

# ANNOTATED AGENDA SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

Thursday, July 23, 2020

6:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – CHERYL DAVILA  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – RIGEL ROBINSON  
DISTRICT 8 – LORI DROSTE

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

*Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.*

*Live audio is available on KPFB Radio 89.3. Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx>.*

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/81015840931>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.*

*To join by phone: Dial **1-669-900-9128** and enter Meeting ID: **810 1584 0931**. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*To submit an e-mail comment during the meeting to be read aloud during public comment, email [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.*

*Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.*

*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:** 7:30 p.m.

**Present:** Kesarwani, Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

**Absent:** None.

## Action Calendar – Old Business

- 1. Animal Services Contract with the City of Piedmont** (*Continued from July 14, 2020*)  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract, with any amendments, with the City of Piedmont for animal care services for FY2021-FY2025, which increases the existing contract by up to \$180,134, with a total contract amount not to exceed \$441,984.  
**Financial Implications:** See report  
Contact: Erin Steffen, City Manager's Office, (510) 981-7000  
**Action:** 0 speakers. M/S/C (Arreguin/Robinson) to adopt Resolution No. 69,506–N.S.  
**Vote:** Ayes – Kesarwani, Bartlett, Hahn, Robinson, Droste, Arreguin; Noes – None; Abstain – Davila, Harrison; Absent – Wengraf.

## Action Calendar – Public Hearings

- 2. \*\*\*Removed from Agenda – Scheduled for a special meeting on July 23, 2020 at 4:30 p.m.\*\*\* ZAB Appeal: 1533 Beverly Place, Administrative Use Permit #ZP2018-0153** (*Continued from July 14, 2020*)  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400

## Action Calendar

### 3. Referral Response: Police Review Commission Recommendation on a Revised Berkeley Police Department Policy 300, Use of Force

**From:** Police Review Commission

**Recommendation:** Approve a revised Use of Force policy for the Berkeley Police Department as recommended by the Police Review Commission.

**Financial Implications:** See report

Contact: Katherine Lee, Commission Secretary, (510) 981-4950

**Action:** M/S/C (Arreguin/Hahn) to accept revised materials from Councilmember Harrison for Item 3.

**Vote:** All Ayes.

Recess 10:17 p.m. – 10:28 p.m.

**Action:** M/S/C (Arreguin/Droste) to suspend the rules and extend the meeting to 11:30 p.m.

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Hahn) to suspend the rules and extend the meeting to 12:00 a.m.

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Harrison) to suspend the rules and extend the meeting to 12:30 a.m.

**Vote:** All Ayes.

**Action:** M/S/Failed (Hahn/Arreguin) to suspend the rules and extend the meeting to 12:45 a.m.

**Vote:** Ayes – Davila, Harrison, Hahn, Robinson, Arreguin; Noes – Bartlett, Droste; Abstain – Kesarwani, Wengraf.

**Action:** M/S/Carried (Hahn/Arreguin) to suspend the rules and extend the meeting to 12:45 a.m.

**Vote:** Ayes – Davila, Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – None; Abstain – Kesarwani, Wengraf, Droste.

**Action:** M/S/C (Harrison/Arreguin) to call for the previous question on Item 3.

**Vote:** All Ayes.

**Action:** 56 speakers. M/S/C (Harrison/Davila) to approve the revised use of force as proposed in Councilmember Harrison's item accepted at the meeting with the following amendments.

- Section 300.1.3 – amended to read:  
C. MINIMIZING THE USE OF DEADLY FORCE. Deadly force may only be used when it is objectively reasonable that such action is immediately necessary to protect the officer or another person from imminent danger or death or serious bodily harm. Officers shall not use deadly force if it is objectively reasonable that alternative techniques will eliminate the imminent

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danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons

- Section 300.4 – amended to read:  
An officer's use of deadly force is justified only when it is objectively reasonable based on the totality of the circumstances, that such force is objectively necessary to, 1) defend against an imminent threat of death or serious bodily injury to the officer or another or 2) apprehend a suspected fleeing person for any felony that threatened or resulted in death or serious bodily injury, provided it is objectively reasonable that the person will cause imminent death or serious bodily injury to another unless immediately apprehended.

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless it is objectively reasonable that the person is aware of those facts.

An officer shall not use deadly force against another person unless it is objectively reasonable that using deadly force would not unnecessarily endanger innocent people.

Lethal force is prohibited when its sole purpose is to effect an arrest, overcome resistance or prevent a subject from escaping when the subject does not present an immediate danger of death or serious bodily injury. Lethal force is also prohibited solely to prevent property damage or prevent the destruction of evidence.

An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention.

- Section 300.6 is amended to read as follows:  
All uses of force shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident and the level of force used. The officer should articulate the factors perceived and why they believed the use of force was objectively reasonable and objectively necessary under the circumstances. Whenever an officer or employee uses Oleoresin Capsicum (pepper spray) they must also complete a "Use of Pepper Spray Report." Whenever an officer or employee use body wrap or spit hood restraint devices they must also complete a "Use of Restraint Device Report" and document, review and report such uses in accordance with section 300.11.

Upon receiving notification of a use of force, an uninvolved supervisor, when feasible, shall determine the level of force reporting level, investigation,

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documentation and review requirements.

- The adopted Use of Force Policy 300 will be effective October 1, 2020.
- The adopted policy does not make any changes to the previously adopted ban on tear gas.
- The Council refers to the City Manager a request for an analysis by the City Attorney of the recent court decision in Oakland regarding the use of tear gas and mutual aid.
- The Council refers to the Police Review Commission and the Public Safety Committee the issue of providing an allowance for the Special Response Team to use tear gas in certain circumstances.

**Vote:** Ayes – Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin; Noes – None; Abstain – Kesarwani, Droste.

#### 4. **Changes to the Berkeley Municipal Code and City of Berkeley Policies with Respect to Local Emergency Declarations and First Amendment Curfews**

*(Continued from June 9, 2020)*

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

##### **Recommendation:**

1. Direct the City Manager to return to the City Council for adoption amendments to the Berkeley Municipal Code and/or policies to approve that clarify and codify the following with respect to the declaration of a Local Emergency:
  - a. A Local Emergency can only be declared by the Director of Emergency Services if a regular or special meeting and session of the City Council cannot be called due to physical impossibility of holding a meeting, because a quorum cannot be established, or because the urgency of the Local Emergency is such that waiting 24 hours for the City Council to convene a session and/or Special Meeting would endanger the community;
  - b. Should the Director declare a Local Emergency without action of the City Council (due to one of the reasons stated at (a), above), Council ratification of such action occurs at the first possible opportunity, even if it requires calling a Special Meeting and/or session of the Council; and
  - c. The applicable statutory and legal standards (Federal, State and Local) for calling a Local Emergency shall be presented to the City Council when seeking declaration or ratification of a Local Emergency, along with facts to support meeting those standards, so that the City Council, likely acting under rushed and exigent circumstances, is able to make a carefully considered and fact-based determination that declaration of such Local Emergency conforms with the legal standards and is supported by facts.
2. Direct the City Manager to return to the City Council for adoption amendments to the Berkeley Municipal Code and/or policies to approve that clarify and codify policies, terms and procedures for the order, scope, terms, duration, and all other elements and conditions of curfews called in response to, or likely to have the effect of limiting or banning, planned, expected or reasonably foreseeable first amendment activity, including rallies, marches, demonstrations and assemblies of all kinds (“First Amendment Curfews”), as enumerated (1-8) under the “Background” section of this item, below.

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3. Advise the City Manager and/or Director of Emergency Services that approval of this item represents the will and direction of the City Council with respect to declarations of Local Emergencies and imposition of First Amendment Curfews, and should the occasion to declare a Local Emergency or impose a First Amendment curfew arise prior to formal Council adoption of the requested amendments and policies, the City Manager and/or Director of Emergency Services shall, to the greatest extent possible under existing law, strive to encompass actionable elements, and meet spirit, of this item.

**Financial Implications:** See report

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

**Action:** M/S/C (Arreguin/Hahn) to continue Item 4 to July 28, 2020.

**Vote:** All Ayes.

## Adjournment

Adjourned at 12:45 a.m.

## Communications

- None

## Supplemental Communications and Reports 1

- None

## Supplemental Communications and Reports 2

### **Item #3: Referral Response: Police Review Commission Recommendation on a Revised Berkeley Police Department Policy 300, Use of Force**

1. Revised material, submitted by Councilmember Harrison
2. Revised material, submitted by the City Manager
3. Supplemental material, submitted by the Police Department
4. City of Oakland Community Police Review Agency
5. BART, Office of the Independent Police Auditor
6. James Chanin
7. Moni Law (2)

## Supplemental Communications and Reports 3

### **Item #3: Referral Response: Police Review Commission Recommendation on a Revised Berkeley Police Department Policy 300, Use of Force**

8. Revised material, submitted by Councilmember Harrison
9. Juli Dickey
10. Janice Schroeder (2)
11. Diana Bohn
12. Lisa Teague
13. Erica Etelson
14. Max Ventura (2)

15. Elizabeth Ferguson
16. Sanah Basrai
17. Marjorie Fletcher
18. Lindsey Yamane
19. Wynd Kaufmyn
20. Mariah Castle
21. Judith Grether
22. Kate Geronemus
23. David Seegal
24. Moni Law
25. Smeeta Mahanti
26. Christine Garibian
27. Marcy Rein
28. George Perezvelez
29. Martha-Lou Wolff
30. Julie Leftwich
31. Ivar Diehl and Siobhan Lettow
32. Michael Chang
33. John Lopez
34. Julia Sen
35. Amy Garlin
36. MJ Baumann
37. Councilmember Harrison
38. Michael McBride
39. Thomas Lord
40. Karen Pita Loor