illness and risk of death; and

WHEREAS Latinx and Black communities are disproportionately affected by COVID-19; and

WHEREAS, hundreds of millions of dollars have been spent in an ongoing massive marketing campaign, which particularly targets children and people of color; and

WHEREAS, an African American resident of Berkeley is 14 times more likely than a White resident to be hospitalized for diabetes; and

WHEREAS, 40% of 9th graders in Berkeley High School are either overweight or obese; and

WHEREAS, tooth decay is the most common childhood disease, experienced by over 70% of California’s 3rd graders; and

WHEREAS, in 2012, a U.S. national research team estimated levying a penny-per-ounce tax on sweetened beverages would prevent nearly 100,000 cases of heart disease, 8,000 strokes, and 26,000 deaths over the next decade and 240,000 cases of diabetes per year nationwide.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to allocate \$3 million from the General Fund to be disbursed in two (2) installments of \$1.5 million in FY24 and \$1.5 million in FY25 and invested as follows:

1. Allocate up to 42.5% of the allocated funds to Berkeley Unified School District (BUSD) through a grant proposal to reduce the consumption of sugar-sweetened

beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs for the period, July 1, 2023 to June 30, 2025; and

2. Allocate at least 42.5% of the allocated funds through a RFP process managed by the Public Health Division for grants to community-based organizations consistent with the SSBPPE Commission's goals to reduce the consumption of SSB and to address the effects of SSB consumption for the period, July 1, 2023 to June 30, 2025; and
3. Allocate up to 15% of the allocated funds to support the Berkeley Public Health Division (BPHD) to coordinate and monitor the grant process, coordinate the overall program evaluation, and produce an annual report that disseminates process and outcome data resulting from the SSBPPE Commission funding program as well as City of Berkeley Finance Department fees related to the sugary drink tax.

A records signature copy of the said agreement and any amendments to be on file in the Office of the City Clerk.

SSBPPE Commission's Criteria for BUSD Funding

The Berkeley Unified School District will be required to provide the following information and comply with the requirements listed in order to receive funding.

- A. Describe how you will reach the following priority populations:
- a. Children and their families; preschool through high school;
 - b. Children and young adults living in households with limited resources;
 - c. Groups exhibiting higher than average population levels of type 2 diabetes, obesity, and tooth decay;
 - d. Groups that are disproportionately targeted by the beverage industry marketing.
- B. Include how the proposal meets the following requirements:
- a. Proposal reflects approval from the BUSD School Board.
 - b. BUSD will not sell or serve sugar-sweetened beverages (as defined by the SSB tax) at any BUSD schools or campuses.
 - c. Awarded funding will not supplant BUSD FY22 and FY23 General Fund allocations.
 - d. Funded projects will publicly reflect support from Healthy Berkeley Program.
 - e. Funded projects and programs will include evaluation of their process and outcomes.
 - f. The proposal timelines and budgets will be specific, measurable, achievable, realistic, and time bound (SMART).
- C. Include specific goals for how the BUSD proposal meets the following scoring criteria:
- a. Decrease access to SSBs and/or improve access to drinking water. (15%)
 - b. Increase or strengthen SSB policies in school and outside of school. (15%)
 - c. Support the annual administration of the Berkeley adapted Youth Risk Behavior Survey to evaluate student's SSB knowledge, consumption, access, and policy perceptions. (20%)
 - d. To document how students at all grade levels and in priority populations are included. (10%)
 - e. To document policy elements that will last beyond the grant period. (15%)
 - f. Proposal budget matches the work plan and is appropriate. (10%)
 - g. To document how BUSD will be able to communicate SSB educational and policy efforts to parents and/or the Berkeley community (15%)

SSBPPE Commission's Criteria for Community Agencies Funding

Community-based organizations will be required to provide the following information in order to be considered for funding.

- A. Describe your strategies that address the goals and objectives of this funding including:
- a. Transforming the systems, policies, environments, structures, and norms that underlie sugary drink consumption.
 - b. Developing community capacity to improve health by transforming systems, policies, environments, structures, and norms through increasing leadership potential of community members and young people, especially those serving priority populations.
 - c. Supporting community programming designed to change norms to support consumption of healthy food and beverages.
 - d. Providing health screenings and chronic disease prevention with a focus on dental health.
 - e. Impacting sugary drink marketing and retail environments (i.e., availability, promotion, price, placement in convenient stores, and advertising), especially those that disproportionately target priority populations.
- B. Include specific goals for how your project will meet the following scoring criteria
- a. The proposal aims to decrease consumption of sugary drinks, increase access to drinking water, and/or address health effects from consumption of sugary drinks (25%).
 - b. The proposal reaches people and communities in the priority populations. (25%).
 - c. Project provides lasting impact beyond the grant period: i.e. builds organizational and community capacity and/or changes systems and policies, and environments related to SSBs. (25%).
 - d. The proposal includes a plan for communicating efforts, activities, and/or successes to the larger Berkeley community. (15%).
 - e. Proposal budget matches the work plan and is appropriate. (10%)



Youth Commission

ACTION CALENDAR

January 17, 2023

To: Honorable Mayor and Members of the City Council
 From: Youth Commission
 Submitted by: Nina Thompson, 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.

Youth Commission Meeting Monday, May 9, 2022

Action Item: **Adding a youth member to the Environment and Climate Commission**

M/S/Kaplan-Pettus/Thompson: Aye's: Weisberg, Kaplan-Pettus, Chokkalingam, Schlosberg, Thompson, Powell, and Jay. Noe's: None. Abstain: None. Absent: Sanders

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.

CITY MANAGER

The City Manager supports youth participation in the City's boards and commissions. Currently, a student/youth in Berkeley may be appointed by the Mayor or a Councilmember to 26 of the City's 30 commissions. With regards to expanding the number of seats on the Environment and Climate Commission (ECC) to reserve seats for persons between 12 and 19 years old, there are some potential alternatives or considerations that the council may wish to weigh.

- Raise the lower end of the age range from 12 to 14 or limit the designated seats to high school students. Commissions often meet until 9pm or 10pm in the evening, which may be difficult for middle school students. If the students are not able to attend regularly for the duration of the meeting, their absence can affect the quorum of the commission and the commission's ability to conduct business.
- Modify the ECC enabling legislation to require that one or two of the nine seats on the ECC to be filled with a "student" as defined. There are other city commissions that have reserved seats for certain interest groups or categories of commissioners (Mental Health

Commission, Design Review Commission).

- Consider adding the additional seats as part of a pilot program or add a sunset date to evaluate the impact and effectiveness of the additional reserved appointments to determine if permanently expanding the membership is the best course of action.
- Clarify the intent to limit this practice to the ECC. Significant expansion of this practice would cause a large shift in how commission appointments are made and could result in requests for reserved seats from other agencies or interest groups.

CONTACT PERSONS

Nina Thompson, Chair, Youth Commission

Ginsi Bryant, Secretary, Youth Commission, 981-6678

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.



Environment and Climate Commission

CONSENT CALENDAR
January 17, 2023

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

If feasible, the ECC recommends that a youth representative be nominated by the BUSD Student Director and confirmed by the full BUSD Board of Directors, in alignment with the recommendation passed by the Youth Commission.

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.

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.

The feasibility analysis and draft language from City staff should consider existing law in BMC 2.04.030 through 2.04.120, including:

- 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.

At the Environment and Climate Commission meeting of Wednesday, September 28, 2022, ECC voted 6-2-0-0 to: Approve recommendations in support of Youth Member proposal and recommend one appointee nominated by BUSD Student Director and confirmed by the full BUSD Board of Directors, in alignment with the original May 9, 2022 Youth Commission proposal. M/S/Hedlund/Gould: Ayes: Ranney, McGuire, Tahara, Guliasi, Lunaparra, Gould. Noes: Hedlund, Allen. Abstain: None. Absent: None.

BACKGROUND

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

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE CHANGE

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.

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 a nonvoting position limited to public

comment was unlikely to be effective at recruiting and sustaining interest from young people.

The ECC considered having the youth member be nominated by the Youth Commission and approved by the City Council, but determined that BUSD was better equipped to engage a wide range of students and youth, and having BUSD make the appointment would align with Berkeley's laws allowing 16- and 17-year-old youth to vote in School Board elections.

CITY MANAGER

The City Manager supports youth participation in the City's boards and commissions. Currently, a student/youth in Berkeley may be appointed by the Mayor or a Councilmember to 26 of the City's 30 commissions. With regards to expanding the number of seats on the Environment and Climate Commission (ECC) to reserve seats for persons between 12 and 19 years old, there are some potential alternatives or considerations that the Council may wish to weigh.

- Raise the lower end of the age range from 12 to 14 or limit the designated seats to high school students. Commissions often meet until 9pm or 10pm in the evening, which may be difficult for middle school students. If the students are not able to attend regularly for the duration of the meeting, their absence can affect the quorum of the commission and the commission's ability to conduct business.
- Modify the ECC enabling legislation to require that one or two of the nine seats on the ECC to be filled with a "student" as defined. There are other city commissions that have reserved seats for certain interest groups or categories of commissioners (Mental Health Commission, Design Review Commission).
- Consider adding the additional seats as part of a pilot program or add a sunset date to evaluate the impact and effectiveness of the additional reserved appointments to determine if permanently expanding the membership is the best course of action.
- Clarify the intent to limit this practice to the ECC. Significant expansion of this practice would cause a large shift in how commission appointments are made and could result in requests for reserved seats from other agencies or interest groups.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE CHANGE

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
Billi Romain, Secretary, Environment and Climate Commission



Office of the Mayor

CONSENT CALENDAR

January 17, 2022

To: Honorable Members of the City Council

From: Mayor Jesse Arreguin

Subject: Amend Contract No. 32200161 with Community Development Partners to extend consulting work associated with Equitable Black Berkeley Initiative.

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200161 with Community Development Partners (CDP) to add \$75,000 to the existing ideation facilitator contract supporting the Equitable Black Berkeley Initiative for a total contact amount not to exceed \$125,000.

FISCAL IMPACTS OF RECOMMENDATION

On November 29, 2022, City Council approved a resolution accepting a grant award of \$75,000 from the San Francisco Foundation to renew the existing ideation facilitator contract with CDP supporting the Equitable Black Berkeley Initiative. The grant funds have been deposited and expensed from the One-Time Grant: No Capital Expenses Fund and will be appropriated in the First Amendment to the FY 2023 Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

On November 30, 2021, the City Council approved a \$50,000 grant from the San Francisco Foundation (SFF) grant to support a six-month process to ideate increasing affordable housing at the North Berkeley and Ashby BART stations. SFF has increased the grant funding by \$75,000 continuing the work of the part time consultant in creating a plan, in collaboration with the community and multiple partners, to secure the funding needed to meet the project goals of maximizing affordable housing at and around the Ashby and North Berkeley BART sites within a reparative framework. In addition, the consultant will assist the City in outreach with Berkeley Flea Market vendors and community members, regarding resources to support the Berkeley Flea Market currently and plans for its relocation at a new Adeline Plaza as part of the new transit oriented development at Ashby Station. City Council approved accepting the increased grant funding of \$75,000 on November 29, 2022.

BACKGROUND

Equitable Black Berkeley is an innovative, replicable model to support equity, opportunity and the well-being of Berkeley's Black community. It will underpin policies to repair harm, create financing vehicles to sustain community investment and ensure Black families have a right to stay, right to return, and right to own/build equity. EBB will help alleviate

the housing crisis and create the conditions for the South Berkeley community to thrive.

The San Francisco Foundation grant will continue to provide support to the City in developing additional strategies for increasing financial support for greater affordability levels for the BART projects and engaging the black community in developing a reparative framework that will address economic harms and provide the support infrastructure to provide repair.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Would support Climate Action goals by providing more affordable housing along transit corridors.

RATIONALE FOR RECOMMENDATION

Increasing affordability levels for new housing developments and addressing inequities for communities of color are expressed City values and council direction. This contract extension supports the efforts to increase affordability in previously redlined areas in a reparative framework.

CONTACT PERSON

Mayor Jesse Arreguin, 510-981-7100

Attachments:

1. Resolution

RESOLUTION NO. XX,XXX N.S.

AUTHORIZING A CONTRACT EXTENSION WITH COMMUNITY DEVELOPMENT PARTNERS (CDP) TO SUPPORT THE EQUITABLE BLACK BERKELEY INITIATIVE AND FUNDED THROUGH A GRANT FROM THE SAN FRANCISCO FOUNDATION.

WHEREAS, On November 30, 2021, the Berkeley City Council voted to receive a grant from the San Francisco Foundation to support a consultant to assist the Equitable Black Berkeley Initiative (EBB) in a six-month process to ideate financing alternatives to increase the level of affordable housing at the North Berkeley and Ashby BART stations within a reparative framework; and

WHEREAS, on November 29, 2022, City Council approved accepting a grant award of \$75,000 from the San Francisco Foundation to renew the existing contract with CDP supporting the Equitable Black Berkeley Initiative; and

WHEREAS, the grant funds have been deposited and expensed from the One-Time Grant: No Capital Expenses Fund and will be appropriated in the First Amendment to the FY 2023 Annual Appropriations Ordinance.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to extend Contract #32200161 with Community Development Partners in support of the Equitable Black Berkeley Initiative, adding an additional \$75,000 to the contract for a total contact amount not to exceed \$125,000.



Rashi Kesarwani
Councilmember, District 1

CONSENT CALENDAR

January 17, 2023

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author)

SUBJECT: Referral for a Security Assessment of the 1700 and 1600 Blocks of San Pablo Avenue

RECOMMENDATION

Refer to the City Manager to conduct a security assessment of the 1700 and 1600 blocks of San Pablo Avenue two months after the City of Berkeley has entered into a lease of real property located at 1720 San Pablo Avenue (hereafter referred to as Berkeley Inn, a 27-room motel). Additional security measures deemed necessary should be implemented as soon as practicable after the security assessment is completed.

Recommended aspects of the security assessment include but are not limited to the following:

- A community meeting for immediate businesses, residents, and stakeholders of the 1700 and 1600 blocks of San Pablo Avenue to be hosted by the Office of Councilmember Rashi Kesarwani, City Manager Dee Williams-Ridley [or her designee(s)], and the Berkeley Police Department in order to assess the current street conditions and safety concerns; and
- A Crime Prevention Through Environmental Design (CPTED) assessment to be conducted by the Berkeley Police Department for the 1700 and 1600 blocks of San Pablo Avenue.

Possible security measures may include but are not limited to the following:

- Increased Berkeley police patrols and/or the provision of private security services;
- Assistance from the Office of Economic Development to identify grant or other funding opportunities so businesses and residents may procure and install security cameras at key locations;

- Implementation of environmental design improvements, as recommended by the CPTED assessment, by the City of Berkeley and/or private property owners, as appropriate.

CURRENT SITUATION AND ITS EFFECTS

New Uses in the 1700 and 1600 Blocks of San Pablo Avenue Warrant Safety Assessment. On December 6, 2022 Council approved the lease with the Berkeley Inn located on the 1700 block of San Pablo Avenue, as well as a contract amendment with the Dorothy Day House to operate the facility as a transitional shelter. The 1600 block of San Pablo Avenue is the site of a permanent supportive housing facility at the former Golden Bear Inn, operated by Bay Area Community Services, with residents in the process of moving in as of November 2022.

City Council's approval of the five-year lease agreement with owners of the Berkeley Inn, located at 1720 San Pablo Avenue, is critical in maintaining Berkeley's commitment to sheltering homeless populations as the Horizon Transitional Village, also administered by Dorothy Day house, provides 50 beds for unsheltered and encampment populations and will be closing at the end of this month on December 31, 2022. This hotel conversion fills a dire need for an alternate location to house this vulnerable population that likely would otherwise end up back on the street and in encampments. Additionally, it provides non-congregate shelter rooms that are preferred and more likely to be accepted by persons experiencing unsheltered homelessness by future residents.

BACKGROUND

Opportunity Sites for Homeless Shelters are Extremely Limited. The City's lease of the Berkeley Inn, a 27-room motel, to serve as a transitional non-congregate shelter facility replaces a larger 50-bed congregate shelter facility located at 742 Grayson Street. The Grayson site, known as the Horizon Transitional Village Program, is scheduled to close on Dec. 31, 2022 due to the termination of the City's lease with the private property owner. The City was able to extend its lease for the Grayson facility on Sept. 29, 2022 through the end of the year, but no further extensions are available. Staff have noted that the City engaged in an exhaustive search of City facilities to replace the Grayson facility, but none were found to be suitable, safe, or available for year-round use as a shelter for vulnerable homeless people¹. The number of motel operators willing to partner with the City is also limited; the City has previously housed homeless individuals at the Berkeley Inn with the use of 28-day motel vouchers provided by the county.

¹ See item #1: [Urgency Ordinance for Leasing the Real Property at 1720 San Pablo Avenue](#), on the December 6, 2022 Berkeley City Council Agenda.

Opportunity Sites for Homekey Permanent Supportive Housing (Golden Bear Inn) Identified by Respondents to City’s Request for Proposals (RFP). The City issued an RFP for a Homekey permanent supportive housing site in October 2021, with the option for RFP respondents to submit proposals for opportunity sites citywide. The selection of the Golden Bear Inn at 1620 San Pablo Avenue is the result of an RFP respondent identifying the site and a motel owner willing to sell as well as submitting a viable application to the City—which happened to be the only Homekey application the City received. Permanent supportive housing has been found to be the evidence-based solution to unsheltered homelessness.²

The San Pablo Corridor is a Priority Development Area. In 2021, the City of Berkeley received a \$750,000 grant from the Metropolitan Transportation Commission (MTC) to begin developing a master plan for the San Pablo Corridor. It is the priority of Councilmember Kesarwani to use the limited grant funds to study effective city policies for filling vacant retail spaces (including by reviewing effective policies in neighboring local jurisdictions) and other strategies for supporting a thriving non-residential sector of small businesses, non-profit organizations, and arts and cultural institutions.

State Housing Laws Have Taken Away Control from Local Jurisdictions to Deny or Lower the Density of Projects, When They Meet Specific Requirements. Over the last several years, new state approved housing laws limit both cities’ ability to reject development projects if they comply with local zoning and design rules, such as the Housing Accountability Act, and the number of times neighborhood groups can appeal such projects, such as SB 330. State law affects cities’ authority over development in additional ways: it further limits local government’s authority over development by speeding up approvals if affordable housing is included; it prevents cities from ordering design changes that would result in fewer units being built; and bars governments from changing zoning rules once a project has been proposed. Yet another piece of legislation, California’s Density Bonus law, allows developers to exceed local zoning limits if projects include affordable units. The goal of these housing laws is to keep cities from arbitrarily denying or delaying the construction of much needed housing. As a result, a community’s ability to alter or slow down development projects has been limited.

Housing Development Along San Pablo Corridor Is Driven by Decisions of Private Property Owners. In recent years, a number of parcels along the San Pablo Corridor have been developed or plans are underway to do so.

² See: Permanent Supportive Housing: Evaluating the Evidence for Improving Health Outcomes Among People Experiencing Chronic Homelessness, National Academies Press, 2018. Contributors: National Academies of Sciences, Engineering, and Medicine; Policy and Global Affairs; Health and Medicine Division; Science and Technology for Sustainability Program; Board on Population Health and Public Health Practice; Committee on an Evaluation of Permanent Supportive Housing Programs for Homeless Individuals

- 1941 San Pablo Avenue: proposed 7 story mixed use development - in early planning stage
- 1835 San Pablo Avenue: entitled project for mostly market rate housing
- 1740 San Pablo Avenue: 54 units of affordable housing, approved and in process
- 1701 San Pablo Avenue: 110 affordable units for Berkeley Unified School District workforce, approved and in process
- 1620 San Pablo Avenue: 44 units of permanent supportive housing, approved and operating
- 1080 Jones Street, The Jones (at 1500 San Pablo Avenue): 170 units mostly market rate - operating and occupied
- 1201-1205 San Pablo Avenue: 66 units of mostly market rate housing - approved
- 1200 San Pablo Avenue: 7 story project previously approved by the Design Review Commission

The decisions to develop these parcels are not driven by the City, but by private property owners. Development occurs throughout the city where a private property owner wishes to do so.

FISCAL IMPACT

The security assessment will require one-time staff attention, and implementation of security measures may result in one-time and/or ongoing costs to the City.

ENVIRONMENTAL SUSTAINABILITY

Enhanced safety can encourage more residents to patronize the area on foot or bike, thus reducing vehicle miles traveled.

CONTACT PERSON

Rashi Kesarwani, Council Member District 1

(510) 981-7110



Kate Harrison
Councilmember District 4

CONSENT CALENDAR
January 17, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison

Subject: Adopt an Ordinance Amending Berkeley Municipal Code Chapter 3.82
Modifying Membership and Appointment Procedures for the Environment and
Climate Commission

RECOMMENDATION

1. Adopt an Ordinance Amending Berkeley Municipal Code Chapter 3.82 Modifying Membership and Appointment Procedures for the Environment and Climate Commission.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

Berkeley's high school aged youth stand to inherit a planet devastated by the escalating climate emergency, yet are currently unable to vote in local, state, and federal elections. Global warming is an existential issue that encompasses nearly all ecological, political and socio-economic issues. This decade is widely considered pivotal in determining the ultimate severity of warming. Berkeley's Commission system is a critical avenue for engaging with and impacting the local legislative process. While Council is technically permitted to appoint such youth as members of the Environment and Climate Commission, there is currently no formal process for encouraging and facilitating the Berkeley Unified School District (BUSD) Board to appoint members to the Commission. Unlike the Council, the BUSD Board includes a Student Director that directly represents students. Consistent with existing processes for the Youth and Peace and Justice Commissions, and given the importance of environmental and climate issues to youth, it is in the public interest to provide high school-aged youth with two permanent voting seats on the Commission to be appointed by the BUSD Board.

BACKGROUND

Currently, the only formalized Commission-based youth involvement in City policymaking are the Youth and Peace and Justice Commissions. Over the past year, youth have organized and mobilized to petition the Council to add an additional voice for youth on issues of the environment and climate.

Adopt an Ordinance Amending Berkeley Municipal Code Chapter 3.82 Modifying Membership and Appointment Procedures for the Environment and Climate Commission

In 2022, both the Youth and Environment and Climate Commissions have formally endorsed the concept of adding voting membership for high school-aged youth on the Environment and Climate Commission.¹

This item includes an ordinance, drafted in consultation with the Clerk and City Manager's offices. The proposed amendments to BMC 3.82 would accomplish the following:

- adds two seats to the Commission to be appointed by the BUSD, with a preference for appointees who are residents of the City (while recognizing that some students may live outside of the district), between the ages of sixteen and twenty-five (while providing ultimate discretion to the Board consistent with current procedures on the Youth and Peace and Justice Commissions), and a demonstrated commitment or interest in the work of the Commission;
- provides for BUSD Board to appoint one of its Board members as a non-voting liaison representative to the Environment and Climate Commission.

This ordinance is being proposed on its own merits and following consultation with the Clerk's and City Manager's offices. Adoption of this ordinance is in no way intended to endorse the concept of amending other Commissions to include BUSD appointments. This item also recognizes and appreciates that expanding membership of Commissions is not without impact to Clerk staff time and resources.

ATTACHMENTS

1. Ordinance Amending Berkeley Municipal Code Chapter 3.82

FISCAL IMPACTS OF RECOMMENDATION

City Clerk staff time is needed to adopt procedures related to appointing and verifying the status of BUSD Board appointed members.

ENVIRONMENTAL SUSTAINABILITY

There are no direct environmental impacts of this proposal. However, the City legislative process would benefit from more robust youth participation.

CONTACT PERSON

Councilmember Kate Harrison, (510) 981-7140

¹ Environment and Climate Commission Minutes, September 28, 2022
https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/ECC2022-09-28_Minutes.pdf; Agenda Regular Meeting of the Environment and Climate Commission, September 28, 2022, https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-09-28_ECC_Agenda%20-%20Packet_0.pdf.

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 3.82 MODIFYING MEMBERSHIP AND APPOINTMENT PROCEDURES FOR THE ENVIRONMENT AND CLIMATE COMMISSION

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

Section 1. That Berkeley Municipal Code Chapter 3.82 is amended to read as follows:

ENVIRONMENT AND CLIMATE COMMISSION

Sections:

- 3.82.010 Established--Membership--Appointment.
- 3.82.020 Council representative as commission liaisons -- ~~Functions.~~
- 3.82.030 Organization, meetings, rules and procedures.
- 3.82.040 Functions.

3.82.10 Established--Membership--Appointment.

A. An Environment and Climate Commission is established. The commission shall consist of ~~nine~~ eleven members. ~~Appointments to the commission shall be made, and vacancies on the commission shall be filled, in accordance with the provisions of Sections 2.04.030 through 2.04.130. City Council shall appoint representatives with appropriate expertise and demonstrated commitment to the areas outlined in the functions section 3.04.40.~~

A.B. One member of the Commission shall be appointed by each City Councilmember. ~~Appointments to the commission shall be made,~~ and vacancies on the commission shall be filled, in accordance with the provisions of Sections 2.04.030 through 2.04.130. City Council shall appoint representatives-members with appropriate expertise and demonstrated commitment to the areas outlined in the functions section ~~3.0482.040~~.

B.C. Two members of the Commission shall be appointed by the Berkeley Unified School District Board of Directors and subject to the following:

(1) The following desirable criteria may guide, but not restrict, the Berkeley Unified School District Board of Directors in making appointments to the Commission:

- i. Appointees to be residents of the City;
- ii. Appointees to be between the ages of sixteen and twenty-five;

(2) Appointees shall have demonstrated commitment or interest in the areas outlined in Section 3.82.040.

~~C.D.~~ B. For purposes of determining term limits under Section 3.02.040, a

commissioner's service on the Energy Commission or the Community Environmental Advisory Commission shall be counted toward their service upon their appointment to the Environment and Climate Commission.

3.82.020 Council representative as commission liaison.

The City Council and School Board may appoint one of its members to act as a non-voting, uncompensated liaison representative to the Environment and Climate Commission. The functions of such liaison representatives are:

- A. To attend meetings of said commission;
- B. To advise the Council and School Board of the background, reasons and rationale behind decisions and recommendations of said commission; and
- C. On request of any member of said commission, to advise the commission of policies, procedures and decisions of the council and School Board that may bear on matters under discussion by the commission.

3.82.030 Organization, meetings, rules and procedures.

A. The commission annually shall elect one of its members as the chairperson and one of its members as the vice-chairperson. One or more officers or employees of the City designated by the City Manager shall serve as secretary of the commission.

B. The commission shall establish a regular place and time for meeting. All meetings shall be noticed as required by law and shall be scheduled in a way to allow for maximum input from the public. The frequency of commission meetings shall be as determined by City Council Resolution. The scheduling of special meetings in addition to those established by City Council resolution, except special meetings that take the place of cancelled regular meetings, shall be subject to approval by the City Council. A request for a special meeting shall include the reason for the proposed meeting and should be expedited on the City Council's agenda, or in the alternative, placed before the Agenda Committee for approval.

C. The commission may make and alter rules governing its organization and procedures which are consistent with this Chapter or any other applicable ordinance of the City.

D. A majority of the members appointed to the commission shall constitute a quorum and the affirmative vote of a majority of the members appointed is required to take any action.

E. The commission shall keep an accurate record of its proceedings and

transactions.

3.82.040 Functions.

The Environment and Climate Commission shall be an advisory board and shall review and advise the City Council on matters related to emerging issues, policies, projects, programs, planning efforts, activities, and funding of environmental sustainability and climate change mitigation, adaptation and resilience. Its scope will include work to advance the goals of advancing green buildings and resource efficiency; decarbonizing buildings and transportation; engaging and educating the community; addressing the impacts and welfare of all species, including animals, insects, and plants; reducing greenhouse gas emissions; reducing toxics and preventing pollution; and supporting environmental justice.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of ~~Council Chamber~~the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Lori Droste
Councilmember, District 8

Action Calendar
January 17, 2023

To: Honorable Mayor Jesse Arreguín and Members of the City Council

From: Councilmember Lori Droste

Subject: Bureaucratic Effectiveness and Referral Improvement and Prioritization Effort (BE RIPE)

Recommendation

In order to ensure that the City focuses on high-priority issues, projects, and goals and affords them the resources and funding such civic efforts deserve, the City Council should consult with the City Manager's Office to develop and adopt a suite of revisions to the City Council Rules of Procedure and Order that would implement the following provisions:

1. Beginning in 2023, Councilmembers shall submit no more than one major legislative proposal or set of amendments to any existing ordinance per year, with the Mayor permitted to submit two major proposals, for a maximum of ten major Council items per year.
2. In 2023 and all future years, Councilmembers shall be required to submit major items before an established deadline. Council shall then prioritize any new legislative items as well as any incomplete major items from the previous year using the Reweighted Range Voting (RRV) process. This will help establish clear priorities for staff time, funding, and scheduling Council work sessions and meetings. For 2023 alone, the RRV process should include outstanding/incomplete Council items from all previous years. In 2024 and thereafter, the RRV process should only incorporate outstanding/incomplete major items from the prior year. However, Councilmembers may choose to renominate an incomplete major policy item from an earlier year as their single major item.
3. During deliberations at a special worksession, Council retreat, and/or departmental budget presentations, Council and the City Manager should develop a work plan that establishes reasonable expectations about what can be accomplished by staff given the list of priorities as ranked by RRV. Council should also consult with the City Manager and department heads, particularly the City Attorney's office, Planning Department, and Public Works Department on workload challenges (mandates outside Council priorities, etc.), impacts, reasonable staff output expectations, and potential corrective actions to ensure that mandated deadlines are met, basic services are provided, and policy proposals are effectively implemented.
4. Budget referrals and allocations from City Council must be explicitly related to a previously established or passed policy/program, planning/strategy document, and/or an external funding opportunity related to one of these. As a good government practice, councilmembers and the Mayor may **not** submit budget referrals which direct funds to a

specific organization or event. Organizations which receive City funding must submit at least annually an application detailing, at a minimum: the civic goal(s)/purpose(s) for which City funds are used, the amount of City funding received for each of the preceding five years, and quantitative or qualitative accounting of the results/outcomes for the projects that made use of those City funds. Organizations receiving more than \$20,000 in City funds should be required to provide quantitative data regarding the number of individuals served and other outcomes.

5. Ensuring that any exceptions to these provisions are designed to ensure flexibility in the face of an emergency, disaster, or urgent legal issue/liability and narrowly tailored to be consistent with the goals of enhanced efficiency, effectiveness, fairness, and focus.

Current Situation and Its Effects

Over the past few years (excluding the COVID-19 state of emergency), City Council has grappled with potential options to reduce the legislative workload on the City of Berkeley staff. While a significant portion of this workload is generated from non-legislative matters and staffing vacancies, it is important to recognize that staff also continue to struggle to keep up with Council directives while still accomplishing the City's core mission or providing high quality public infrastructure and services.

Background and Rationale

Berkeley faces an enormous staffing crisis due in part to workload concerns; as such, Council should take steps to hone its focus on legislative priorities. [November 2022's Public Works Off-Agenda Memo](#) offers a benchmark for problems faced by City departments. Public Works staff struggles to complete its top strategic plan projects, respond to audit findings, and provide basic services, in addition to fulfilling legislative priorities by Council. While the "Top Goals and Priorities" outlined by Public Works is tied to 130+ directives by the City Council, it is not reasonable to assume that all will be implemented.

The challenges faced by the Public Works department are not an anomaly. Other departments share the same challenges. In addition to needing to ensure that the City can adopt a compliant state-mandated Housing Element, process permits, secure new grant funding, mitigate seismic risks, and advance our Climate Action Plan, Planning Department staff have been tasked with addressing multiple policy proposals from the City Council. The sheer number of referrals also impacts the ability of staff in the City Attorney's office to vet all ordinances, protect the City's interests, participate in litigation, and address the City's other various legal needs.

Best Practices

A number of nearby, similarly-sized cities were contacted to request information about how these cities approach Councilmember referrals and prioritizations processes. Cities contacted included Richmond, Vallejo, Santa Clara, Concord, and Sunnyvale. Of these cities, Santa Clara, Concord, and Sunnyvale replied.

Santa Clara

Overall, Santa Clara staff indicated that—similar to Berkeley—the Council referrals and prioritization process is not especially formalized, with additional referrals being made outside of the prioritization process.

Each year, the Council holds an annual priority setting session at which the Council examines and updates priorities from the previous year and considers what progress was made toward those priorities. The prioritization process takes place in February so that any priorities that rise to the top may be considered for funding ahead of the budget process. In any given year, some priorities may go unfunded and even holding those priorities over to a second year is not necessarily a guarantee of funding.

Despite conducting this annual prioritization exercise, Councilmembers in Santa Clara often still do bring forward additional referrals outside of this process. Part of this less restricted approach in Santa Clara's 030 ("zero thirty") policy, which allows members of the the City Council to add items to the Council agenda with sufficient notice and even allows members of the public to petition to have items added to a special section of the Council agenda.

Despite the overall looseness of Santa Clara's approach. Council members still rely upon staff to provide direction with respect to what priorities are or are not feasible based upon available funding and staff bandwidth.

Concord

According to Concord City staff, although Concord—like Berkeley and Santa Clara—does have a process for Councilmembers to request items be added to Council agendas, Councilmembers generally agree not to add referrals outside of the formal priority-setting process.

Concord City staff only work on "new" items/policies that are mandated by law, recommended by the City Manager, and have been recommended for review/work of some kind by a majority (three of the five members) of the City Council.

In general, Councilmembers agree to not add work items outside of the Council's formal priority setting process. The Concord City Council has a once-a-year goal setting workshop each spring where the City plans its Tier 1 and Tier 2 priorities for the year (or sometimes for a 2-year cycle). Most Councilmembers abide by this process and refrain from bringing forward additional items. However any Councilmember may put forward a referral outside of the process and use the method outlined below.

Outside of the prioritization process, Councilmembers can request that their colleagues (under Council reports at any Council meeting) support placing an item on a future Council meeting agenda for a discussion. The Concord City Attorney has advised councilmembers that they can make a three sentence statement, e.g. "I would like my colleagues' support to agendize [insert item]" or "to send [insert item] to a Council standing committee for discussion." Followed by: "This is an important item to me or a timely item for the Council because [insert reasoning]. Do I have your support?" The other Councilmembers then cannot engage in any detailed discussion or follow up, but may only vote yes or no to agendizing the item.

If two of the Councilmember's colleagues (for a total of 3 out of 5) agree to the request to have the item agendized for a more detailed discussion by Council, then the item will be added to a future agenda for fuller consideration. An additional referral outside the prioritization process is suggested perhaps once every month in Concord, but the Concord City Council usually does not provide the majority vote to agendize these additional items.

Sunnyvale

Of all the cities surveyed, Sunnyvale has the most structured approach for selecting, rating, and focusing on City Council priorities. “Study issues” require support from multiple councilmembers before being included in the annual priority setting, and then must go through a relatively rigorous process to rise to the top as Council priorities. And, perhaps most importantly, policy changes *must* go through the priority setting process to be considered. The Sunnyvale City Council’s Policy 7.3.26 Study Issues reads, in part:

Any substantive policy change (large or relatively small) is subject to the study issues process (i.e. evaluated for ranking at the Council Study Issues Workshop).

Policy related issues include such items as proposed ordinances, new or expanded service delivery programs, changes to existing Council policy, and/or amendments to the General Plan. Exceptions to this approach include emergency issues, and urgent policy issues that must be completed in the short term to avoid serious negative consequences to the City, subject to a majority vote of Council.

If a study issue receives the support of at least two Councilmembers, the issue will go to staff for the preparation of a study issue paper. Council-generated study issues must be submitted to staff at least three weeks ahead of the priority-setting session, with an exception for study issues raised by the public and carried by at least two Councilmembers, if the study issues hearing takes place less than three weeks before the priority setting.

At the Annual Study Issues Workshop, the Council votes whether to rank, defer, or drop study issues. If a majority votes to drop the issue, it may not return the following year; if the issue is deferred, it returns at the following year’s workshop; and if a majority votes to rank an issue, it proceeds to the ranking process. Sunnyvale’s process uses “forced ranking” for “departments” with ten or fewer issues and “choice ranking” for departments with eleven or more issues. (The meaning of “departments” and the process for determining the number of issues per department are not elucidated within the policy.) Forced ranking involves assigning a ranking to every policy within a given subset, while choice ranking only assigns a ranking to a third of policies within a given subset, with the others going unranked.

After the Council determines which study issues will be moving forward for the year based on the rankings, the City Manager advises Council of staff’s capacity for completing ranked issues. However, if the Council provides additional funding, the number of study issues addressed may be increased.

In 2022, Sunnyvale had 24 study issues (including 17 from previous years and only 7 new ones) and **zero** budget proposals. Although Sunnyvale does consider urgency items outside the prioritization process, this generally happens only 1 to 3 times per year and usually pertains to highly urgent items, such as gun violence.

Status Quo and Its Effects

Council currently uses a reweighted range proportional representation voting method to determine which priorities represent both a) a consensus and b) district/neighborhood concerns. This process allows Council to coalesce around a particular common area of concern; but if there is a specific neighborhood or district issue that is not addressed by Council consensus, it also allows for that district’s councilmember’s top priority to be elevated in the ratings even without broad consensus, so long as there are not multiple items designated as that

councilmember's "top" item. More information about this process can be found [here](#). This [system was established](#) in 2016 due to the sheer amount of referrals by Council and the lack of cohesive direction on which of the 100+ referrals the City Manager should act upon.

Subsequent to this effort, Council created a "short-term referral" pool which was intended to be light-lift referrals that could be accomplished in less than 90 days. However, that designation was always intended to be determined by the City Manager, not Council, with respect to what was operationally feasible in terms of the 90 day window. The challenge with Council determining what is a short-term referral is that it is not always realistic given other duties that the staff has to attend to and inappropriate determinations can stymy work on other long term priorities if staff have to drop everything they are doing to attend to an "short-term" or "emergency" referral.

An added challenge is that the City Auditor [reported in 2018](#) that the City of Berkeley's Code Enforcement Unit (CEU) had insufficient capacity to enforce various Municipal Code provisions. This was due to multiple factors, including understaffing—some of which have since improved. Nevertheless, the City Auditor wrote,

"Council passes some ordinances without fully analyzing the resources needed for enforcement and without understanding current staffing capacity. In order to enforce new ordinances, the CEU must take time away from other enforcement areas. This increases the risk of significant health and safety code violations going unaddressed. It also leads to disgruntled community members who believe that the City is failing to meet its obligations. This does not suggest that the new ordinances are not of value and needed. Council passes policy to address community concerns. However, it does mean that the City Council routinely approves policy that may never result in the intended change or protections."

Subsequent to that report, [an update](#) was published in September of 2022. A staffing and resource analysis for Code Enforcement is still needed to ensure that the laws Council passes can be implemented.

Fiscal Impacts

These reforms are likely to result in significant direct savings related to reduced staff time/overtime as well as potential decreases to costs associated with the recruitment/retention of staff.

Alternatives Considered

Alternatives were considered using effectiveness and efficiency as the evaluative criteria for referrals. One missing criterion that will be necessary in developing this process will be operational considerations so the City of Berkeley can continue to deliver basic services in an efficient manner.

All-Council determination

Council could vote as a *body* on the top 10 legislative priorities. The drawback of this method is that it, by default, eliminates any remaining priorities that have been passed by Council. It also eliminates "minority" voices which may disproportionately impact neighborhood-specific concerns as the remainder of the Council may not value district-specific concerns outside of their council district.

Councilmember parameters

Councilmembers could select their top two legislative priorities (as a primary author) for the year and the Mayor could select four legislative priorities for the year for a total of 10 legislative priorities per year. These “legislative priorities” would not include resolutions of support, budget referrals for infrastructure or traffic mitigations or other non-substantive policy items.....

Status Quo Sans Short-Term Referrals

The status quo of rating referrals is the fairest and most equitable if Council wishes to continue to pass the same quantity of referrals; however, it does not address the overall volume and that certain legislative items skip the prioritization queue due to popularity or perceived community support. Council enacts ordinances that fall outside of the priority setting process and designates items as short-term referrals. This loophole has made this process a bit more challenging. One potential option is to continue the prioritization process but eliminate the short-term referral option unless it is undeniably and categorically an emergency or time-sensitive issue.

Contact Person

Councilmember Lori Droste (legislative aide Eric Panzer)

erpanzer@cityofberkeley.info

Phone: 510-981-7180

Attachments

Update on Public Works' Goals, Projects, Measures, and Challenges



Office of the City Manager

November 15, 2022

To: Honorable Mayor and Members of the City Council
 From: *DWR* Dee Williams-Ridley, City Manager
 Re: Update on Public Works' Goals, Projects, Measures, and Challenges

This memo shares an update on the department's *Performance Measures* and *FY 2023 Top Goals and Projects*, and identifies the department's highest priority challenge. I am proud of this department's work, its efforts to align its work with City Council's goals, and the department's dedication to improving project and program delivery.

Performance Measures

The department's performance measures were first placed on the department's website (<https://berkeleyca.gov/your-government/about-us/departments/public-works>) in 2020. They are updated annually in April. Progress continues in preventing trash from reaching the Bay, reducing waste, increasing bike lane miles, reducing the City fleet's reliance on gas, increasing City-owned electric chargers, expanding acres treated by green infrastructure, and reducing the sidewalk repair backlog. Challenges remain with the City's street condition and safety.

Top Goals and Projects

Public Works' top goals and projects are also on the department's website (<https://berkeleyca.gov/your-government/about-us/departments/public-works>). Department goals are developed annually. This year, after reviewing the 130+ directives from open City Council referrals, FY 2023 adopted budget referrals, audit findings, and strategic plan projects, staff matched existing resources with City Council's direction and the ability to deliver on this direction while ensuring continuity in baseline services.

The *FY 2023 Top Goals and Projects* is staff's projection of the work that the department has the capacity to advance this fiscal year. This list is intended to be both realistic and a stretch to achieve. More than three-quarters of the work on the *FY 2023 Top Goals and Projects* is tied to the existing 130+ directives from City Council referrals, budget referrals, audit findings, and strategic plan projects. The remainder are initiatives internal to the department aimed at increasing effectiveness and/or improving baseline services.

Public Works conducts quarterly monitoring of progress on the goals and projects, and status updates are shared on the department's website using a simple status reporting

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November 15, 2022

Re: Update on Public Works' Goals, Projects, Measures, and Challenges

procedure. Each goal or project is coded green, yellow, or red. A project coded green is either already completed or is on track and on budget. A project in yellow is at risk of being off track or over budget. A project in red either will not meet its milestone for this fiscal year or is significantly off track or off-budget. Where a project or goal has multiple sub-parts, an overall status is color-coded for the numbered goal and/or project, and exceptions within the subparts are identified by color-coding. Quarter 1's status update is [here](#). The 2nd, 3rd, and 4th quarter results will be posted at the same location.

Challenge

Besides the volume of direction, the most significant challenge in delivering on City Council's directions is the department's high vacancy rate. The Public Works Department is responsible for staff retention and serves as the hiring manager in the recruitment and selection process. Both retention and hiring contribute to the department's vacancy rate, and the department collaborates closely with the Human Resources Department to reduce the rate. Over the last year, the vacancy rate has ranged from 12% to 18%, and some divisions, such as Equipment Maintenance (Fleet), Transportation,¹ and Engineering, have exceeded 20%. While the overall vacancy rate is lower than in Oakland and San Francisco, it is higher than in Public Works Departments in Alameda, Albany, Emeryville, and San Leandro.

The high vacancy rate obviously reduces the number of services and projects that staff can deliver. It leaves little room for new direction through the course of the fiscal year and can lead to delays and diminished quality. It also detracts from staff morale as existing staff are left to juggle multiple job responsibilities over long periods with little relief. The department's last two annual staff surveys show that employee morale is in the lowest quarter of comparable public agencies and the vacancy rate is a key driver of morale.

Attachment 1 offers an excerpted list of programs and projects that the department is unable to complete or address in this fiscal year due to the elevated vacancy rate and/or the volume of directives.

Attachment 1: Selected list of program, project, referral, and audit finding impacts

cc: Paul Buddenhagen, Deputy City Manager
 LaTanya Bellow, Deputy City Manager
 Jenny Wong, City Auditor
 Mark Numainville, City Clerk
 Matthai Chakko, Assistant to the City Manager

¹ Three of the City's five transportation planner positions will be vacant by December 3. Before January 1, 2023, the City Manager will share an off agenda memo that explains the impact of transportation-specific vacancies on existing projects and programs.

Attachment 1: Selected list of program, project, referral, and audit finding impacts

Project and Program Impacts

- Major infrastructure planning processes are 6+ months behind schedule, including comprehensive planning related to the City's Zero Waste goal, bicycle, stormwater/watershed, sewer, and streetlight infrastructure.
- Some flashing beacon installations have been delayed for more than 18 months, new traffic maintenance requests can take 2+ months to resolve, and the backlog of neighborhood traffic calming requests stretches to 2019.
- The City may lose its accreditation status by the American Public Works Association because of a lack of capacity to gain re-accreditation.
- Some regular inspections and enforcement of traffic control plans for the City's and others' work in the right of way are missed.
- Residents experience missed waste and compost pickups as drivers and workers cover unfamiliar routes and temporary assignments.
- Illegal dumping, ongoing encampment, and RV-related cleanups are sometimes missed or delayed.
- The backlog of parking citation appeals has increased.
- Invoice and contracting approvals can face months-long delays.
- The Janitorial Unit has reduced service levels and increased complaints.
- Maintenance of the City's fleet has declined, with preventative maintenance happening infrequently, longer repair response times, and key vehicles being unavailable during significant weather events.

Prior Direction Deferred or Delayed

- Referral: Expansion of Paid Parking (DMND0003994)
- Referral: Long-Term Zero Waste Strategy (DMND0001282)
- Referral: Residential Permit Parking (PRJ0016358)
- Referral: Parking Benefits District at Marina (DMND0003997)
- Referral: Prioritizing pedestrians at intersections (DMND0002584)
- Referral: Parking Districts on Lorin and Gilman (DMND0003998)
- Budget Referral: Durant/Telegraph Plaza, 12/14/2021
- Referral: Traffic Calming Policy Revision (PRJ0012444)
- Referral: Public Realm Pedestrianization Opportunities (PRJ0019832)
- Referral: Long-Term Resurfacing Plan (PRJ0033877)
- Referral: Street Sweeping Improvement Plan (DMND0002583)
- Audit: Leases: Conflicting Directives Hinder Contract Oversight (2009)
- Audit: Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress Toward the Year 2020 Zero Waste Goal (2014)
- Audit: Unified Vision of Zero Waste Activities Will Help Align Service Levels with Billing and Ensure Customer Equity (2016)



Lori Droste
Councilmember, District 8

Action Calendar
January 17, 2023

To: Honorable Mayor Jesse Arreguín and Members of the City Council

From: Councilmember Lori Droste

Subject: Reforms to Public Comment Procedures at meetings of the Berkeley City Council

Recommendation

Adopt a Resolution revising the City Council Rules of Procedure and Order: Section IV. Conduct of the Meeting and Appendix C Temporary Rules for The Conduct of City Council Meetings Through Video Conference During The Covid-19 Emergency to:

1. Consolidate non-agenda public comment, public comment on the Consent Calendar, and public comment on Action Items into a single public comment period toward the start of the Council meeting (consistent with the Berkeley Unified School District's public comment procedure), and continue to provide for additional time for public comment at the end of meetings;
2. Adopt reasonable limits on the overall number of public speakers (consistent with rulings from the Second District Court of Appeal) with a mechanism for the City Council to extend public comment; and
3. Rescind Resolution No. 70,091– N.S

Current Situation and Its Effects

City Council has occasionally tried to rebalance the City's approach to public comment at Council meetings to create a more welcoming atmosphere, conduct the people's business efficiently, and ensure elected officials have time to give items due consideration. Unfortunately, members of the public, applicants/appellants, and staff frequently have to wait for hours before an item is heard or unexpectedly moved to another meeting. This is due to the way public comment was established prior to the tenure of any of the current Councilmembers or the Mayor. This prevents many ordinary people, particularly those who have small children or work long hours, from having a reasonable opportunity to provide public comment and hear the Council deliberate. It also deprives the Council of the time needed for adequate consideration of items, especially major policy efforts, and frequently pushes important items to future meetings.

Background and Rationale

Pursuant to the Brown Act, Section 54954.3, members of the public shall be afforded the opportunity to speak on any agenda item of a substantive nature providing they are first recognized by the presiding officer. City Council greatly values input and comment from a broad cross-section of the public on legislative matters. The City of Berkeley and Councilmembers appreciate and admire the dedication of the many mainstays at public comment. Nevertheless, other community members often feel overwhelmed and intimidated by the prospect of enduring hours-long City Council meetings, not just to provide public comment but to even hear the Council's discussions. Having to wait through hours of public comment (much of which is often

duplicative) before one gets to participate and/or hear the position of one's elected representatives is neither fair, equitable, nor good for democracy.

Public comment and Council procedures have undergone iterations before. Most recently, Mayor Arreguín offered a very successful and equitable amendment to require three councilmembers to agree to pull an item from the consent calendar to the action calendar, instead of one councilmember or four public speakers. This change dramatically helped meetings run smoother and ensured that uncontroversial and broad-consensus consent calendar items were not subject to attempts at obstructionism or unduly long debates which extended meeting times.

Even with that positive change, the current approach to public comment ironically does not likely widen opportunities for civic engagement; but instead serves to preclude a more representative sample of participants—as political scientists from Boston University have [found](#). Currently, many residents must wait for extended periods of time in order to provide public comment on specific legislation, since no specific times are available for when a piece of legislation will be heard. This means that people who may care deeply about a particular issue are discouraged from participating in favor of those who have a general interest in speaking and the time to sit through the entirety of a meeting. Although their commitment and interest are commendable, such individuals are not necessarily representative of the broader public.

[The Brown Act](#) actually provides leeway for the City to consider other approaches to public comment. Under the Brown Act, the City must allow the public to comment on any agenda item; and there are certain items that require ensuring public comment from all interested parties (e.g., quasi-judicial proceedings and public hearings where due process demands allowing comment from all participants). But for most items, the Brown Act permits agencies to limit the amount of time for public comment on any given item, provided that such limits are content-neutral. For example, for most Council items, the City Council would be permitted under the Brown Act to impose a 10-minute limit on public comment, comprising ten speakers with one minute each, with the speakers determined on a lottery or first-come, first-served basis. Alternatively, the City Council could also adopt a content-neutral limitation on the number of speakers for a general public comment period at the start of each meeting which covers all agenda and non-agenda comments—as proposed in this item.

In its decision in the 2018 *Ribakoff v. City of Long Beach, et al.* decision, the Second District Court of Appeal ruled in part:

*“On the other hand, having no limit on either the length of any particular presentation by a member of the public **or on the number of public speakers (or on the total time for public comment)** has the potential for endless discussion—given the potential that there will be a far greater number of members of the public who may wish to speak to an issue than there are staff and guests who make presentations concerning it. The number of staff and invited guests speaking on a topic will clearly be limited; **the potential for public speakers is potentially extensive and needs some reasonable limitation.**”*

*We do not suggest that members of the public may not have expertise, or that their presentations would be of lesser value than those of the invited, expert staff and guest speakers, **only that their number must be considered in weighing the time allotted to public participation.** Indeed, this concern was a factor in shaping the text of Government Code section 54954.3 as it moved through the Legislature with*

*amendments to the Brown Act adopted in 1986. On the one hand, the Legislature declared the importance of open governance and the public's right to participate. On the other, it **validated enactment of limits on public speakers so that the business of government could function.** (Gov. Code, § 54954.3.)²³[emphasis added]"*

Members of the public would still have ample additional means of addressing their concerns to councilmembers, including in-person meetings and office hours, written correspondence, emails, telephone calls, and social media/online platforms. Although it is beyond the scope of this item, the City may also wish to explore expanding and enhancing Berkeley Considers to provide a new platform for community members to provide comments on upcoming Council items. Berkeley could potentially pioneer having a "one-stop shop" for members of the public to provide feedback on upcoming Council items and have that feedback delivered to Council in a formalized and easily visualized format.

Best Practices

Berkeley Unified School District

The Berkeley Unified School District has adopted [a practice](#) that is likely more conducive to allowing a broader participation of residents in the civic process. There are two opportunities for public comment, one at the beginning and one at the end of the meeting. By allowing public comment at the beginning of the meeting, individuals do not have to wait for hours for an item with an unknown start time. And In other cities, the presiding officer can limit individual presentations, the amount of time allotted for public input, and/or limit the number of speakers with similar positions. This item proposes to use the approach used by BUSD.

Fiscal Impacts

De minimis costs for staff to revise local and public-facing digital copies of the City Council's Rules of Procedure and time and materials costs for any printing of physical copies.

Long-term fiscal impacts are speculative, but reduced Council and staff time for the receipt and management of in-person and virtual public comment have a strong potential to reduce City costs. The cost reductions would be highly variable depending on the number and nature of staff present at any given City Council meeting.

Alternative Actions Considered

Alternative Actions include but are not limited to:

- Leaving existing public comment policies and procedures unchanged.
- Adopting a limit on the number of public speakers for each item.

These options were rejected in favor of the more "tried and true" approach currently used by the Berkeley Unified School District, as well as other jurisdictions and agencies across California.

Contact Person

Councilmember Lori Droste (legislative aide Eric Panzer)

erpanzer@cityofberkeley.info

Phone: 510-981-7180

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

RE-ADOPTING THE CITY COUNCIL RULES OF PROCEDURE AND ORDER AND
RESCINDING RESOLUTION NO. 70,091–N.S.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the revised sections of the City Council Rules of Procedure and Order attached hereto as Exhibit A shall replace wholesale the corresponding sections of the existing City Council Rules of Procedure and Order attached hereto as Exhibit B and incorporated by reference.

BE IT FURTHER RESOLVED that the revised City Council Rules of Procedure and Order (Exhibit B as amended by Exhibit A) shall govern all proceedings of the City Council therein described, subject to the exceptions and deviations provided for in such rules.

BE IT FURTHER RESOLVED that violation of these rules shall not be construed as a penal offense, except as provided for by the adopted Rules of Procedure and Order.

BE IT FURTHER RESOLVED that the Council shall review its Rules of Procedure and Order in March of each odd-numbered year per [April 26, 2016 City Council action](#).

BE IT FURTHER RESOLVED that Resolution No 70,091–N.S. is hereby rescinded.

Exhibits

Exhibit A: Sections of the City Council Rules of Procedure and Order to be revised

Exhibit B: Existing City Council Rules of Procedure and Order

Exhibit A: Sections of the City Council Rules of Procedure and Order to be Revised

IV. CONDUCT OF MEETING

A. Comments from the Public

Public comment will be taken in the following order:

- An initial ~~ten-minute~~ period of public comment on non-agenda items, the consent calendar, action items (excluding public hearings, appeals, and/or other quasi-judicial matters), and information items, after the commencement of the meeting and immediately after Ceremonial Matters and City Manager Comments.
- ~~Public comment on the Consent and Information Calendars.~~
- Public comment on action items, any appeals, and/or public hearings, and/or other quasi-judicial matters requiring extended public comment for due process purposes, as they are taken up under procedures set forth in the sections governing each below.
- Public comment on non-agenda items from any speakers who did not speak during the first round of ~~non-agenda~~ public comment at the beginning of the meeting.

Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. A speaker wishing to yield their time shall identify themselves, shall be recognized by the chair, and announce publicly their intention to yield their time. Disabled persons shall have priority seating in the front row of the public seating area.

A member of the public may only speak once at public comment ~~on any single item~~, unless called upon by the Mayor or a Councilmember to answer a specific inquiry, or unless the individual is speaking with respect to a public hearing, a quasi-judicial matter, and/or any other item requiring unrestricted public comment as a matter of due process.

Prior to the general public comment period, the Presiding Officer shall announce any planned changes to the order of the agenda, including any items which are being moved to the Consent Calendar and/or any items that are being removed from the agenda at the prerogative of the Presiding Officer and/or the item's sponsor(s).

The Presiding Officer will request that persons wishing to speak, line up at the podium, raise their hands on Zoom, or otherwise indicate their intent to speak in order to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking virtually or in person, each speaker may speak for two minutes at the discretion of the Presiding Officer. If there are more than ten persons interested in speaking, the Presiding Officer shall limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one another, however no one speaker shall have more than four minutes.

A maximum of 50 individuals shall be permitted to speak or yield time during the general public comment period. This maximum shall apply whether speakers are virtual, in person, or a combination of the two. In the event that more than 50 individuals wish to speak at a fully virtual or fully in-person Council meeting, speaking opportunities shall be given on a "first come, first served" basis.

In the event that more than 50 individuals wish to speak at a "hybrid" Council meeting (with both a virtual and in-person component), 25 in-person speakers shall be allowed to speak first.

followed by 25 virtual speakers. For both the virtual and in-person queues, speakers shall be recognized in the order they lined up or provided virtual notification of their intent to speak. If the queue for either type of speaker is exhausted while speakers of the other type remain, the remaining individuals in either queue will be allowed to speak, up to the overall 50-speaker maximum.

The maximum number of speakers/yielders may be increased up to 100 total individuals by a two-thirds (2/3) vote of the City Council. Increases above 100 total individuals speaking or yielding shall require a unanimous vote of the City Council. In no case shall these limits be applied to items which require unconstrained public comment to ensure due process.

These procedures/limits also apply to public hearings except for those which would be precluded by the types of due process public hearings specifically provided for in Section 2, below.

1. Public Comment on Consent Calendar and Information Items.

As described above, public comment on the "Consent Calendar" will be taken as part of the general public comment period at the start of the Council meeting following Ceremonial Matters and any comments from the City Manager.

Prior to this initial general public comment period, the Council will first determine whether to move items on the agenda for "Action" or "Information" to the "Consent Calendar," and/or move "Consent Calendar" items to "Action." Items that remain on the "Consent Calendar" are voted on in one motion as a group. "Information" items are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent."

The Council will then take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. A speaker may only speak once during the period for public comment on Consent Calendar and Information items. Following the initial period of general public comment, the three or more members of City Council may still move items from the "Consent Calendar" to "Action," but no additional items can be moved onto the Consent Calendar once public comment has commenced.

At any time during, or immediately after, the initial period of general public comment on Information and Consent items, the Mayor or any Councilmember may move any Information or Consent item to "Action." Three or more members of the City Council, including the Mayor, may move any Consent Item to "Action." Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

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

2. Public Comment on Action Items.

After the initial ten minutes of public comment on non-agenda items, public comment on consent and information items, and adoption of the Consent Calendar, the public may comment on each remaining item listed on the agenda for action as the item is taken up.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

~~If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.~~

~~This procedure also applies to public hearings except those types of public hearings specifically provided for in this section, below.~~

32. Appeals Appearing on Action Calendar.

With the exception of appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission, appeals from decisions of City commissions appear on the "Action" section of the Council Agenda. Council determines whether to affirm the action of the commission, set a public hearing, or remand the matter to the commission. Appeals of proposed special assessment liens shall also appear on the "Action" section of the Council Agenda. Appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission are automatically set for public hearing and appear on the "Public Hearings" section of the Council Agenda. The procedures for public comment on appeals from these two bodies and attendant public hearings shall be the same as described below for all other commission appeals.

Time shall be provided for public comment for persons representing both sides of the action/appeal and each side will be allocated seven minutes to present their comments on the appeal. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have seven minutes to comment and the applicant shall have seven minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have seven minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have seven minutes to comment and the persons supporting the action of the board or commission on appeal shall have seven minutes to comment. In the case of an appeal of a proposed special assessment lien, the appellant shall have seven minutes to comment.

After the conclusion of the seven-minute comment periods, members of the public may comment on the appeal. Comments from members of the public regarding appeals shall be limited to one minute per speaker. Any person that addressed the Council during one of the seven-minute periods may not speak again during the public comment period on the appeal. Speakers may yield their time to one other speaker, however, no speaker shall have more than two minutes. Each side shall be informed of this public comment procedure at the time the Clerk notifies the parties of the date the appeal will appear on the Council agenda.

43. Public Comment on Non-Agenda Matters.

~~Immediately following Ceremonial Matters and the City Manager Comments and prior to the Consent Calendar, persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting.~~

Individuals wishing to address the Council about non-agenda matters may do so during the initial period of general public comment, and will count toward the overall limit on the number of individuals making public comment.

The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.

~~Persons submitting speaker cards are not required to list their actual name, however they must list some identifying information or alternate name in order to be called to speak.~~ For the second round of public comment on non-agenda matters, the Presiding Officer retains the authority to limit the number of speakers by subject. The Presiding Officer will generally request that persons wishing to speak, line up at the podium, raise their hand on zoom, or otherwise to be recognized to determine the number of persons interested in speaking at that time. Each speaker will be entitled to speak for two minutes each unless the Presiding Officer determines that one-minute is appropriate given the number of speakers.

Pursuant to this document, no Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items. If any agenda item remains unfinished at 11:00 p.m. or the expiration of any extension after 11:00 p.m., it will be referred to the Agenda & Rules Committee for scheduling pursuant to Chapter II, Section F. In that event, the meeting shall be automatically extended for up to fifteen (15) minutes for public comment on non-agenda items.

54. Ralph M. Brown Act Pertaining to Public Comments.

The Brown Act prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the agenda. However, the Council may refer a matter to the City Manager.

APPENDIX C. TEMPORARY RULES FOR THE CONDUCT OF CITY COUNCIL MEETINGS THROUGH VIDEO CONFERENCE DURING THE COVID-19 EMERGENCY

Public Comment Speaking Time

With the exception of prescribed times in the Rules of Procedure for public hearings, the amount of time for each speaker during public comment is limited to two ~~one~~ minutes maximum and that speakers can only address an agenda item once, ~~however the Presiding Officer has the discretion to reduce speaker time if needed in order to allow the orderly conduct of the meeting, subject to the consent of a majority of the City Council.~~ Speakers may yield their time for a maximum of four minutes per individual. If a speaker wishes to yield their time, they must indicate so when called on by the Presiding Officer and state who they are yielding their speaker time to. The Presiding Officer will keep a list with the names and amount of time yielded to individuals.

In order to inform members of the public of their place in the speaker's queue, the Presiding Officer will call the names of 5 speakers at a time.

Public Comment on Non-Agenda Matters ~~will~~ may be conducted in the order of hands raised on the Zoom platform or based upon a lottery or similar system, ~~and will be limited to either the first~~

~~10 speakers during the initial round of Non-Agenda public comment, as well as all hands raised during the closing round of Non-Agenda public comment at the conclusion to the meeting, until such time that the meeting adjourns. If there are five or fewer speakers with hands raised for Public Comment on Non-Agenda Matters, each speaker will have two minutes to address the City Council. If there are more than five speakers with their hands raised then speaker time will be limited to one minute per person. The procedure for selection of Non-Agenda speakers prescribed in the Rules of Procedure by random draw is suspended for videoconference meetings where there is no physical meeting location.~~

**Exhibit B:
City Council Rules of Procedure and Order**

The Berkeley City Council Rules of Procedure and Order

Adopted by Resolution No. 70,091–N.S.

Effective October 26, 2021

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I. DUTIES

A. Duties of Mayor

The Mayor shall preside at the meetings of the Council and shall preserve strict order and decorum at all regular and special meetings of the Council. The Mayor shall state every question coming before the Council, announce the decision of the Council on all subjects, and decide all questions of order, subject, however, to an appeal to the Council, in which event a majority vote of the Council shall govern and conclusively determine such question of order. In the Mayor's absence, the Vice President of the Council (hereafter referred to as the Vice-Mayor) shall preside.

B. Duties of Councilmembers

Promptly at the hour set by law on the date of each regular meeting, the members of the Council shall take their regular stations in the Council Chambers and the business of the Council shall be taken up for consideration and disposition.

C. Motions to be Stated by Chair

When a motion is made, it may be stated by the Chair or the City Clerk before debate.

D. Decorum by Councilmembers

While the Council is in session, the City Council will practice civility and decorum in their discussions and debate. Councilmembers will value each other's time and will preserve order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings of the Council, use personal, impertinent or slanderous remarks, nor disturb any other member while that member is speaking or refuse to obey the orders of the presiding officer or the Council, except as otherwise provided herein.

All Councilmembers have the opportunity to speak and agree to disagree but no Councilmember shall speak twice on any given subject unless all other Councilmembers have been given the opportunity to speak. The Presiding Officer may set a limit on the speaking time allotted to Councilmembers during Council discussion.

The presiding officer has the affirmative duty to maintain order. The City Council will honor the role of the presiding officer in maintaining order. If a Councilmember believes the presiding officer is not maintaining order, the Councilmember may move that the Vice-Mayor, or another Councilmember if the Vice-Mayor is acting as the presiding officer at the time, enforce the rules of decorum and otherwise maintain order. If that motion receives a second and is approved by a majority of the Council, the Vice-Mayor, or other designated Councilmember, shall enforce the rules of decorum and maintain order.

E. Voting Disqualification

No member of the Council who is disqualified shall vote upon the matter on which the member is disqualified. Any member shall openly state or have the presiding officer announce the fact and nature of such disqualification in open meeting, and shall not be subject to further inquiry. Where no clearly disqualifying conflict of interest appears, the matter of disqualification may, at the request of the member affected, be

decided by the other members of the Council, by motion, and such decision shall determine such member's right and obligation to vote. A member who is disqualified by conflict of interest in any matter shall not remain in the Chamber during the debate and vote on such matter, but shall request and be given the presiding officer's permission to recuse themselves. Any member having a "remote interest" in any matter as provided in Government Code shall divulge the same before voting.

F. Requests for Technical Assistance and/or Reports

A majority vote of the Council shall be required to direct staff to provide technical assistance, develop a report, initiate staff research, or respond to requests for information or service generated by an individual council member.

II. MEETINGS

A. **Call to Order - Presiding Officer**

The Mayor, or in the Mayor's absence, the Vice Mayor, shall take the chair precisely at the hour appointed by the meeting and shall immediately call the Council to order. Upon the arrival of the Mayor, the Vice Mayor shall immediately relinquish the chair. In the absence of the two officers specified in this section, the Councilmember present with the longest period of Council service shall preside.

B. **Roll Call**

Before the Council shall proceed with the business of the Council, the City Clerk shall call the roll of the members and the names of those present shall be entered in the minutes. The later arrival of any absentee shall also be entered in the minutes.

C. **Quorum Call**

During the course of the meeting, should the Chair note a Council quorum is lacking, the Chair shall call this fact to the attention of the City Clerk. The City Clerk shall issue a quorum call. If a quorum has not been restored within two minutes of a quorum call, the meeting shall be deemed automatically adjourned.

D. **Council Meeting Conduct of Business**

The agenda for the regular business meetings shall include the following: Ceremonial Items (including comments from the City Auditor if requested); Comments from the City Manager; Comments from the Public; Consent Calendar; Action Calendar (Appeals, Public Hearings, Continued Business, Old Business, New Business); Information Reports; and Communication from the Public. Presentations and workshops may be included as part of the Action Calendar. The Chair will determine the order in which the item(s) will be heard with the consent of Council.

Upon request by the Mayor or any Councilmember, any item may be moved from the Consent Calendar or Information Calendar to the Action Calendar. Unless there is an objection by the Mayor or any Councilmember, the Council may also move an item from the Action Calendar to the Consent Calendar.

A public hearing that is not expected to be lengthy may be placed on the agenda for a regular business meeting. When a public hearing is expected to be contentious and lengthy and/or the Council's regular meeting schedule is heavily booked, the Agenda & Rules Committee, in conjunction with the staff, will schedule a special meeting exclusively for the public hearing. No other matters shall be placed on the agenda for the special meeting. All public comment will be considered as part of the public hearing and no separate time will be set aside for public comment not related to the public hearing at this meeting.

Except at meetings at which the budget is to be adopted, no public hearing may commence later than 10:00 p.m. unless there is a legal necessity to hold the hearing or make a decision at that meeting or the City Council determines by a two-thirds vote that there is a fiscal necessity to hold the hearing.

E. Adjournment

1. No Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items; and any motion to extend the meeting beyond 11:00 p.m. shall include a list of specific agenda items to be covered and shall specify in which order these items shall be handled.
2. Any items not completed at a regularly scheduled Council meeting may be continued to an Adjourned Regular Meeting by a two-thirds majority vote of the Council.

F. Unfinished Business

Any items not completed by formal action of the Council, and any items not postponed to a date certain, shall be considered Unfinished Business. All Unfinished Business shall be referred to the Agenda & Rules Committee for scheduling for a Council meeting that occurs within 60 days from the date the item last appeared on a Council agenda. The 60 day period is tolled during a Council recess.

G. City Council Schedule and Recess Periods

Pursuant to the Open Government Ordinance, the City Council shall hold a minimum of twenty-four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.

Regular meetings of the City Council shall be held generally two to three Tuesdays of each month except during recess periods; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.

Regular City Council meetings shall begin no later than 6:00 p.m.

A recess period is defined as a period of time longer than 21 days without a regular meeting of the Council.

When a recess period occurs, the City Manager is authorized to take such ministerial actions for matters of operational urgency as would normally be taken by the City Council during the period of recess except for those duties specifically reserved to the Council by the Charter, and including such emergency actions as are necessary for the immediate preservation of the public peace, health or safety; the authority to extend throughout the period of time established by the City Council for the period of recess.

The City Manager shall have the aforementioned authority beginning the day after the Agenda & Rules Committee meeting for the last regular meeting before a Council recess and this authority shall extend up to the date of the Agenda & Rules Committee meeting for the first regular meeting after the Council recess.

The City Manager shall make a full and complete report to the City Council at its first regularly scheduled meeting following the period of recess of actions taken by the City Manager pursuant to this section, at which time the City Council may make such findings as may be required and confirm said actions of the City Manager.

H. Pledge of Allegiance to the Flag

At the first meeting of each year following the August recess and at any subsequent meeting if specifically requested before the meeting by any member of the Council in order to commemorate an occasion of national significance, the first item on the Ceremonial Calendar will be the Pledge of Allegiance.

I. Ad Hoc Subcommittees

From time to time the Council or the Mayor may appoint several of its members but fewer than the existing quorum of the present body to serve as an ad hoc subcommittee. Only Councilmembers may be members of the ad hoc subcommittee; however, the subcommittee shall seek input and advice from residents, related commissions, and other groups, as appropriate to the charge or responsibilities of such subcommittee. Ad hoc subcommittees must be reviewed annually by the Council to determine if the subcommittee is to continue.

Upon creation of an ad hoc subcommittee, the Council shall allow it to operate with the following parameters:

1. A specific charge or outline of responsibilities shall be established by the Council.
2. A target date must be established for a report back to the Council.
3. Maximum life of the subcommittee shall be one year, with annual review and possible extension by the Council.

Subcommittees shall conduct their meetings in locations that are open to the public and meet accessibility requirements under the Americans with Disabilities Act. Meetings may be held at privately owned facilities provided that the location is open to all that wish to attend and that there is no requirement for purchase to attend. Agendas for subcommittee meetings must be posted in the same manner as the agendas for regular Council meetings except that subcommittee agendas may be posted with 24-hour notice. The public will be permitted to comment on agenda items but public comments may be limited to one minute if deemed necessary by the Committee Chair. Agendas and minutes of the meetings must be maintained and made available upon request.

Ad hoc subcommittees will be staffed by City Council legislative staff. As part of the ad hoc subcommittee process, City staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item(s) under consideration. Staff analysis at ad hoc subcommittees is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

Subcommittees must be comprised of at least two members. If only two members are appointed, then both must be present in order for the subcommittee meeting to be held. In other words, the quorum for a two-member subcommittee is always two.

Ad hoc subcommittees may convene a closed session meeting pursuant to the conditions and regulations imposed by the Brown Act.

III. AGENDA

A. Declaration of Policy

No ordinance, resolution, or item of business shall be introduced, discussed or acted upon before the Council at its meeting without prior thereto its having been published on the agenda of the meeting and posted in accordance with Section III.D.2. Exceptions to this rule are limited to circumstances listed in Section III.D.4.b and items continued from a previous meeting and published on a revised agenda.

B. Definitions

For purposes of this section, the terms listed herein shall be defined as follows:

1. "Agenda Item" means an item placed on the agenda (on either the Consent Calendar or as a Report For Action) for a vote of the Council by the Mayor or any Councilmember, the City Manager, the Auditor, or any board/commission/committee created by the City Council, or any Report For Information which may be acted upon if the Mayor or a Councilmember so requests. For purposes of this section, appeals shall be considered action items. All information from the City Manager concerning any item to be acted upon by the Council shall be submitted as a report on the agenda and not as an off-agenda memorandum and shall be available for public review, except to the extent such report is privileged and thus confidential such as an attorney client communication concerning a litigation matter. Council agenda items are limited to a maximum of four Authors and Co-Sponsors, in any combination that includes at least one Author.

Authors must be listed in the original item as submitted by the Primary Author. Co-Sponsors may only be added in the following manner:

- In the original item as submitted by the Primary Author
 - In a revised item submitted by the Primary Author at the Agenda & Rules Committee
 - By verbal request of the Primary Author at the Agenda & Rules Committee
 - In a revised item submitted by the Primary Author in Supplemental Reports and Communications Packet #1 or #2
 - By verbal or written request of the Mayor or any Councilmember at the Policy Committee meeting or meeting of the full Council at which the item is considered
2. Agenda items shall contain all relevant documentation, including the information listed below:
 - a) A descriptive title that adequately informs the public of the subject matter and general nature of the item or report;
 - b) Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;

- c) Recommendation of the report's Primary Author that describes the action to be taken on the item, if applicable;
 - d) Fiscal impacts of the recommendation;
 - e) A description of the current situation and its effects;
 - f) Background information as needed;
 - g) Rationale for recommendation;
 - h) Alternative actions considered;
 - i) For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items);
 - j) Person or persons to contact for further information, with telephone number;
 - k) Additional information and analysis as required. It is recommended that reports include the points of analysis in Appendix B - Guidelines for Developing and Writing Council Agenda Items.
3. "Author" means the Mayor or other Councilmembers who actually authored an item by contributing to the ideas, research, writing or other material elements.
4. "Primary Author" means the Mayor or Councilmember listed first on the item. The Primary Author is the sole contact for the City Manager with respect to the item. Communication with other Authors and Co-Sponsors, if any, is the responsibility of the Primary Author.
5. "Co-Sponsor" means the Mayor or other Councilmembers who wish to indicate their strong support for the item, but are not Authors, and are designated by the Primary Author to be co-sponsors of the council agenda item.
6. "Agenda" means the compilation of the descriptive titles of agenda items submitted to the City Clerk, arranged in the sequence established in Section III.E hereof.
7. "Packet" means the agenda plus all its corresponding agenda items.
8. "Emergency Matter" arises when prompt action is necessary due to the disruption or threatened disruption of public facilities and a majority of the Council determines that:
- a) A work stoppage or other activity which severely impairs public health, safety, or both;
 - b) A crippling disaster, which severely impairs public health, safety or both. Notice of the Council's proposed consideration of any such emergency

matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.

9. "Continued Business" Items carried over from a prior agenda of a meeting occurring less than 11 days earlier.
10. "Old Business" Items carried over from a prior agenda of a meeting occurring more than 11 days earlier.

C. Procedure for Bringing Matters Before City Council

1. Persons Who Can Place Matters on the Agenda.

Matters may be placed on the agenda by the Mayor or any Councilmember, the City Manager, the Auditor, or any board/commission/committee created by the City Council. All items are subject to review, referral, and scheduling by the Agenda & Rules Committee pursuant to the rules and limitations contained herein. The Agenda & Rules Committee shall be a standing committee of the City Council.

The Agenda & Rules Committee shall meet 15 days prior to each City Council meeting and shall approve the agenda of that City Council meeting. Pursuant to BMC Section 1.04.080, if the 15th day prior to the Council meeting falls on a holiday, the Committee will meet the next business day. The Agenda & Rules Committee packet, including a draft agenda and Councilmember, Auditor, and Commission reports shall be distributed by 5:00 p.m. four days before the Agenda & Rules Committee meeting.

The Agenda & Rules Committee shall have the powers set forth below.

a) Items Authored by the Mayor, a Councilmember, or the Auditor.

As to items authored by the Mayor, a Councilmember, or the Auditor, the Agenda & Rules Committee shall review the item and may take the following actions:

- i. Refer the item to a commission for further analysis (Primary Author may decline and request Policy Committee assignment).
- ii. Refer the item to the City Manager for further analysis (Primary Author may decline and request Policy Committee assignment).
- iii. Refer the item back to the Primary Author for adherence to required form or for additional analysis as required in Section III.B.2 (Primary Author may decline and request Policy Committee assignment).
- iv. Refer the item to a Policy Committee.
- v. Schedule the item for the agenda under consideration or one of the next three full Council agendas.

For referrals under Chapter III.C.1.a.i, ii, or iii, the Primary Author must inform the City Clerk within 24 hours of the adjournment of the Agenda & Rules Committee meeting whether they prefer to:

- 1) re-submit the item for a future meeting with modifications as suggested by the Agenda & Rules Committee; or
- 2) pull the item completely; or
- 3) re-submit the item with revisions as requested by the Agenda & Rules Committee within 24 hours of the adjournment of the Agenda & Rules Committee meeting for the Council agenda under consideration; or
- 4) accept the referral of the Agenda & Rules Committee in sub paragraphs III.C.1.a. i, ii, or iii, or request Policy Committee assignment.

If the Primary Author requests a Policy Committee assignment, the item will appear on the next draft agenda presented to the Agenda & Rules Committee for assignment.

In the event that the City Clerk does not receive guidance from the Primary Author of the referred item within 24 hours of the Agenda & Rules Committee's adjournment, the item will appear on the next draft agenda for consideration by the Agenda & Rules Committee.

Items held for a future meeting to allow for modifications will be placed on the next available Council meeting agenda at the time that the revised version is submitted to the City Clerk.

- b) **Items Authored by the City Manager.** The Agenda & Rules Committee shall review agenda descriptions of items authored by the City Manager. The Committee can recommend that the matter be referred to a commission or back to the City Manager for adherence to required form, additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

If the City Manager determines that the matter should proceed notwithstanding the Agenda & Rules Committee's action, it will be placed on the agenda as directed by the Manager. All City Manager items placed on the Council agenda against the recommendation of the Agenda & Rules Committee will automatically be placed on the Action Calendar.

- c) **Items Authored by Boards and Commissions.** Council items submitted by boards and commissions are subject to City Manager review and must follow procedures and timelines for submittal of reports as described in the Commissioners' Manual. The content of commission items is not subject to review by the Agenda & Rules Committee unless referred for policy review to the Agenda & Rules Committee.
- i) For a commission item that does not require a companion report from the City Manager, the Agenda & Rules Committee may act on an agendaized commission report in the following manner:
 - 1. Move a commission report from the Consent Calendar to the Action Calendar or from the Action Calendar to the Consent Calendar.
 - 2. Re-schedule the commission report to appear on one of the next three regular Council meeting agendas that occur after the regular meeting under consideration. Commission reports submitted in response to a Council referral shall receive higher priority for scheduling.
 - 3. Refer the item to a Policy Committee for review.
 - 4. Allow the item to proceed as submitted.
- ii) For any commission report that requires a companion report, the Agenda & Rules Committee may schedule the item on a Council agenda. The Committee must schedule the commission item for a meeting occurring not sooner than 60 days and not later than 120 days from the date of the meeting under consideration by the Agenda & Rules Committee. A commission report submitted with a complete companion report may be scheduled pursuant to subparagraph c.i. above.
- d) The Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in Chapter III, Section E.

2. Scheduling Public Hearings Mandated by State, Federal, or Local Statute.

The City Clerk may schedule a public hearing at an available time and date in those cases where State, Federal or local statute mandates the City Council hold a public hearing.

3. Submission of Agenda Items.

- a) **City Manager Items.** Except for Continued Business and Old Business, as a condition to placing an item on the agenda, agenda items from departments, including agenda items from commissions, shall be furnished to the City Clerk at a time established by the City Manager.

- b) **Council and Auditor Items.** The deadline for reports submitted by the Auditor, Mayor and City Council is 5:00 p.m. on Monday, 22 days before each Council meeting.
- c) **Time Critical Items.** A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or Councilmember is received by the City Clerk after established deadlines and is not included on the Agenda & Rules Committee's published agenda.

The Primary Author of the report shall bring any reports submitted as Time Critical to the meeting of the Agenda & Rules Committee. Time Critical items must be accompanied by complete reports and statements of financial implications. If the Agenda & Rules Committee finds the matter to meet the definition of Time Critical, the Agenda & Rules Committee may place the matter on the Agenda on either the Consent or Action Calendar.

- d) The City Clerk may not accept any agenda item after the adjournment of the Agenda & Rules Committee meeting, except for items carried over by the City Council from a prior City Council meeting occurring less than 11 days earlier, which may include supplemental or revised reports, and reports concerning actions taken by boards and commissions that are required by law or ordinance to be presented to the Council within a deadline that does not permit compliance with the agenda timelines in BMC Chapter 2.06 or these rules.

4. Submission of Supplemental and Revised Agenda Material.

Berkeley Municipal Code Section 2.06.070 allows for the submission of supplemental and revised agenda material. Supplemental and revised material cannot be substantially new or only tangentially related to an agenda item. Supplemental material must be specifically related to the item in the Agenda Packet. Revised material should be presented as revised versions of the report or item printed in the Agenda Packet. Supplemental and revised material may be submitted for consideration as follows:

- a) Supplemental and revised agenda material shall be submitted to the City Clerk no later than 5:00 p.m. seven calendar days prior to the City Council meeting at which it is to be considered. Supplemental and revised items that are received by the deadline shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. five calendar days prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Councilmember evaluation.

- b) Supplemental and revised agenda material submitted to the City Clerk after 5:00 p.m. seven days before the meeting and no later than 12:00 p.m. one day prior to the City Council meeting at which it is to be considered shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. one day prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Council evaluation.
- c) After 12:00 p.m. one calendar day prior to the meeting, supplemental or revised reports may be submitted for consideration by delivering a minimum of 42 copies of the supplemental/revised material to the City Clerk for distribution at the meeting. Each copy must be accompanied by a completed supplemental/revised material cover page, using the form provided by the City Clerk. Revised reports must reflect a comparison with the original item using track changes formatting. The material may be considered only if the City Council, by a two-thirds roll call vote, makes a factual determination that the good of the City clearly outweighs the lack of time for citizen review or City Councilmember evaluation of the material. Supplemental and revised material must be distributed and a factual determination made prior to the commencement of public comment on the agenda item in order for the material to be considered.

5. Submission of Late Urgency Items Pursuant to Government Code Section 54954.2(b)

Late Urgency Items are items proposed for submission to the Council Agenda pursuant to Government Code Section 54954.2(b)

All items to be submitted for consideration for addition to an agenda as Late Urgency Items shall be accompanied by a cover sheet that includes 1) boxes to check for the Author to affirm whether the item is submitted under the Emergency or Immediate Action Rule (and a short explanation of what is required to meet each rule, as well as the vote threshold required for the item to be placed onto the agenda by the City Council); 2) a disclaimer in BOLD 14pt. CAPS stating that the item is not yet agendized and may or may not be accepted for the agenda as a Late Urgency Item, at the City Council's discretion according to Brown Act rules; 3) a prompt requiring the author to list the facts which support consideration of the item for addition to the agenda as either an Emergency or Immediate Action item; and 4) a copy of the City Attorney memo on Late Urgency Items.

Late Items must be submitted to the City Clerk no later than 12:00 p.m. (noon) the day prior to the meeting.

All complete Late Items submitted by the deadline will be distributed with Supplemental Communication Packet #2 by 5:00 p.m. the day before the Council meeting. A Late Item is not considered "complete" and will not be distributed unless submitted with the required cover sheet, filled out in a complete manner.

Very Late Urgency Items of an extremely urgent nature (e.g., earthquake, severe wildfire, pandemic) may be submitted for addition to the agenda after the deadline of 12:00 p.m. the day before the meeting to accommodate unforeseeable, extreme and unusual circumstances. A Very Late Urgency Item will be distributed at the Council meeting prior to any vote to add it to the agenda and the Presiding Officer may provide an appropriate break to allow Councilmembers and the public to review the item before voting on whether to add it to the agenda and possibly again, at the Presiding Officer's discretion, before the item is voted on.

The required cover sheet should be included with the Very Late Urgency Item unless extremely exigent circumstances underlie the Very Late Urgency Item submission and a written cover sheet could not be prepared (for example, power is out and printing or emailing is not possible), in which case the individual "walking in" the item should be ready to provide all required information verbally at the meeting before a vote is taken to add or not add the item to the Agenda.

6. Scheduling a Presentation.

Presentations from staff are either submitted as an Agenda Item or are requested by the City Manager. Presentations from outside agencies and the public are coordinated with the Mayor's Office. The Agenda & Rules Committee may adjust the schedule of presentations as needed to best manage the Council Agenda. The Agenda & Rules Committee may request a presentation by staff in consultation with the City Manager.

D. Packet Preparation and Posting

1. Preparation of the Packet.

Not later than the thirteenth day prior to said meeting, the City Clerk shall prepare the packet, which shall include the agenda plus all its corresponding agenda items. No item shall be considered if not included in the packet, except as provided for in Section III.C.4 and Section III.D.4.

2. Distribution and Posting of Agenda.

- a) The City Clerk shall post each agenda of the City Council regular meeting no later than 11 days prior to the meeting and shall post each agenda of a special meeting at least 24 hours in advance of the meeting in the official bulletin board. The City Clerk shall maintain an affidavit indicating the location, date and time of posting each agenda.
- b) The City Clerk shall also post agendas and annotated agendas of all City Council meetings and notices of public hearings on the City's website.
- c) No later than 11 days prior to a regular meeting, copies of the agenda shall be mailed by the City Clerk to any resident of the City of Berkeley who so requests in writing. Copies shall also be available free of charge in the City Clerk Department.

3. Distribution of the Agenda Packet.

The Agenda Packet shall consist of the Agenda and all supporting documents for agenda items. No later than 11 days prior to a regular meeting, the City Clerk shall:

- a) distribute the Agenda Packet to each member of the City Council;
- b) post the Agenda Packet to the City's website;
- c) place copies of the Agenda Packet in viewing binders in the office of the City Clerk and in the main branch of the Berkeley Public Library; and
- d) make the Agenda Packet available to members of the press.

4. Failure to Meet Deadlines.

- a) The City Clerk shall not accept any agenda item or revised agenda item after the deadlines established.
- b) Matters not included on the published agenda may be discussed and acted upon as otherwise authorized by State law or providing the Council finds one of the following conditions is met:
 - A majority of the Council determines that the subject meets the criteria of "Emergency" as defined in Section III.B.8.
 - Two thirds of the Council determines that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the posting of the agenda as required by law.
- c) Matters listed on the printed agenda but for which supporting materials are not received by the City Council on the eleventh day prior to said meeting as part of the agenda packet, shall not be discussed or acted upon.

E. Agenda Sequence and Order of Business

The Council agenda for a regular business meeting is to be arranged in the following order:

1. Preliminary Matters: (Ceremonial, Comments from the City Manager, Comments from the City Auditor, Non-Agenda Public Comment)
2. Consent Calendar
3. Action Calendar
 - a) Appeals
 - b) Public Hearings
 - c) Continued Business
 - d) Old Business
 - e) New Business

4. Information Reports
5. Non-Agenda Public Comment
6. Adjournment
7. Communications

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

The Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in this section.

F. Closed Session Documents

This section establishes a policy for the distribution of, and access to, confidential closed session documents by the Mayor and members of the City Council.

1. Confidential closed session materials shall be kept in binders numbered from one to nine and assigned to the Mayor (#9) and each Councilmember (#1 to #8 by district). The binders will contain confidential closed session materials related to Labor Negotiations, Litigation, and Real Estate matters.
2. The binders will be maintained by City staff and retained in the Office of the City Attorney in a secure manner. City staff will bring the binders to each closed session for their use by the Mayor and Councilmembers. At other times, the binders will be available to the Mayor and Councilmembers during regular business hours for review in the City Attorney's Office. The binders may not be removed from the City Attorney's Office or the location of any closed session meeting by the Mayor or Councilmembers. City staff will collect the binders at the end of each closed session meeting and return them to the City Attorney's Office.
3. Removal of confidential materials from a binder is prohibited.
4. Duplication of the contents of a binder by any means is prohibited.
5. Confidential materials shall be retained in the binders for at least two years.
6. This policy does not prohibit the distribution of materials by staff to the Mayor and Councilmembers in advance of a closed session or otherwise as needed, but such materials shall also be included in the binders unless it is impracticable to do so.

G. Regulations Governing City Council Policy Committees

1. Legislative Item Process

All agenda items begin with submission to the Agenda & Rules Committee.

Full Council Track

Items under this category are exempt from Agenda & Rules Committee discretion to refer them to a Policy Committee. Items in this category may be submitted for the agenda of any scheduled regular meeting pursuant to established deadlines (same as existing deadlines). Types of Full Council Track items are listed below.

- a. Items submitted by the City Manager and City Auditor
- b. Items submitted by Boards and Commissions
- c. Resolutions on Legislation and Electoral Issues relating to Outside Agencies/Jurisdictions
- d. Position Letters and/or Resolutions of Support/Opposition
- e. Donations from the Mayor and Councilmember District Office Budgets
- f. Referrals to the Budget Process
- g. Proclamations
- h. Sponsorship of Events
- i. Information Reports
- j. Presentations from Outside Agencies and Organizations
- k. Ceremonial Items
- l. Committee and Regional Body Appointments

The Agenda & Rules Committee has discretion to determine if an item submitted by the Mayor or a Councilmember falls under a Full Council Track exception or if it will be processed as a Policy Committee Track item.

Policy Committee Track

Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts will go first to the Agenda & Rules Committee on a draft City Council agenda.

The Agenda & Rules Committee must refer an item to a Policy Committee at the first meeting that the item appears before the Agenda & Rules Committee. The Agenda & Rules Committee may only assign the item to a single Policy Committee.

For a Policy Committee Track item, the Agenda & Rules Committee, at its discretion, may either route item directly to 1) the agenda currently under consideration, 2) one of the next three full Council Agendas (based on completeness of the item, lack of potential controversy, minimal impacts, etc.), or 3) to a Policy Committee.

Time Critical Track

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

The Agenda & Rules Committee retains final discretion to determine the time critical nature of an item.

- a) Time Critical items submitted on the Full Council Track deadlines, that would otherwise be assigned to the Policy Committee Track, may bypass Policy Committee review if determined to be time critical. If such an item is deemed not to be time critical, it may be referred to a Policy Committee.
- b) Time Critical items on the Full Council Track or Policy Committee Track that are submitted at a meeting of the Agenda & Rules Committee may go directly on a council agenda if determined to be time critical.

2. Council Referrals to Committees

The full Council may refer any agenda item to a Policy Committee by majority vote.

3. Participation Rules for Policy Committees Pursuant to the Brown Act

- a. The quorum of a three-member Policy Committee is always two members. A majority vote of the committee (two 'yes' votes) is required to pass a motion.
- b. Two Policy Committee members may not discuss any item that has been referred to the Policy Committee outside of an open and noticed meeting.
- c. Notwithstanding paragraph (b) above, two members of a Policy Committee may be listed as Authors or Co-Sponsors on an item provided that one of the Authors or Co-Sponsors will not serve as a committee member for consideration of the item, and shall not participate in the committee's discussion of, or action on the item. For purposes of the item, the appointed alternate, who also cannot be an Author or Co-Sponsor, will serve as a committee member in place of the non-participating Author or Co-Sponsor.
- d. All three members of a Policy Committee may not be Authors or Co-Sponsors of an item that will be heard by the committee.
- e. Only one Author or Co-Sponsor who is not a member of the Policy Committee may attend the committee meeting to participate in discussion of the item.

- f. If two or more non-committee members are present for any item or meeting, then all non-committee members may act only as observers and may not participate in discussion. If an Author who is not a member of the committee is present to participate in the discussion of their item, no other non-committee member Councilmembers, nor the Mayor, may attend as observers.
- g. An item may be considered by only one Policy Committee before it goes to the full Council.

4. Functions of the Committees

Committees shall have the following qualities/components:

- a. All committees are Brown Act bodies with noticed public meetings and public comment. Regular meeting agendas will be posted at least 72 hours in advance of the meeting.
- b. Minutes shall be available online.
- c. Committees shall adopt regular meeting schedules, generally meeting once or twice per month; special meetings may be called when necessary, in accordance with the Brown Act.
- d. Generally, meetings will be held at 2180 Milvia Street in publicly accessible meeting rooms that can accommodate the committee members, public attendees, and staff.
- e. Members are recommended by the Mayor and approved by the full Council no later than January 31 of each year. Members continue to serve until successors are appointed and approved.
- f. Chairs are elected by the Committee at the first regular meeting of the Committee after the annual approval of Committee members by the City Council. In the absence of the Chair, the committee member with the longest tenure on the Council will preside.
- g. The Chair, or a quorum of the Committee may call a meeting or cancel a meeting of the Policy Committee.
- h. Committees will review items for completeness in accordance with Section III.B.2 of the City Council Rules of Procedure and Order and alignment with Strategic Plan goals.
- i. Reports leaving a Policy Committee must adequately include budget implications, administrative feasibility, basic legal concerns, and staff resource demands in order to allow for informed consideration by the full Council.
- j. Per Brown Act regulations, any revised or supplemental materials must be direct revisions or supplements to the item that was published in the agenda packet.

Items referred to a Policy Committee from the Agenda & Rules Committee or from the City Council must be agendized for a committee meeting within 60 days of the referral date.

Within 120 days of the referral date, either (1) the committee Chair may accept the Primary Author's request, either in writing, or in person at a meeting of the committee, that the item remain in committee until a date certain (more than one extension may be requested by the Primary Author); or (2) the committee may vote to send the item to the Agenda & Rules Committee to be placed on a Council Agenda with a Committee recommendation consisting of one of the four options listed below. The Committee Chair shall report any extension granted outside of a meeting to the Committee by email or verbally at the next Committee meeting.

1. Positive Recommendation (recommending Council pass the item as proposed),
2. Qualified Positive Recommendation (recommending Council pass the item with some changes),
3. Qualified Negative Recommendation (recommending Council reject the item unless certain changes are made) or
4. Negative Recommendation (recommending the item not be approved).

The Policy Committee's recommendation will be included in a separate section of the report template for that purpose.

A Policy Committee may not refer an item under its consideration to a city board or commission.

The Primary Author of an item referred to a Policy Committee is responsible for revisions and resubmission of the item back to the full Council. Items originating from the City Manager are revised and submitted by the appropriate city staff. Items from Commissions are revised and resubmitted by the members of the Policy Committee. Items and recommendations originating from the Policy Committee are submitted to the City Clerk by the members of the committee.

If a Policy Committee does not take final action by the 120-day deadline, the item is returned to the Agenda & Rules Committee and appears on the next available Council agenda. The Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the next Council agenda. Items appearing on a City Council agenda due to lack of action by a Policy Committee may not be referred to a Policy Committee and must remain on the full Council agenda for consideration.

Policy Committees may add discussion topics that are within their purview to their agenda with the concurrence of a majority of the Committee. These items are not subject to the 120-day deadline for action.

Once the item is voted out of a Policy Committee, the final item will be resubmitted to the agenda process by the Primary Author, and it will return to the Agenda & Rules Committee

on the next available agenda. The Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the following Council agenda. Only items that receive a Positive Recommendation can be placed on the Consent Calendar.

The Primary Author may request expedited committee review for items referred to a committee. Criteria for expedited review is generally to meet a deadline for action (e.g. grant deadline, specific event date, etc.). If the committee agrees to the request, the deadline for final committee action is 45 days from the date the committee approves expedited review.

5. Number and Make-up of Committees

Six committees are authorized, each comprised of three Councilmembers, with a fourth Councilmember appointed as an alternate. Each Councilmember and the Mayor will serve on two committees. The Mayor shall be a member of the Agenda and Rules Committee. The committees are as follows:

1. Agenda and Rules Committee
2. Budget and Finance Committee
3. Facilities, Infrastructure, Transportation, Environment, and Sustainability
4. Health, Life Enrichment, Equity, and Community
5. Land Use, Housing, and Economic Development
6. Public Safety

The Agenda & Rules Committee shall establish the Policy Committee topic groupings, and may adjust said groupings periodically thereafter in order to evenly distribute expected workloads of various committees.

All standing Policy Committees of the City Council are considered “legislative bodies” under the Brown Act and must conduct all business in accordance with the Brown Act.

6. Role of City Staff at Committee Meetings

Committees will be staffed by appropriate City Departments and personnel. As part of the committee process, staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item. Staff analysis at the Policy Committee level is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

IV. CONDUCT OF MEETING

A. Comments from the Public

Public comment will be taken in the following order:

- An initial ten-minute period of public comment on non-agenda items, after the commencement of the meeting and immediately after Ceremonial Matters and City Manager Comments.
- Public comment on the Consent and Information Calendars.
- Public comment on action items, appeals and/or public hearings as they are taken up under procedures set forth in the sections governing each below.
- Public comment on non-agenda items from any speakers who did not speak during the first round of non-agenda public comment at the beginning of the meeting.

Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. A speaker wishing to yield their time shall identify themselves, shall be recognized by the chair, and announce publicly their intention to yield their time. Disabled persons shall have priority seating in the front row of the public seating area.

A member of the public may only speak once at public comment on any single item, unless called upon by the Mayor or a Councilmember to answer a specific inquiry.

1. Public Comment on Consent Calendar and Information Items.

The Council will first determine whether to move items on the agenda for “Action” or “Information” to the “Consent Calendar,” or move “Consent Calendar” items to “Action.” Items that remain on the “Consent Calendar” are voted on in one motion as a group. “Information” items are not discussed or acted upon at the Council meeting unless they are moved to “Action” or “Consent.”

The Council will then take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. A speaker may only speak once during the period for public comment on Consent Calendar and Information items. No additional items can be moved onto the Consent Calendar once public comment has commenced.

At any time during, or immediately after, public comment on Information and Consent items, the Mayor or any Councilmember may move any Information or Consent item to “Action.” Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

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

2. Public Comment on Action Items.

After the initial ten minutes of public comment on non-agenda items, public comment on consent and information items, and adoption of the Consent Calendar, the public may comment on each remaining item listed on the agenda for action as the item is taken up.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

This procedure also applies to public hearings except those types of public hearings specifically provided for in this section, below.

3. Appeals Appearing on Action Calendar.

With the exception of appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission, appeals from decisions of City commissions appear on the "Action" section of the Council Agenda. Council determines whether to affirm the action of the commission, set a public hearing, or remand the matter to the commission. Appeals of proposed special assessment liens shall also appear on the "Action" section of the Council Agenda. Appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission are automatically set for public hearing and appear on the "Public Hearings" section of the Council Agenda.

Time shall be provided for public comment for persons representing both sides of the action/appeal and each side will be allocated seven minutes to present their comments on the appeal. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have seven minutes to comment and the applicant shall have seven minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have seven minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have seven minutes to comment and the persons supporting the action of the board or commission on appeal shall have seven minutes to comment. In the case of an appeal of proposed special assessment lien, the appellant shall have seven minutes to comment.

After the conclusion of the seven-minute comment periods, members of the public may comment on the appeal. Comments from members of the public regarding appeals shall be limited to one minute per speaker. Any person that addressed the Council during one of the seven-minute periods may not speak again during the public comment period on the appeal. Speakers may yield their time to one other speaker, however, no speaker shall have more than two minutes. Each side

shall be informed of this public comment procedure at the time the Clerk notifies the parties of the date the appeal will appear on the Council agenda.

4. Public Comment on Non-Agenda Matters.

Immediately following Ceremonial Matters and the City Manager Comments and prior to the Consent Calendar, persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting.

The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.

Persons submitting speaker cards are not required to list their actual name, however they must list some identifying information or alternate name in order to be called to speak.

For the second round of public comment on non-agenda matters, the Presiding Officer retains the authority to limit the number of speakers by subject. The Presiding Officer will generally request that persons wishing to speak, line up at the podium to be recognized to determine the number of persons interested in speaking at that time. Each speaker will be entitled to speak for two minutes each unless the Presiding Officer determines that one-minute is appropriate given the number of speakers.

Pursuant to this document, no Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items. If any agenda item remains unfinished at 11:00 p.m. or the expiration of any extension after 11:00 p.m., it will be referred to the Agenda & Rules Committee for scheduling pursuant to Chapter II, Section F. In that event, the meeting shall be automatically extended for up to fifteen (15) minutes for public comment on non-agenda items.

5. Ralph M. Brown Act Pertaining to Public Comments.

The Brown Act prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the agenda. However, the Council may refer a matter to the City Manager.

B. Consent Calendar

There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, Councilmembers, boards, commissions, City Auditor and City Manager deem to be of such nature that no debate or inquiry

will be necessary at the Council meetings. Ordinances for second reading may be included in the Consent Calendar.

It is the policy of the Council that the Mayor or Councilmembers wishing to ask questions concerning Consent Calendar items should ask questions of the contact person identified prior to the Council meeting so that the need for discussion of consent calendar items can be minimized.

Consent Calendar items may be moved to the Action Calendar by the Council. Action items may be reordered at the discretion of the Chair with the consent of Council.

C. Information Reports Called Up for Discussion

Reports for Information designated for discussion at the request of the Mayor or any Councilmember shall be added to the appropriate section of the Action Calendar and may be acted upon at that meeting or carried over as pending business until discussed or withdrawn. The agenda will indicate that at the request of Mayor or any Councilmember a Report for Information may be acted upon by the Council.

D. Written Communications

Written communications from the public will not appear on the Council agenda as individual matters for discussion but will be distributed as part of the Council agenda packet with a cover sheet identifying the author and subject matter and will be listed under "Communications." All such communications must have been received by the City Clerk no later than 5:00 p.m. fifteen days prior to the meeting in order to be included on the agenda.

In instances where an individual forwards more than three pages of email messages not related to actionable items on the Council agenda to the Council to be reproduced in the "Communications" section of the Council packet, the City Clerk will not reproduce the entire email(s) but instead refer the public to the City's website or a hard copy of the email(s) on file in the City Clerk Department.

All communications shall be simply deemed received without any formal action by the Council. The Mayor or a Councilmember may refer a communication to the City Manager for action, if appropriate, or prepare a consent or action item for placement on a future agenda.

Communications related to an item on the agenda that are received after 5:00 p.m. fifteen days before the meeting are published as provided for in Chapter III.C.4.

E. Public Hearings for Land Use, Zoning, Landmarks, and Public Nuisance Matters

The City Council, in setting the time and place for a public hearing, may limit the amount of time to be devoted to public presentations. Staff shall introduce the public hearing item and present their comments.

Following any staff presentation, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Such reports shall include a brief statement describing the name, date,

place, and content of the contact. Written reports shall be available for public review in the office of the City Clerk prior to the meeting and placed in a file available for public viewing at the meeting.

This is followed by five-minute presentations each by the appellant and applicant. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have five minutes to comment and the applicant shall have five minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have five minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have five minutes to comment and the persons supporting the action of the board or commission on appeal shall have five minutes to comment. In the case of a public nuisance determination, the representative(s) of the subject property shall have five minutes to present.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Any person that addressed the Council during one of the five-minute periods may not speak again during the public comment period on the appeal. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

F. Work Sessions

The City Council may schedule a matter for general Council discussion and direction to staff. Official/formal action on a work session item will be scheduled on a subsequent agenda under the Action portion of the Council agenda.

In general, public comment at Council work sessions will be heard after the staff presentation, for a limited amount of time to be determined by the Presiding Officer.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

After Council discussion, if time permits, the Presiding Officer may allow additional public comment. During this time, each speaker will receive one minute. Persons who spoke during the prior public comment time may be permitted to speak again.

G. Protocol

People addressing the Council may first give their name in an audible tone of voice for the record. All remarks shall be addressed to the Council as a body and not to any member thereof. No one other than the Council and the person having the floor shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer. No question shall be asked of a Councilmember except through the Presiding Officer.

V. PROCEDURAL MATTERS

A. Persons Authorized to Sit at Tables

No person, except City officials, their representatives and representatives of boards and commissions shall be permitted to sit at the tables in the front of the Council Chambers without the express consent of the Council.

B. Decorum

No person shall disrupt the orderly conduct of the Council meeting. Prohibited disruptive behavior includes but is not limited to shouting, making disruptive noises, such as boos or hisses, creating or participating in a physical disturbance, speaking out of turn or in violation of applicable rules, preventing or attempting to prevent others who have the floor from speaking, preventing others from observing the meeting, entering into or remaining in an area of the meeting room that is not open to the public, or approaching the Council Dais without consent. Any written communications addressed to the Council shall be delivered to the City Clerk for distribution to the Council.

C. Enforcement of Decorum

When the public demonstrates a lack of order and decorum, the presiding officer shall call for order and inform the person(s) that the conduct is violating the Rules of Order and Procedure and provide a warning to the person(s) to cease the disruptive behavior. Should the person(s) fail to cease and desist the disruptive conduct, the presiding officer may call a five (5) minute recess to allow the disruptions to cease.

If the meeting cannot be continued due to continued disruptive conduct, the presiding officer may have any law enforcement officer on duty remove or place any person who violates the order and decorum of the meeting under arrest and cause that person to be prosecuted under the provisions of applicable law.

D. Precedence of Motions

When a question or motion is before the Council, no motion shall be entertained except:

1. To adjourn;
2. To fix the hour of adjournment;
3. To lay on the table;
4. For the previous question;
5. To postpone to a certain day;
6. To refer;
7. To amend;
8. To substitute; and
9. To postpone indefinitely.

These motions shall have precedence in order indicated. Any such motion, except a motion to amend or substitute, shall be put to a vote without debate.

E. Robert's Rules of Order

Robert's Rules of Order have been adopted by the City Council and apply in all cases except the precedence of motions in Section V.D shall supersede.

F. Rules of Debate

1. Presiding Officer May Debate.

The presiding officer may debate from the chair; subject only to such limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges as a member of the Council by reason of that person acting as the presiding officer.

2. Getting the Floor - Improper References to be avoided.

Members desiring to speak shall address the Chair, and upon recognition by the presiding officer, shall confine themselves to the question under debate.

3. Interruptions.

A member, once recognized, shall not be interrupted when speaking unless it is to call a member to order, or as herein otherwise provided. If a member, while speaking, were called to order, that member shall cease speaking until the question of order is determined, and, if in order, the member shall be permitted to proceed.

4. Privilege of Closing Debate.

The Mayor or Councilmember moving the adoption of an ordinance or resolution shall have the privilege of closing the debate. When a motion to call a question is passed, the Mayor or Councilmember moving adoption of an ordinance, resolution or other action shall have three minutes to conclude the debate.

5. Motion to Reconsider.

A motion to reconsider any action taken by the Council may be made only during the same session such action is taken. It may be made either immediately during the same session, or at a recessed or adjourned session thereof. Such motion must be made by a member on the prevailing side, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable. Nothing herein shall be construed to prevent any member of the Council from making or remaking the same or other motion at a subsequent meeting of the Council.

6. Repeal or Amendment of Action Requiring a Vote of Two-Thirds of Council, or Greater.

Any ordinance or resolution which is passed and which, as part of its terms, requires a vote of two-thirds of the Council or more in order to pass a motion pursuant to such an ordinance or resolution, shall require the vote of the same percent of the Council to repeal or amend the ordinance or resolution.

G. Debate Limited

1. Consideration of each matter coming before the Council shall be limited to 20 minutes from the time the matter is first taken up, at the end of which period consideration of such matter shall terminate and the matter shall be dropped to the foot of the agenda, immediately ahead of Information Reports; provided that either of the following two not debatable motions shall be in order:
 - a) A motion to extend consideration which, if passed, shall commence a new twenty-minute period for consideration; or
 - b) If there are one or more motions on the floor, a motion for the previous question, which, if passed by a 2/3 vote, shall require an immediate vote on pending motions.
2. The time limit set forth in subparagraph 1 hereof shall not be applicable to any public hearing, public discussion, Council discussion or other especially set matter for which a period of time has been specified (in which case such specially set time shall be the limit for consideration) or which by applicable law (e.g. hearings of appeals, etc.), the matter must proceed to its conclusion.
3. In the interest of expediting the business of the City, failure by the Chair or any Councilmember to call attention to the expiration of the time allowed for consideration of a matter, by point of order or otherwise, shall constitute unanimous consent to the continuation of consideration of the matter beyond the allowed time; provided, however, that the Chair or any Councilmember may at any time thereafter call attention to the expiration of the time allowed, in which case the Council shall proceed to the next item of business, unless one of the motions referred to in Section D hereof is made and is passed.

H. Motion to Lay on Table

A motion to lay on the table shall preclude all amendments or debate of the subject under consideration. If the motion shall prevail, the consideration of the subject may be resumed only upon a motion of a member voting with the majority and with consent of two-thirds of the members present.

I. Division of Question

If the question contains two or more propositions, which can be divided, the presiding officer may, and upon request of a member shall, divide the same.

J. Addressing the Council

Under the following headings of business, unless the presiding officer rules otherwise, any interested person shall have the right to address the Council in accordance with the following conditions and upon obtaining recognition by the presiding officer:

1. Written Communications.

Interested parties or their authorized representatives may address the Council in the form of written communications in regard to matters of concern to them by

submitting their written communications at the meeting, or prior to the meeting pursuant to the deadlines in Chapter III.C.4.

2. Public Hearings.

Interested persons or their authorized representatives may address the Council by reading protests, petitions, or communications relating to matters then under consideration.

3. Public Comment.

Interested persons may address the Council on any issue concerning City business during the period assigned to Public Comment.

K. Addressing the Council After Motion Made

When a motion is pending before the Council, no person other than the Mayor or a Councilmember shall address the Council without first securing the permission of the presiding officer or Council to do so.

L. Use of Cellular Phones and Electronic Devices

The use of cell phones during City Council meetings is discouraged for the Mayor and Councilmembers. While communications regarding Council items should be minimized, personal communications between family members and/or caregivers can be taken outside in the case of emergencies. In order to acknowledge differences in learning styles and support tactile learners, note-taking can continue to be facilitated both with a pen and paper and/or on electronic devices such as laptop computers and tablets.

The use cell phones during Closed Session Meetings is explicitly prohibited for the Mayor and Councilmembers.

VI. FACILITIES

A. Meeting Location Capacity

Attendance at council meetings shall be limited to the posted seating capacity of the meeting location. Entrance to the meeting location will be appropriately regulated by the City Manager on occasions when capacity is likely to be exceeded. While the Council is in session, members of the public shall not remain standing in the meeting room except to address the Council, and sitting on the floor shall not be permitted.

B. Alternate Facilities for Council Meetings

The City Council shall approve in advance a proposal that a Council meeting be held at a facility other than the School District Board Room.

If the City Manager has reason to anticipate that the attendance for a meeting will be substantially greater than the capacity of the Board Room and insufficient time exists to secure the approval of the City Council to hold the meeting at an alternate facility, the City Manager shall make arrangements for the use of a suitable alternate facility to which such meeting may be recessed and moved, if the City Council authorizes the action.

If a suitable alternate facility is not available, the City Council may reschedule the matter to a date when a suitable alternate facility will be available.

Alternate facilities are to be selected from those facilities previously approved by the City Council as suitable for meetings away from the Board Room.

C. Signs, Objects, and Symbolic Materials

Objects and symbolic materials such as signs which do not have sticks or poles attached or otherwise create any fire or safety hazards will be allowed within the meeting location during Council meetings.

D. Fire Safety

Exits shall not be obstructed in any manner. Obstructions, including storage, shall not be placed in aisles or other exit ways. Hand carried items must be stored so that such items do not inhibit passage in aisles or other exit ways. Attendees are strictly prohibited from sitting in aisles and/or exit ways. Exit ways shall not be used in any way that will present a hazardous condition.

E. Overcrowding

Admittance of persons beyond the approved capacity of a place of assembly is prohibited. When the meeting location has reached the posted maximum capacity, additional attendees shall be directed to the designated overflow area.

APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

Purpose

To establish a uniform policy regarding the naming and renaming of existing and future parks, streets, pathways and other public facilities.

Objective

- A. To ensure that naming public facilities (such as parks, streets, recreation facilities, pathways, open spaces, public building, bridges or other structures) will enhance the values and heritage of the City of Berkeley and will be compatible with community interest.

Section 1 – Lead Commission

The City Council designates the following commissions as the ‘Lead Commissions’ in overseeing, evaluating, and ultimately advising the Council in any naming or renaming of a public facility. The lead commission shall receive and coordinate comment and input from other Commissions and the public as appropriate.

Board of Library Trustees

Parks and Recreation Commission –Parks, recreation centers, camps, plazas and public open spaces

Public Works Commission –Public buildings (other than recreation centers), streets and bridges or other structures in the public thoroughfare.

Waterfront Commission –Public facilities within the area of the City known as the Waterfront, as described in BMC 3.36.060.B.

Section 2 – General Policy

- A. Newly acquired or developed public facilities shall be named immediately after acquisition or development to ensure appropriate public identity.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. Public facilities that are renamed must follow the same criteria for naming new facilities. In addition, the historical significance and geographical reference of the established name should be considered when weighing and evaluating any name change.
- D. The City encourages the recognition of individuals for their service to the community in ways that include the naming of activities such as athletic events, cultural presentations, or annual festivals, which do not involve the naming or renaming of public facilities.
- E. Unless restricted by covenant, facilities named after an individual should not necessarily be considered a perpetual name.

Section 3 – Criteria for Naming of Public Facilities

When considering the naming of a new public facility or an unnamed portion or feature within an already named public facility (such as a room within the facility or a feature within an established park), or, the renaming of an existing public facility the following criteria shall be applied:

- A. Public Facilities are generally easier to identify by reference to adjacent street names, distinct geographic or environmental features, or primary use activity. Therefore, the preferred practice is to give City-owned property a name of historical or geographical significance and to retain these names.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. The naming of a public facility or any parts thereof in recognition of an individual posthumously may only be considered if the individual had a positive effect on the community and has been deceased for more than 1 year.
- D. When a public facility provides a specific programmatic activity, it is preferred that the activity (e.g. skateboard park, baseball diamond) be included in the name of the park or facility.
- E. When public parks are located adjacent to elementary schools, a name that is the same as the adjacent school shall be considered.
- F. When considering the renaming of an existing public facility, in addition to applying criteria A-E above, proper weight should be given to the fact that: a name lends a site or property authenticity and heritage; existing names are presumed to have historic significance; and historic names give a community a sense of place and identity, continuing through time, and increases the sense of neighborhood and belonging.

Section 4 –Naming Standards Involving a Major Contribution

When a person, group or organization requests the naming or renaming of a public facility, all of the following conditions shall be met:

- A. An honoree will have made a major contribution towards the acquisition and/or development costs of a public facility or a major contribution to the City.
- B. The honoree has a record of outstanding service to their community
- C. Conditions of any donation that specifies that name of a public facility, as part of an agreement or deed, must be approved by the City Council, after review by and upon recommendation of the City Manager.

Section 5 –Procedures for Naming or Renaming of Public Facilities

- A. Any person or organization may make a written application to the City Manager requesting that a public facility or portion thereof, be named or renamed.
 - 1. Recommendations may also come directly of the City Boards or Commissions, the City Council, or City Staff.
- B. The City Manager shall refer the application to the appropriate lead commission as defined in Section 1 of the City's policy on naming of public facilities, for that commission's review, facilitation, and recommendation of disposition.
 - 1. The application shall contain the name or names of the persons or organization making the application and the reason for the requested naming or renaming.
- C. The lead commission shall review and consider the application, using the policies and criteria articulated to the City Policy on Naming and Renaming to make a recommendation to Council.
 - 1. All recommendations or suggestion will be given the same consideration without regard to the source of the nomination
- D. The lead commission shall hold a public hearing and notify the general public of any discussions regarding naming or renaming of a public facility.

1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.
- E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the Agenda & Rules Committee to request that the Primary Author of an item provide “additional analysis” if the item as submitted evidences a “significant lack of background or supporting information” or “significant grammatical or readability issues.”

These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they are intended to prompt Authors to consider presenting items with as much relevant information and analysis as possible.

Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:

2. Agenda items shall contain all relevant documentation, including the following as Applicable:
 - a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
 - b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
 - c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
 - d. Fiscal impacts of the recommendation;
 - e. A description of the current situation and its effects;
 - f. Background information as needed;
 - g. Rationale for recommendation;
 - h. Alternative actions considered;
 - i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
 - j. Person or persons to contact for further information, with telephone number. If the Primary Author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.

Guidelines for City Council Items:

1. Title
2. Consent/Action/Information Calendar
3. Recommendation
4. Summary Statement/Current situation and its effects
5. Background
6. Review of Existing Plans, Programs, Policies and Laws
7. Actions/Alternatives Considered
8. Consultation/Outreach Overview and Results
9. Rationale for Recommendation
10. Implementation, Administration and Enforcement
11. Environmental Sustainability
12. Fiscal Impacts
13. Outcomes and Evaluation
14. Contact Information
15. Attachments/Supporting Materials

1. Title

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

2. Consent/Action/Information Calendar

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

3. Recommendation

Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

Common action options include:

- Adopt first reading of ordinance
- Adopt a resolution
- Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
- Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
- Referral to a Commission or to a Standing or Ad Hoc Council Committee
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

4. Summary Statement/ “Current situation and its effects”

A short resume of the circumstances that give rise to the need for the recommended action(s).

- Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
- Example (fictional):
Winter rains are lasting longer than expected. Berkeley’s winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley’s winter shelters open until the end of April, and refers to the Budget Process \$40,000 to cover costs of an additional two months of shelter operations.

5. Background

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

6. Review of Existing Plans, Programs, Policies and Laws

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan

- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan

Review of similar legislation previously introduced/passed by Council

Review of County, State and Federal laws/policies/programs/plans, if applicable

7. Actions/Alternatives Considered

- What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
- What solutions/measures are recommended by **advocates, experts, organizations**?
- What is the range of actions considered, and what are some of their major pros and cons?
- Why were other solutions not as feasible/advisable?

8. Consultation/Outreach Overview and Results

- Review/list external and internal stakeholders that were consulted
 - **External:** constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
 - **Internal:** staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, Clerk, etc.
- What reports, articles, books, websites and other materials were consulted?
- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?

9. Rationale for Recommendation

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented,

but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

10. Implementation, Administration and Enforcement

Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation?

11. Environmental Sustainability

Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

12. Fiscal Impacts

Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs.

13. Outcomes and Evaluation

State the specific outcomes expected, if any (i.e., *"it is expected that 100 homeless people will be referred to housing every year"*) and what reporting or evaluation is recommended.

14. Contact Information

15. Attachments/Supporting Materials

APPENDIX C. TEMPORARY RULES FOR THE CONDUCT OF CITY COUNCIL MEETINGS THROUGH VIDEO CONFERENCE DURING THE COVID-19 EMERGENCY

Mayor and Councilmember Speaking Time on Agenda Items

For the Consent Calendar, the Mayor and Councilmembers will initially have up to five minutes each to make comments. After all members of the Council have spoken (or passed) and after public comment, members will each have two additional minutes to discuss the Consent Calendar.

For non-Consent items, the Mayor and Councilmembers will have two minutes each to make initial comments on an agenda item, except for the author of an agenda item who will have five minutes to initially present the item. After every Councilmember has spoken or declined and after public comment, Councilmembers will each have another five minutes per person to address an item. Debate may be extended beyond a second round of Council comments by a majority vote (5 votes).

Time will toll during staff answers to questions; Councilmembers are urged to ask their questions of city staff before the meeting or in writing.

Procedure for Pulling Items from Consent or Information Calendar

Three (3) members of the City Council must agree to pull an item from the Consent or Information Calendar for it to move to Action. Absent three members concurring, the item will stay on Consent or Information Calendar and, with respect to Consent items, the Mayor or Councilmembers will be allowed to record their aye, nay or abstain votes on individual items or the entire Consent Calendar.

Moving an item from the Action Calendar to the Consent Calendar requires the unanimous consent of the entire City Council.

Public Comment Speaking Time

With the exception of prescribed times in the Rules of Procedure for public hearings, the amount of time for each speaker during public comment is limited to two minutes maximum and that speakers can only address an agenda item once, however the Presiding Officer has the discretion to reduce speaker time if needed in order to allow the orderly conduct of the meeting, subject to the consent of a majority of the City Council. Speakers may yield their time for a maximum of four minutes per individual. If a speaker wishes to yield their time, they must indicate so when called on by the Presiding Officer and state who they are yielding their speaker time to. The Presiding Officer will keep a list with the names and amount of time yielded to individuals.

In order to inform members of the public of their place in the speaker's queue, the Presiding Officer will call the names of 5 speakers at a time.

Public Comment on Non-Agenda Matters will be conducted in the order of hands raised on the Zoom platform, and will be limited to either the first 10 speakers during the initial round of Non-Agenda public comment, as well as all hands raised during the closing round of Non-Agenda public comment at the conclusion to the meeting, until such time that the

meeting adjourns. If there are five or fewer speakers with hands raised for Public Comment on Non-Agenda Matters, each speaker will have two minutes to address the City Council. If there are more than five speakers with their hands raised then speaker time will be limited to one minute per person. The procedure for selection of Non-Agenda speakers prescribed in the Rules of Procedure by random draw is suspended for videoconference meetings where there is no physical meeting location.

Upcoming Worksessions and Special Meetings <i>start time is 6:00 p.m. unless otherwise noted</i>	
Scheduled Dates	
Jan 18	1. Housing Element (Special - Virtual) (4:00 p.m.)
Jan 31	1. Measure T1 Funding Update (4:00 p.m.)
Feb. 21 (WS)	1. Local Pandemic/Endemic Update Report 2. Housing Preference Policy
March 7	1. Berkeley Marina Area Specific Plan (BMASP)
March 14	1. Annual Crime Report (4:00 p.m.)
March 21	1. Civic Arts Grantmaking Process & Capital Grant Program (4:00 p.m.) 2. Civic Center Vision Project (4:00 p.m.)
May 16 (WS)	1. Fire Facilities Study Report

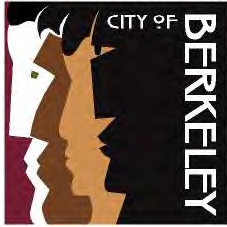
Unscheduled Workshops and Special Meetings
1. Adoption of Election Results (December 2022) 2. African American Holistic Resource Center and T1 Update (January 2023) 3. Zero Waste 5-Year Rate Schedule (February 2023)

Unscheduled Presentations (City Manager)
None

	City Council Referrals to the Agenda & Rules Committee and Unfinished Business for Scheduling
1.	Climate Action Plan and Resilience Update <i>(Referred to the Agenda & Rules Committee for scheduling on November 29, 2022.)</i> From: City Manager Contact: Jordan Klein, Planning and Development, (510) 981-7400
2.	City Policies for Managing Parking Around BART Stations <i>(Referred to the Agenda & Rules Committee for scheduling on November 29, 2022.)</i> From: City Manager Contact: Liam Garland, Public Works, (510) 981-6300

CITY CLERK DEPARTMENT			
WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS BEFORE THE CITY COUNCIL			
Address	Board/ Commission	Appeal Period Ends	Public Hearing
NOD – Notices of Decision			
Public Hearings Scheduled			
2065 Kittredge Ave (construct an 8-story, mixed-use building)	ZAB		1/31/2023
1262 Francisco Street (add 40 sq. ft. and second story balcony)	ZAB		2/28/2023
Remanded to ZAB or LPC			
1205 Peralta Avenue (conversion of an existing garage)			
Notes			

11/18/2022



Office of the City Manager

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: November 10, 2020

Item Number: 20

Item Description: Annual Commission Attendance and Meeting Frequency Report

Submitted by: Mark Numainville, City Clerk

The attached memo responds to issues and questions raised at the October 26 Agenda & Rules Committee Meeting and the October 27 City Council Meeting regarding the ability of city boards and commissions to resume regular meeting schedules.



Office of the City Manager

November 9, 2020

To: Mayor and Council
From: Dee Williams-Ridley, City Manager
Subject: Commission Meetings Under COVID-19 Emergency (Item 20)

This memo provides supplemental information for the discussion on Item 20 on the November 10, 2020 Council agenda. Below is a summary and update of the status of meetings of Berkeley Boards and Commissions during the COVID-19 emergency declaration and the data collected by the City Manager on the ability of commissions to resume meetings in 2021.

On March 10, 2020 the City Council ratified the proclamation of the Director of Emergency Services for a state of local emergency related to the COVID-19 pandemic. The emergency proclamation has been renewed twice by the Council and remains in effect.

On March 17, 2020 the City Council adopted Resolution No. 69,331-N.S. which placed limitations of the meetings of City legislative bodies, including all boards and commissions. The resolution allows for commissions to meet to conduct time-sensitive, legally mandated business with the authorization of the City Manager. Since that time, several commissions have obtained this approval and held meetings; many other commissions have not met at all since March.

The City Manager has periodically reviewed the status of commission meetings with the City Council Agenda & Rules Committee. Recently, at the October 12, 2020 Agenda & Rules Committee meeting, the City Manager presented a proposal to allow all commissions to meet under limited circumstances. The Committee voted to endorse the City Manager's recommendation.

Effective October 12, 2020, all City boards and commissions may meet once to develop and finalize their work plan for 2021 and to complete any Council referrals directly related to the COVID-19 pandemic response. A second meeting may be held to

complete this work with specific authorization by the City Manager. It is recommended that the meeting(s) occur by the end of February 2021.

Commissions that have been granted permission to meet under Resolution No. 69,331-N.S. may continue to meet pursuant to their existing authorization, and may also meet to develop their 2021 work plan.

Commissions that have not requested meetings pursuant to the Resolution No. 69,331-N.S. may meet pursuant to the limitations listed above.

In response to questions from the Agenda & Rules Committee and the Council, the City Manager polled all departments that support commissions to obtain information on their capacity to support the resumption of regular commission meetings. The information in Attachment 1 shows the information received from the departments and notes each commission's ability to resume a regular, or semi-regular, meeting schedule in 2021.

In summary, there are 24 commissions that have staff resources available to support a regular meeting schedule in 2021. Seven of these 24 commissions have been meeting regularly during the pandemic. There are five commissions that have staff resources available to support a limited meeting schedule in 2021. There are seven commissions that currently do not have staff resources available to start meeting regularly at the beginning of 2021. Some of these seven commissions will have staff resources available later in 2021 to support regular meetings. Please see Attachment 1 for the full list of commissions and their status.

With regards to commission subcommittees, there has been significant discussion regarding the ability of staff to support these meetings in a virtual environment. Under normal circumstances, the secretary's responsibilities regarding subcommittees is limited to posting the agenda and reserving the meeting space (if in a city building). With the necessity to hold the meetings in a virtual environment and be open to the public, it is likely that subcommittee meetings will require significantly more staff resources to schedule, train, manage, and support the work of subcommittees on Zoom or a similar platform. This additional demand on staff resources to support commission subcommittees is not feasible for any commission at this time.

One possible option for subcommittees is to temporarily suspend the requirement for ad hoc subcommittees of city commissions to notice their meetings and require public participation. Ad hoc subcommittees are not legislative bodies under the Brown Act and are not required to post agendas or allow for public participation. These requirements are specific to Berkeley and are adopted by resolution in the Commissioners' Manual. If it is the will of the Council, staff could introduce an item to temporarily suspend these

requirements which will allow subcommittees of all commissions to meet as needed to develop recommendations that will be presented to the full commission.

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

Meeting frequency for boards and commissions will continue to be evaluated on a regular basis by the City Manager and the Health Officer in consultation with Department Heads and the City Council.

Attachments:

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

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

<u>Boards and Commissions</u>	<u>Meetings Held Under COVID March - Oct</u>	<u>Regular Mtg. Date</u>	<u>Secretary</u>	<u>Dept.</u>	<u>Resume Regular Schedule in January 2021?</u>	<u>Note</u>
Commission on Aging	0	3rd Wed.	Richard Castrillon	HHCS	REDUCED FREQUENCY	Significant Dept. resources assigned to COVID response
Housing Advisory Commission	0	1st Thur.	Mike Uberti	HHCS	REDUCED FREQUENCY	Significant Dept. resources assigned to COVID response
Measure O Bond Oversight Committee	0	3rd Monday	Amy Davidson	HHCS	REDUCED FREQUENCY	Significant Dept. resources assigned to COVID response
Transportation Commission	2	3rd Thur.	Farid Javandel	PW	REDUCED FREQUENCY	Staff assigned to COVID response
Children, Youth, and Recreation Commission	0	4th Monday	Stephanie Chu	PRW	NO - SEPT 2021	Staff assigned to COVID response
Youth Commission	0	2nd Mon.	Ginsi Bryant	PRW	NO - SEPT 2021	Staff assigned to COVID response
Community Environmental Advisory Commission	0	2nd Thur.	Viviana Garcia	PLD	NO - JUNE 2021	Staff assigned to COVID response
Cannabis Commission	0	1st Thur.	VACANT	PLD	NO - JAN. 2022	Staff vacancy
Peace and Justice Commission	0	1st Mon.	VACANT	CM	NO	Staff vacancy
Commission on Labor	0	3rd Wed., alternate mon	Kristen Lee	HHCS	NO	Staff assigned to COVID response
Personnel Board	1	1st Mon.	La Tanya Bellow	HR	NO	Staff assigned to COVID response

RESOLUTION NO. 69,331-N.S.

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

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

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

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

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

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

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

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

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

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

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

Section 1. Boards and Commissions

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

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

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

Category B

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

Transportation Commission
Youth Commission
Zero Waste Commission
Loan Administration Board

Section 2. City Council Policy Committees

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

Section 3. City Council


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

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

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

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numalville, City Clerk



Office of the City Manager

October 22, 2020

To: Berkeley Boards and Commissions

From: *DWR* Dee Williams-Ridley, City Manager

Subject: Commission Meetings During COVID-19 Emergency

This memo serves to provide a summary and update of the status of meetings of Berkeley Boards and Commissions during the COVID-19 emergency declaration.

On March 10, 2020, the City Council ratified the proclamation of the Director of Emergency Services for a state of local emergency related to the COVID-19 pandemic. The emergency proclamation has been renewed twice by the Council and remains in effect.

On March 17, 2020, the City Council adopted Resolution No. 69,331-N.S. which placed limitations of the meetings of City legislative bodies, including all boards and commissions. The resolution allows for commissions to meet to conduct time-sensitive, legally mandated business with the authorization of the City Manager. Since that time, several commissions have obtained this approval and held meetings; many other commissions have not met at all since March.

The City Manager has periodically reviewed the status of commission meetings with the City Council Agenda & Rules Committee. Recently, at the October 12, 2020, Agenda & Rules Committee meeting, the City Manager presented a proposal to allow all commissions to meet under limited circumstances. The Committee voted to endorse the City Manager's recommendation.

Effective October 12, 2020, all City boards and commissions may meet once to develop and finalize their work plan for 2021 and to complete any Council referrals directly related to the COVID-19 pandemic response. A second meeting may be held to complete this work with specific authorization by the City Manager. It is recommended that the meeting(s) occur by the end of February 2021.

Commissions that have been granted permission to meet under Resolution No. 69,331-N.S. may continue to meet pursuant to their existing authorization, and may also meet to develop their 2021 work plan.

Commissions that have not requested meetings pursuant to the Resolution No. 69,331-N.S. may meet pursuant to the limitations listed above.

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October 22, 2020

Re: Commission Meetings During COVID-19 Emergency

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

Prompts for Commissions to use in work plan:

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

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

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

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

Attachments:

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

cc: Mayor and City Councilmembers
Senior Leadership Team

RESOLUTION NO. 69,331-N.S.

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

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Energy Commission
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Homeless Services Panel of Experts
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Transportation Commission
Youth Commission
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Loan Administration Board

Section 2. City Council Policy Committees

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Section 3. City Council


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

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

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

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numalville, City Clerk



Office of the City Manager

October 31, 2022

To: Agenda & Rules Committee

From: Dee Williams-Ridley, City Manager

Subject: Return to In-Person City Council Meetings and Status of Meetings of City Legislative Bodies

This memo provides an update regarding the return to in-person meetings by the City Council and other legislative bodies.

On October 19, 2022 the Agenda & Rules committee discussed the return to in-person meetings and recommended that the City Council return to in-person meetings starting with the December 6, 2022 meeting. The in-person meetings of the City Council will continue to allow for remote participation by the public.

Governor Newsom announced that he will end the statewide emergency declaration for COVID-19 on February 28, 2023. Rescinding the emergency declaration will end the exemptions to the Brown Act that were codified in AB 361. These exemptions allowed for remote participation by members of the legislative bodies without the need to notice the remote participation location or make the remote location accessible to the public.

In the past legislative session, AB 2449 was signed into law to extend the Brown Act exemptions in AB 361, but only for certain circumstances and for a limited duration of time. The provisions of AB 2449 are cumbersome and complicated and do not provide any long-term extension of the Brown Act exemptions used during the statewide declared emergency. A summary of AB 2449 is attached to this memo.

After February 28, 2023, if a member of the City Council participates remotely, but does not qualify for the exemptions in AB 2449, the remote location will be listed on the agenda, and the remote location must be available to the public.

Hybrid Meetings of the City Council

Since the start of the pandemic in March of 2020, the City Council has held six hybrid meetings from the Boardroom. These hybrid meetings allowed for in-person participation and virtual participation for the public and the City Council. The meetings

were successful from a technology and logistics standpoint and a regular return to hybrid meetings should be manageable from a staff and meeting management perspective. Resources and processes will be continuously evaluated by staff throughout the transition to a regular hybrid meeting structure.

For the hybrid meetings staff developed meeting protocols for members of the public in attendance and the City Council. With the changing public health conditions related to COVID-19, these meeting protocols need to be reviewed and revised prior to the December 6 meeting. The current version of the protocols that were last used in June 2022 are attached for review.

City staff will continue to test the Boardroom technology with the IT Department, BUSD IT, and Berkeley Community Media to ensure smooth functionality. Communication with the public about the return to in-person (hybrid) meetings will be sent out through multiple channels in advance of December 6.

Status of Other Legislative Bodies

City boards and commissions have been meeting virtual-only during the state declared emergency. When the state declared emergency expires on February 28, 2023, these bodies will return to in-person only meetings.

With over 30 commissions, there are approximately 350 commission meetings per year. Often there are multiple commissions meeting on the same day. The City does not currently have the videoconference infrastructure in place to provide for hybrid meetings for commissions. In addition, in a hybrid setting it is more difficult to manage and conduct meetings while attempting to provide meaningful participation by commissioners and the public. City staff will communicate with commission secretaries and commissioners to facilitate the transition back to in-person meetings. Staff will also analyze the costs for expanding videoconference capabilities throughout the City.

City Council policy committees may have the potential to meet in a hybrid format after February 28, 2023. In order to accommodate hybrid meetings, the videoconference capabilities in 2180 Milvia will need to be significantly expanded. This analysis is currently underway.

For both commissions and policy committees, the videoconference aspect of the meeting is for the public only. The members of the legislative bodies will be at the physical meeting location as previously discussed.

Summary of AB 2449 (Att. 1)

Current Law

Under current law [AB 361 (R. Rivas), Chapter 165, Statutes of 2021], The exemptions included in AB 361 only apply during a declared state of emergency as defined under the California Emergency Services Act. (Gov. Code §§ 52953(e)(1), (e)(4).) In addition, one of the following circumstances must apply:

- State or local officials have imposed or recommended measures to promote social distancing.
- The legislative body is meeting to determine whether, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
- The legislative body has determined that, as a result of the emergency, meeting in person presents imminent risks to the health or safety of attendees.

With the lifting of the State of Emergency, the provisions of AB 361 cannot be met, and therefore localities must return to pre-pandemic Brown Act provisions.

Recently Enacted Legislation on Remote Meetings

The State legislature recently enacted, and the Governor signed AB 2449 (Rubio) [Chapter 285, Statutes of 2022] which provides under incredibly limited circumstances, the ability to have a minority amount of a Brown Act body members participate remotely. The measure is slated to sunset January 1, 2026.

General Requirements

1. A quorum of the council must participate in person at its public meeting site within the boundaries of the jurisdiction (e.g., city hall/council chambers).
2. A member who wishes to participate remotely must have either “just cause” or “emergency circumstances.”

“Just cause” is defined as:

- A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires the councilmember to participate remotely.
- A contagious illness that prevents a member from attending in person.
- A need related to a physical or mental disability not otherwise accommodated under the ‘reasonable accommodation’ provisions of the Americans with Disabilities Act.
- Travel while on official business of the legislative body or another state or local agency.

“Emergency circumstances” is defined as “a physical or family medical emergency that prevents a member from attending in person.”

Procedures and Limitations

A. When using the ‘Just cause’ exception:

1. The elected/appointed official must provide a general description of the circumstances relating to their need at the earliest opportunity possible, including at the start of the meeting.
2. A councilmember may not appear remotely due to “just cause” for more than two meetings per calendar year.

B. When using the 'emergency circumstances' exception:

1. The elected/appointed official must give a general description of the emergency circumstances, but the member is not required to disclose any medical diagnosis, disability, or personal medical information.
2. The governmental body must take action to approve the request prior to the remote participant being able to participate in any further business.

C. In all circumstances the following must occur:

1. The elected/appointed official must disclose at the meeting before any action is taken whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.
2. The member must participate through both audio and visual technology (e.g., the member must be on-screen).

D. Limited use despite narrow circumstances:

1. A member cannot attend meetings remotely for a period of more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.

Hybrid Meeting Policies for City Council Meetings Revised May 2022

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

City Council policy committees and city boards and commissions will continue to meet in a virtual-only setting until the City Council makes the required findings under state law that in-person meetings may resume.

I. Vaccination Status

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

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

Pre-entry negative testing

Definition: Testing must be conducted within one day for an antigen test and within two days for a PCR test prior to entry into an event. Results of the test must be available prior to entry into the facility or venue. Children under 2 years of age are exempt from the testing requirement, consistent with [CDC guidance](#).

Verification: See current [CDPH Updated Testing Guidance](#) and [CDPH Over-the-Counter Testing Guidance](#) for acceptable methods of proof of negative COVID-19 test result and information on Over-the-Counter tests. Note: Self-attestation may not be used to verify negative test result, even when using Over-the-Counter (or at home tests) for entry into Indoor Mega Events.

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Beyond-Blueprint-Framework.aspx>

II. Health Status Precautions

If a person who desires to attend the meeting in-person is feeling sick, including but not limited to, cough, shortness of breath or difficulty breathing,

fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell, they will be advised to attend the meeting remotely.

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

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

A voluntary sign in sheet will be available at the meeting entry for in-person attendees. This will assist with contact tracing in case of COVID-19 contact resulting from the meeting.

III. Face Coverings/Mask

Face coverings or masks that cover both the nose and mouth are required for all attendees at an in-person City Council meeting. Face coverings will be provided by the City and available for attendees to use at the meeting. Members of the City Council, city staff, and the public are required to wear a mask at all times, except when speaking publicly from the dais or at the public comment podium.

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

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

IV. Physical Distancing

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

Audience seating capacity will be at regular allowable levels per the Fire Code. The relevant capacity limits will be posted at the meeting location.

However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as “distanced seating” to accommodate persons with a medical status that requires distancing and for those that choose to distance for personal health reasons.

Conference room capacity is limited to 15 persons.

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

Distancing is encouraged for the dais and partitions will be used as needed for the seating positions on the dais.

V. Protocols for Remote Participation by Mayor or Councilmembers

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

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

VI. Hand Washing/Sanitizing

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

VII. Air Flow/Circulation/Sanitizing

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IX. In-Meeting Procedures

Revised and Supplemental Materials

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Hybrid Meeting Policies for City Council Meetings Revised May 2022

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

City Council policy committees and city boards and commissions will continue to meet in a virtual-only setting until the City Council makes the required findings under state law that in-person meetings may resume.

I. Vaccination Status

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

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

Pre-entry negative testing

Definition: Testing must be conducted within one day for an antigen test and within two days for a PCR test prior to entry into an event. Results of the test must be available prior to entry into the facility or venue. Children under 2 years of age are exempt from the testing requirement, consistent with [CDC guidance](#).

Verification: See current [CDPH Updated Testing Guidance](#) and [CDPH Over-the-Counter Testing Guidance](#) for acceptable methods of proof of negative COVID-19 test result and information on Over-the-Counter tests. Note: Self-attestation may not be used to verify negative test result, even when using Over-the-Counter (or at home tests) for entry into Indoor Mega Events.

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Beyond-Blueprint-Framework.aspx>

II. Health Status Precautions

If a person who desires to attend the meeting in-person is feeling sick, including but not limited to, cough, shortness of breath or difficulty breathing,

fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell, they will be advised to attend the meeting remotely.

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

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

A voluntary sign in sheet will be available at the meeting entry for in-person attendees. This will assist with contact tracing in case of COVID-19 contact resulting from the meeting.

III. Face Coverings/Mask

Face coverings or masks that cover both the nose and mouth are required for all attendees at an in-person City Council meeting. Face coverings will be provided by the City and available for attendees to use at the meeting. Members of the City Council, city staff, and the public are required to wear a mask at all times, except when speaking publicly from the dais or at the public comment podium.

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

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

IV. Physical Distancing

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

Audience seating capacity will be at regular allowable levels per the Fire Code. The relevant capacity limits will be posted at the meeting location. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as “distanced seating” to accommodate persons with a medical status that

requires distancing and for those that choose to distance for personal health reasons.

Conference room capacity is limited to 15 persons.

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

Distancing is encouraged for the dais and partitions will be used as needed for the seating positions on the dais.

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- No buffet dinner provided. Box lunches only. Maximum of 16 (Mayor & Council [9], City Manager, City Attorney, City Clerk [2], Deputy City Managers [2], BCM Staff)
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Communications from the Public

A communication submitted by the public during the City Council meeting may be shared as follows.

- Paper: If requested by the Presiding Officer, the document can be displayed in the Boardroom and screen shared on the Zoom.
- Electronic: If requested by the Presiding Officer, the document can be displayed in the Boardroom and screen shared on the Zoom.



Office of the City Attorney

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

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

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

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

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

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

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

March 2, 2022

Page 2 Re: Continuing Use of Teleconferencing for Public Meetings

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

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

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

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

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

³ Text of SCR 5 available at: https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SCR5.

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

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

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

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A voluntary sign in sheet will be available at the meeting entry for in-person attendees. This will assist with contact tracing in case of COVID contact resulting from the meeting.

III. Face Coverings/Mask

Following the State of California and Local Health Officer Guidance, face coverings or masks that cover both the nose and mouth are required for all attendees at an in-person City Council meeting. Face coverings will be provided by the City and available for attendees to use at the meeting. Members of the City Council, city staff, and the public are required to wear a mask at all times, including when speaking publicly at the meeting.

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

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

IV. Physical Distancing

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

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IX. Food Provided for Elected Officials and Designated Staff

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- Individually packaged snacks will be provided on a common table and drinks will be available in the refrigerator.

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

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

I. **Vaccination Status**

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

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

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

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

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

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

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

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

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

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

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

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

III. **Face Coverings/Mask**

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

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

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

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

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

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

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

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

- A Councilmember at a remote location will follow the same policies as the Boardroom with regards to vaccination status and testing requirements, health status precautions, temperature checks, and masking requirements.
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BUSD Facilities Staff performs a vigorous cleaning process after each use of the Boardroom. BUSD upgraded all HVAC filtration to MERV13, and with the inclusion of Needlepoint BiPolar Ionization, is achieving a rating that is closer to MERV18. Additionally, BUSD installed indoor air quality monitoring sensors in all facilities that constantly monitor VOC's CO2, Relative Humidity, and Temperature. The sensors and alarms allow BUSD to ensure that all systems are working properly and as designed. If a sensor trips an alarm, a work order request is generated immediately to ensure the system is repaired expeditiously.

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

VIII. Overflow in Gymnasium

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

IX. Food Provided for Elected Officials and Designated Staff

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

Hybrid Meeting Procedures for BUSD Boardroom (November 2021)

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

I. Vaccination Status

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

II. Health Check

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

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

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

III. Face Coverings/Mask

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

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

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

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

Hybrid Meeting Procedures for BUSD Boardroom (November 2021)

IV. Physical Distancing

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

V. Protocols for Remote Participation by Mayor or Councilmembers

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

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

VI. Hand Washing/Sanitizing

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

VII. Air Flow/Circulation/Sanitizing

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

VIII. Overflow in Gymnasium

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

Hybrid Meeting Procedures for BUSD Boardroom (November 2021)

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

IX. Food Provided for Elected Officials and Designated Staff

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



URGENT ITEM AGENDA MATERIAL

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

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

Meeting Date: September 28, 2021

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

This item is submitted pursuant to the provision checked below:

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

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

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

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

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

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



Office of the City Attorney

CONSENT CALENDAR
September 28, 2021

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

From: Farimah Faiz Brown, City Attorney

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

RECOMMENDATION

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

FISCAL IMPACT OF RECOMMENDATION

To be determined.

CURRENT SITUATION AND ITS EFFECTS

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

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

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

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

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

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

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

BACKGROUND

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

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

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

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

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

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Not applicable.

RATIONALE FOR RECOMMENDATION

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

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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

Attachments:

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

RESOLUTION NO. –N.S.

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

WHEREAS, in accordance with Berkeley Municipal Code section 2.88.040 and sections 8558(c) and 8630 of the Government Code, which authorize the proclamation of a local emergency when conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a City exist, the City Manager, serving as the Director of Emergency Services, beginning on March 3, 2020, did proclaim the existence of a local emergency caused by epidemic in the form of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (“COVID-19”), including confirmed cases in California and the San Francisco Bay Area, and presumed cases in Alameda County prompting the County to declare a local health emergency; and

WHEREAS, on March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312; and

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

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

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

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

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

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

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

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

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

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

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



OFFICE OF THE GOVERNOR

June 2, 2021

VIA EMAIL

Graham Knaus, Executive Director
CA State Assoc. of Counties
gknaus@counties.org

Jean Kinney Hurst, Legislative Advocate
Urban Counties of CA
jhurst@counties.org

Carolyn Coleman, Executive Director
League of CA Cities
ccoleman@cacities.org

Laura Preston, Legislative Advocate
Assoc. of CA School Administrators
lpreston@acsa.org

Staci Heaton, Acting Vice President of
Government Affairs
Rural County Representatives of CA
sheaton@rcrcnet.org

Amber King, Vice President, Advocacy
and Membership
Assoc. of CA Healthcare Districts
amber.king@achd.org

Pamela Miller, Executive Director
CA Assoc. of Local Agency Formation
Commissions
pmiller@calafco.org

Danielle Blacet-Hyden, Deputy Executive
Director
CA Municipal Utilities Assoc.
dblacet@cmua.org

Niel McCormick, Chief Executive Officer
CA Special Districts Assoc.
neilm@cstda.net

Kristopher M. Anderson, Esq., Legislative
Advocate
Assoc. of CA Water Agencies
krisa@acwa.com

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

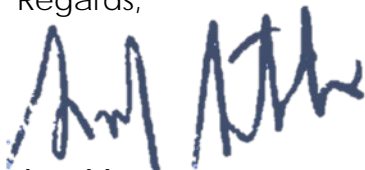
Dear Mr. Knaus, Ms. Miller, Ms. Hurst, Ms. Preston, Ms. Heaton, Ms. King, Ms. Coleman, Ms. Blacet-Hyden, Mr. McCormick, Mr. Anderson, and colleagues,

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

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

We appreciate your partnership throughout the pandemic.

Regards,

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

Ana Matosantos
Cabinet Secretary



NEWS RELEASE

Release
Number: 2021-58

June 4, 2021

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



Office of the City Manager

June 1, 2021

To: Agenda & Rules Committee

From: Dee Williams-Ridley, City Manager

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

Introduction

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

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

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

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

Meeting Options

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

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

The three meeting models available are:

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

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

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

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

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

Meeting Type Considerations

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

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

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

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

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

Other Considerations

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

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

Conclusion

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

Attachment:

1. Executive Order N-29-20

**EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA**

EXECUTIVE ORDER N-29-20

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

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

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

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

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

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

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

IT IS HEREBY ORDERED THAT:

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

otherwise-applicable Medicaid time limits in emergency situations.

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

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

In particular, any otherwise-applicable requirements that

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

are hereby suspended.

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

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

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

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

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

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

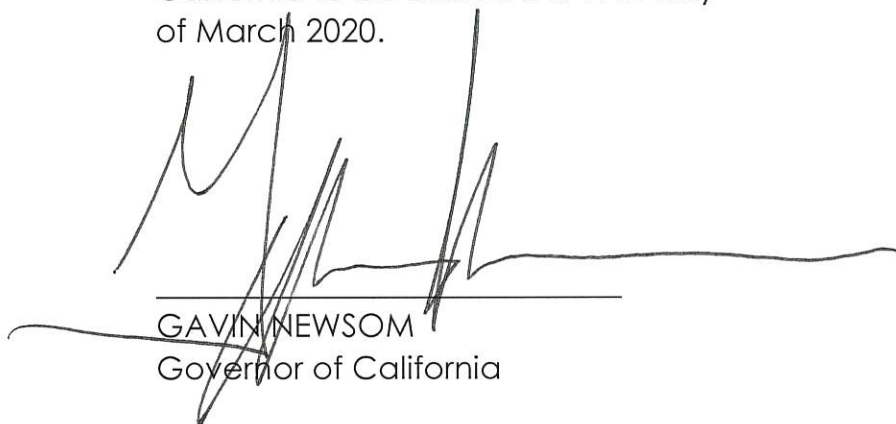
All of the foregoing provisions concerning the conduct of public meetings shall apply only during the period in which state or local public health officials have imposed or recommended social distancing measures.

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

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

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

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



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State



**Sophie Hahn, Councilmember
District 5**

CONSENT CALENDAR
December 6, 2022

To: Honorable Mayor and Members of the City Council
 From: Councilmember Sophie Hahn (Author)
 Subject: Amending City Council Rules of Procedure & Order to Allow Policy Committee Track Items with Budget Referrals to be Referred to the Budget & Finance Committee and one Subject Matter Policy Committee

RECOMMENDATION

Adopt a resolution amending the City Council Rules of Procedure & Order to allow Policy Committee Track Items that include a Budget Referral to be assigned by the Agenda Committee to the Budget & Finance Committee and one additional Policy Committee.

BACKGROUND

The City Council Rules of Procedure & Order currently prohibit the Agenda Committee from referring Council Policy Committee Track items to more than one Policy Committee. The purpose of this rule was to avoid delay and duplicative work by two Committees that may not result in consensus recommendations.

Subsequent to adoption of rules relating to Council Committees, numerous substantive items with “moderate to significant administrative, operational, budgetary, resource, or programmatic impacts” have come before the Agenda Committee in the form of Budget Referrals, or with budget referrals incorporated within the item.

Because the current rules only allow Policy Committee items to be sent to one Committee, items accompanied by budget requests that otherwise would have gone to one of the five other policy committees have been sent directly to the Budget & Finance Committee, without the benefit of review by a Policy Committee with subject matter jurisdiction over the substance of the proposed policy or program.

The unintended consequence is that programs and policies that are “significant” are considered for funding without the benefit of subject matter review, including the opportunity for staff to provide input on associated costs and administrative implications, which would inform budget allocations.

To address this situation, which was not anticipated at the time Committees were first developed, this item asks that the City Council Rules of Procedure and Order be amended to allow (but not require) Policy Committee Track Council items with budget referrals to be referred by the Agenda Committee to both the Budget & Finance Committee and a Policy Committee.

This will allow funding to be considered in an appropriate timeframe while also giving subject matter Policy Committees and the City Council the opportunity to weigh in on programmatic, policy, implementation, and administrative details of proposed policies and programs with moderate to significant impacts.

In addition, this item requests that the City Manager advise as to appropriate cut-off dates for submission of Policy Committee Track budget referrals to each budget process, building in time for at least one policy committee meeting and for the City Council to vote on the policy or program prior to Council action on associated budgets.

These deadlines, once established, should be clearly indicated on the Clerk's meeting timelines so all Councilmembers and members of the public are aware of deadlines to submit items with budget referrals that may qualify as Policy Committee Track items.

Councilmember items with budget referrals submitted after established deadlines may go forward and be referred to one or two Committees, but will be considered for funding in the subsequent budget cycle. Exceptions to the deadline can be made by the Agenda Committee utilizing the existing "Time Critical Track" process.

Proposed amendments to City Council Rules of Procedure & Order, Section III(G)(1) are shown in redline, below.

Policy Committee Track

Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts will go first to the Agenda & Rules Committee on a draft City Council agenda.

The Agenda & Rules Committee must refer an item to a Policy Committee at the first meeting that the item appears before the Agenda & Rules Committee.

The Agenda & Rules Committee may only assign the item to a single Policy Committee, **except that Policy Committee Track items that include a budget referral may be assigned to both the Budget & Finance Committee and one other Policy Committee.**

The Agenda and Rules Committee shall set deadlines for submission of Council items with budget referrals so they may be considered in time for budget processes, with exceptions for items that may qualify for the Time Critical Track.

[City Council Rules of Procedure and Order](#) - see Page 19.

FINANCIAL IMPLICATIONS

N/A

CURRENT SITUATION AND ITS EFFECTS

See Background.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

N/A

CONTACT PERSON

Councilmember Sophie Hahn Council District 5 510-981-7150

ATTACHMENTS

1. Resolution

RESOLUTION #####-N.S.

AMENDING THE CITY COUNCIL RULES OF PROCEDURE & ORDER TO ADDRESS POLICY COMMITTEE TRACK ITEMS THAT INCLUDE A BUDGET REFERRAL

WHEREAS, the City Council Rules of Procedure & Order currently prohibit the Agenda Committee from referring Council Policy Committee Track items to more than one Policy Committee; and

WHEREAS, subsequent to adoption of rules relating to Council Committees, numerous substantive items with “moderate to significant administrative, operational, budgetary, resource, or programmatic impacts” have come before the Agenda Committee in the form of Budget Referrals, or with budget referrals incorporated within the item;

WHEREAS, items accompanied by budget requests that otherwise would have gone to one of the five other policy committees have been sent directly to the Budget & Finance Committee, without the benefit of review by a Policy Committee with subject matter jurisdiction over the substance of the proposed policy or program;

NOW THEREFORE, BE IT RESOLVED, by the Council of the City of Berkeley that the Council Rules of Procedure and Order shall be amended so that the Agenda & Rules Committee may only assign an item to a single Policy Committee, except that Policy Committee Track items that include a budget referral may be assigned to both the Budget & Finance Committee and one other Policy Committee;

BE IT FURTHER RESOLVED, that the Agenda and Rules Committee shall set deadlines for submission of Council items with budget referrals so they may be considered in time for budget processes, with exceptions for items that may qualify for the Time Critical Track.