



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

TUESDAY, JANUARY 17, 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/1618509440>. 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: **161 850 9440**. 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: January 4, 2023**
- 2. Review and Approve Draft Agenda:**
 - a. 1/31/23 – 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. Strengthening and Supporting City Commissions: Guidance on the Development of Legislative Proposals**
- 10. Discussion of Potential Changes and Enhancements to the City Council Legislative Process**

Unscheduled Items

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

Unscheduled Items

12a. Adding a Youth Member to the Environment and Climate Commission

From: Youth Commission

Referred: January 4, 2023

Due: June 5, 2023

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

12b. Support for Youth Appointee to Environment and Climate Commission

From: Environment and Climate Commission

Referred: January 4, 2023

Due: June 5, 2023

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

12c. 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)

Referred: January 4, 2023

Due: June 5, 2023

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

Unscheduled Items

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

From: Councilmember Droste (Author)

Referred: January 4, 2023

Due: June 5, 2023

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

Unscheduled Items

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

From: Councilmember Droste (Author)

Referred: January 4, 2023

Due: June 5, 2023

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

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment – Next Meeting Monday, January 30, 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, January 12, 2023.

A handwritten signature in black ink that reads "Mark Numainville".

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**

**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**

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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.

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

**Public Comment** – 2 speakers.

## **Review of Agendas**

**1. Approval of Minutes: November 28, 2022**

**Action:** M/S/C (Hahn/Arreguin) to approve the minutes of 11/28/22.

**Vote:** All Ayes.

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

a. 1/17/23 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Arreguin/Wengraf) to approve the 1/17/23 agenda with the changes noted below.

- *Item 14 Martin Luther King Jr. Celebration (Arreguin) – Councilmembers Wengraf and Hahn added as co-sponsors*
- *Item 15 Support of SB 36 (Wengraf) – Councilmembers Harrison, Humbert, and Hahn added as co-sponsors*
- *Item 21a Sugar Sweetened Beverages (Sugar Sweetened Beverage Product Panel of Experts) – Referred to Budget & Finance Committee*
- *Item 21b Sugar Sweetened Beverages Companion Report (City Manager) – Referred to Budget & Finance Committee*
- *Item 22a Commission Membership (Youth Commission) – Referred to the Agenda & Rules Committee*
- *Item 22b Commission Membership (Environment and Climate Commission) – Referred to the Agenda & Rules Committee*
- *Item 23 Contract for Consulting Work (Arreguin) – Revised item submitted; scheduled for 1/17/23 Consent Calendar*
- *Item 24 Security Assessment (Kesarwani) – Scheduled for 1/17/23 Consent Calendar*
- *Item 25 Commission Membership (Harrison) – Referred to the Agenda & Rules Committee*
- *Item 26 Bureaucratic Effectiveness (Droste) – Referred to the Agenda & Rules Committee*
- *Item 27 Public Comment Procedures (Droste) – Referred to the Agenda & Rules Committee*

Order of Action Calendar

Item 19 Berkeley's Financial Condition

Item 17 Camps Program Fees

Item 18 Affordable Housing Requirements

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** – received and filed



- 6. **Council Referrals to Agenda Committee for Scheduling**  
– Added a special meeting on February 2, 2023 for the Hopkins Corridor Plan
- 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. Discussion held. 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:** 2 speakers. M/S/C (Hahn/Arreguin) to send the item to the City Council with a qualified positive recommendation that in order to be considered for the budget process that will take place in June 2023, policy committee track items (as defined in the City Council Rules of Procedure), that have the potential for budget implications, must be submitted to the agenda process to allow for consideration by the Agenda & Rules Committee no later than its March 6, 2023 meeting.

**Vote:** All Ayes.

**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**  
Scheduled for the January 17, 2023 Items for Review.
- 12. **Discussion of Potential Changes and Enhancements to the City Council Legislative Process**  
Scheduled for the January 17, 2023 Items for Review.

## Items for Future Agendas

- None

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 4:36 p.m.

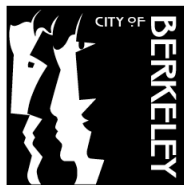
I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on January 4, 2023.

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Rose Thomsen, Deputy City Clerk

## Communications

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**DRAFT AGENDA**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, January 31, 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.*

## **Recess Items**

- 1. Contract No. 32200036 Amendment: Berkeley Convention and Visitors Bureau, d.b.a. Visit Berkeley**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution ratifying the action taken by the City Manager during recess to modify the sole source contract (Contract No. 32200036) and any amendments with the Berkeley Convention and Visitors Bureau, d.b.a. Visit Berkeley, to distribute one-twelfth of annual Berkeley Transient Occupancy Tax funds to support tourism marketing and promotion for the period from July 1, 2020 through June 30, 2023.  
**Financial Implications:** See report  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 2. Contract No. 100692-3 Amendment: Serological Research Institute for DNA Testing Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution ratifying the action taken by the City Manager during recess to amend Contract No. 100692-3 and any necessary future amendments with Serological Research Institute (SERI) for the Police Department, increasing the contract amount by \$500,000 for a total not to exceed amount of \$2,000,000 while the contract expiration will remain June 30, 2025.  
**Financial Implications:** See report  
Contact: Jennifer Louis, Police, (510) 981-5900

## Consent Calendar

**3. Resolution Reviewing and Ratifying the Proclamation of Local Emergency Due to the Spread of a Severe Acute Respiratory Illness Caused by a Novel (New) Coronavirus (COVID-19)**

**From: City Manager**

**Recommendation:** Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, July 26, 2022, September 20, 2022, November 3, 2022, and December 13, 2022.

**Financial Implications:** To be determined

Contact: Farimah Brown, City Attorney, (510) 981-6950

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

**From: City Manager**

**Recommendation:** Adopt a Resolution making the required findings pursuant to Government Code Section 54953(e)(3) and determining that as a result of the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference, initially ratified by the City Council on September 28, 2021, and subsequently reviewed and ratified on October 26, 2021, November 16, 2021, December 14, 2021, January 10, 2022, February 8, 2022, March 8, 2022, March 22, 2022, April 12, 2022, May 10, 2022, May 31, 2022, June 28, 2022, July 26, 2022, August 23, 2022, September 20, 2022, October 11, 2022, November 3, 2022, November 29, 2022, December 13, 2022, and January 10, 2023.

**Financial Implications:** To be determined

Contact: Farimah Brown, City Attorney, (510) 981-6950

**5. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on January 31, 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:** Various Funds - \$33,541,532

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

## Consent Calendar

6. **Grant Application: Funding from California Department of Forestry and Fire Protection (CAL FIRE) Wildfire Prevention Grant to Implement an Incentive Program for Residents of Berkeley's Very High Fire Hazard Severity Zone**  
**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to apply for and accept a grant, and any amendments, from the California Department of Forestry and Fire Protection (CAL FIRE) for up to \$5 Million to implement a vegetation management program for residents of Berkeley's Very High Fire Hazard Severity Zone (VHFHSZ). Grant funds will be used to develop and deliver public education materials explaining the inspection process and the importance of creating defensible space, assist residents in need of financial assistance to remove vegetation to meet state and local codes, enhance the chipper program, and fund a 3rd party administrator to manage applications and contractor pay schedules.

**Financial Implications:** See report

Contact: David Sprague, Fire, (510) 981-3473

7. **Contract No. 32000202 Amendment: Berkeley Food & Housing Project for Rental Subsidy for the Russell Street Residence**  
**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32000202 with Berkeley Food & Housing Project (BFHP) to provide rental subsidies for the Russell Street Residence through June 30, 2023 in an amount not to exceed \$3,400,640. This will extend the existing contract by one year and add \$576,616 in funding.

**Financial Implications:** See report.

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

8. **Contract: AppleOne Employment Services for Temporary Staffing Services**  
**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract with AppleOne Employment Services for Temporary Staffing Services, in the amount of \$250,000 for the period of February 1, 2023 through July 31, 2023.

**Financial Implications:** General Fund - \$250,000

Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800

9. **Contract No. 32000118-1 Amendment: Nexgen Asset and Work Order Management Software Maintenance and Professional Services**  
**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000118 with Nexgen Asset Management to provide two additional years of software maintenance, training and professional services, increasing the amount by \$689,400, for a total not-to-exceed amount of \$1,706,909.

**Financial Implications:** Various Funds - \$689,400

Contact: Kevin Fong, Information Technology, (510) 981-6500

## Consent Calendar

**10. AHEAD, Inc: Using the California Department of General Services' (DGS) Software Licensing Program (SLP) for Software License Purchases**  
**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to increase spending authority with AHEAD, Inc. ("AHEAD") for the purchase of additional Varonis software licenses, utilizing pricing and contracts, amendments, and extensions from the California Department of General Services (DGS) Software Licensing Program (SLP) increasing the amount by \$186,610 for a total amount not-to-exceed \$422,915 and the period beginning January 31, 2023 through December 21, 2023.

**Financial Implications:** Cost Allocation Fund - \$186,610

Contact: Kevin Fong, Information Technology, (510) 981-6500

**11. Contract No. 32200183 Amendment: Western Water Features Inc. for the Electrical Renovations at King Swim Center**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200183 with Western Water Features, Inc. for the electrical renovations at King Swim Center, increasing the contract amount by \$90,000 for a total not to exceed amount of \$1,100,000.

**Financial Implications:** CIP Fund - \$90,000

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

**12. Contract: California Constructores for Grove Park Field and Playground Renovation Project**

**From: City Manager**

**Recommendation:** Adopt a Resolution: 1. Approving the plans and specifications for the Grove Park Field and Playground Renovation Project, Specification No. 22-11538-C; and 2. Accepting the correction of the sum of bid items for California Constructores' bid; and 3. Accepting the bid of the lowest responsive and responsible bidder, California Constructores; and 4. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, with California Constructores, for the Grove Park Field and Playground Renovation Project at 2828 Martin Luther King Jr. Way, Berkeley, CA 94703, in an amount not to exceed \$2,483,865, which includes a contract amount consisting of the base bid plus one additive alternate of \$2,159,883 and a 15% contingency in the amount of \$323,982.

**Financial Implications:** Various Funds - \$2,483,865

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



## Consent Calendar

**13. Contract No. 32000020 Amendment: Rincon Consultants, Inc. for On-Call Planning and Environmental Review Services**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000020 with Rincon Consultants, Inc., to increase the total not-to-exceed amount by \$1,000,000 to a new total of \$2,000,000, for additional services related to the review of land use permit applications and environmental review.

**Financial Implications:** See report

Contact: Alene Pearson, Planning and Development, (510) 981-7400

**14. Contract: Koios Engineering, Inc. for Urgent Sewer Repair FY2023 Project**

**From: City Manager**

**Recommendation:** Adopt a Resolution: 1) approving plans and specifications for the Urgent Sewer Repair FY2023 Project, located throughout the City of Berkeley; 2) accepting the bid of the lowest responsive and responsible bidder, Koios Engineering, Inc.; and 3) authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$1,490,427, which includes a 10% contingency of \$135,493.

**Financial Implications:** See report

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

**15. Contract: Bay Pacific Pipeline, Inc. for Hearst, et al. FY2023 Sanitary Sewer Rehabilitation Project**

**From: City Manager**

**Recommendation:** Adopt a Resolution: 1) approving plans and specifications for the FY2023 Sanitary Sewer Project, located on Hearst Avenue, Scenic Avenue, Euclid Avenue, Le Conte Avenue, Arch Street, Cedar Street, La Loma Avenue, Le Roy Avenue, Piedmont Avenue, Kelsey Street, Palm Court, Russell Street and Backline, Avalon Avenue Backline, Belrose Avenue Backline, University Avenue, Alvarado Road, and Roble Road Backline; 2) accepting the bid of the lowest responsive and responsible bidder, Bay Pacific Pipeline, Inc.; and 3) authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$4,417,421, which includes a 10% contingency of \$401,584.

**Financial Implications:** Sanitary Sewer Fund - \$4,417,421

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

## Consent Calendar

- 16. Authorize a Funding Agreement with AC Transit to supplement the Quick-Build Durant Transit Lane Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to negotiate and enter into a funding agreement between the City of Berkeley and AC Transit providing \$1,036,000 in additional City funding to supplement the Quick-Build Durant Transit Lane Project.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 17. Contract: Gruendl Inc. DBA Ray's Electric for Martin Luther King Jr. Way Vision Zero Quick Build Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution: 1. Approving plans and specifications for the Martin Luther King Jr. Way Vision Zero Quick Build Project, (Project), Specification No. 23-11554-C; 2. Accept the bid of Gruendl Inc. Doing Business As (DBA) Ray's Electric, the lowest responsive and responsible bidder; and 3. Authorize the City Manager to execute a contract with Gruendl Inc. DBA Ray's Electric and any amendments, extensions, and/or change orders until completion of the Project in accordance with the approved plans and specifications, in an amount not to exceed \$1,663,900, which includes a contingency of ten percent for unforeseen circumstances.  
**Financial Implications:** Various Funds - \$1,663,900  
Contact: Liam Garland, Public Works, (510) 981-6300
- 18. Contract: Andes Construction, Inc. for FY2023 Sanitary Sewer Rehabilitation Parnassus Rd, et al. Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution: 1) approving plans and specifications for the FY2023 Sanitary Sewer Rehabilitation Parnassus Road Project, et al. Project located throughout the City of Berkeley; 2) accepting the bid of the lowest responsive and responsible bidder, Andes Construction, Inc.; and 3) authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$4,444,006, which includes a 10% contingency of \$404,001.  
**Financial Implications:** Sanitary Sewer Fund - \$4,444,006  
Contact: Liam Garland, Public Works, (510) 981-6300

## Council Consent Items

**19. Parking/Towing Fines & Fees Reform** *(Reviewed by the Health, Life Enrichment, Equity & Community Committee)*

**From: Councilmember Robinson (Author), Councilmember Harrison (Co-Sponsor), Councilmember Bartlett (Co-Sponsor), Councilmember Hahn (Co-Sponsor)**

**Recommendation:**

1. Adopt an Ordinance amending BMC 14.72.080 to allow individuals who are eligible for Residential Preferential Parking (RPP) permits and also for parking citation Indigent Payment Plans to purchase Residential Parking Permits even if they have outstanding parking tickets older than 21 days.
2. Direct the City Manager to implement reforms that reduce the disproportionate burden of parking and towing fines and fees on low-income individuals, as follows: a. Expand eligibility for the City's parking citations indigent payment plan to encompass households making up to 50% of Alameda County's Area Median Income (AMI) and update these guidelines in accordance with AMI on an annual basis. Provide notice of the change to all individuals with unpaid tickets. b. Amend City policy to formalize the current practice of not booting or towing cars when the sole reason for doing so is the vehicle having five or more outstanding parking tickets where payment is delinquent.
3. Refer to the City Manager to: a. Develop and return to Council with a program to offer vehicle release fee waivers for low-income and/or homeless individuals and, if feasible, vehicle release fee reductions or waivers for first-time tows. b. Explore the possibility of raising the thresholds for 2A to 80% or 100% of AMI in the future, and explore the possibility of indexing fee reduction to income. c. Consider allowing all undocumented individuals to participate in payment plans or fee reductions or waivers without the need to show proof of income or public benefits. d. Look at simplification of payment plan administration and potentially allowing all parking and towing-related fines and fees to be paid through payment plans, regardless of income qualification, as a means to simplify administration. Consider software options for tracking and collection. e. Explore opportunities to coordinate outreach for payment plans with opportunities to engage residents in participation in other social services and public benefits.
4. Refer \$383,512 in ongoing annual funding to the FY 2024 Mid-Biennial Budget Update for 2 Associate Management Analyst FTEs to administer and expand the indigent payment plan program.

*Policy Committee Recommendation: Forward the item to Council with a positive recommendation that the City Council approve the item with the Author's substitute recommendations as follows:*

- (1) Adopt an Ordinance amending BMC 14.72.080 to allow individuals who are eligible for Residential Preferential Parking (RPP) permits and also for parking citation Indigent Payment Plans to purchase Residential Parking Permits even if they have outstanding parking tickets older than 21 days.*
- (2) Direct the City Manager to implement reforms that reduce the disproportionate burden of parking and towing fines and fees on low-income individuals, as follows: a) Expand eligibility for the City's parking citations indigent payment plan to encompass households making up to 50% of Alameda County's Area Median Income (AMI) and*

## Council Consent Items

*update these guidelines in accordance with AMI on an annual basis. Provide notice of the change to all individuals with unpaid tickets. b) Amend City policy to formalize the current practice of not booting or towing cars when the sole reason for doing so is the vehicle having five or more outstanding parking tickets where payment is delinquent.*

*(3) Refer to the City Manager to: a) Develop and return to Council with a program to offer vehicle release fee waivers for low-income and/or homeless individuals and, if feasible, vehicle release fee reductions or waivers for first-time tows. b) Explore the possibility of raising the thresholds for 2A to 80% or 100% of AMI in the future, and explore the possibility of indexing fee reduction to income (if at 30% AMI, pay 30% of fee, if at 50%, pay 50% of fee, etc.). c) Consider allowing all undocumented individuals to participate in payment plans or fee reductions or waivers without the need to show proof of income or public benefits. d) Look at simplification of payment plan administration and potentially allowing all parking and towing-related fines and fees to be paid through payment plans, regardless of income qualification, as a means to simplify administration. Consider software options for tracking and collection. e) Explore opportunities to coordinate outreach for payment plans with opportunities to engage residents in participation in other social services and public benefits.*

*(4) Refer \$383,512 in ongoing annual funding to the FY 2024 Mid-Biennial Budget Update for 2 Associate Management Analyst FTEs to administer and expand the indigent payment plan program.*

**Financial Implications:** See report

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

## Action Calendar

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

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

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

## Action Calendar – Public Hearings

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

## Action Calendar – Public Hearings

*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.*

### 20. **ZAB Appeal: 2065 Kittredge Street, Use Permit #ZP2021-0193**

**From: City Manager**

**Recommendation:** Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board decision to approve Use Permit # ZP2021-0193 to demolish portions of existing City Landmark commercial buildings and construct an eight-story, mixed-use building at 2065 Kittredge Street with 187 dwelling units (including four live/work units and nine Very Low-Income units), 4,993 square feet commercial space and 43 parking spaces, and dismiss the appeal.

**Financial Implications:** None

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

## Council Action Items

### 21. **Outcomes Based Funding, Pay-For-Success and Social Impact Bonds**

*(Reviewed by the Budget & Finance Committee)*

**From: Councilmember Bartlett (Author)**

**Recommendation:** Qualified Positive Recommendation from the Berkeley City Council Budget & Finance Committee to:

Refer to the City Attorney to provide guidance on how the City can implement an Outcomes Based Funding initiative; request implementation analysis from the City Manager; and request information on whether or not this program can be used with external funds (e.g. grants) or city funds only

*Policy Committee Recommendation: Send the item to the City Council with a Qualified Positive Recommendation to refer to the City Attorney to provide guidance on how the City can implement an Outcomes Based Funding initiative; request implementation analysis from the City Manager; and request information on whether or not this program can be used with external funds (e.g. grants) or city funds only.*

**Financial Implications:** See report

Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

## Action Calendar – Policy Committee Track Items

- 22. Resolution Authorizing Regional Early Action Planning Grants (REAP 2.0) for Higher Impact Transformative Activities**  
**From: Mayor Arreguin (Author)**  
**Recommendation:** Adopt a resolution authorizing the City of Berkeley to request an allocation of Early Action Planning Grants (REAP 2.0) for Higher Impact Transformative Activities.  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 23. Berkeley Food Utility and Access Resilience Measure (FARM)**  
**From: Councilmember Bartlett (Author), Mayor Arreguin (Co-Sponsor), Councilmember Harrison (Co-Sponsor), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:**  
1. Direct the City Manager to protect the City’s food supply from natural disasters and economic disruptions by facilitating and chartering a community-based non-profit organization charged with designing and implementing an integrated local food production and distribution system for Berkeley.  
2. Direct the City Manager and the Office of Economic Development to design and offer economic incentives for non-profits, agricultural producers, and small businesses to partner with the City of Berkeley in support of the FARM.  
**Financial Implications:** See report  
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

## Information Reports

- 24. Updated Sanctuary City Contracting Compliance Report for FY 2021**  
**From: City Manager**  
Contact: Farimah Brown, City Attorney, (510) 981-6950

## 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.*

Archived indexed video streams are available at:

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>.

Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication**

**to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service to the City Clerk Department at 2180 Milvia Street. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

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

Agendas and agenda reports may be accessed via the Internet at:  
<https://berkeleyca.gov/your-government/city-council/city-council-agendas>  
and may be read at reference desks at the following locations:

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, Tarea Hall Pittman 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.

Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.



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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Internal



CONSENT CALENDAR
January 31, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson (Author), Councilmember Kate Harrison (Co-Sponsor), Councilmember Ben Bartlett (Co-Sponsor), and Councilmember Sophie Hahn (Co-Sponsor)

Subject: Parking/Towing Fines & Fees Reform

RECOMMENDATION

1. Adopt an Ordinance amending BMC 14.72.080 to allow individuals who are eligible for Residential Preferential Parking (RPP) permits and also for parking citation Indigent Payment Plans to purchase Residential Parking Permits even if they have outstanding parking tickets older than 21 days.
2. Direct the City Manager to implement reforms that reduce the disproportionate burden of parking and towing fines and fees on low-income individuals, as follows:
 - a. Expand eligibility for the City's parking citations indigent payment plan to encompass households making up to 50% of Alameda County's Area Median Income (AMI) and update these guidelines in accordance with AMI on an annual basis. Provide notice of the change to all individuals with unpaid tickets.
 - b. Amend City policy to formalize the current practice of not booting or towing cars when the sole reason for doing so is the vehicle having five or more outstanding parking tickets where payment is delinquent.
3. Refer to the City Manager to:
 - a. Develop and return to Council with a program to offer vehicle release fee waivers for low-income and/or homeless individuals and, if feasible, vehicle release fee reductions or waivers for first-time tows.
 - b. Explore the possibility of raising the thresholds for 2A to 80% or 100% of AMI in the future, and explore the possibility of indexing fee reduction to income.
 - c. Consider allowing all undocumented individuals to participate in payment plans or fee reductions or waivers without the need to show proof of income or public benefits.
 - d. Look at simplification of payment plan administration and potentially allowing all parking and towing-related fines and fees to be paid through payment plans, regardless of income qualification, as a means to simplify administration. Consider software options for tracking and collection.

- e. Explore opportunities to coordinate outreach for payment plans with opportunities to engage residents in participation in other social services and public benefits.
4. Refer \$383,512 in ongoing annual funding to the FY 2024 Mid-Biennial Budget Update for 2 Associate Management Analyst FTEs to administer and expand the indigent payment plan program.

POLICY COMMITTEE RECOMMENDATION

On December 12, 2022, the Health, Life Enrichment, Equity, & Community Policy Committee adopted the following action: M/S/C (Taplin/Hahn) to forward the item to Council with a positive recommendation that the City Council approve the item with the Author's substitute recommendations as follows:

- (1) Adopt an Ordinance amending BMC 14.72.080 to allow individuals who are eligible for Residential Preferential Parking (RPP) permits and also for parking citation Indigent Payment Plans to purchase Residential Parking Permits even if they have outstanding parking tickets older than 21 days.
- (2) Direct the City Manager to implement reforms that reduce the disproportionate burden of parking and towing fines and fees on low-income individuals, as follows:
 - a) Expand eligibility for the City's parking citations indigent payment plan to encompass households making up to 50% of Alameda County's Area Median Income (AMI) and update these guidelines in accordance with AMI on an annual basis. Provide notice of the change to all individuals with unpaid tickets.
 - b) Amend City policy to formalize the current practice of not booting or towing cars when the sole reason for doing so is the vehicle having five or more outstanding parking tickets where payment is delinquent.
- (3) Refer to the City Manager to:
 - a) Develop and return to Council with a program to offer vehicle release fee waivers for low-income and/or homeless individuals and, if feasible, vehicle release fee reductions or waivers for first-time tows.
 - b) Explore the possibility of raising the thresholds for 2A to 80% or 100% of AMI in the future, and explore the possibility of indexing fee reduction to income (if at 30% AMI, pay 30% of fee, if at 50%, pay 50% of fee, etc.)
 - c) Consider allowing all undocumented individuals to participate in payment plans or fee reductions or waivers without the need to show proof of income or public benefits.
 - d) Look at simplification of payment plan administration and potentially allowing all parking and towing-related fines and fees to be paid through payment plans, regardless of income qualification, as a means to simplify administration. Consider software options for tracking and collection.
 - e) Explore opportunities to coordinate outreach for payment plans with opportunities to engage residents in participation in other social services and public benefits
- (4) Refer \$383,512 in ongoing annual funding to the FY 2024 Mid-Biennial Budget Update for 2 Associate Management Analyst FTEs to administer and expand the indigent payment plan program.

Vote: All Ayes.

BACKGROUND

The fines and fees reform movement is growing across cities in the United States, including here in the Bay Area. Punitive fines and fees levied by governments — and the enforcement actions taken when they go unpaid — can create a cycle of economic hardship for the most vulnerable. In addition to the monetary consequences, the towing of a car or the loss of a license or vehicle registration can upend one's life. This drives economic inequality and facilitates a breakdown of trust between community and government.

Instead of punishing people for being unable to pay their parking tickets, the City should look at expanding payment options, identifying alternative budget strategies to replace unnecessarily punitive fees, and moving away from enforcement strategies that disproportionately impact low-income people.

These reforms align with the direction given by the Reimagining Public Safety Taskforce. In their report presented to Council in March 2022, the Taskforce recommends a “review of transportation laws, fines and fees to promote safety and equity.” The relevant section reads:

“Another issue is the matter of how Berkeley approaches fines and fees for violations issued. One example relates to our penalties for parking tickets, which can be devastatingly expensive to those experiencing poverty. While the city does offer an Indigent Payment Plan for Parking Citations where late fees are waived and payments can be spread over time, there are substantial administrative hurdles to jump through to apply to this program and there are still fees to be paid. In instances in which a vehicle is towed, the spiraling fines and fees could lead to the loss of a car or license, and this loss of mobility can further lead to loss of access to employment, education, or medical care. Ensuring that cars are parked properly often does have an important public safety component, but not always, and punitive fines and fees certainly do not improve public safety.”¹

The City Manager's report, presented to Council in April 2022, echoes the Taskforce and recommends that the City “review Berkeley Municipal Code for proposed changes to increase equity and racial justice in the City's existing transportation fines and fees, especially related to parking. Involve the Transportation Commission in the recommendation of such changes to Council.”² Through the subsequent FY 2023-2024 budget process, Council allocated \$150,000 to conduct a fines and fees analysis.

¹ https://berkeley-rps.org/wp-content/uploads/2022/03/BerkeleyReport_032422FNL.pdf

² <https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-04-21%20Agenda%20Packet%20-%20Council.pdf>

This item should align with and complement the upcoming assessment of fines and fees. Both will build off Council's past referrals related to fines and fees reform, including amendments to the indigent payment plan,³ a referral to the Disability Commission to examine the impacts that the parking citation system may have on people with low income and disabilities,⁴ and a referral expanding the community service in lieu of parking penalties program to non-residents.⁵

RPP for Vehicles with Outstanding Parking Tickets

The City's Residential Parking Permits (RPP) program allows Berkeley residents living in designated zones to purchase an annual parking permit for \$66. Under current policy, if a resident has any outstanding parking violations older than 21 days, they are ineligible to purchase an RPP permit.⁶

This policy can create a cycle of debt for residents who do not have the funds to pay off tickets, yet have no choice but to continue to park their car on City streets, either for work or because their apartment unit does not come with a parking space. For an individual experiencing financial hardship, a \$66 permit may be within financial reach even if paying off several hundreds of dollars in tickets all at once is not. If they are not allowed to obtain a permit, they may continue getting more and more citations for unpermitted parking with no way out of the situation. Combined with late fees, this racks up fines and fees and punishes people who are trying to come into compliance by purchasing a permit.

The City should be encouraging compliance, not prohibiting it. Amending the BMC to allow residents making below 50% of Area Median Income to purchase Residential Parking Permits even if they have outstanding parking tickets would enable them to stop the ongoing citations and focus on paying off their existing tickets.

Eligibility for Indigent Payment Plan

AB 503 (2017) established that low-income individuals are eligible for a payment plan for unpaid parking citations.⁷ The City's program allows individuals to pay off their balance monthly over the course of 24 months or less, up to a limit of \$500.⁸

3

<https://records.cityofberkeley.info/PublicAccess/api/Document/AQOQRceMCzTaULeVOAA2odBEtJ8DÁw cGNV911ÁdF8ZjqW2IEoRntIzlwfDSYIPb5u3gX4RBHOuzWVWoWBiaUcEc%3D/>

4

<https://records.cityofberkeley.info/PublicAccess/api/Document/AanANYizYnm9EVOkiYEpn1CRI60Sdf9vU 3UY3hzKBDUqngFppIÉsjT5za7N5EjkH69KILhA5ÉucrfpQPlqWAWc%3D/>

5

<https://records.cityofberkeley.info/PublicAccess/api/Document/ASÁplwGjfLaUÁsb382hHTJR7BdOvBCibrp 2fGaLyCIJTwp7PkiTMctUFRlBzVmgjPTj4Mccz5wXn4500yCd7U4%3D/>

⁶ <https://berkeley.municipal.codes/BMC/14.72.080>

⁷ https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=40220.&lawCode=VEH

⁸ <https://berkeleyca.gov/city-services/parking/parking-tickets>

Candidates may qualify based on income or proof of public benefits, as follows:

- Supplemental Security Income (SSI) or State Supplementary Payment (SSP)
- California Work Opportunity and Responsibility to Kids Act (CalWORKs) or a federal Tribal Temporary Assistance for Needy Families (Tribal TANF) grant program
- Supplemental Nutrition Assistance Program (SNAP) or the California Food Assistance Program (CFAP)
- County Relief, General Relief (GR) or General Assistance (GA)
- Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (CAPI)
- In-Home Support Services (IHSS)
- Medi-Cal

Current vs. Suggested Income Caps to be Eligible for the Indigent Payment Plan

| Household Size | Current Annual Income Cap (Federal Poverty Guidelines) | Suggested Annual Income Cap (Alameda County 50% AMI) |
|-----------------------|---|---|
| 1 | \$13,590 | \$47,950 |
| 2 | \$18,310 | \$54,800 |
| 3 | \$23,030 | \$61,650 |
| 4 | \$27,750 | \$68,500 |
| 5 | \$32,470 | \$74,000 |
| 6 | \$37,190 | \$79,500 |
| 7 | \$41,190 | \$84,950 |
| 8 | \$46,630 | \$90,450 |

AB 503 establishes minimum requirements for indigent payment plan programs but does not prohibit municipalities from expanding eligibility. Federal poverty guidelines do not reflect the high cost of living in the City of Berkeley and the larger Bay Area. The federal caps fall well below 30% AMI, which is classified as extremely low income.⁹ Acknowledging this reality, the City recently expanded eligibility for low-income commissioner stipends using 50% AMI for a household size of 3.¹⁰

⁹ <https://www.acgov.org/cda/hcd/documents/2021IncomeandRentLimits.pdf>

¹⁰ <https://berkeleyca.gov/sites/default/files/city-council-meetings/03-09-Annotated-Agenda.pdf>

While an individual does not have to meet the income guidelines if they are receiving any of the public benefits listed above, our current restrictions may not adequately serve undocumented immigrants, who are ineligible for many government programs.

Giving more people the option to enroll in an indigent payment plan will also shield low-income residents from the broader consequences of delinquent parking tickets. For example, the California Department of Motor Vehicles is required to refuse renewal of vehicle registration until all outstanding parking tickets have been paid, unless the individual is enrolled in a payment plan. Expired vehicle registration puts the vehicle at risk of being towed, which results in additional financial hardship and potential loss of wages for the vehicle's owner if they are not able to get to work without their car. Furthermore, barring vehicle owners from registering their vehicles is antithetical to public safety, since it serves the general public to ensure that drivers are insured and vehicles are regularly smog checked.

Scofflaw Vehicle Enforcement/I-Tows

California Vehicle Code Section 22651 grants local governments the authority to remove and impound scofflaw vehicles, or vehicles with five or more notices of parking violations where payment is delinquent.¹¹ This practice is also known as an I-Tow. AB 2876 (2018) placed certain limits on this authority, revising the CVC to read:

“Any removal of a vehicle is a seizure under the Fourth Amendment of the Constitution of the United States and Section 13 of Article I of the California Constitution, and shall be reasonable and subject to the limits set forth in Fourth Amendment jurisprudence. A removal pursuant to an authority, including, but not limited to, as provided in Section 22651, that is based on community caretaking, is only reasonable if the removal is necessary to achieve the community caretaking need, such as ensuring the safe flow of traffic or protecting property from theft or vandalism.”¹²

In San Francisco, vehicles towed for unpaid parking tickets made up only 9% of all vehicles towed but 55% of lien sales. Half of all the vehicles towed for parking ticket debt were sold, suggesting that this practice targets people who are simply unable to pay and is not a particularly effective strategy for collecting debt.¹³ The staff and transportation costs associated with towing and lien sales often do not justify the small amounts of debt that are able to be collected in the end.

In 2019, Assemblymember David Chiu introduced AB 516, which would have ended the practice commonly referred to as a “poverty tow” but died in Senate Appropriations.¹⁴ In

¹¹ https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=22651&lawCode=VEH

¹² https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2876

¹³ <https://wclp.org/wp-content/uploads/2019/03/TowedIntoDebt.Report.pdf>

¹⁴ https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB516

February 2022, the City of Los Angeles temporarily suspended the towing of scofflaw vehicles in response to a federal court ruling against the City.¹⁵

The Berkeley Police Department does not currently conduct scofflaw enforcement due to both the “community caretaking” clause of AB 2876 and the impacts of the COVID-19 pandemic. Parking enforcement performs a critical public safety function by enforcing against cars that are unsafely parked or otherwise pose a risk to the general public. However, scofflaw vehicles that are legally parked are towed solely for the crime of poverty, which does not fall under “community caretaking.” In the interest of transparency and clarity, the City should formalize the current practice of not booting or towing scofflaw vehicles by updating relevant public-facing policy documents and internal employee manuals.

Vehicle Release Fee Waivers

When a vehicle is towed in the City of Berkeley, the vehicle’s owner must pay a release fee of \$75 to the City for certain infractions, in addition to towing fees and daily storage fees. If the vehicle was towed for unpaid parking citations, the owner must also pay off all outstanding parking fines and fees before they can obtain a vehicle release.

In the State of California, vehicle owners owe an average of \$499 in tow, storage, and administrative fees just three days after a tow.¹⁶ This is in addition to the parking or registration fees that must be paid off. If they do not have the money to retrieve the vehicle, it can be sold at a lien sale after 30 days, resulting in a permanent loss of mobility and potentially jeopardizing their employment and access to other essential services such as school and health care.

These towing practices disproportionately burden low-income people due to the exorbitant fees and the time required to resolve a tow. An individual must first go to the City’s Customer Service Center or the DMV to pay outstanding parking and registration fines and fees, then to the Police Department to obtain a vehicle release, and finally to the tow yard to retrieve their car. If someone is not able to take time off work or school to do so on short notice, the daily storage fees accumulate quickly.

As part of San Francisco’s Financial Justice Project, the City and County of San Francisco implemented a tow waiver program for people experiencing homelessness or low income, as well as a fee reduction for first-time tows.¹⁷ For low-income people, the \$325 administrative fee is waived and the tow fee is reduced from \$268 to \$100. For unhoused people, both the administrative and tow fees are waived. For first-time tows, the administrative fee is reduced to \$275.

¹⁵ <https://www.latimes.com/california/story/2022-02-08/los-angeles-stops-impounding-cars-for-unpaid-tickets>

¹⁶ <https://wclp.org/wp-content/uploads/2019/03/TowedIntoDebt.Report.pdf>

¹⁷ <https://www.sfmta.com/getting-around/drive-park/towed-vehicles/reduced-fees-first-time-tow-and-low-income-individuals>

San Francisco is a larger and more well-resourced jurisdiction that handles their own towing, as opposed to contracting it out to tow companies like the City of Berkeley does. While the case study of San Francisco cannot be directly applied to Berkeley, we should look to San Francisco's program as a model and offer waivers for fees that fall under the City's control.

ALTERNATIVES CONSIDERED

The City could reduce the tow and storage fees imposed on vehicle owners by amending our tow contracts at the next available opportunity. However, this would make it infeasible for any tow companies to operate in Berkeley without significant subsidies. The City could also consider municipalization of towing operations.

FINANCIAL IMPLICATIONS

Staff time and \$383,512 in ongoing annual funding for 2 Associate Management Analyst FTEs.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

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

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

ORDINANCE AMENDING THE MUNICIPAL CODE TO ALLOW ISSUANCE OF
RESIDENTIAL PARKING PERMITS FOR VEHICLES WITH OUTSTANDING PARKING
TICKETS

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

Section 1. That Berkeley Municipal Code Section 14.72.080 is amended to read as follows:

14.72.080 Issuance of permits.

A. Residential, local business and neighborhood-serving community facility parking permits shall be issued by the Department of Finance in accordance with requirements set forth in this chapter. Each such permit shall be designed to state or reflect thereon the identification of the particular residential, local business or neighborhood-serving community facility permit parking area for which it is issued. No more than one residential or local business parking permit shall be issued to each motor vehicle for which application is made.

B. When issuing local business and neighborhood-serving community facility permits, the Department of Finance in consultation with the traffic engineering division shall issue permits such that they will not unduly be concentrated on a specific block front in any given residential permit parking area.

C.

1. No permits shall be issued to residents in newly constructed residential units. The Current Planning division shall provide a listing of newly-constructed housing units to the Department of Finance.

2. No permits shall be issued to residents of Group Living Accommodations as defined in Chapter [23F.04](#) that are approved after January 1, 2012, unless the Zoning Adjustments Board specified otherwise when it approved the GLA. The Current Planning division shall provide a listing of addresses subject to this paragraph to the Department of Finance.

3. In the R-2 and R-2A zoning districts, no permits shall be issued to residents of dwelling units with more than 5 bedrooms to which new bedrooms have been added subsequent to January 1, 2012. The Current Planning division shall provide a listing of addresses subject to this paragraph to the Department of Finance.

4. This subdivision shall not prevent issuance of permits to residents of permitted and legal nonconforming sororities, fraternities and student cooperatives who are not otherwise prohibited from obtaining them.

D. The Department of Finance and the Public Works Transportation Division are authorized to issue such rules and regulations necessary to implement this chapter, and are not inconsistent with it.

E. Parking permits shall not be issued for vehicles for which there is any outstanding City of Berkeley notice of violation of parking rules and restrictions that are unpaid for more than 21 calendar days from the issuance of the parking violation, except for vehicles belonging to individuals eligible for the City's Indigent Payment Plan.

~~E. Parking permits shall not be issued for vehicles for which there is any outstanding City of Berkeley notice of violation of parking rules and restrictions that are unpaid for more than 21 calendar days from the issuance of the parking violation.~~

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 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.



ACTION CALENDAR
January 31, 2023

To: Honorable Mayor and Members of the City Council
 From: Councilmember Ben Bartlett
 Subject: Outcomes Based Funding, Pay-For-Success and Social Impact Bonds

RECOMMENDATION

Qualified Positive Recommendation from the Berkeley City Council Budget & Finance Committee to:

Refer to the City Attorney to provide guidance on how the City can implement an Outcomes Based Funding initiative; request implementation analysis from the City Manager; and request information on whether or not this program can be used with external funds (e.g. grants) or city funds only

POLICY COMMITTEE RECOMMENDATION

On October 13, 2022, the Budget & Finance Committee adopted the following action: M/S/C (Arreguin/Harrison) to send the item to the City Council with a Qualified Positive Recommendation to refer to the City Attorney to provide guidance on how the City can implement an Outcomes Based Funding initiative; request implementation analysis from the City Manager; and request information on whether or not this program can be used with external funds (e.g. grants) or city funds only. Vote: Ayes – Harrison, Arreguin; Noes – None; Abstain – None; Absent – Droste.

BACKGROUND

Outcome Based Funding is a financing strategy in which Government allocates funding to vendors only upon the demonstrable achievement of specific outcomes. Under an Outcome Based Funding approach, Government enters into Contracts with non-internal-government organizations to deliver services intended to result in positive measurable outcomes. Often, in outcomes based fundings, private investors provide the funding and are repaid later by the government only if the service meets agreed-on performance benchmarks.¹ Outcomes Based Funding, Social Impact Bonds, or Pay for Success (PFS) Contracts can be an effective way for Government to reduce its spending while simultaneously achieving better social outcomes.

Outcomes Based Funding initiatives often work in close collaboration with Community Development Finance Institutions (“CDFI”). CDFI’s direct resources in communities with the potential for high social returns but with a lack of resources.

¹ Kasturi Rangan & Lisa A. Chase. “The Payoff of Pay-for-Success (SSIR).” <https://ssir.org/>, Stanford Social Innovation Review, 2015, https://ssir.org/up_for_debate/article/the_payoff_of_pay_for_success#

Outcomes-based funding supports evidence-based strategies to create better community outcomes and save taxpayer money.

Pay For Success was introduced by the Obama Administration; and is a strategy of obtaining positive social or environmental outcomes by paying, in part or in whole, for an intervention only once it produces those outcomes. Through PFS, government (or another entity) enters into a contract to pay for concrete, measurable outcomes once they are achieved for specific people or communities in need. Instead of funding services regardless of the results, payments are made only if interventions actually achieve the outcomes agreed upon in advance. For example, instead of paying for job training simply to be provided, a community might use PFS to pay only when individuals gain stable employment in good jobs. Where government employs PFS strategies, taxpayers no longer bear the risk of paying for services that are ineffective because resources are not expended until the services have produced a specific benefit².

Social Impact Bonds are an innovative financing mechanism in which governments or commissioners enter into agreements with social service providers, such as social enterprises or non-profit organizations, and investors to pay for the delivery of pre-defined social outcomes. More precisely, a bond-issuing organization raises funds from private-sector investors, charities or foundations. These funds are distributed to service providers to cover their operating costs. If the measurable outcomes agreed upfront are achieved, the government or the commissioner proceeds with payments to the bond-issuing organization or the investors. In reality, the term “bond” is more of a misnomer. In financial terms, SIBs are not real bonds but rather future contracts on social outcomes. They are also known as Payment-for-Success bonds (USA) or Pay-for-Benefits bonds³. There is healthy appetite for Social Impact Investing, currently there is more than \$700 billion in impact investment capital seeking deployment⁴.

Outcomes Based Funding and Social Impact Bonds are very similar in practice. They both include the practice of entering into a conditional contract with an organization to address social welfare programs. The payment to the organization is derived from the budgetary savings and other proceeds stemming from the resulting reduction in spending. This transfer of risk from Government to the vendor helps overcome resistance to funding innovative projects within a constrained budgetary environment.

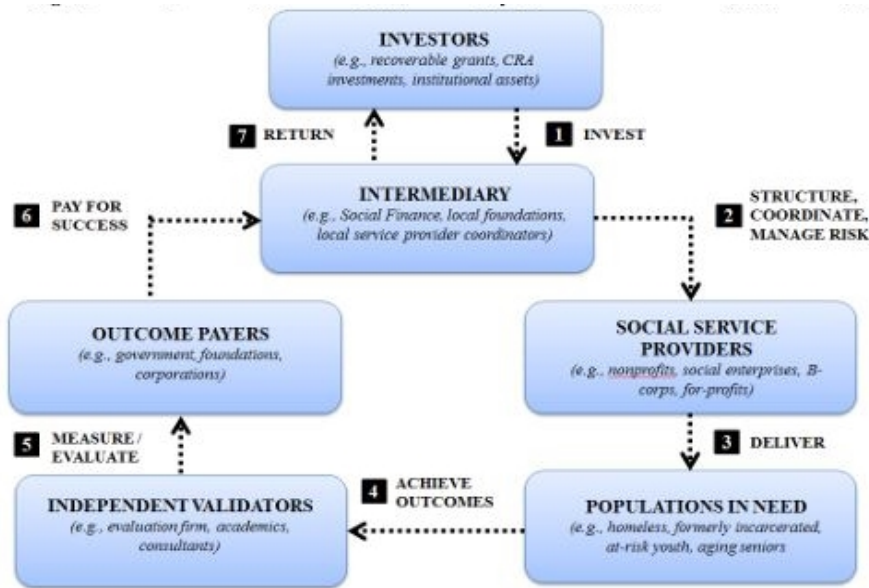
The Benefits of Outcomes Based Funding, Pay for Success, and Social Impact Bonds include:

1. Spurs Innovation
2. Saves Money
3. Transfers Risk from Tax Payer to Vendor
4. Better Outcomes for the Community

² “Pay for Success:” The White House, 2012, <https://obamawhitehouse.archives.gov/administration/eop/sicp/initiatives/pay-for-success>

³ Organisation for Economic Co-operation and Development, et al. “Understanding Social Impact Bonds.” OECD Working Papers, 2016, <https://www.oecd.org/cfe/leed/UnderstandingSIBsLux-WorkingPaper.pdf>

⁴ SG Analytics. “Impact Investing Market Size Is \$715 Billion: What Is the Future of Our Planet?” SG Analytics, 2 Mar. 2021, <https://us.sganalytics.com/blog/impact-investing-market-size-is-715-billion-what-is-the-future-of-our-planet/>



5

Here are a few examples of Outcomes Based Funding, Pay for Success, and Social Impact Bonds Models:

1. New York (1990s) – New York City dramatically changed the way it bought workforce development services from nonprofit providers working around the city. Instead of paying for the cost of services up front and hoping for the best, the city tied 100 percent of funding to measured performance. Job placement providers got paid only if they achieved clearly defined milestones (e.g., job placement, retention after set periods of time). The innovative focus on results yielded a number of benefits including, but not limited to, providers being incentivized to achieve outcomes that aligned with the city’s policy objectives, allowing the city to flexibly price (and re-price) outcomes it cared about while avoiding a more prescriptive, top-down approach to program design that can stymie innovation, and performance data helping the city make course corrections to the system as a whole. (When early program data showed poor job retention results, the city doubled down by changing payment formulas to incentivize longer-term retention outcomes.)⁶
2. Salt Lake City, Utah (2015) – Salt Lake County policymakers implemented innovative funding strategies to reduce incarceration and recidivism rates. In this particular case, a suite of evidence-based programs were funded through a social impact financing mechanism. If incarceration rates drop by an agreed-upon threshold percentage over a

⁵ Organization for Economic Co-operation and Development, et al. “Understanding Social Impact Bonds.” OECD Working Papers, 2016, <https://www.oecd.org/cfe/leed/UnderstandingSIBsLux-WorkingPaper.pdf>

⁶ Keele, Jeremy, and Sarah Peters. “HOW OUTCOMES-BASED FUNDING MODELS CAN IMPROVE THE EFFECTIVENESS OF STATE AND LOCAL GOVERNMENTS.” Sorenson Impact Center, 2017, pp. 134–37. https://investinresults.org/sites/default/files/book-chapter/WM_14_Keele-Peters_0.pdf

certain time frame, the county will repay the funders who provided the upfront bridge financing. If the programs are not successful, the county won't pay.⁷

3. USA (2008-2016) - President Barack Obama Administration's in Pay For Success⁸ initiative: The administration dedicated nearly \$100 million in funding to advance PFS through eight federal agencies. These federal dollars leveraged at least \$65 million in philanthropic, state and local funds for PFS. Among other important priorities, the Administration's PFS awards have been provided to help connect veterans with jobs⁹, build brighter futures for at-risk youth, support English language learners¹⁰, increase access to high-quality pre-K¹¹, reduce childhood asthma, support at-risk moms and their children, reduce homelessness, incarceration, and recidivism, and even promote natural resources conservation¹². Participants performed validation tests, feasibility studies¹³, transaction structuring, outcomes evaluation, outcomes payments, and cross-system data integration¹⁴. The U.S. is now the largest PFS market the world, with greater total outcome payment scale and impact investment dollars committed to projects than any other nation¹⁵.
4. Massachusetts (2014) Social Impact Bond Initiatives:
 - a. The Juvenile Justice Pay for Success Initiative was a managed Social Impact Bond project. The program's aim was to reduce recidivism and increase employment through intensive street outreach, targeted life skills training, education, and employment programming. The target group was 929 at-risk young men aged 17 to 23. Philanthropic grantors included The Kresge Foundation, Living Cities, Laura and John Arnold Foundation, New Profit Inc., and the Boston Foundation. Third Sector Capital Partners acted as the financial

⁷ Keele, Jeremy, and Sarah Peters. "HOW OUTCOMES-BASED FUNDING MODELS CAN IMPROVE THE EFFECTIVENESS OF STATE AND LOCAL GOVERNMENTS." Sorenson Impact Center, 2017, pp. 134–

37. https://investinresults.org/sites/default/files/book-chapter/WM_14_Keele-Peters_0.pdf

⁸"Pay for Success:" The White House, 2012, <https://obamawhitehouse.archives.gov/administration/eop/sicp/initiatives/pay-for-success>

⁹"New VA – CNCS Collaboration to Connect Funding to Better Outcomes For." Whitehouse.Gov, 5 Jan. 2017, <https://obamawhitehouse.archives.gov/blog/2016/11/11/new-va-%E2%80%93-cnccs-collaboration-connect-funding-better-outcomes-veterans>

¹⁰ Office of the Press Secretary. "FACT SHEET: New Commitments Announced in Support of the My Brother's." Whitehouse.Gov, 17 Oct. 2016, <https://obamawhitehouse.archives.gov/the-press-office/2016/10/11/fact-sheet-new-commitments-announced-support-my-brothers-keeper>

¹¹ US Department of Education (ED). "Pay for Success." U.S. Department of Education, <https://www2.ed.gov/about/inits/ed/pay-for-success/index.html>. Accessed 2 July 2022.

¹² Goldfuss, Christy, and David Wilkinson. "Pay for Success: New Resources for Better Conservation Outcomes." Whitehouse.Gov, the White House, 5 Jan. 2017, <https://obamawhitehouse.archives.gov/blog/2015/12/17/pay-success>

¹³ Munoz, Cecila, and Shaun Donovan. "Administration Nearly Doubles Number of 'Pay for Success' Feasibility." Whitehouse.Gov, the White House, 19 Apr. 2016, <https://obamawhitehouse.archives.gov/blog/2016/04/19/administration-nearly-doubles-number-pay-success-feasibility-studies>

¹⁴ Wilkinson, David, and Wendy Spencer. "How Data and Innovation Can Help People." National Service Archived Blog, 13 Oct. 2016, <https://nationalservice.tumblr.com/post/151761667357/how-data-and-innovation-can-help-people>

¹⁵ "Pay for Success:" The White House, 2012, <https://obamawhitehouse.archives.gov/administration/eop/sicp/initiatives/pay-for-success>

intermediary and prime contractor. Third Sector was responsible for arranging project funding, overseeing project implementation, distributing funding to Roca and managing repayment to funders. It is worth noting that Third Sector Capital Partners is deferring \$50 000 USD of its management fees; it will only be paid that portion of its fees if results are achieved. New Profit Inc. The Juvenile Justice Pay for Success Initiative is an individual SIB, but it is also part of the Massachusetts Social Innovation Financing Trust Fund.¹⁶

- b. The State of Massachusetts, the nonprofit Roca, the financial intermediary Third Sector Capital Partners, and a group of investors entered into a contract under which Roca was paid by investors to operate a program designed to prevent formerly incarcerated young people from returning to jail. Under an Outcomes Based Funding and Pay for Success Model, the state would repay the investors only if Roca met or exceeded the contract goals. Massachusetts was willing to repay the loan with interest to investors because the program saved even more money by keeping young people out of prison. While the result of this program was inconclusive, the State of Massachusetts will only have to pay Roca if the model is successful.¹⁷
5. New York State (2012) – New York implemented a Social Impact Bond model where the State of New York partnered with Social Finance, a nonprofit social impact financing and advisory firm, to reduce recidivism through a Social Impact Bond contract. After analyzing the needs of high-risk formerly incarcerated individuals and conducting thorough due diligence on interventions and social service providers, Social Finance selected CEO, a nonprofit employment service agency for formerly incarcerated individuals, as the entity to deliver the intervention. The State of New York, Social Finance, and CEO worked together over the next year to structure the project with the help of law firm Jones Day. The State of New York also obtained pro bono technical assistance from the Harvard Kennedy School Social Impact Bond Technical Assistance Lab (“SIB Lab”) to develop and implement the project¹⁸ This Social Impact Bond managed to reduce the number of bed days for former inmates therefore directly reducing the State of New York’s public spending and increasing the well being for the participants.
 6. Ohio State (2014) – Cuyahoga County, Ohio, the local government entered into a Social Impact Bond contract with FrontLine to reduce time spent in foster care for children of homeless mothers. FrontLine had devoted 26 years to providing comprehensive services to mentally ill homeless people, with the goal of transitioning its clients to

¹⁶ Organization for Economic Co-operation and Development, et al. “Understanding Social Impact Bonds.” OECD Working Papers, 2016, <https://www.oecd.org/cfe/leed/UnderstandingSIBsLux-WorkingPaper.pdf>

¹⁷ Kasturi Rangan & Lisa A. Chase. “The Payoff of Pay-for-Success (SSIR).” <https://ssir.org/>, Stanford Social Innovation Review, 2015, https://ssir.org/up_for_debate/article/the_payoff_of_pay_for_success#

¹⁸ The State of New York, et al. “Investing in What Works: ‘Pay for Success’ in New York State Increasing Employment and Improving Public Safety.” Harvard Kennedy School Government Performance Lab, 2014. <https://govlab.hks.harvard.edu/>, https://govlab.hks.harvard.edu/files/govlabs/files/nys_ceo_pfs_project_summary.pdf

permanent supportive housing. FrontLine had also demonstrated that moving homeless mothers to stable housing increased their chances of recovering and regaining custody of their children from foster care. The county's data revealed that children of homeless mothers spent considerably more time in foster care than other children (724 days compared to 440 days) at a daily cost of \$75 per child. Keeping mothers in stable housing with their children therefore represented significant savings for the county.¹⁹

7. Saskatchewan, Canada (2014) – The Canadian Province of Saskatchewan Sweet Dreams, implemented a Social Impact Bond to increase the well being of lowincome families. The Government of Saskatchewan and the Ministry of Social Services, held direct contracts with the investors and the service provider, Saskatoon Downtown Youth Centre (EGADZ). The investors provided in May 2014 \$1 million CAD for a period of 60 months to the EGADZ to offer to single mothers with children under the age of eight, who are at risk of requiring services from Child and Family Services, with affordable housing and support. At the same time, the mothers can complete their education, secure employment, or participate in pre-employment activities, such as life skills training and parenting classes. In the end, the SIB succeeded in helping keep single mothers in the schools and helped keep those families together.²⁰

The City's budgetary constraints are becoming more pronounced. Meanwhile a looming recession is poised to exacerbate the City's growing social needs. Berkeley should explore new tools to drive innovation to more cheaply achieve greater community outcomes.

CURRENT SITUATION

The City has many challenges from homelessness, health, environmental impact, public safety, and many more that demands financial and external costs that could use more preventative measures to save on costs. The guidance on how the City can implement an Outcomes Based Funding and Social Impact Bond Initiative would allow the City to have more options to achieve greater outcomes for less money.

FINANCIAL IMPLICATIONS

Staff time from the City Attorney's Office.

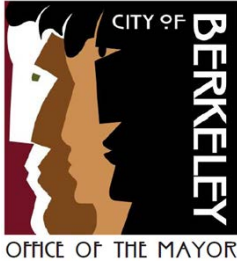
CONTACT PERSONS

Councilmember Ben Bartlett
James Chang
Marcelo Garcia-Sarraf

bbartlett@cityofberkeley.info
jchang@cityofberkeley.info
510-981-7130

¹⁹ Kasturi Rangan & Lisa A. Chase. "The Payoff of Pay-for-Success (SSIR)." <https://ssir.org/>, Stanford Social Innovation Review, 2015, https://ssir.org/up_for_debate/article/the_payoff_of_pay_for_success#

²⁰"Sweet Dreams Supported Living Project." The Government Outcomes Lab, Sept. 2020, <https://golab.bsg.ox.ac.uk/knowledge-bank/indigo/project-database/sweet-dreams-supported-living-project/>



CONSENT CALENDAR
January 31, 2023

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Resolution Authorizing Regional Early Action Planning Grants (REAP 2.0) for Higher Impact Transformative Activities

RECOMMENDATION

Adopt a resolution authorizing the City of Berkeley to request an allocation of Early Action Planning Grants (REAP 2.0) for Higher Impact Transformative Activities.

BACKGROUND

The Regional Early Action Planning Grants of 2021 (REAP 2.0) Higher Impact Transformative (HIT) Allocation is intended to made funding available to regional entities including Metropolitan Planning Organizations, rural counties, and tribal entities on a competitive basis to support novel, unique or innovative approaches that are scalable and that further REAP 2.0's Goals and Objectives. REAP 2.0 makes funding available to meet the state's Housing and equity goals, reduce Vehicle Miles Traveled (VMT) Per Capita, and advance implementation of the region's Sustainable Communities Strategy (SCS) or Alternative Planning Strategy.

The BART Equitable Transit-Oriented Development (TOD) Accelerator proposal aims to address two systemic challenges to advancing development near BART stations: a shortage of predevelopment financing for affordable housing, and the need to capture value of new development to support nearby communities who are vulnerable to displacement. The Equitable TOD Accelerator addresses these challenges through the innovative use of a revolving loan fund and enhanced infrastructure financing districts (EIFD).

Use #1: Revolving Loan Fund for Predevelopment Needs on BART-Owned Land

Smaller scale affordable housing developers working with BART have reported difficulties advancing projects due to the scale of financing needed to complete predevelopment activities for multiphase projects. BART would use the HIT grant to work with consultants and a Community Development Financial Institution (CDFI) to set up and operate a revolving loan fund specifically for predevelopment costs at affordable housing projects. The CDFI will also be tasked with leveraging the HIT grant to expand the fund, with the

HIT grant in a first-loss position. This structure would reduce the risk on these uncollateralized loans to a more standard level, making them attractive to private predevelopment investments. The initial loan would be made to the Lake Merritt/Chinatown TOD Senior Affordable Housing project, which has received its final approvals from the City of Oakland and, if funding is secured, could break ground as early as 1st Quarter 2024. Upon repayment at close of construction financing, BART would cycle funds to another affordable housing project in BART's portfolio, creating a perpetual loan fund to address the high predevelopment costs of multi-phase development on BART land. BART's robust TOD pipeline contains ample opportunities to accelerate affordable housing development at transit-rich, infill sites, and as such the HIT funds would have a lasting impact across multiple projects on public land.

Use #2: Value Capture for Community Benefits in Vulnerable Communities

The City of Berkeley and BART would use HIT funding to create an EIFD designed to capture the value of development on BART land as well as land nearby the Ashby Station, and create a reliable financing source to accelerate the development of affordable housing and other community-serving infrastructure. The EIFD would leverage tax increment financing to specifically fund anti-displacement efforts, which would be an innovative use of this tool. The scope would fund City of Berkeley staff time, consultant time, and creation of the work products needed to establish this EIFD. BART and the City of Berkeley are advancing development at the Ashby BART station with the goal of releasing a developer solicitation for BART property in mid-2023. BART and the City have a goal of making 50% of the homes on BART property affordable, and understand that the community wants the value generated by the development to accrue to the neighborhood, primarily through the funding of affordable housing. We believe this work, coupled with the development of a 700 – 1,200-unit housing project on the Ashby BART property, could create a new model for equitable infill development that ensures this development is truly serving the local community and benefiting surrounding areas.

FINANCIAL IMPLICATIONS

The City Manager or their designee is authorized to enter into, execute, and deliver a State of California Standard Agreement for the amount of a maximum of \$10,000,000 and any and all other documents required or deemed necessary or appropriate to evidence and secure the REAP 2.0 Allocation, the City of Berkeley obligations related thereto and all amendments the Department of Housing and Community Development deems necessary.

CONTACT PERSON

Jesse Arreguín, Mayor, 510-981-7100

Attachments:

1. Resolution

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

Authorizing Regional Early Action Planning Grants (REAP 2.0) for Higher Impact Transformative Activities

WHEREAS, the State of California (the "State"), Department of Housing and Community Development ("Department") Department is authorized to provide up to \$30,000,000 to Eligible Entities ("Applicant") listed in Health and Safety Code Section 50515.08, subdivisions (a)(1)-(6) under the Higher Impact Transformative (HIT) Allocation of the Regional Early Action Planning grants program (REAP 2.0), as detailed in Health and Safety Code Section 50515.08-10; and

WHEREAS, the Department issued a Notice of Funding Availability on November 9, 2022 for REAP 2.0 HIT Allocation funds available to Eligible Entities and

WHEREAS, the City of Berkeley is an Eligible Entity eligible to submit a Request for Funds pursuant to Health and Safety Code Section 50515.08(c) to develop and accelerate the implementation of the requirements described in Health and Safety Code section 50515.08(c)(1); and

WHEREAS, the San Francisco Bay Area Rapid Transit District ("BART") has been working on transit-oriented development ("TOD") at multiple Stations including ones located in disadvantaged communities such as Lake Merritt, and historically underserved communities such as South Berkeley, and has conducted extensive community engagement as part of these efforts; and

WHEREAS, BART has a formal relationship with the City of Berkeley ("City") to advance TOD at the North Berkeley and Ashby stations as evidenced by a Board- and Council-authorized Memorandum of Understanding dated March 6, 2020 and a Board- and Council-authorized Memorandum of Agreement dated June 30, 2022; and

WHEREAS, the Department requires that the ~~BART Board~~Berkeley City Council adopt this Resolution authorizing City of Berkeley staff to apply for funds and to partner with BART; and

WHEREAS, the Department shall approve the Request for Funds, subject to the terms and conditions of Eligibility, Guidelines, NOFAs, Program requirements, and the Standard Agreement by and between the Department and REAP 2.0 Grant Recipients.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley is hereby authorized and directed to request an allocation of funds not to exceed **\$10,000,000**.

BE IT FURTHER RESOLVED that the City Manager or their designee is authorized to execute the Request for Funds, on behalf of the City of Berkeley as required by the Department for receipt of REAP 2.0 funds.

BE IT FURTHER RESOLVED that when the City of Berkeley receives an allocation of REAP 2.0 funds in the authorized amount of a maximum of \$10,000,000 from the Department pursuant to the above referenced Request for Funds, it represents and certifies that it will use all such funds only for eligible activities as set forth in Health and Safety Code section 50515.08(c)(1), as approved by the Department and in accordance with all REAP 2.0 requirements, guidelines, all applicable state and federal statutes, rules, regulations, and the Standard Agreement executed by and between the City of Berkeley and the Department.

BE IT FURTHER RESOLVED that the City Manager or their designee is authorized to enter into, execute, and deliver a State of California Standard Agreement for the amount of a maximum of \$10,000,000 and any and all other documents required or deemed necessary or appropriate to evidence and secure the REAP 2.0 Allocation, the City of Berkeley obligations related thereto and all amendments the Department deems necessary and in accordance with REAP 2.0.

CONSENT CALENDAR

January 31, 2023

To: Honorable Mayor and Members of the City Council
 From: Vice Mayor Ben Bartlett (Author), Mayor Jesse Arreguin, Councilmember Kate Harrison, and Councilmember Sophie Hahn (Co-Sponsors)
 Subject: Berkeley Food Utility and Access Resilience Measure (FARM)

RECOMMENDATION

1. Direct the City Manager to protect the City's food supply from natural disasters and economic disruptions by facilitating and chartering a community-based non-profit organization charged with designing and implementing an integrated local food production and distribution system for Berkeley.
2. Direct the City Manager and the Office of Economic Development to design and offer economic incentives for non-profits, agricultural producers, and small businesses to partner with the City of Berkeley in support of the FARM.

BACKGROUND & CURRENT SITUATION

Berkeley is home to the local foods revolution, yet thousands of Berkeley residents are food insecure. Natural disasters and economic downturns exacerbate this insecurity and climate change increases the likelihood and severity of food supply interruption.

Berkeley has the framework for food resiliency through its successful farmers' market; service providers who have been providing meals to homeless individuals since the early 1970s; community groups like Consider the Homeless and Food Not Bombs, which distribute food to homeless populations; and the Berkeley Food Network (BFN). Founded in 2016 in collaboration with community organizations, BFN promotes access to nutritional food by using "innovative, community-centered solutions to build a more sustainable, resilient, and equitable food system."¹

The City should preemptively safeguard its residents from a food supply interruption through a Food Utility and Access Resilience Measure (FARM). A FARM initiative achieves food resilience by (1) developing local food production sources; (2) connecting these sources to each other and local community hubs, including food banks, grocery stores, restaurants, and local schools; and (3) powering local food production sources using renewable energy with battery backup storage that can operate despite disruptions to the main power grid. These efforts will be assisted by the requirements under SB 1383, which requires restaurants and grocery stores to compost left-over food. These businesses would benefit from having a lower cost method of disposing of still fresh but excess food.

1. Community resilience

Government planners are faced with an emergent set of existential threats to populations and infrastructure. Many threats stem from the rapid advancement of climate change, with the increasing frequency of extreme weather events, such as hurricanes,

¹ Berkeley Food Network, *About BFN*, (last accessed Jan. 5, 2023), <https://berkeleyfoodnetwork.org/who-we-are/about/>.

tornadoes, floods, droughts, and fires. In addition to climate disasters, disaster preparedness must brace for pandemics, electrical failure, targeted violence, and cyber attacks, water and energy infrastructure failure, sea level rise, supply chain breakdown, and food insecurity. These threats arise from a variety of sources and therefore require a systems-level approach that addresses all the possible points of failure in an urban food supply chain.

Accordingly, policymakers are embracing new emergency preparedness and disaster mitigation models centered on equity and resilience at the community level (community resilience). Community resilience refers to the ability of a community to withstand and recover from disruptions, such as natural disasters, economic downturns, or health crises. Community resilience leverages local community networks; local knowledge; local communication channels; local resources; and local bodies of governance and leadership.

2. *Food resilience*

One component of community resilience is food resilience, which refers to the ways in which a community can ensure its members have access to healthy and nutritious food, even during times of crisis. This can involve a variety of strategies, such as growing food locally, supporting local agriculture, building community gardens, developing food storage and preservation facilities, and forming relationships with local food producers. By building a resilient local food system, communities can reduce their reliance on remote sources of food and ensure that they are able to continue providing sustenance for residents, even during challenging times.

The State of California and the US Federal Government are increasingly incorporating food resilience in disaster planning and view food security as foundational to any resilience effort. For example, California’s budget for fiscal year 2022-23 allocates \$477 million toward agricultural resilience measures, including climate-friendly agriculture, soil health, water efficiency, and wildfire prevention.²

Additionally, California’s Strategic Growth Council (SGC) has called for local-level resilience through its Community Resilience Centers (CRC) program. The CRC program will “fund new construction and upgrades of neighborhood-level resilience centers to provide shelter and resources during climate and other emergencies . . .”³

At the federal level, President Joe Biden signed National Security Memorandum-16 (NSM-16) in November 2022 “to strengthen the security and resilience of United States food and agriculture.” NSM-16 provides a process for identifying and assessing threats to food

² Arohi Sharma, *FY22 California Budget Invests in Agricultural Resilience*, NRDC (Sep. 21, 2022), <https://www.nrdc.org/experts/arohi-sharma/fy22-california-budget-invests-food-farm-resilience>.

³ Cal. Strategic Growth Council, *SGC Launches Development of Community Resilience Centers (CRC) Program*, (July 5, 2022), <https://sgc.ca.gov/news/2022/07-05.html>.

security, strengthens relationships with the private sector, and promotes systems that respond to disruptions in the food sector.⁴

3. Food is a fundamental human right.

It has been often said, “There are only nine meals between mankind and anarchy.” And Vladimir Lenin said, “Every society is three meals away from chaos.” Like air and water, food is essential for survival and the only commodity that cannot be postponed. When social, economic, or ecological barriers block access to nutritious food, people suffer. Food-insecure individuals have higher rates of mental health issues, and hungry children attain lower academic achievement than their peers.⁵

The United Nations recognizes the fundamental right to food for all. At its core, this right is the right to “all nutritional elements” necessary to live a “healthy and active life” and to the means to access these elements.⁶ The access portion of this right focuses on physical and economic access.⁷

The US federal government has failed to legally recognize such a right, but some states have made progress. In 2021, the State of Maine recognized the right to food in its constitution.⁸ The amendment declares that “all individuals have the right to grow, raise, harvest, produce and consume the food of their own choosing for their own nourishment, sustenance, bodily health, and well-being.”⁹ This amendment follows Maine’s 2017 Food Sovereignty Act, which built a food sovereignty foundation by permitting municipal governments to regulate local food systems with the guarantee of state recognition.¹⁰

4. Food insecurity rates are rising in the Bay Area.

Food insecurity is a growing crisis throughout the US. The US Department of Agriculture (USDA) defines food insecurity as “a household-level economic and social condition of limited or uncertain access to adequate food.”¹¹ The USDA found that in 2020, almost 14 million households (10.5% of the population) did not have enough food to meet their needs. In

⁴ See National Security Memorandum on Strengthening the Security and Resilience of United States Food and Agriculture, (Nov. 10, 2022), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/11/10/national-security-memorandum-on-on-strengthening-the-security-and-resilience-of-united-states-food-and-agriculture/>.

⁵ Arohi Pathak, Ryan Richards & Marc Jarsulic, *The United States Can End Hunger and Food Insecurity for Millions of People*, Center for American Progress Action Fund (Aug. 11, 2022), <https://www.americanprogress.org/article/the-united-states-can-end-hunger-and-food-insecurity-for-millions-of-people/>.

⁶ Off. of the High Comm’r for Hum. Rts., *The Right to Adequate Food*, Fact Sheet No. 34 (Apr. 2010), <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet34en.pdf>.

⁷ *Id.*

⁸ Tess Brennan, *Maine Becomes the First US State to Recognize the Right to Food in a Constitutional Amendment*, Universal Rts. Grp. Geneva (Jan. 19, 2022), <https://www.universal-rights.org/blog/maine-becomes-the-first-us-state-to-recognise-the-right-to-food-in-a-constitutional-amendment/>.

⁹ *Id.*

¹⁰ *See id.*

¹¹ USDA, *Definitions of Food Security*, <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-u-s/definitions-of-food-security/>.

California alone, more than 4 million people were reported to be food insecure in May 2022,¹² and In the Bay Area, food insecurity is increasing. In 2018, the San Francisco Chronicle reported that 11.5% of Bay Area residents, 870,000 people, were food insecure.¹³ The economic and public health impacts of COVID-19 exacerbated food insecurity. A 2021 study by San Jose State University found that Bay Area food insecurity rates spiked from 20% to 33% from the beginning of the COVID-19 pandemic to March 2021.¹⁴

In Berkeley and Albany pre-pandemic, an estimated 24,000 individuals were food insecure.¹⁵ The demand for food aid in Berkeley increased sharply during the pandemic, forcing the Berkeley Food Network (BFN) to *triple* its operations in the first half of 2020.¹⁶

The growing need for food aid in Berkeley highlights the fragility of the degree of food accessibility at any given time. If there is a disruption in the food supply chain, households that are already food insecure will face even greater barriers to food access. Further, the COVID-19 pandemic demonstrated that disruption would drastically increase the number of households that are food insecure. Without a safety net to insulate our community from these devastating supply chain shocks, a large proportion of households would find themselves in a struggle to survive.

5. Natural disasters, climate change, and foreign conflicts further threaten food access.

Climate change, natural disasters, and increasing global conflict jeopardize the world's food security. The market for food spans internationally, so disruptions in one region send ripple effects, in the form of food scarcity or price shocks, throughout the rest of the food supply chain. The supply chain is fragile; it only takes a disruption in one of the chain's many links for consumers to lose access to healthy food.¹⁷ Recognizing the supply chain's vulnerability, the USDA built a Food System Transformation framework to create a more resilient food network.¹⁸ Climate change reduces food availability and is exacerbated by transporting food long distances that could be grown locally.

The COVID-19 pandemic disrupted "all segments of food supply chains," including farming, food processing, transportation, and final demand.¹⁹ At the farming level, labor-

¹² Toni Koraza, *California to Face a Devastating Crisis*, NewsBreak (May 5, 2022), <https://original.newsbreak.com/@toni-koraza-561162/2590989189701-california-to-face-a-devastating-crisis>.

¹³ Tara Duggan, *How Families Slip Through*, San Francisco Chronicle (Nov. 18, 2018), <https://www.sfchronicle.com/food/article/The-hidden-hungry-Bay-Area-paradox-13379274.php>.

¹⁴ Giselle Pignotti et al., *Food Insecurity and Food Access during COVID-19 in the San Francisco Bay Area*, San Jose State Univ. (Mar. 2021).

¹⁵ Berkeley Food Network, *Programs*, (last accessed Dec. 20, 2022), <https://berkeleyfoodnetwork.org/what-we-do/programs/>.

¹⁶ Berkeley Food Network, *Major Hunger-Relief Investment Will Help Alleviate Growing Food Insecurity in Berkeley*, (May 19, 2020), <https://berkeleyfoodnetwork.org/major-hunger-relief-investment-will-help-alleviate-growing-food-insecurity-in-berkeley/>.

¹⁷ Mario Lubetkin, *2021 Revealed the Fragility of Food Systems*, ReliefWeb (Dec. 16, 2021), <https://reliefweb.int/report/world/2021-revealed-fragility-food-systems>.

¹⁸ USDA, *USDA Announces Framework for Shoring Up the Food Supply Chain and Transforming the Food System to Be Fairer, More Competitive, More Resilient*, (June 1, 2022), <https://www.usda.gov/media/press-releases/2022/06/01/usda-announces-framework-shoring-food-supply-chain-and-transforming>.

¹⁹ OECD, *Food Supply Chains and COVID-19: Impacts and Policy Lessons*, (June 2, 2020), <https://www.oecd.org/coronavirus/policy-responses/food-supply-chains-and-covid-19-impacts-and-policy-lessons-71b57aea/>.

intensive farms—those producing crops like fruits and vegetables—suffered from production shortages when their sick workers were unable to work.²⁰ Labor shortages also inhibited food processing facilities, with many reporting high rates of worker absences during the pandemic.²¹ Necessary pandemic measures severely impacted the transportation of fruits and vegetables. Fruits and vegetables are perishable foods with a “high value-to-weight ratio,” so they are transported on passenger planes. Declines in passenger air travel thus caused bottlenecks in fruit and vegetable transportation.²² The last step in the supply chain is getting food to consumers. When consumers lost their jobs due to the initial economic downturn in 2020, they lost economic access to food, endangering those without social safety nets.

Like the COVID-19 pandemic, other natural disasters threaten global food security by disrupting agriculture production, food availability, and food accessibility. A survey on natural disasters between 2003 and 2013 by the Food and Agriculture Organization of the United Nations “showed 25% of disaster-related losses are in agriculture sectors . . .”²³ The impact of a natural disaster depends on the type of natural disaster that occurs. For example, researchers report that droughts in China cut wheat yields by 5.8% over 30 years.²⁴ Droughts are a growing danger in California that reduces usable farmland. In 2022, California’s irrigated farmland shrank by 752,000 acres (nearly 10%) compared with 2019, the year before the drought.²⁵ The amount of fallowed farmland in 2022 surpassed the peak during California’s last drought, which lasted from 2012 to 2016.²⁶

While droughts are long-term natural disasters with creeping effects, wildfires can impact the supply chain immediately. During the 2020 California wildfires, the intense smoke made it unsafe for farm workers and livestock to be outdoors.²⁷ Without workers, farms had to plow under many crops, meaning these crops never reached consumers. Additionally, the wildfires destroyed vital land where farmers grew food; the fires destroyed the existing crops and contaminated the soil, jeopardizing future harvests.²⁸

War can also disrupt the food supply chain. The Russian invasion of Ukraine, one of the world’s biggest wheat and corn producers, caused many countries to skyrocket food prices.²⁹

²⁰ OECD, *Food Supply Chains and COVID-19: Impacts and Policy Lessons*, (June 2, 2020), <https://www.oecd.org/coronavirus/policy-responses/food-supply-chains-and-covid-19-impacts-and-policy-lessons-71b57aea/>.

²¹ *Id.*

²² *Id.*

²³ James Ducker, *Investigating the Impact of Disasters on Food and Agriculture*, AZO Life Sciences (last updated Nov. 26, 2021), <https://www.azolifesciences.com/article/Investigating-the-Impact-of-Disasters-on-Food-and-Agriculture.aspx>.

²⁴ Shi et al., *Crop Yield and Production Responses to Climate Disasters in China*, 750 *Science of the Total Environment* (2021).

²⁵ Ian James, ‘It’s a Disaster.’ *Drought Dramatically Shrinking California Farmland, Costing \$1.7 Billion*, Los Angeles Times (Nov. 23, 2022), <https://www.latimes.com/environment/story/2022-11-23/drought-cost-california-agriculture-1-7-billion-this-year>.

²⁶ *Id.*

²⁷ Phil Lempert, *California Wildfires: The Enormous Effect on Our Food Supply*, Retail Dietitians Bus. Alliance (Dec. 9, 2020), <https://www.retaildietitians.com/articles/california-wildfires-the-enormous-effect-on-our-food-supply/>.

²⁸ *Id.*

²⁹ Rob Garver, *Global Food Prices Rise with Ukraine-Russia Agreement in Doubt*, VOA News (Oct. 31, 2022), <https://www.voanews.com/a/global-food-prices-rise-with-ukraine-russia-agreement-in-doubt-/6813606.html>.

The invasion halted Ukrainian exports and damaged Ukraine’s rail infrastructure. As a result, large quantities of grain were trapped in Ukraine, preventing the entire 2022 harvest from having adequate storage space.³⁰ This supply shock affected countries throughout the world, including India, Egypt, and South Korea. Further, Russia was one of the top exporters of fertilizers before the invasion. Stricter controls on Russian exports caused the price of fertilizer to spike worldwide, leading farmers to reduce their planned harvests.³¹

6. Food Citizenship

“Food citizenship” describes the rights and responsibilities that individuals have in relation to the food they eat and produce. Food citizenship can include making informed choices about food purchases and consumption, supporting sustainable and ethical food systems, and advocating for food policies that prioritize the health and well-being of individuals and the environment. Food citizenship can also involve taking action to address issues such as food waste, hunger, and access to healthy food in underserved communities. Essentially, being a food citizen means actively engaging in the food system and working towards creating a more sustainable and equitable food system for all.

Food citizenship can play an important role in promoting community resilience by supporting local food systems and promoting food security. When communities have access to healthy and sustainable food sources, they are better able to withstand and recover from disruptions, such as natural disasters or economic downturns.

If a community is able to grow or produce its own food, it is less dependent on outside sources and can continue to provide for itself in the event of a supply chain disruption. Additionally, supporting local food systems can help to boost the local economy and create jobs, which can increase the overall resilience of the community.

Further, food citizenship can promote food justice and equity within a community, ensuring that all members have access to healthy and affordable food. This can reduce food insecurity and prevent vulnerable populations from being disproportionately affected by disruptions to the food system.

7. A food resilience system could insure Berkeley against disruptions in the food supply chain.

Building a food resilience system *before* a supply chain disruption protects food-insecure households and prevents more households from becoming food insecure. Food resilience is the ability to withstand and recover from disruptions to food access in a way that ensures a sufficient supply of acceptable and accessible food for all³².

³⁰ Dea Bankova, Prasanta Kumar Dutta & Michael Ovaska, *The War in Ukraine is Fuelling a Global Food Crisis*, Reuters (May 30, 2022), <https://graphics.reuters.com/UKRAINE-CRISIS/FOOD/zjqkgomjvx/>.

³¹ *Id.*

³² Johns Hopkins Center for a Livable Future, *Food System Resilience*, <https://clf.jhsph.edu/projects/food-system-resilience>.

8. FARM as a Community Food Utility: Overview³³

The mission of FARM is to foster a resilient food system that can withstand supply chain shocks and ensure all people in the community have access to adequate amounts of wholesome, nutritious foods produced by ecologically sound and socially responsible means. FARM would be a chartered public utility based on the concept of food citizenship, similar to the existing utilities for energy and water systems. FARM would have three major components: a) Community Layer, b) Food Production Layer, and c) Energy Resilience.

a. Community Layer

Growing food locally promotes physical access to food in times of crisis. To ensure that enough food is locally grown, it is critical to connecting community gardens, backyard gardens, and other urban farms into a production network with delivery centers.

i. Community Gardens and Backyard Gardens

The FARM should create a network of community gardens and backyard gardens in order to support community resilience by providing local food sources, fostering social connections, and promoting environmental sustainability.

Community gardens and backyard gardens can provide communities with a local source of fresh, healthy, and affordable produce. This can help to increase food security and reduce dependency on outside sources, making communities more resilient in the face of disruptions to the food supply chain. One backyard garden can provide food for up to six families.

Community gardens can also provide a space for community members to come together and engage in productive, healthy activities. This can help to build social connections and a sense of community, which are important for promoting resilience in the face of challenges.

Furthermore, community gardens and backyard gardens help to promote environmental sustainability and resilience by providing a space for growing food using sustainable and environmentally-friendly practices. This can help to reduce the community's overall ecological footprint and make it more resilient in the face of environmental challenges.

ii. Synchronizing Local Food Production with Food Banks, Restaurants, Schools, and Grocery Stores

Yields from local food production can be distributed to local food banks, restaurants, schools, and grocery stores. This omnichannel production and distribution model has two key benefits. First, it ensures that locally produced food is not wasted. Second, it provides a source of feedback for FARM because

³³ lkerd, J. (n.d.). *Enough Good Food For All; A Community Food Utility*. Communityfoodutility. Retrieved January 4, 2023, from <https://sites.google.com/site/communityfoodutility?pli=1>

restaurants, schools, and grocery stores can provide guidance to FARM for improvements in usability, quantity, and quality.

iii. Supplemental Nutrition Assistance Program (SNAP)

The community layer should incorporate a SNAP group-buying mechanism whereby SNAP recipients can deposit assistance funds into a FARM account. In return, the FARM would ensure that each recipient received enough good food to meet their basic needs, regardless of the amount of their individual SNAP payment. Some non-profit organizations are currently operating in this manner.³⁴

b. Production Layer

Additionally, FARM would partner with urban agriculture companies and nonprofits with experience and expertise in producing high crop yields with accelerated harvest velocity in urban settings. The yields from these producers could supplement yields from existing community gardens while minimizing seasonal fluctuations and other disruptions in the supply chain.

To increase local food production, the City would offer certain economic incentives to urban agriculture companies to co-locate within the City of Berkeley. In exchange for these incentives, companies would agree to give the City Most Favored Nation (“MFN”) status, with the right of first refusal and right of first offer on the companies’ food items in the event of a local food supply chain disruption event (food shock). As discussed below, the FARM board will institute policies that define a food shock that triggers the MFN agreement. For example, the board may define a food shock to include a week-long interruption of certain food staples at two grocery stores.

Recent innovations continue to mitigate the historical limitations of urban agriculture: land, labor, and potential yield. A study on urban farms in New York City found that the crops in urban farms produced higher yields than their conventional farm counterparts, thus making up for the spatial limitations that urban farms may face.³⁵ Additionally, peri-urban farming, which produces substantial amounts of food on a relatively small amount of land on the fringes of a city, has emerged as a space-efficient form of urban agriculture.³⁶ Gotham Greens addresses the yield limit issue by growing crops inside greenhouses with hydroponic technology. Gotham Greens’ greenhouses are located near cities, allowing for proximity to communities while avoiding real estate

³⁴ See e.g., *Community Resilience Centers*, CA.gov (last accessed Nov. 30, 2022), <https://sgc.ca.gov/programs/community-resilience-centers/>.

³⁵ Mara Gittleman et al., *Using Citizen Science to Quantify Community Garden Crop Yields*, 5 *Cities and the Environment* (2012), <https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1095&context=cate>.

³⁶ Ina Optiz et al., *Contributing to Food Security in Urban Areas: Differences Between Urban Agriculture and Peri-Urban Agriculture in the Global North*, 33 *Agriculture and Human Values* (2016), <https://link.springer.com/article/10.1007/s10460-015-9610-2>.

constraints.³⁷ Closer to home, Upside Foods has opened a production facility to produce high-quality laboratory-grown meat at scale.³⁸

i. Controlled Environment Agriculture (CEA)

CEA is an indoor food production method that uses stacked shelves, modular rack systems, or tower gardens to increase crop yields using less surface area significantly.³⁹ Technologies such as ultra-efficient LED lighting, automated environmental control systems, and dehumidification recapture loops can dramatically reduce resource consumption, including consumption of energy, water, and nutrients.

Exceptional yields and multiple harvests per year make indoor farming economically viable and sustainable over time. These two factors are possible because indoor farming creates an environment for resource-efficient methods like aeroponics (i.e., spraying nutrient-rich mist on root zones that are suspended in the air) and aquaponics.

Aquaponics is a sustainable farming method that combines traditional aquaculture (raising fish) with hydroponics (growing plants in water without soil). In an aquaponic system, fish produce waste that is converted into plant nutrients. The plants, in turn, help to purify the water for the fish. This closed-loop system can be highly efficient, as it reduces the need for external inputs such as synthetic fertilizers and pesticides, and it allows for year-round production in a controlled environment. Aquaponics can be used to grow various vegetables, herbs, and other plants, as well as raise fish such as tilapia, trout, and bass. It can be a great option for urban farming, as it requires less space and water than traditional farming methods.

Compared to traditional farming techniques, aeroponics and aquaponics dramatically increase yields and quality while reducing water consumption by as much as 90%.⁴⁰

ii. Repurposing Empty Commercial Space

Indoor farms can be developed in underutilized warehouses, shuttered big boxes retail locations such as the vacant CVS on Shattuck and Bancroft, and the vacant Walgreens on Ashby and San Pablo, or under freeway overpasses such as Gilman and I-80. To create dual-purpose land-use throughout the city, advanced greenhouses could be elevated above existing ground-level parking lots at locations such as Whole Foods in North Berkeley.

³⁷ Gotham Greens, *Our Story*, <https://www.gothamgreens.com/our-story/>.

³⁸ Katie Spalding, *World's Most Advanced Lab-Grown Meat Facility Opens in California*, IFL Science (Nov. 8, 2021), <https://www.iflscience.com/worlds-most-advanced-labgrown-meat-facility-opens-in-california-61548>.

³⁹ Sarah Federman, *Vertical Farming for the Future*, USDA (Oct. 25, 2021), <https://www.usda.gov/media/blog/2018/08/14/vertical-farming-future>.

⁴⁰ Michelle Keller, *Aeroponics - What Is It & Why Is It Important?*, Living Greens Farm (Aug. 4, 2020), <https://www.livinggreensfarm.com/blog/what-is-aeroponics>.

c. Energy Resilience

The food production network should integrate renewable energy systems that can remain resilient in the event of a disruption to the energy grid. Such a system could employ local micro-grids with solar and storage to provide power to local food production facilities. Additionally, a renewable energy system could help limit environmental impact and reduce long-term costs.⁴¹

This renewable energy system would combine various methods of production to maximize redundancies and extend grid independence of the food resilience program in the event of a major energy crisis. Existing technologies such as rooftop solar arrays and onsite battery storage systems can be combined with emerging technologies such as urban wind turbines,⁴² transparent solar panels that allow crops below to absorb energy,⁴³ and biofuel co-generators⁴⁴ for use when other means of production are not available. These emerging technologies should be considered and planned for when developing the energy independence component of FARM, placing Berkeley at the forefront of sustainability in urban farming.

9. FARM: Organization

The FARM will be a self-funded non-profit chartered by the City of Berkeley, with a self-appointed Board of Directors, approved by the City Council, with duties and administrative powers also approved by the City Council.

The FARM could be organized as a “vertical cooperative.”⁴⁵ A cooperative is a user-owned and controlled entity from which benefits are distributed equitably.⁴⁶ As a vertical cooperative, the FARM would operate on all levels of the vertical food system—linking producers, processors, distributors, retailers, and consumers. The system as a whole must be sustainable if the FARM continues to provide food security for the community. All recipients and participants in the vertical system would be members of the FARM cooperative.

⁴¹ US Department of Agriculture, *Rural Energy for America Program Renewable Energy Systems & Energy Efficiency Improvement Guaranteed Loans & Grants*, <https://www.rd.usda.gov/programs-services/energy-programs/rural-energy-america-program-renewable-energy-systems-energy-efficiency-improvement-guaranteed-loans>.

⁴² IBIS Power, *Easily Upgrade Your Building to Renewable Energy*, (last accessed Dec. 20, 2022), <https://ibispower.eu/powernest/>.

⁴³ Anthony Cuthbertson, *Record-Breaking Transparent Solar Panels Pave Way for Electricity-Generating Windows*, Independent (Oct. 28, 2022), <https://www.independent.co.uk/tech/solar-panel-world-record-window-b2211057.html>.

⁴⁴ Diego Perrone et al., *Energy and Economic Investigation of a Biodiesel-Fired Engine for Micro-Scale Cogeneration*, 14 *Energies* (2021), https://www.researchgate.net/publication/348594263_Energy_and_Economic_Investigation_of_a_Biodiesel-Fired_Engine_for_Micro-Scale_Cogeneration.

⁴⁵ John Ikerd, *The Economic Pamphleteer: Reflections on Cooperation*, *Journal of Agriculture, Food Systems, and Community Development* (2013), <https://doi.org/10.5304/jafscd.2013.032.001>.

⁴⁶ USDA, *Understanding Cooperatives: Cooperative Business Principles*, (Revised Apr. 2011), https://www.rd.usda.gov/sites/default/files/publications/CIR_45-2.pdf.

10. FARM: Governance

The FARM will begin with a volunteer, skills-based governing board, named the Food Security Council, with the City acting as a facilitator. Once the FARM has achieved grant funding, the Food Security Council members will be compensated. The Food Security Council should consist of community members, grant writers, SNAP recipients, food producers, an organized labor representative, and experts in resilience, logistics, renewable energy, and public health. All members would be appointed by the Berkeley City Council. The Food Security Council will have six core responsibilities:

1. Form the FARM as a non-profit organization;
2. Apply for grant funding;
3. Seek external partnerships;
4. Manage the FARM's efforts to develop and maintain food production and distribution processes;
5. Determine the caloric needs of residents based on empirical evidence to set food production goals for the FARM; and
6. Define food shock events (e.g., how many days without staples constitute a food shock).

11. FARM: Potential Funding Sources

Funding sources include fees for administering government food assistance programs and grants from California, the USDA, and the Department of Energy (DOE) are available.

a. Federal and State Food Insecurity Related Grants and Programs

| Grant or Program | Amount | Source/Sponsor | Eligible Projects |
|---|---|----------------|--|
| Local Foods, Local Places | - | USDA and EPA | Developing the local food economy. Examples: community gardens, kitchens, farmer's markets, and other food-related enterprises that can create new businesses and revitalize main streets, improve access to fresh, local food, and protect the environment. |
| Community Food Projects Competitive Grants Program (CFPCGP) | \$25K-35K in planning; Up to \$125K per year for up to four years | USDA | Planning toward the improvement of community food security in accordance with the goals of CFPCGP. |
| The GusNIP - Nutrition Incentive Program | - | USDA | Projects intended to increase the purchase of fruits and vegetables by providing incentives at the point of purchase among income-eligible consumers participating in the USDA Supplemental Nutrition |

| | | | Assistance Program (SNAP) |
|---|--|------|--|
| Farm to School Grant | Up to \$500K | USDA | Linking local producers with schools and other organizations participating in child nutrition programs working to purchase and include locally grown fruits, vegetables, grains, meat, dairy, and seafood in program meals. |
| Conservation Innovation Grants | - | USDA | Projects supporting the development of farming technology to efficiently increase agricultural production through the conservation of natural resources, such as water and soil. |
| The Farmers Market Promotion Program (FMPP) | - | | Projects that develop, coordinate, and expand direct producer-to-consumer markets to help increase access to and availability of locally and regionally produced agricultural products by developing, coordinating, expanding, and providing outreach, training, and technical assistance to domestic farmers markets, roadside stands, community-supported agriculture programs, agritourism activities, online sales or other direct producer-to-consumer (including direct producer-to-retail, direct producer-to-restaurant, and direct producer-to-institutional marketing) market opportunities. |
| Local Food Promotion Program | \$25,000 to \$100,000 (for Planning projects) and \$100,000 to \$500,000 (for Implementation and Farm to Institution projects) | USDA | Grants for Planning projects help food businesses to develop and test services. Grants for Implementation projects fund the creation of food businesses like community kitchens. Grants for Farm to Institution projects support institutional food services like schools with linkage to farms. |
| Food and Agriculture Service Learning Program | - | USDA | For private organizations or non-profits to increase the capacity for food, garden, and nutrition education within host organizations or entities, such as school cafeterias and classrooms while fostering higher levels of community engagement between farms and school systems by bringing together stakeholders from distinct parts of the food system. |

b. Federal and State Resilience Grants and Programs

| Grant or Program | Amount | Source/ Sponsor | Eligible Projects |
|---|--------|--|---|
| CA Community Resilience Centers (anticipated release in spring 2023) | - | California Strategic Growth Council | New construction and upgrades of neighborhood-level resilience centers to provide shelter and resources during climate and other emergencies. The program will also fund year-round services and ongoing programming that build overall community resilience. |
| Building Resilient Infrastructure and Communities (BRIC) Grant | - | FEMA | Hazard mitigation projects, reducing the risks they face from disasters and natural hazards. |
| Hazard Mitigation Grant Program (HMGP) | - | FEMA/ OEM | Developing hazard mitigation plans and rebuilding in a way that reduces, or mitigates, future disaster losses in local communities. |
| Regional Resilience Planning and Implementation Grant Program | - | Governor's Office of Planning and Research | Advancing resilience and responding to their greatest climate risks through three major activities: capacity building, planning (including identifying climate resilience priorities), and project implementation. |
| CA Transformative Climate Communities | - | California Strategic Growth Council | Development and infrastructure projects that achieve major environmental, health, and economic benefits in California's most disadvantaged communities. |

c. Federal and State Renewable Energy Grants and Programs

| Grant or Program | Amount | Source/Sponsor | Eligible Projects |
|--|---------------|---|---|
| Energy Efficiency and Conservation Block Grant (EECBG) Program | \$500,000,000 | Department of Energy | Development and implementation of an energy efficiency and conservation strategy; establishment of financial incentive programs for energy efficiency improvements. |
| CA Transformative Climate Communities | - | California Strategic Growth Council | Development and infrastructure projects that achieve major environmental, health, and economic benefits in California's most disadvantaged communities. |
| CA Distributed Electricity Backup Assets Program | - | California | Construction of cleaner and more efficient distributed energy assets that would serve as on-call emergency supply or load reduction for the state's electrical grid during extreme events. |
| CA Climate Catalyst Revolving Loan Fund | - | California Infrastructure and Economic Development Bank | <p>Projects that promote climate-smart technologies and practices across the agricultural value chain</p> <p>Projects may include (but are not limited to):</p> <ul style="list-style-type: none"> ● On-farm and food processing renewable energy, including electricity, fuels, and bioenergy ● Energy, water, and materials efficiency ● Methane reduction projects that use best practice approaches consistent with state policy goals ● Energy storage or microgrids ● Equipment replacements |
| Renewable Energy For Agricultural Program (REAP) | - | California Energy Commission | Installation of renewable energy technologies serving agricultural operations to reduce greenhouse gas emissions. |

12. Berkeley is well positioned for a food resilience program.

The City of Berkeley has already taken steps that facilitate a food resilience program. In 2018, the City updated its Urban Agriculture Ordinance, lowering barriers to urban farming in Berkeley.⁴⁷ The update reduced the permit costs for larger-scale farming projects to \$1000 and removed requirements that restricted farming to select city-owned properties.⁴⁸

ENVIRONMENTAL SUSTAINABILITY

A food resilience program that involves urban agriculture is expected to reduce pollution from food transportation. Urban agriculture shortens the supply chain, truncating the journey from farm to table.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

Adopted in 2009, Berkeley’s Climate Action Plan outlines a vision for a more sustainable city. One key goal in the Plan is for the “majority of food consumed in Berkeley” be produced locally.⁴⁹ FARM advances this goal by bringing food production and individuals closer together.

On July 24, 2022, the City of Berkeley adopted an ordinance that updated the municipal code on urban agriculture as follows⁵⁰:

Purpose (23.318.010)

The purpose of the Urban Agriculture related regulations contained in this chapter is to provide the following community benefits:

- A. Support the local economy and increase access to fresh local produce.
- B. Strengthen the health and social fabric of communities by encouraging and supporting community gardens.
- C. Accomplish the Berkeley Climate Action Plan goal of supporting efforts to build more complete and sustainable local food production and distribution systems

Applicability (23.318.020)

These regulations supersede definitions of incidental or ancillary uses.

Urban Agriculture Uses and Levels of Discretion (23.318.030)

- A. Zoning Certificate. When all of the thresholds in Section [23.318.040](#) (Thresholds) are met, the use is considered Low-Impact Urban Agriculture (LIUA) and is allowed by right with a Zoning Certificate.
- B. Administrative Use Permit. When one or more of the thresholds in Section [23.318.040](#) (Thresholds) are not met, the use is considered High-Impact Urban Agriculture (HIUA) requires an AUP. (Ord. 7787-NS § 2 (Exh. A), 2021)

Thresholds (23.318.040)

⁴⁷ Stuart Luman, *Berkeley’s New Urban Agriculture Ordinance Encourages Residents to Grow Their Own Food*, Berkeleyside (Aug. 27, 2018), <https://www.berkeleyside.org/2018/08/27/berkeley-urban-agriculture-law>.

⁴⁸ *Id.*

⁴⁹ City of Berkeley, *Berkeley Climate Action Plan*, (June 2, 2009), <https://berkeleyca.gov/your-government/our-work/adopted-plans/berkeley-climate-action-plan>.

⁵⁰ Berkeley Municipal Code 23.318.050.

The levels of discretion for urban agriculture are based on the following thresholds:

- A. Maximum parcel size of 7,500 square feet.
- B. Maximum lot coverage of 20 percent for accessory structures and buildings.
- C. Maximum group classes and workshops of 20 participants per class conducted no more than three times per week.
- D. Hours of operation from 8:00 a.m. to 8:00 p.m., including but not limited to activities related to gardening and planting of horticultural crops, group classes, and sales.
- E. Use of organic pesticides. (Ord. 7787-NS § 2 (Exh. A), 2021)

Operation Standards (23.318.050)

- Performance Standards. The growing, production, or sale of urban agricultural products may not involve hazardous materials or processes or create offensive or objectionable noise, vibration, odors, heat, dirt, or electrical disturbance perceptible by a person beyond the lot line of the subject lot.
- Sales and Donations.
 - Sales and/or donations of urban agricultural products grown and produced on-site are permitted.
 - If selling or donating urban agricultural products to the public, the urban agriculture use shall comply with all applicable food safety laws, including the California Health and Safety Code.
- Garbage and Compost.
 - Garbage and compost receptacles must be screened from the street and adjacent properties by utilizing landscaping, fencing, or storage structures and all garbage shall be removed from the site weekly.
 - Compost piles and containers must be set back at least 10 feet from residential buildings when an urban agriculture use abuts a residential use.
- Farm Equipment. Use of mechanized farm equipment is not permitted in Residential Districts and when the urban agriculture use abuts a residential use, with the following exceptions:
 - Heavy equipment may be used initially to prepare the land for agriculture use.
 - Landscaping equipment designed for household use is permitted.
 - Equipment when not in use must be enclosed or otherwise screened from sight. (Ord. 7787-NS § 2 (Exh. A), 2021)

FISCAL IMPACTS OF RECOMMENDATION

Fiscal impacts include staff time for analysis.

RATIONALE FOR RECOMMENDATION

Food insecurity rates in the Bay Area are worrying. Food shortages, natural disasters, and global conflicts further threaten the availability and economic accessibility of healthy food. The increasingly intense impacts of climate change create heightened cause for concern. Therefore, to create a food safety net in the City of Berkeley, it is necessary to implement FARM.

While FARM is not intended to replace conventional food retailing, it should produce enough food to supplement the normal food supply during times of distress. Reaching this quantity requires a

coordinated effort and collaboration with experts in the field of urban agriculture, including small businesses and nonprofit organizations. Therefore, the Office of Economic Development should research incentives for these entities to partner with the City of Berkeley to design and implement a food utility pilot.

OUTCOMES AND EVALUATION

This food resilience initiative is expected to address food insecurity for the City's population and maintain that security in the event of environmental and economic shocks.

CONTRIBUTORS

Leanne Gluck, Project Director, Agriculture Innovation
John Ikerd, Professor Emeritus of Agricultural Economics
Ben Cadranel, Development Officer
Ian Richards, Agricultural Technology Consultant

CONTACT PERSON

Councilmember Ben Bartlett
James Chang
Kyle Tang

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jchang@cityofberkeley.info
ktang@cityofberkeley.info

| 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 2 | 1. Hopkins Corridor Plan |
| Feb. 21 (WS) | 1. Local Pandemic/Endemic Update Report 2. Housing Preference Policy |
| Feb 28 | 1. Zero Waste 5-Year Rate Schedule (4:00 p.m.) |
| 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 |

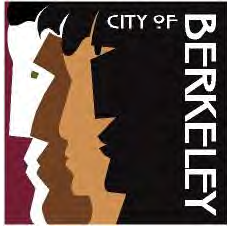
| Unscheduled Workshops and Special Meetings |
|--|
| None |

| 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.

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

| <u>Boards and Commissions</u> | <u>Meetings Held Under COVID March - Oct</u> | <u>Regular Mtg. Date</u> | <u>Secretary</u> | <u>Dept.</u> | <u>Resume Regular Schedule in January 2021?</u> | <u>Note</u> |
|---|--|--------------------------|--------------------|--------------|---|--|
| Commission on Aging | 0 | 3rd Wed. | Richard Castrillon | HHCS | REDUCED FREQUENCY | Significant Dept. resources assigned to COVID response |
| Housing Advisory Commission | 0 | 1st Thur. | Mike Uberti | HHCS | REDUCED FREQUENCY | Significant Dept. resources assigned to COVID response |
| Measure O Bond Oversight Committee | 0 | 3rd Monday | Amy Davidson | HHCS | REDUCED FREQUENCY | Significant Dept. resources assigned to COVID response |
| Transportation Commission | 2 | 3rd Thur. | Farid Javandel | PW | REDUCED FREQUENCY | Staff assigned to COVID response |
| Children, Youth, and Recreation Commission | 0 | 4th Monday | Stephanie Chu | PRW | NO - SEPT 2021 | Staff assigned to COVID response |
| Youth Commission | 0 | 2nd Mon. | Ginsi Bryant | PRW | NO - SEPT 2021 | Staff assigned to COVID response |
| Community Environmental Advisory Commission | 0 | 2nd Thur. | Viviana Garcia | PLD | NO - JUNE 2021 | Staff assigned to COVID response |
| Cannabis Commission | 0 | 1st Thur. | VACANT | PLD | NO - JAN. 2022 | Staff vacancy |
| Peace and Justice Commission | 0 | 1st Mon. | VACANT | CM | NO | Staff vacancy |
| Commission on Labor | 0 | 3rd Wed., alternate mon | Kristen Lee | HHCS | NO | Staff assigned to COVID response |
| Personnel Board | 1 | 1st Mon. | La Tanya Bellow | HR | NO | Staff assigned to COVID response |

RESOLUTION NO. 69,331-N.S.

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

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

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

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

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

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

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

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

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

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

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

Section 1. Boards and Commissions

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

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

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

Category B

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

Transportation Commission
Youth Commission
Zero Waste Commission
Loan Administration Board

Section 2. City Council Policy Committees

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

Section 3. City Council


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

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

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

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numalville, City Clerk



Office of the City Manager

October 22, 2020

To: Berkeley Boards and Commissions

From: *DWR* Dee Williams-Ridley, City Manager

Subject: Commission Meetings During COVID-19 Emergency

This memo serves to provide a summary and update of the status of meetings of Berkeley Boards and Commissions during the COVID-19 emergency declaration.

On March 10, 2020, the City Council ratified the proclamation of the Director of Emergency Services for a state of local emergency related to the COVID-19 pandemic. The emergency proclamation has been renewed twice by the Council and remains in effect.

On March 17, 2020, the City Council adopted Resolution No. 69,331-N.S. which placed limitations of the meetings of City legislative bodies, including all boards and commissions. The resolution allows for commissions to meet to conduct time-sensitive, legally mandated business with the authorization of the City Manager. Since that time, several commissions have obtained this approval and held meetings; many other commissions have not met at all since March.

The City Manager has periodically reviewed the status of commission meetings with the City Council Agenda & Rules Committee. Recently, at the October 12, 2020, Agenda & Rules Committee meeting, the City Manager presented a proposal to allow all commissions to meet under limited circumstances. The Committee voted to endorse the City Manager's recommendation.

Effective October 12, 2020, all City boards and commissions may meet once to develop and finalize their work plan for 2021 and to complete any Council referrals directly related to the COVID-19 pandemic response. A second meeting may be held to complete this work with specific authorization by the City Manager. It is recommended that the meeting(s) occur by the end of February 2021.

Commissions that have been granted permission to meet under Resolution No. 69,331-N.S. may continue to meet pursuant to their existing authorization, and may also meet to develop their 2021 work plan.

Commissions that have not requested meetings pursuant to the Resolution No. 69,331-N.S. may meet pursuant to the limitations listed above.

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

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

Prompts for Commissions to use in work plan:

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

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

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

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

Attachments:

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

cc: Mayor and City Councilmembers
Senior Leadership Team

RESOLUTION NO. 69,331-N.S.

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

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

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

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

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

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

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

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

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

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

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

Section 1. Boards and Commissions

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

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

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

Category B

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

Transportation Commission
Youth Commission
Zero Waste Commission
Loan Administration Board

Section 2. City Council Policy Committees

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

Section 3. City Council


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

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

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

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numalville, City Clerk

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

Berkeley Unified Facilities Staff performs a vigorous cleaning process after each use of the Boardroom. BUSD upgraded all HVAC filtration to MERV13, and with the inclusion of Needlepoint BiPolar Ionization, is achieving a rating that is closer to MERV18. Additionally, BUSD installed indoor air quality monitoring sensors in all facilities that constantly monitor Volatile Organic Compounds, 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 if staff determines that attendance is likely to exceed the capacity of the Boardroom. The capacity of the gymnasium is 200 persons. The overflow area will have a broadcast of the meeting in progress to allow participants to follow the proceedings and move to the Boardroom at the appropriate time to provide public comment if desired. This area will be monitored by the BUSD security personnel.

IX. In-Meeting Procedures

Revised and Supplemental Materials

All revised and supplemental materials for items on the agenda submitted after 12:00pm (noon) the day prior to the meeting must be submitted to the City Clerk in both paper AND electronic versions.

- Paper: 42 copies delivered to the Boardroom (distributed per normal procedure)
- Electronic: e-mailed to the Agenda Inbox (posted online)

Communications from the Public

The public may submit communications in hard copy at the Boardroom or electronically to clerk@cityofberkeley.info. To ensure that both in-person and remote Councilmembers receive the communication, the public should submit 10 copies at the Boardroom and send the electronic version to the e-mail listed above.

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

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An overflow indoor seating area will be available at the West Campus Gymnasium if staff determines that attendance is likely to exceed the capacity of the Boardroom. The capacity of the gymnasium is 200 persons. The

overflow area will have a broadcast of the meeting in progress to allow participants to follow the proceedings and move to the Boardroom at the appropriate time to provide public comment if desired. This area will be monitored by the BUSD security personnel.

IX. Food Provided for Elected Officials and Designated Staff

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

X. In-Meeting Procedures

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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

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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 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).

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. 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. The relevant capacity limits will be posted at the meeting location.

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

Distancing is encouraged for the dais and partitions will be used as needed for the seating positions on the dais.

V. Protocols for Remote Participation by Mayor or Councilmembers

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

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

VI. Hand Washing/Sanitizing

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

VII. Air Flow/Circulation/Sanitizing

Berkeley Unified Facilities Staff performs a vigorous cleaning process after each use of the Boardroom. BUSD upgraded all HVAC filtration to MERV13, and with the inclusion of Needlepoint BiPolar Ionization, is achieving a rating that is closer to MERV18. Additionally, BUSD installed indoor air quality monitoring sensors in all facilities that constantly monitor Volatile Organic Compounds, 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 200 persons. The overflow area will have a broadcast of the meeting in progress to allow participants to follow the proceedings and move to the Boardroom at the appropriate time to provide public comment if desired. This area will be monitored by the BUSD security personnel.

IX. Food Provided for Elected Officials and Designated Staff

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

X. In-Meeting Procedures

Revised and Supplemental Materials from Staff and Council

All revised and supplemental materials for items on the agenda submitted after 12:00pm (noon) the day prior to the meeting must be submitted to the City Clerk in both paper AND electronic versions.

- Paper: 42 copies delivered to the Boardroom (distributed per normal procedure)
- Electronic: e-mailed to the Agenda Inbox (posted online)

Communications from the Public

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.legislature.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>.

Hybrid Meeting Policies for City Council Meetings Revised April 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.

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 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 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.

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

Conference room capacity is limited to 15 persons. The relevant capacity limits will be posted 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, and masking requirements.
- A Councilmember at a remote location may impose reasonable capacity limits at their location.

VI. Hand Washing/Sanitizing

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

VII. Air Flow/Circulation/Sanitizing

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

VIII. Overflow in Gymnasium

An overflow indoor seating area will be available at the West Campus Gymnasium for every meeting. The capacity of the gymnasium is 200 persons. The overflow area will have a broadcast of the meeting in progress

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

IX. Food Provided for Elected Officials and Designated Staff

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

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

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

I. **Vaccination Status**

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

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

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

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

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

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

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

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

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

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

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

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

III. **Face Coverings/Mask**

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

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

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

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

IV. **Physical Distancing**

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

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

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

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

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

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

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

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

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

VI. **Hand Washing/Sanitizing**

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

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

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

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

VIII. Overflow in Gymnasium

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

IX. Food Provided for Elected Officials and Designated Staff

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

Hybrid Meeting Procedures for BUSD Boardroom (November 2021)

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

I. Vaccination Status

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

II. Health Check

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

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

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

III. Face Coverings/Mask

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

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

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

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

Hybrid Meeting Procedures for BUSD Boardroom (November 2021)

IV. Physical Distancing

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

V. Protocols for Remote Participation by Mayor or Councilmembers

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

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

VI. Hand Washing/Sanitizing

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

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VIII. Overflow in Gymnasium

An overflow indoor seating area will be available at the West Campus Gymnasium for every meeting. The capacity of the gymnasium is 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
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RE: Transition Period Prior to Repeal of COVID-related Executive Orders

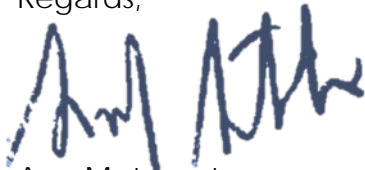
Dear Mr. Knaus, Ms. Miller, Ms. Hurst, Ms. Preston, Ms. Heaton, Ms. King, Ms. Coleman, Ms. Blacet-Hyden, Mr. McCormick, Mr. Anderson, and colleagues,

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

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

We appreciate your partnership throughout the pandemic.

Regards,

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

Ana Matosantos
Cabinet Secretary



NEWS RELEASE

Release
Number: 2021-58

June 4, 2021

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



Office of the City Manager

June 1, 2021

To: Agenda & Rules Committee

From: Dee Williams-Ridley, City Manager

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

Introduction

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

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

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

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

Meeting Options

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

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

The three meeting models available are:

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

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

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

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

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

Meeting Type Considerations

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

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

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

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

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

Other Considerations

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

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

Conclusion

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

Attachment:

1. Executive Order N-29-20

**EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA**

EXECUTIVE ORDER N-29-20

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

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

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

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

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

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

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

IT IS HEREBY ORDERED THAT:

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

otherwise-applicable Medicaid time limits in emergency situations.

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

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

In particular, any otherwise-applicable requirements that

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

are hereby suspended.

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

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

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

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

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

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

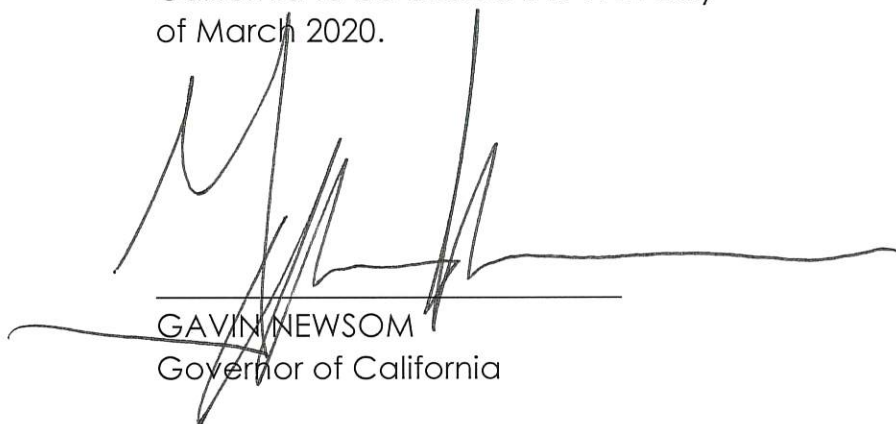
All of the foregoing provisions concerning the conduct of public meetings shall apply only during the period in which state or local public health officials have imposed or recommended social distancing measures.

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

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

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


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



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State




No Material
Available for
this Item

There is no material for this item.

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2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

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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



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 stymie 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)

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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

Page 2

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)

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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.