



**BERKELEY CITY COUNCIL FACILITIES, INFRASTRUCTURE,  
TRANSPORTATION, ENVIRONMENT & SUSTAINABILITY COMMITTEE  
REGULAR MEETING**

**Wednesday, March 3, 2021  
2:30 PM**

Committee Members:

Councilmembers Terry Taplin, Rigel Robinson, and Kate Harrison  
Alternate: Councilmember Sophie Hahn

**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 Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive 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.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL <https://us02web.zoom.us/j/89572199909>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **895 7219 9909**. 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 Facilities, Infrastructure, Transportation, Environment & Sustainability 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. City offices are currently closed and cannot accept written communications in person.

# AGENDA

## Roll Call

## Public Comment on Non-Agenda Matters

## Minutes for Approval

*Draft minutes for the Committee's consideration and approval.*

### 1. Minutes - February 3, 2021

## Committee Action Items

*The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair 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.*

*Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.*

### 2. Presentations on the Electrification of the Municipal Fleet and Citywide Electric Vehicle/Mobility Infrastructure

### 3. Refer to the City Manager to Prioritize Establishment of Impact/Mitigation Fees to Address Disproportionate Private and Public Utility Impact to the Public Right of Way

**From: Councilmember Harrison (Author)**

**Referred: February 22, 2021**

**Due: July 12, 2021**

**Recommendation:** In order to ensure equitable support of the public right of way by private and public entities that use City facilities, refer to the City Manager and City Attorney to prioritize the following in consultation with the Facilities, Infrastructure, Transportation, Environment, & Sustainability Committee:

1. establish impact and/or mitigation fees to address disproportionate private impacts to the public right of way, such as our roads and utility poles; and
2. establish transfers between sewer, waste, or other utilities as appropriate to address impacts to the public right of way.

**Financial Implications:** See report

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

## Committee Action Items

### 4. Recognize the Rights of Nature

**From: Councilmember Davila (Author)**

**Referred: October 13, 2020**

**Due: March 16, 2021**

**Recommendation:** Adopt a resolution to recognize that the natural living world has a right to exist, thrive, regenerate and evolve its life cycles; to protect the ecosystems upon which our own vitality depends; and to transform our human relationship with nature from a property-based to a legal rights-bearing entity.

**Financial Implications:** See report

Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

## Unscheduled Items

*These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.*

### 5. Potential Bonding and Funding Opportunities for Improving the PCI of Residential Streets, and Creating a Paving Master Plan

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

**Referred: December 15, 2020**

**Due: May 18, 2021**

**Recommendation:** Refer to the to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee (FITES) to continue working with the Public Works Department and the Commission to explore potential bonding and funding opportunities for improving the PCI of residential streets, create a paving master plan, and consider the Public Works Commission Paving Policy, once complete. (On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to send the item to the City Council requesting that the item be referred back to the Facilities committee for further consideration and to request that Council refer the Paving Plan from the Public Works Commission to the committee when the item comes before Council in January.)

**Financial Implications:** See report

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

### 6. Adopt an Ordinance Adding a Chapter 11.62 to the Berkeley Municipal Code to Regulate Plastic Bags at Retail and Food Service Establishments

**From: Councilmembers Harrison and Hahn**

**Referred: November 25, 2019**

**Due: July 30, 2021**

**Recommendation:** Adopt an ordinance adding a Chapter 11.62 to the Berkeley Municipal Code to regulate plastic bags at retail and food service establishments.

**Financial Implications:** See report

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

## Unscheduled Items

7. **Referral Response: Ordinance Amending Berkeley Municipal Code Chapter 7.52, Reducing Tax Imposed for Qualifying Electrification, Energy Efficiency and Water Conservation Retrofits**  
**From: City Manager**  
**Referred: July 21, 2020**  
**Due: September 30, 2021**  
**Recommendation:** 1. Delay adoption of the first reading of an ordinance amending the Berkeley Municipal Code (BMC) Chapter 7.52 to expand the Seismic Transfer Tax Rebate Program to include qualifying sustainability and resilience measures, and any associated budget requests, until FYE 2022 when more information on budget due to COVID-19 response and recovery is available; and  
2. Refer to the City Manager the design of a companion Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements to low-income residents.  
**Financial Implications:** See report  
Contact: Jordan Klein, Planning and Development, (510) 981-7400

## Items for Future Agendas

- Discussion of items to be added to future agendas

## Adjournment

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*Written communications addressed to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee and submitted to the City Clerk Department 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. 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 meeting of the Standing Committee 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 February 25, 2021.



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 FACILITIES, INFRASTRUCTURE,  
TRANSPORTATION, ENVIRONMENT & SUSTAINABILITY COMMITTEE  
REGULAR MEETING MINUTES**

**Wednesday, February 3, 2021  
2:30 PM**

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Councilmembers Terry Taplin, Rigel Robinson, and Kate Harrison  
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## MINUTES

**Roll Call:** 2:32 pm. All present.

**Public Comment on Non-Agenda Matters:** 2 Speakers

### Minutes for Approval

*Draft minutes for the Committee's consideration and approval.*

**1. Minutes - January 20, 2021**

**Action:** M/S/C (Robinson/Harrison) to approve the January 20, 2021 minutes as presented.

**Vote:** All Ayes

### Committee Action Items

*The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair 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.*

*Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.*

**2. Potential Bonding and Funding Opportunities for Improving the PCI of Residential Streets, and Creating a Paving Master Plan**

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

**Referred:** December 15, 2020

**Due:** May 18, 2021

**Recommendation:** Refer to the to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee (FITES) to continue working with the Public Works Department and the Commission to explore potential bonding and funding opportunities for improving the PCI of residential streets, create a paving master plan, and consider the Public Works Commission Paving Policy, once complete. (On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to send the item to the City Council requesting that the item be referred back to the Facilities committee for further consideration and to request that Council refer the Paving Plan from the Public Works Commission to the committee when the item comes before Council in January. On December 15, 2020, Council approved the recommendation as adopted by the policy committee.)

**Financial Implications:** See report

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

**Action:** 8 Speakers. Discussion and presentation held. Councilmember Hahn added as Co-Sponsor. The item was continued to the next meeting.



## Unscheduled Items

*These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.*

- 3. Request for a Presentation from Public Works staff on the Conversion of the City's Fleet Vehicles**  
**Action:** Scheduled for the February 17, 2021 regular meeting.
- 4. Adopt an Ordinance Adding a Chapter 11.62 to the Berkeley Municipal Code to Regulate Plastic Bags at Retail and Food Service Establishments**  
**From:** Councilmembers Harrison and Hahn  
**Referred:** November 25, 2019  
**Due:** July 31, 2021  
**Recommendation:** Adopt an ordinance adding a Chapter 11.62 to the Berkeley Municipal Code to regulate plastic bags at retail and food service establishments.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 5. Referral Response: Ordinance Amending Berkeley Municipal Code Chapter 7.52, Reducing Tax Imposed for Qualifying Electrification, Energy Efficiency and Water Conservation Retrofits**  
**From:** City Manager  
**Referred:** July 21, 2020  
**Due:** September 30, 2021  
**Recommendation:** 1. Delay adoption of the first reading of an ordinance amending the Berkeley Municipal Code (BMC) Chapter 7.52 to expand the Seismic Transfer Tax Rebate Program to include qualifying sustainability and resilience measures, and any associated budget requests, until FYE 2022 when more information on budget due to COVID-19 response and recovery is available; and  
2. Refer to the City Manager the design of a companion Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements to low-income residents.  
**Financial Implications:** See report  
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 6. Recognize the Rights of Nature**  
**From:** Councilmember Davila (Author)  
**Referred:** October 13, 2020  
**Due:** March 16, 2021  
**Recommendation:** Adopt a resolution to recognize that the natural living world has a right to exist, thrive, regenerate and evolve its life cycles; to protect the ecosystems upon which our own vitality depends; and to transform our human relationship with nature from a property-based to a legal rights-bearing entity.  
**Financial Implications:** See report  
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

## Items for Future Agendas

- None

## Adjournment: 4:17 pm


I hereby certify that this is a true and correct record of the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee meeting held on February 3, 2021.

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Michael MacDonald, Assistant City Clerk

## Communications

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No Material  
Available for  
this Item

There is no material for this item.

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

**The City of Berkeley Facilities, Infrastructure, Transportation, Environment, & Sustainability Policy Committee Webpage:**

[https://www.cityofberkeley.info/Clerk/Home/Policy\\_Committee\\_Facilities,\\_Infrastructure,\\_Transportation,\\_Environment,\\_Sustainability.aspx](https://www.cityofberkeley.info/Clerk/Home/Policy_Committee_Facilities,_Infrastructure,_Transportation,_Environment,_Sustainability.aspx)





Kate Harrison  
Councilmember District 4

**03**

CONSENT CALENDAR  
March 9, 2021

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Harrison  
Subject: Refer to the City Manager to Prioritize Establishment of Impact/Mitigation Fees to Address Disproportionate Private and Public Utility Impact to the Public Right of Way

RECOMMENDATION

In order to ensure equitable support of the public right of way by private and public entities that use City facilities, refer to the City Manager and City Attorney to prioritize the following in consultation with the Facilities, Infrastructure, Transportation, Environment, & Sustainability Committee:

1. establish impact and/or mitigation fees to address disproportionate private impacts to the public right of way, such as our roads and utility poles; and
2. establish transfers between sewer, waste, or other utilities as appropriate to address impacts to the public right of way.

BACKGROUND

A Metropolitan Transportation Commission report warns that Berkeley's overall paving condition is "At Risk," meaning on the cusp of falling into "Failing" category.<sup>1</sup> The current five-year paving plan is the result of historic deferred maintenance and an underfunded, imperfect and complex balance between arterial, collector and residential streets distributed across Council districts. The City's bicycle, pedestrian and Vision Zero projects are severely underfunded. Meanwhile, neighboring cities in the Bay Area, such as Richmond, El Cerrito, San Francisco have "Excellent/Very Good" to "Fair/Good" streets conditions.

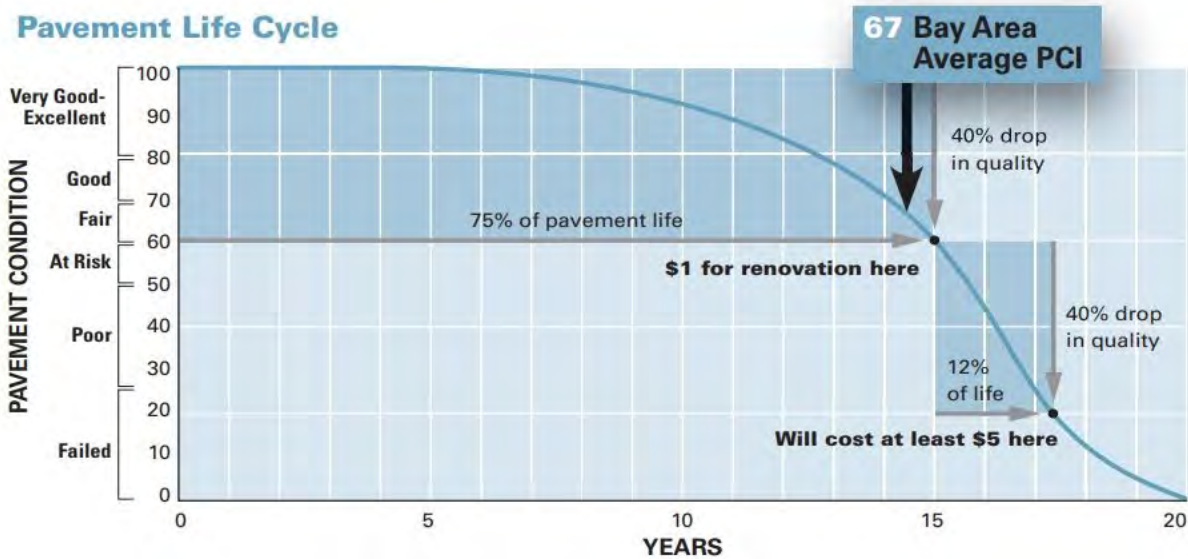
Critically, maintenance of the public right of way has been underfunded due to (1) historic lack of impact/mitigation fees levied against private corporations who

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<sup>1</sup> "The Pothole Report: Bay Area Roads At Risk," Bay Area Metropolitan Transportation Commission, September 2018, [https://mtc.ca.gov/sites/default/files/Pothole%20Report%20III\\_September%202018.pdf](https://mtc.ca.gov/sites/default/files/Pothole%20Report%20III_September%202018.pdf)

disproportionally cause negative impacts to Berkeley’s streets and (2) an absence of transfers from public utility ratepayers to the Berkeley Public Works Department to mitigate utility-related damage to the right of way. The public right of way is key part of the City’s “commons,” a public resource that is available to all community members and to be managed for the collective benefit. As learned during recent FITES hearings, it appears that certain private actor and public utilities have not been paying their fair share to address their disproportionate impact on the condition of Berkeley’s right of way.

The Public Works Department has advised that ongoing funding under the rolling 5-Year Street Plan will not be enough to stabilize Berkeley’s streets. In fact, if street investment is not increased, Public Works warns that the City could face \$1 billion in future repair costs as the cost of deferred paving maintenance increases exponentially each year.



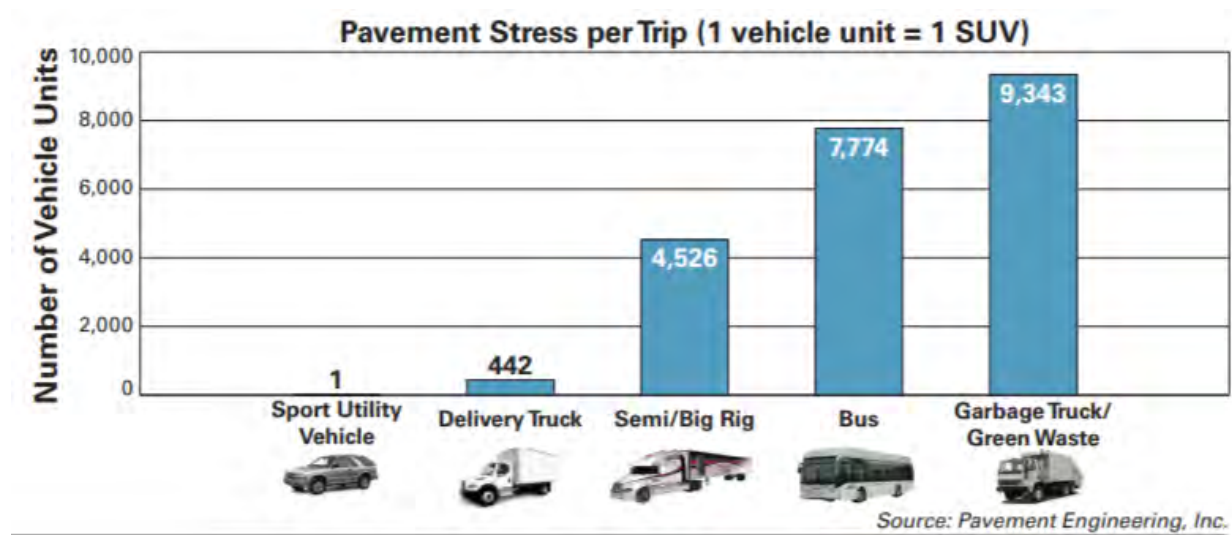
Since January 2020, the Facilities, Infrastructure, Transportation, Environment, & Sustainability (FITES) Committee has been working with the Public Works Department and Public Works Commission to explore funding opportunities to enhance the Paving Condition Index (PCI) of Berkeley’s streets. In addition, it has been reviewing the City’s Paving Policy, which was last updated in 2009, and has been working to develop a Paving Master Plan.

To stabilize street conditions, the City will likely need to pursue a combination of investment strategies ranging from increasing General Fund allocations, initiating

transfers from waste, sewer and other utility accounts, initiating impact/mitigation fees in response to heavy private vehicle use and potentially issuing bonds. However, before going to the voters for new bonds, who already pay significant sales, property and other taxes, which contribute to paving maintenance, it is critical that the Council exhaust all equitable alternatives, including leveraging the proceeds of new fees and transfers from private corporations and public utilities who contribute disproportionately to the deterioration of Berkeley’s streets and greenhouse gas emissions.

The current 2009 Paving Plan, which is being revised by the Public Works Commission, Public Works Department and the FITES Committee, explicitly specifies that “fees [may be] assessed to mitigate for excessive deterioration on and wear and tear of streets resulting from construction activities, public or private, shall be used for street rehabilitation.”<sup>2</sup> However, the FITES Committee has not been able to identify historical evidence of such fee being levied upon private users for such excessive deterioration.

During hearings on the paving policy, the FITES Committee has learned that large private vehicles such as delivery trucks, big rigs, private buses and construction vehicles contributed heavily to excessive deterioration. The same is true for vehicles acting on behalf of public utilities, such as AC Transit, the City’s Sanitary Sewer Program, Recology waste services, and gas, electric and telecommunications utilities.



<sup>2</sup> “City of Berkeley Street Rehabilitation and Repair Policy,” Public Works Department, March 2009, [https://www.cityofberkeley.info/Public\\_Works/Sidewalks-Streets-Utility/Street\\_Rehabilitation\\_and\\_Repair\\_Policy\\_updated\\_March\\_2009.aspx](https://www.cityofberkeley.info/Public_Works/Sidewalks-Streets-Utility/Street_Rehabilitation_and_Repair_Policy_updated_March_2009.aspx)

Refer to the City Manager to Prioritize Establishment of Impact/Mitigation Fees to Address Disproportionate Private and Public Utility Impact to the Public Right of Way

CONSENT CALENDAR  
March 9, 2021

Public Works staff indicate that transfers could bring in approximately \$1 million per year in additional paving funding, but more research will need to be done to calculate potential revenue from impact fees.

It is in the public interest to ensure an equitable and rapid as possible assessment of such private and public actors for the purpose of providing supplemental funding to Berkeley's Street Repair Program.

#### FINANCIAL IMPLICATIONS

The item would require staff time to develop potential fees and transfers, however it could potentially offset and supplemental millions of dollars in existing City paving funding.

#### ENVIRONMENTAL SUSTAINABILITY

Supporting low-carbon asphalt alternatives and building bicycle and alternative mobility infrastructure will compliment and accelerate Berkeley's ongoing efforts to reduce carbon emissions at an emergency and equitable pace in line with the Climate Action Plan and Climate Emergency Declaration.

#### CONTACT PERSON

Councilmember Kate Harrison, Council District 4, 510-981-7140



**04**



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
October 27, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Recognize the Rights of Nature

RECOMMENDATION

Adopt a resolution to recognize that the natural living world has a right to exist, thrive, regenerate and evolve its life cycles; to protect the ecosystems upon which our own vitality depends; and to transform our human relationship with nature from a property-based to a legal rights-bearing entity.

BACKGROUND

Currently, the legal systems are doing very little to protect our ecosystems from the destruction by economically driven industrialization. In fact, not only is there no regard to the impacts this will have on future generations, but the degradation of our natural world is often encouraged. Currently, our laws view nature as human-owned property, confirming human authority over all of nature. The natural world has no legal standing in a court of law. There needs to be a legal shift in the way we view our human relationship with the natural world. It is our responsibility to live respectfully within the natural order of life. We must redraw the boundaries of the economy taking into consideration the ecological and planetary limits. All rights, including human rights depend on the health and vitality of Earth's living systems. Therefore, the needs of nature must be elevated and protected by legal rights and maintained through life-sustaining systems of exchange and reciprocity.

Five countries and dozens of US communities have recognized the rights of nature and are resolving to provide adequate protection for the health of local ecosystems. It is our responsibility to recognize and respect the rights of the natural world so that we may sustain and protect our environment, and help secure the well-being of future generations.

ENVIRONMENTAL SUSTAINABILITY

From the impacts of climate change, to the tar sands of Alberta to mountaintop removal for coal extraction, to fracking and the destruction of vast tropical rainforests, we have witnessed the horrifying damage these negligent practices are imposing on our environment. This resolution will help provide environmental protection and sustainability.

FINANCIAL IMPLICATIONS

There is no limit on the value of the Rights of Nature.

References:

Global Alliance for the Rights of Nature

<https://therightsofnature.org/what-is-rights-of-nature/#:~:text=Rights%20of%20Nature%20is%20the%20recognition%20and%20honoring%20that%20Nature%20has%20rights.&text=Rather%20than%20treating%20nature%20as,and%20regenerate%20its%20vital%20cycles.>

CONTACT PERSONS

Cheryl Davila

Councilmember District 2

510.981.7120

[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

ATTACHMENTS:

1. Resolution

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA, RECOGNIZING THAT THE NATURAL LIVING WORLD HAS A RIGHT TO EXIST, THRIVE, REGENERATE AND EVOLVE ITS LIFE CYCLES; TO PROTECT THE ECOSYSTEMS UPON WHICH OUR OWN VITALITY DEPENDS

WHEREAS, the natural living world has a right to exist, thrive, regenerate and evolve its life cycles; and

WHEREAS, all rights, including human rights, depend on the health and vitality of Earth's living systems; and

WHEREAS, our current laws view nature as human-owned property, confirming human authority over all of nature; and

WHEREAS, the natural world has no legal standing in a court of law; and

WHEREAS, the current legal systems are doing very little to protect our ecosystems from the destruction by economically driven industrialization; and

WHEREAS, from the impacts of climate change, to the tar sands of Alberta to mountaintop removal for coal extraction, to fracking and the destruction of vast tropical rainforests, we have witnessed the horrifying damage these negligent practices are imposing on our environment; and

WHEREAS, not only is there no regard to the impacts this will have on future generations, but the degradation of our natural world is often encouraged; and

WHEREAS, we must redraw the boundaries of the economy taking into consideration the ecological and planetary limits; and

WHEREAS, there needs to be a legal shift in the way we view our human relationship with the natural world; and

WHEREAS, we must transform our human relationship with nature from a property-based to a legal rights-bearing entity; and

WHEREAS, the needs of nature must be elevated and protected by legal rights, and maintained through life-sustaining systems of exchange and reciprocity; and

WHEREAS, five countries and dozens of US communities have recognized the rights of nature and are dedicated to providing adequate protection for the health of the local ecosystem; and

WHEREAS, it is our responsibility to recognize and respect the rights of the natural world so that we may sustain and protect our environment, and help secure the well-being of future generations.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Berkeley recognizes the Rights of our local ecosystem to exist, flourish, and regenerate its natural capacities.

Recognizing these rights places obligations on residents to live within, not above, the natural world, of which we are only one part, and to protect and replenish the ecosystems upon which our mutual well being depends. In essence, it is necessary to transform our human relationship with nature from property-based to a legal rights-bearing entity.



Kate Harrison  
Councilmember District 4

**05**

CONSENT CALENDAR  
December 15, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Harrison, Kesarwani, and Bartlett  
Subject: Potential Bonding and Funding Opportunities for Improving the PCI of Residential Streets, and Creating a Paving Master Plan

RECOMMENDATION

Refer to the to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee (FITES) to continue working with the Public Works Department and the Commission to explore potential bonding and funding opportunities for improving the PCI of residential streets, create a paving master plan, and consider the Public Works Commission Paving Policy, once complete.

POLICY COMMITTEE RECOMMENDATION

On November 18, 2020, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Harrison/Robinson) to send the item with a positive recommendation to the City Council requesting that the item be referred back to the Facilities committee for further consideration and to request that Council refer the Paving Plan from the Public Works Commission to the committee when the item comes before Council in January. Vote: All Ayes.

BACKGROUND

On January 21, 2020, the City Council referred the following language from the revised agenda material from Councilmember Harrison in the Supplemental Communications Packet 2, and as further revised by the Council, to the FITES Committee for consideration:

Refer to the Facilities, Infrastructure, Transportation, Environment, & Sustainability Committee to work with the Public Works Department and the Commission to explore potential bonding and funding opportunities for improving the PCI of residential streets, and creating a paving master plan.

The FITES committee has been working diligently with the Public Works Department, the Public Works Commission and community members to explore funding opportunities to support programs and policies that will significantly increase citywide paving condition index (PCI).

Currently, the Public Works Department and Commission are in the process of finalizing an updated five-year paving plan. The five-year paving plan will proceed directly to Council in January so that bids may be issued for paving in 2021. At the same time, the Department and Commission are working on proposals for funding significant long-term paving improvement, stabilization and maintenance programs and recommendations for an updated Paving Policy, which has not been revised since 2009, and which includes a new definition of paving equity and consideration of how to complete paving segments in the most efficient manner possible. Both the Public Works Department and Commission expect to have updated paving policy and funding proposals for Council review by early next year. The FITES committee is prepared to continue consideration of these proposals in order to assist Council action.

In light of these policy developments and given that FITES consideration of the original Council referral is set to expire on November 23, 2020, Committee members unanimously voted on November 18, 2020 to request that the Council extend the period of consideration. Approval of this item would extend the FITES Committee's consideration and oversight with regard to improving Berkeley's PCI and referral of the Public Works Commission's forthcoming Paving Policy to the FITES Committee.

#### ENVIRONMENTAL SUSTAINABILITY

Extending FITES consideration of paving funding opportunities and policies would provide continued Council oversight related to procuring sustainable and low-carbon paving technologies and practices.

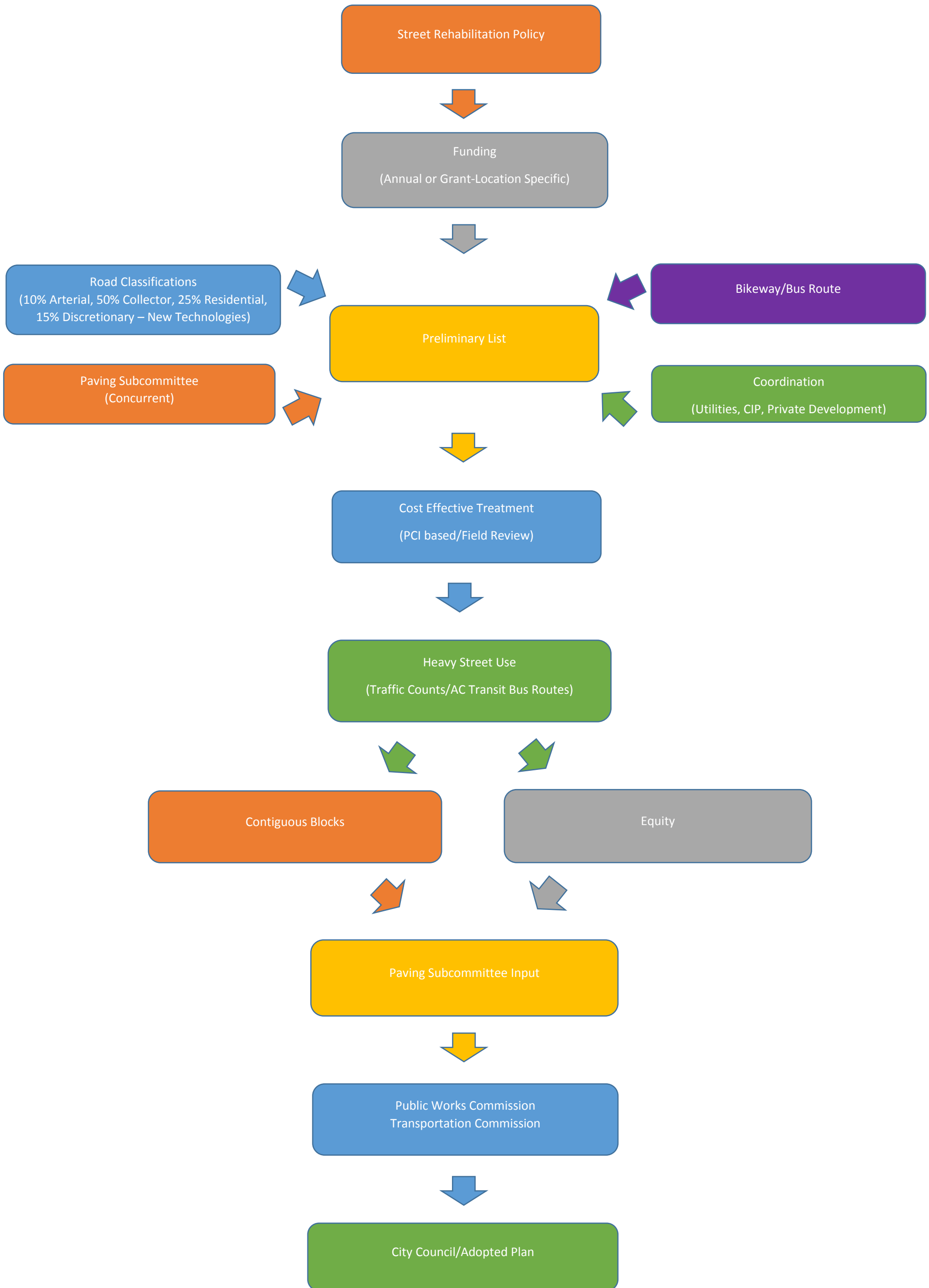
#### FISCAL IMPACTS OF RECOMMENDATION

Staff time will be necessary to facilitate further FITES Committee consideration.

#### CONTACT PERSON

Councilmember Kate Harrison  
510-981-7140

### 5-Year Paving Plan Process Flow Diagram



# Paving Policy Update

To go fast, work alone.  
To go far, work together.



# Paving Policy Update

To go fast, work alone.  
To go far, work together.

Matt, Jacqueline, Mark, Bryce  
Ray Yep  
Andrew, Joe, Liam and more

- **Funding**
- **Equity**
- **Utility Coordination**
  
- **New Technology**
- **Design for  
Maintenance**
  
- **Heavy Vehicles**

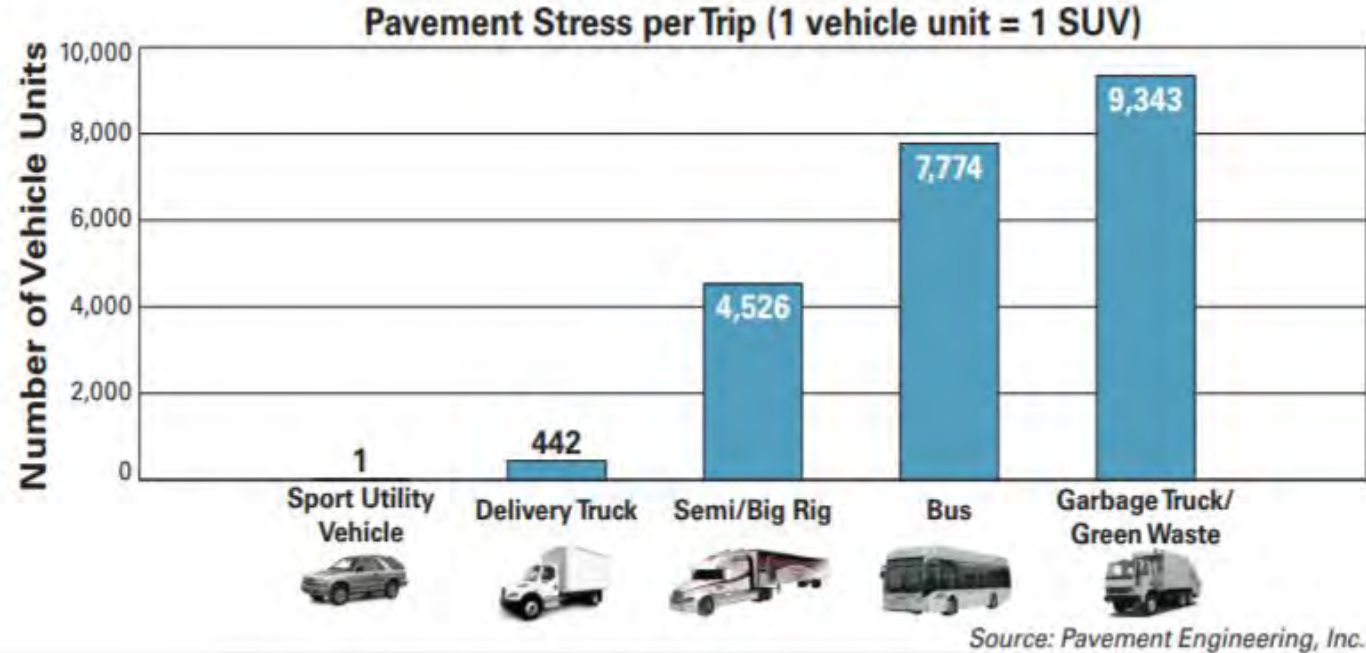
- Funding
- Equity
- Utility Coordination
  
- **New Technology**
- Design for Maintenance
  
- Heavy Vehicles



- Funding
- Equity
- Utility Coordination

- New Technology
- Design for Maintenance

- **Heavy Vehicles**



- Funding
- Equity
- **Utility Coordination**
  
- New Technology
- Design for Maintenance
  
- Heavy Vehicles



- Funding
- Equity
- **Utility Coordination 5G**

- New Technology
- Design for Maintenance
- Heavy Vehicles



Slicing roadways to ribbon, and PG&E gets the revenue<sub>30</sub>

# Possible Approaches to Equity

# Possible Approaches to Equity

- **Equal spending per council district**
- **Redressing impact of past redlining**
- **Funding based on traffic volume**  
**(The most benefit per vehicle mile traveled)**
- **Prioritize for people least able to pay for car repairs.**
- **Lowest life cycle cost - Save funds for other City priorities**
- **Environmental justice**



# Equity of Results

Divide the City into analysis zones

Rank not just the pavement, but the entire streetscape.

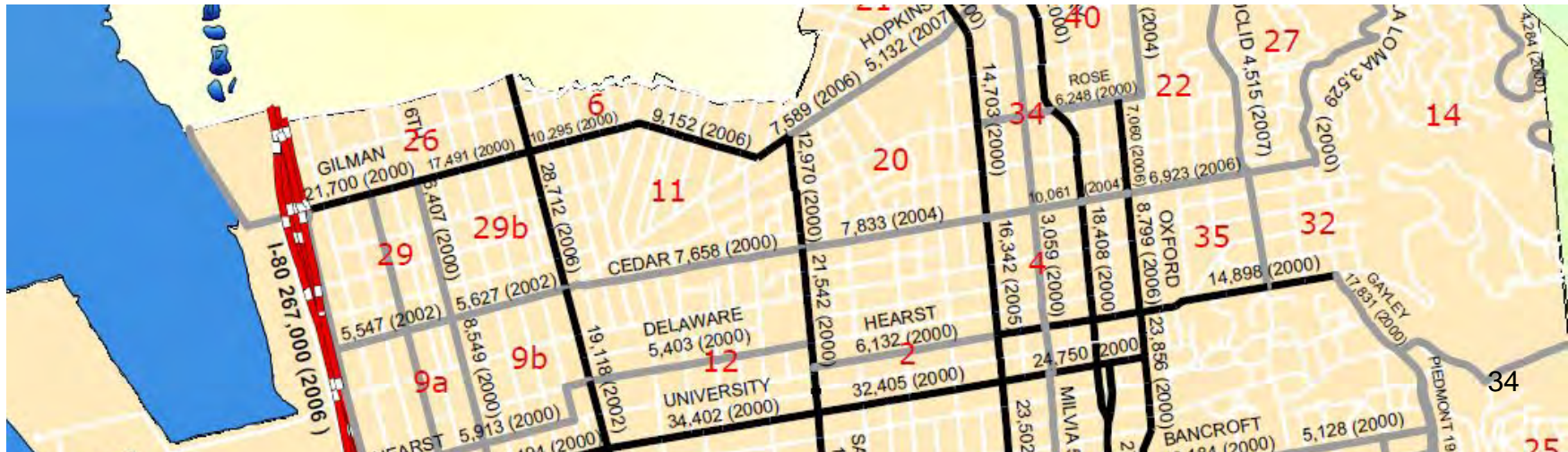
Put the most money in the worst analysis zone

# Equity of Results

Divide the City into analysis zones

Rank not just the pavement, but the entire streetscape.

Put the most money in the worst analysis zone



# Equity of Results

The good:

- You know when you're done.
- Contiguous paving lowers bid cost per mile
- Vastly better chances for utility coordination

The bad:

- Some areas won't see any nearby paving for decades.

# Equity of Results

Arterials and Bicycle Boulevards get counted separately, as they are City-wide assets.

# Public Policy

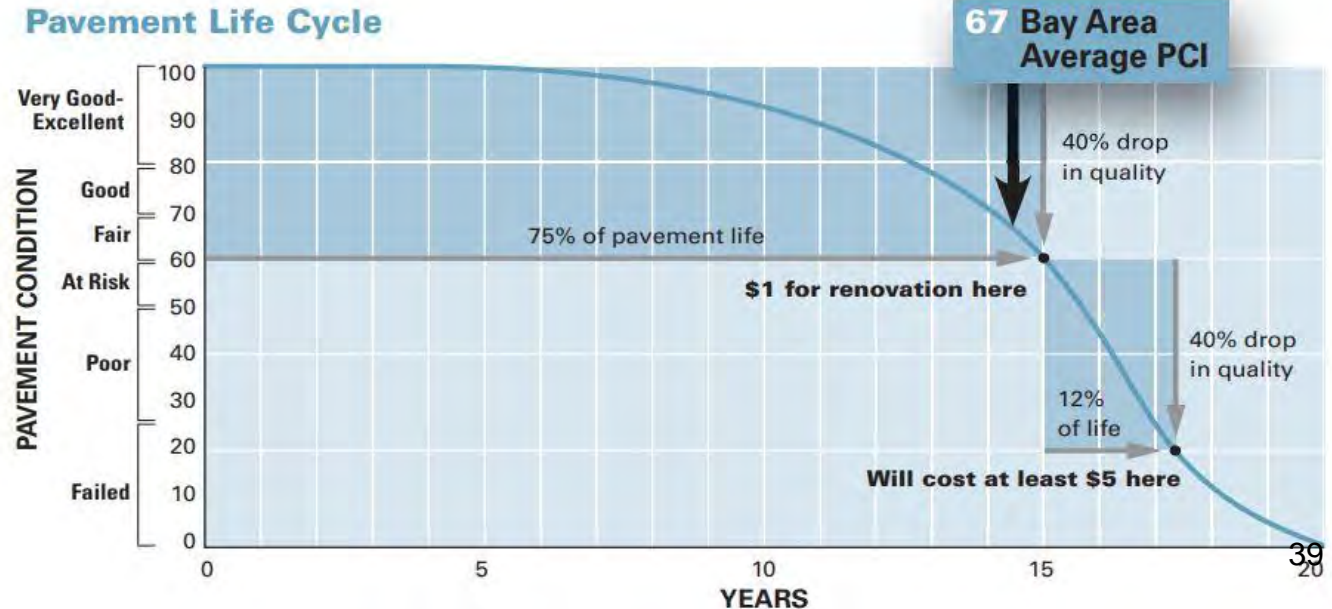
- Road impact budget transfers
  - Zero waste
  - Fire Department
  - Encampment Water Delivery Trucks
  - Sewer
- Road impact developer fees
- Road impact enforcement
- Integrate truck routes into Google Maps
- Demonstration projects: Pavers, Stone Dust
- Undergrounding
  - Cross conduit demonstration project

# Public Policy

- The insanity of using 30 year bonds on 15 year pavement.
- Radical Roadway Diets
- Maintenance First (Muni Meltdown)

# Public Policy

- The insanity of using 30 year bonds on 15 year pavement.
- Maintenance First (Muni Meltdown)







**06**

Kate Harrison  
Councilmember District 4

ACTION CALENDAR  
December 10, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Harrison and Hahn  
Subject: Adopt an Ordinance Adding a Chapter 11.62 to the Berkeley Municipal Code to Regulate Plastic Bags at Retail and Food Service Establishments

RECOMMENDATION

Adopt an ordinance adding a Chapter 11.62 to the Berkeley Municipal Code to regulate plastic bags at retail and food service establishments.

BACKGROUND

Californians throw away 123,000 tons of plastic bags each year, and much of it finds its way into regional and international waterways.<sup>1</sup> The situation is only getting worse with 18 billion more pounds of plastic added to the already colossal amount in our seas.<sup>2</sup> Today, there are 100 million tons of trash in the North Pacific Subtropical Gyre;<sup>3</sup> in some parts, plastic outweighs plankton 6 to 1.<sup>4</sup>

Legislative action at the state level has been successful in achieving reductions in plastic bag pollution. According to the 2018 Change the Tide report, restrictions on plastic bags such as that in effect in California have resulted in a “steady drop” in plastic grocery bags found on California beaches. Berkeley has also recently made substantial progress on its restriction of plastic litter in the city through the Single Use Foodware and Litter Reduction ordinance (BMC Chapter 11.64).<sup>5</sup> The ordinance restricts food providers from offering take-out and dine-in food in single-use disposable ware. These items include “containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids, sleeves, condiment containers, spill plugs, paper or foil wrappers, liners and any

<sup>1</sup> Environment California, “Keep Plastic Out of the Pacific,”

<https://environmentcalifornia.org/programs/cae/keep-plastic-out-pacific>.

<sup>2</sup> Division of Boating and Waterways, “The Changing Tide,”

[http://dbw.parks.ca.gov/pages/28702/files/Changing%20Tide%20Summer%202018%20HQ%20\(1\).pdf](http://dbw.parks.ca.gov/pages/28702/files/Changing%20Tide%20Summer%202018%20HQ%20(1).pdf).

<sup>3</sup> The North Pacific Gyre, also known as the North Pacific Subtropical Gyre, is a system of ocean currents that covers much of the northern Pacific Ocean. It stretches from California to Japan and contains the Great Pacific Trash Patch, or Pacific trash vortex. National Geographic, “Great Pacific Garbage Patch,” <https://www.nationalgeographic.org/encyclopedia/great-pacific-garbage-patch/>.

<sup>4</sup> Environment California, “Keep Plastic Out of the Pacific,”

<https://environmentcalifornia.org/programs/cae/keep-plastic-out-pacific>.

<sup>5</sup> Berkeley Municipal Code, Chapter 11.64 Single Use Foodware and Litter Reduction.

other items used to hold, serve, eat, or drink Prepared Food.”<sup>6</sup> Notably, plastic bags do not fall within the purview of the Single Use Foodware and Litter Reduction ordinance.

In order to take a further step in protecting the environment and reaching our zero waste goal, Berkeley must consider more aggressive action to close critical loopholes in state law with regard to plastic bags.

California currently prohibits the sale of plastic bags that fall into several categories, based on composition, intended use and business size and type. The statewide Single-Use Carryout Bag Ban prevents the sale of single-use plastic carryout bags in most large grocery stores, retail stores with a pharmacy, convenience stores, food marts, and liquor stores. Affected stores may offer reusable or recycled paper bags to a customer at the point of sale. Despite these restrictions, the law provides for the sale of plastic bags that are more than 2.25 mils thick in these stores, and exempts a number of key commercial establishments such as restaurants, general retailers, farmers markets, and other smaller businesses. State law also fully exempts plastic bags in grocery stores used for carrying produce from the shelf to the check stand.<sup>7</sup>

This proposed ordinance intends to expand the scope of existing regulation to further reduce plastic waste across these exempt categories, avoiding further destruction of the local, regional and global environment.

### **State Restrictions on Plastic Bags**

California’s legislature decided in 2014 to take a step to limit single-use plastic bag waste. Senate Bill 270 mandates that stores of a certain size and type offer only reusable bags at checkout and sets a minimum price of at least \$0.10.<sup>8</sup> As a result, thin film bags, known as t-shirt bags, are no longer available at larger retail and grocery stores.

The scope of state regulation includes minimum percentage of post-consumer recycled plastics the bag must include and banning plastic bags deemed adequate for only one use. The state defines single-use plastic bags as thin film bags—bags made out of flexible sheets of plastic usually of polyethylene resin. Legislation often distinguishes between single-use film bags and reusable ones based on their thickness, measured in mils—1 thousandth of an inch.

The ban however does not apply to other types of plastic bags deemed reusable or to smaller retailers and restaurants. Many plastic film bags, in particular, are still permitted under SB 270. They are permitted for sale as long as: the bags contain more than 20%

<sup>6</sup> Berkeley Municipal Code Section 11.64.020D.

<sup>7</sup> Ban on Single-Use Carryout Bags (SB 270 / Proposition 67) Frequently Asked Questions, Office of the Attorney General and CalRecycle, April 2017, <https://www.calrecycle.ca.gov/Plastics/CarryOutBags/FAQ/>.

<sup>8</sup> California Legislature, Senate Bill 270,

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201320140SB270](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201320140SB270)

post-consumer recycled material<sup>9</sup>; are recyclable in the state of California; are properly labeled as containing post-consumer recycled material; can carry over 22lb for a minimum of 175ft for at least 125 uses; and are at least 2.25 mils thick.

Despite the assumption of reusability, there is limited evidence to suggest that plastic bags are being repurposed to the degree accounted for by SB 270. Some studies suggest that fewer than 1% of people actually reuse the thicker and thus technically-reusable film bags.<sup>10</sup> This erroneous legislative assumption can be addressed at the local level.

Aside from SB 270, the only other legislation governing plastic bag usage in Berkeley is an Alameda County ordinance implementing SB 270 and local ordinances regulating the type of plastic allowed in food packaging.<sup>11</sup> By not addressing plastic produce bags and defining reusable bags as any film bag exceeding 2.25 mils, current regional and local law shares many of the shortcomings of state legislation.<sup>1213</sup>

### Local Restrictions on Plastic Bags

Contested but upheld in a 2016 ballot measure,<sup>14</sup> SB 270 set a statewide code that has been built upon by numerous local governments, including many in the Bay Area.

Palo Alto is one of the most recent cities to amend its municipal code and take the extra step in limiting the distribution of film bags. By splitting plastic bags into three categories by use—produce bags, checkout bags, and product bags—the city is able to differentiate regulation for each purpose. Its ordinance<sup>15</sup> bans grocery stores and farmers markets from packaging food in film bags, requiring instead the use of compostable plastics. For checkout, Palo Alto mandates that all stores only offer their customers recycled paper bags or reusable bags, a term it defines in accordance with California law as a bag thicker than 2.25 mils.

<sup>9</sup> [In 2020, the percentage required will increase to 40% post-consumer recycled material.](#)

<sup>10</sup> Save Our Shores, “Help Ban Plastic Bags,” <https://saveourshores.org/help-ban-plastic-bags/>

<sup>11</sup> Alameda County Waste Management Authority, “Ordinance Regulating the use of carryout bags and promoting the use of reusable bags,” <http://reusablebagsac.org/acwma-ordinance-2012-2-amended-ordinance-2016-2>.

<sup>12</sup> Berkeley Municipal Code Chapter 11.58 Prohibition of Chlorofluorocarbon-Processed Food Packaging, <https://www.codepublishing.com/CA/Berkeley/cgi/NewSmartCompile.pl?path=Berkeley11/Berkeley1158/Berkeley1158.html>.

<sup>13</sup> Berkeley Municipal Code Chapter 11.60 Polystyrene Foam, Degradable and Recyclable Food Packaging, <https://www.codepublishing.com/CA/Berkeley/cgi/NewSmartCompile.pl?path=Berkeley11/Berkeley1160/Berkeley1160.html>.

<sup>14</sup> Ballotpedia, “California Proposition 67, Plastic Bag Ban Veto Referendum (2016),” [https://ballotpedia.org/California\\_Proposition\\_67,\\_Plastic\\_Bag\\_Ban\\_Veto\\_Referendum\\_\(2016\)](https://ballotpedia.org/California_Proposition_67,_Plastic_Bag_Ban_Veto_Referendum_(2016))

<sup>15</sup> Palo Alto Municipal Code, “Chapter 5.35 Retail and Food Service Establishment Checkout Bag Requirements,” <https://www.cityofpaloalto.org/civicax/filebank/documents/63550>.

San Francisco has similar provisions.<sup>16</sup> It decided in July 2019<sup>17</sup> to both increase the amount of money charged for checkout bags from \$0.10 to \$0.25 and ban what it calls “pre-checkout bags”—defined as a “bag provided to a customer before the customer reaches the point of sale,” nearly identical in definition to Palo Alto’s produce bag language. San Francisco drew inspiration from Monterey, Pacifica, Santa Cruz and Los Altos, all of which charge more than SB270 requires for plastic bags.<sup>18</sup> The ordinance also specifically referenced an Irish law, which increased the price of plastic checkout bags from 15 cents to 22 cents, reducing plastic checkout usage by more than 95 percent, as precedent.<sup>19</sup>

Yet there are some cities that have gone even farther in their restriction of single-use plastics. Although Capitola does not ban produce/pre-checkout bags, it notably redefined the thickness of a reusable bag as equal or exceeding 4 mils, instead of 2.25 mils.<sup>20</sup> This means that any carryout bag provided by a retailer in the city is more durable than those considered multi-use by the state of California.

New York State recently introduced a plastic bag reduction ordinance that provides a number of precedents for a potential Berkeley ordinance. It bans “the provision of plastic carryout bags at any point of sale.”<sup>21</sup> It exempts compostable bag and *non*-film plastic bags and does away with any distinction between reusable and non-reusable film bags based on their thickness. Where the New York ban falls short is in its regulation of non-checkout bags: bags for produce, meat, newspapers, take-out food and garments remain legal.

Given the progress many cities and states have made in regulating plastic bags, Berkeley has many examples to emulate.

### Past Efforts in Berkeley

<sup>16</sup> San Francisco Municipal Code Chapter 17: Plastic Bag Reduction Ordinance, [http://library.amlegal.com/nxt/gateway.dll/California/environment/chapter17plasticbagreductionordinance?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca](http://library.amlegal.com/nxt/gateway.dll/California/environment/chapter17plasticbagreductionordinance?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca).

<sup>17</sup> San Francisco Municipal Code, “Ordinance amending the Environment Code,” <https://sfbos.org/sites/default/files/o0172-19.pdf>.

<sup>18</sup> Isabela Agnus, “San Francisco bumps bag fee up to 25 cents,” <https://www.sfgate.com/news/article/SF-bumps-bag-fee-25-cents-plastic-produce-ban-14102908.php>.

<sup>19</sup> Republic of Ireland Department of Communications, Climate Action & Environment, “Plastic Bags,” <https://www.dccae.gov.ie/en-ie/environment/topics/waste/litter/plastic-bags/Pages/default.aspx>.

<sup>20</sup> Capitola Municipal Code Chapter 8.07: Single-use Plastic and Paper Carryout Bag Reduction, <https://www.codepublishing.com/CA/Capitola/#!/Capitola08/Capitola0807.html#8.07>.

<sup>21</sup> New York State Governor’s Office, “An act to amend the environmental conservation law, in relation to prohibiting plastic carryout bags,” <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/PlasticBagBan.pdf>.

Berkeley attempted to pass its own plastic bag ban in 2010.<sup>22</sup> In the years following councilmembers have pushed for reform, calling for an ordinance to improve upon county and state legislation.<sup>23</sup> Yet the threat of lawsuits<sup>24</sup> and movement on the state and county level appear to have delayed local reform.

### The Proposed Ordinance

This proposed ordinance picks up where prior attempts failed, bringing Berkeley on par with many of its neighbors in tightening restrictions on plastic bag sales. On some points, this ordinance ensures that the City again becomes a leader in environmental regulation. The following details the key changes that close loopholes in state and local law:

- Plastic bag regulations would now apply to a number of retail service establishments previously omitted from the state ban. Restaurants and food vendors would no longer be able to distribute single-use plastic carryout bags. Grocery stores and other retailers selling prepared food would be required to move away from single-use plastic produce bags.
- Retail service establishments of all sizes would be included, closing exemptions for smaller stores.
- Reusable plastic bags would be redefined as non-film plastic bags, adjusting the criteria to more accurately reflect common perceptions of reusability and the tendency for consumers treat all film bags as disposable, regardless of thickness.
- The price per non-plastic bag increases from \$0.10 to \$.25, to avoid a substitution effect.

The most common concern in reducing plastic bag waste is that the alternatives are even less sustainable. Substituting paper bags for plastic could be equally, if not more, hazardous for the environment because of the energy, transport and disposal processes required.<sup>25</sup> Cloth bags are also imperfect options, because of the large amount of energy and water necessary to produce them.<sup>26</sup> The California ban on bags thinner than 2.25

<sup>22</sup> Berkeley City Council, "Berkeley Bag Reduction Ordinance," [https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Solid\\_Waste/BagReductionDraftOrdinance.100316.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Solid_Waste/BagReductionDraftOrdinance.100316.pdf).

<sup>23</sup> Kriss Worthington, "Adopt Expanded Single Use Plastic Bag Ban/Paper Bag Fee Ordinance," [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/2012/01Jan/2012-01-31\\_Item\\_25\\_Adopt\\_Expanded\\_Single\\_Use\\_Plastic\\_Bag.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/2012/01Jan/2012-01-31_Item_25_Adopt_Expanded_Single_Use_Plastic_Bag.pdf).

<sup>24</sup> Doug Oakley, "Berkeley's plan for plastic bag ban part of larger movement," <https://www.mercurynews.com/2009/12/23/berkeleys-plan-for-plastic-bag-ban-part-of-larger-movement/>.

<sup>25</sup> The Environmental Literacy Council, "Paper or Plastic?" <https://enviroliteracy.org/environment-society/life-cycle-analysis/paper-or-plastic/>.

<sup>26</sup> Patrick Barkham, "Paper bags or plastic bags: which are best?" <https://www.theguardian.com/environment/shortcuts/2011/dec/20/paper-plastic-bags-which-best>.

mils may also have resulted in a substitution toward thicker and less sustainable film bags.<sup>27</sup> Moreover, international studies confirm that even single-use bags are reused to a limited degree for other household functions, such as garbage disposal or to pick up dog feces.<sup>28</sup> A University of Sydney economist found that garbage bag consumption increased when California placed restrictions on single-use plastic bags, likely because consumers no longer had as many free single-use film bags at hand in which to dispose their waste. Yet that same study also concluded that the benefits of the ban were still significant: Californians consumed 28 million pounds fewer plastic than they did before.<sup>29</sup>

Still, eliminating plastic bags cannot be the only approach to combat the cycle of consumer waste. It must come, as this ordinance would ensure, in combination with higher prices and greater requirements for the percentage of recycled content in paper bags. Any paper bags sold in Berkeley must per this resolution contain no old growth fiber, be 100% recyclable overall and contain a minimum of 40% post-consumer recycled content.

Data from Alameda County as a whole seems to indicate that when the cost of single-use paper bags was set at \$0.10, consumption *decreased* by approximately 40% within three years.<sup>30</sup> The same report revealed that “plastic bags found in storm drains decreased by 44 percent, indicating that the ordinance has been successful in reducing single use plastic bag litter.” Further price increases have been shown to realize even larger benefits.

### FISCAL IMPLICATIONS

Staff or contractor costs for the launch, for outreach and education, enforcement, administration and analysis.

### ENVIRONMENTAL SUSTAINABILITY

Reducing the amount of discarded plastic bags—previously classified as multi-use—in the city of Berkeley will result in less over all waste and fewer plastic that makes it into local and regional waterways.

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<sup>27</sup> Christian Britschgi, “California Plastic Bag Bans Spur 120 Percent Increase in Sales of Thicker Plastic Garbage Bags,” <https://reason.com/2019/04/11/california-plastic-bag-bans-spur-120-per/>.

<sup>28</sup> NPR Planet Money, “Are Plastic Bag Bans Garbage?” <https://www.npr.org/sections/money/2019/04/09/711181385/are-plastic-bag-bans-garbage>.

<sup>29</sup> Rebecca L.C. Taylor, “Bag leakage: The effect of disposable carryout bag regulations on unregulated bags,” <https://www.sciencedirect.com/science/article/pii/S0095069618305291>.

<sup>30</sup> Alameda County Waste Management Authority, “Addendum to the Final Environmental Impact Report Mandatory Recycling and Single Use Bag Reduction Ordinances,” <http://reusablebagsac.org/resources/addendum-final-environmental-impact-report-2016>.

Furthermore, a switch toward bags made from polyester or plastics like polypropylene, which are more sustainable than film bags and sold at many grocery stores will lead to greater environmental sustainability.<sup>31</sup>

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, (510) 981-7140

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<sup>31</sup> Claire Thompson, "Paper, Plastic or Reusable?" [https://stanfordmag.org/contents/paper-plastic-or-reusable?utm\\_source=npr\\_newsletter&utm\\_medium=email&utm\\_content=20190408&utm\\_campaign=money&utm\\_term=nprnews](https://stanfordmag.org/contents/paper-plastic-or-reusable?utm_source=npr_newsletter&utm_medium=email&utm_content=20190408&utm_campaign=money&utm_term=nprnews).

ORDINANCE NO. –N.S.

ADDING CHAPTER 11.62 TO THE BERKELEY MUNICIPAL CODE TO REGULATE PLASTIC BAGS AT RETAIL AND FOOD SERVICE ESTABLISHMENTS

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

Section 1. That Chapter 11.62 of the Berkeley Municipal Code is added to read as follows:

**Chapter 11.62**

**PLASTIC BAGS - RETAIL AND FOOD SERVICE ESTABLISHMENTS**

**Sections:**

**11.62.010 Findings and Purpose.**

**11.62.020 Definitions.**

**11.62.030 Types of Checkout Bags permitted at Retail Service and Food Service Establishments.**

**11.62.040 Checkout Bag charge for paper or Reusable Checkout Bags at Retail Service establishments.**

**11.62.050 Use of Compostable Produce Bags at Retail Service Establishments.**

**11.62.060 Hardship Exemption**

**11.62.070 Duties, responsibilities and authority of the City of Berkeley.**

**11.62.080 City of Berkeley--purchases prohibited**

**11.62.090 Liability and Enforcement.**

**11.62.100 Severability.**

**11.62.110 Construction.**

**11.62.120 Chapter supersedes existing laws and regulations.**

**11.62.130 Effective Date.**



### **11.62.010 Findings and Purpose.**

The Council of the City of Berkeley finds and declares as follows:

- A. Single-use plastic bags, plastic produce bags, and plastic product bags are a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions.
- B. The production, consumption and disposal of plastic based bags contribute significantly to the depletion of natural resources. Plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and present a great harm to global environment.
- C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain plastic bags can also contain microplastics that present a great harm to our seawater and freshwater life, which implicitly presents a threat to human life.
- D. It is in the interest of the health, safety and welfare of all who live, work and do business in the City that the amount of litter on public streets, parks and in other public places be reduced.
- E. The City of Berkeley must eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. Reduction of plastic bag waste furthers this goal.
- F. The State of California regulates single-use carryout bags as directed under Senate Bill 270, but numerous local governments, including San Francisco and Palo Alto, have imposed more stringent regulations to reduce the toll plastic bags inflict upon the environment.
- G. Stores often provide customers with plastic pre-checkout bags to package fruits, vegetables, and other loose or bulky items while shopping, before reaching the checkout area. They share many of the same physical qualities as single-use plastic carryout bags no longer permitted in California, and are difficult to recycle or reuse.
- H. SB 270 permits local governments to increase the price of bags provided at the point of sale and leaves open any regulation on pre-checkout bags, such as at meat or vegetable stands within grocery stores.
- I. The City of Berkeley regulates a number of disposable plastic items through the Single-Use Foodware and Litter Reduction Ordinance (Ord. 7639-NS § 1 (part), 2019), but does not impose regulations on bags.
- J. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan, as amended, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

### **11.62.20 Definitions.**

"Checkout Bag" means a bag provided by a Retail Service Establishment at the checkstand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment. Checkout Bags do not include Produce Bags or Product Bags.

"Recyclable Paper Checkout Bag" means a paper bag that meets the following criteria:

- 1. Contains no old growth fiber;
- 2. Is 100% recyclable overall and contains a minimum of 40% post-consumer recycled content;
- 3. Displays the word "Recyclable" on the outside of the bag along with the manufacturer, the location (country) where manufactured and the percentage of post-consumer recycled content in an easy-to-read size font;

4. Or is made from alternative material or meets alternative standards approved by the City Manager or their designee.

“Reusable Checkout Bag” means all Checkout Bags defined as reusable under Cal. PRC §42280-42288, such as cloth or other washable woven bags, but do not include film bags considered reusable under Cal. PRC §42280-42288.

"Produce Bag" means a bag provided to a customer to carry produce, meats, bulk food, or other food items to the point of sale inside a store and protects food or merchandise from being damaged or contaminated by other food or merchandise when items are placed together in a Reusable Checkout Bag or Recyclable Paper Checkout Bag.

"Compostable Produce Bags" means paper bags and bags made of plastic-like material if the material meets the ASTM Standard Specifications for compostability D6400 or D6868, or the product is Biodegradable Products Institute (BPI) certified, or is considered acceptable within the City's compost collection program.

"Product Bag" means a bag provided to a customer to protect merchandise from being damaged or contaminated by other merchandise when items are placed together in a Reusable Checkout Bag or Recyclable Paper Checkout Bag; a bag to hold prescription medication dispensed from a pharmacy; or a bag without handles that is designed to be placed over articles of clothing on a hanger.

“Retail Food Establishment” means any establishment, located or providing food within the City, which provides prepared and ready-to-consume food or beverages, for public consumption including but not limited to any Retail Service Establishment, eating and drinking service, takeout service, supermarket, delicatessen, restaurant, food vendor, sales outlet, shop, cafeteria, catering truck or vehicle, cart or other sidewalk or outdoor vendor or caterer which provides prepared and ready-to-consume food or beverages, for public consumption, whether open to the general public or limited to certain members of the public (e.g., company cafeteria for employees).

“Retail Service Establishment” means a for-profit or not-for-profit business that where goods, wares or merchandise or services are sold for any purpose other than resale in the regular course of business (BMC Chapter 9.04.135).

#### **11.62.030 Types of Checkout Bags permitted at Retail Service and Food Service Establishments.**

- A. Retail Service Establishments and Food Service Establishments shall provide or make available to a customer only Reusable Checkout Bags, Compostable Produce Bags, or Recyclable Paper Checkout Bags for the purpose of carrying away goods or other materials from the point of sale, subject to the terms of this Chapter.
  1. Exception: Single-use plastic bags exempt from the Chapter include those integral to the packaging of the product, Product Bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste or yard waste bags.
- B. Effective [ ], 2020, farmers markets shall only provide Compostable Produce Bags to hold produce, meats, bulk food or other food items. Single-use Plastic Checkout Bags, Produce Bags or Product Bags shall not be provided by farmers markets for produce or meat.

- C. Nothing in this Chapter prohibits customers from using bags of any type that they bring to the establishment themselves or from carrying away goods that are not placed in a bag at point of sale, in lieu of using bags provided by the establishment.

**11.62.040 Checkout Bag charge for paper or Reusable Checkout Bags at Retail Service Establishments.**

- A. Effective [ ], 2020, no Retail Service Establishment shall provide a Compostable Produce Bag, Recyclable Paper Checkout Bag or Reusable Checkout Bag to a customer at the point of sale, unless the store charges the customer a Checkout Bag charge of at least twenty-five cents (\$0.25) per bag to cover the costs of compliance with the Chapter, the actual costs of providing Recyclable Paper Checkout Bags, educational materials or other costs of promoting the use of Reusable Checkout Bags.
- B. Retail Service Establishments shall establish a system for informing the customer of the charge required under this section prior to completing the transaction. This system can include store clerks inquiring whether customers who do not present their own Reusable Checkout Bag at point of checkout want to purchase a Checkout Bag.
- C. The Checkout Bag charge shall be separately stated on the receipt provided to the customer at the time of sale and shall be identified as the Checkout Bag charge. Any other transaction fee charged by the Retail Service Establishment in relation to providing a Checkout Bag shall be identified separately from the checkout bag charge. The Checkout Bag charge may be completely retained by the Retail Service Establishment and used for public education and administrative enforcement costs.
- D. Retail services establishments shall keep complete and accurate records of the number and dollar amount collected from Recyclable Paper Checkout Bags and Reusable Checkout Bags sold each month and provide specifications demonstrating that paper and reusable bags meet the standards set forth in Section 11.62.030 using either the electronic or paper reporting format required by the city. This information is required to be made available to city staff upon request up to three times annually and must be provided within seven days of request. Reporting false information, including information derived from incomplete or inaccurate records or documents, shall be a violation of the Chapter. Records submitted to the city must be signed by a responsible agent or officer of the establishment attesting that the information provided on the form is accurate and complete.

**11.62.050 Use of Compostable Produce Bags at Retail Service Establishments.**

Effective [ ], 2020, Retail Service Establishments shall only provide Compostable Produce Bags to carry produce, meats, bulk food, or other food items to point of sale within the store.

**11.62.060 Hardship Exemption.**

- A. Undue hardship. The City Manager, or their designee, may exempt a retail service or food service establishment from the requirements of this Chapter for a period of up to one year, upon sufficient evidence by the applicant that the provisions of this Chapter would cause undue hardship. An undue hardship request must be submitted in writing to the city. The phrase "undue hardship" may include, but is not limited to, the following:
  - 1. Situations where there are no acceptable alternatives to single-use plastic Checkout Bags for reasons which are unique to the Retail Service Establishment or Food Service Establishment.

2. Situations where compliance with the requirements of this Chapter would deprive a person of a legally protected right.
- B. Retail Service Establishments shall not enforce the ten cent (\$0.25) store charge for customers participating in the California Special Supplemental Food Program for Women, Infants, and Children, or in CalFresh, or in the Supplemental Nutrition Assistance Program (SNAP).

**11.62.070 Duties, responsibilities and authority of the City of Berkeley.**

The City Manager or their designee shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this Chapter and is hereby authorized to take any and all actions reasonable and necessary to enforce this Chapter including, but not limited to, inspecting any Retail Service Establishment's premises to verify compliance.

**11.62.080 City of Berkeley—purchases prohibited.**

The City of Berkeley shall not purchase any Foodware or Bag that is not Compostable, Recyclable or Reusable under Disposable Foodware and Bag Standards in Section 11.64.080, nor shall any City-sponsored event utilize non-compliant Disposable Foodware and Bag.

**11.62.090 Liability and Enforcement.**

- A. Anyone violating or failing to comply with any requirement of this Chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a requirement of this Chapter until one year after the effective date of such requirement.
- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 11.64.090.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

**11.62.100 Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

**11.62.110 Construction.**

This Chapter is intended to be a proper exercise of the City's police power, to operate only upon its own officers, agents, employees and facilities and other persons acting within its boundaries, and not to regulate inter-city or interstate commerce. It shall be construed in accordance with that intent.

**11.62.120 Chapter supersedes existing laws and regulations.**

The provisions of this Chapter shall supersede any conflicting law or regulations.

**11.62.130 Effective Date.**

The provisions in this ordinance are effective [ ], 2020.

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.





Office of the City Manager

**07**

CONSENT CALENDAR  
July 21, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Timothy Burroughs, Director, Department of Planning & Development

Subject: Referral Response: Ordinance Amending Berkeley Municipal Code Chapter 7.52, Reducing Tax Imposed for Qualifying Electrification, Energy Efficiency and Water Conservation Retrofits

RECOMMENDATION

1. Delay adoption of the first reading of an ordinance amending the Berkeley Municipal Code (BMC) Chapter 7.52 to expand the Seismic Transfer Tax Rebate Program to include qualifying sustainability and resilience measures, and any associated budget requests, until FYE 2022 when more information on budget due to COVID-19 response and recovery is available; and
2. Refer to the City Manager the design of a companion Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements to low-income residents.

SUMMARY

On November 27, 2018, City Council adopted a referral sponsored by Councilmembers Harrison and Davila to expand the existing Seismic Transfer Tax Rebate Program to include qualifying electrification, energy efficiency and water conservation retrofits.<sup>1</sup> The Seismic Transfer Tax Rebate Program provides refunds for voluntary seismic upgrades to residential properties. Up to one-third of the base 1.5% transfer tax rate may be refunded, on a dollar-for-dollar basis, for voluntary seismic upgrades to residential property. Applicants have up to one year from the record of transfer to complete all seismic retrofit work, then apply for the rebate. The ordinance allows this deadline to be extended for good cause for up to one additional year.

This report and proposed actions are the result of in-depth analysis and input from stakeholders, including the Energy Commission and Disaster & Fire Safety Commission. The recommendations for updating the Transfer Tax Rebate program have General Fund budget implications for the City. Given challenges and uncertainties from COVID-19 response and recovery, staff now recommend that adoption of these

<sup>1</sup> See November 27, 2018 Council Referral:

[https://www.cityofberkeley.info/Clerk/City\\_Council/2018/11\\_Nov/Documents/Item\\_24\\_Rev\\_Harrison.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/11_Nov/Documents/Item_24_Rev_Harrison.aspx)

proposed changes be delayed. Staff will return to Council in one year, when more information on future budget constraints is available. Should Council approve the program changes in the future, staff would develop Administrative Regulations to define the qualifying measures and rebate application process.

The current Transfer Tax Rebate Program only benefits Berkeley residents who can afford to purchase a home in Berkeley, while low-income residents who often live in older homes most in need of improvements are excluded from this resource. Given that COVID-19 is exacerbating vulnerabilities of low income homeowners and renters, staff proposes development of a Resilient Homes Equity Pilot Program now, to complement a proposed future update to the Transfer Tax Rebate program.

### FISCAL IMPACTS OF RECOMMENDATION

#### *Resilience Transfer Tax Rebate Program*

The current proposal of delaying program changes for one year has no fiscal impacts.

If these program changes are adopted in the future, there would be budget impacts. The current Seismic Transfer Tax Rebate Program reserves one-third of the base 1.5% transfer tax amount to be rebated from the General Fund. Based on residential property sales from 2014 to 2019, the average annual total net residential Transfer Tax (1.5%) was nearly \$14 million,<sup>2</sup> and the eligible rebate amount was approximately \$4.6 million. Funds not spent on rebates have remained in the General Fund.

As of the FY2018-2019 adopted budget, up to \$12.5 million of the net Transfer Tax amount goes to the General Fund, including the one-third subset which can be rebated to homeowners as part of the Seismic Transfer Tax Rebate Program. Anything received by the City exceeding \$12.5 million is to be used for Capital Improvement Projects.<sup>3</sup>

See Table 1 below for average transfers of residential, commercial, and mixed-use properties from 2014-2019.

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<sup>2</sup> This amount does not include the additional 1.0% of Transfer Tax funds that is dedicated for Measure P.

<sup>3</sup> City of Berkeley, Fiscal Years 2018 & 2019 Adopted Biennial Budget:  
<https://www.cityofberkeley.info/uploadedFiles/Manager/Budget/FY%202018-2019%20Adopted%20Budget%20Book.pdf>



Table 1 – 2014-2019 Residential, Commercial + Mixed Use Property Transfers<sup>4</sup>

Fiscal Year:	# Residential Transfers	Total Residential 1.5% Transfer Tax Amount	Eligible Residential Rebate Amount	# Commercial + Mixed Use Transfers	Commercial + Mixed Use Transfer Tax Amount (\$)	Potential Eligible Commercial + Mixed Use Rebate Amount	Total Potential Residential + Commercial + Mixed Use Rebate (\$)
2014	945	\$ 12,334,024	\$ 4,111,341	69	\$ 1,579,799	\$ 526,600	\$ 4,637,941
2015	886	\$ 12,474,066	\$ 4,158,022	71	\$ 3,093,733	\$ 1,031,244	\$ 5,189,267
2016	874	\$ 13,516,064	\$ 4,505,355	64	\$ 3,303,230	\$ 1,101,077	\$ 5,606,431
2017	710	\$ 13,410,320	\$ 4,470,107	61	\$ 3,002,048	\$ 1,000,683	\$ 5,470,789
2018	793	\$ 14,511,819	\$ 4,837,273	79	\$ 3,705,287	\$ 1,235,096	\$ 6,072,368
2019	863	\$ 17,577,210	\$ 5,859,070	53	\$ 2,519,843	\$ 839,948	\$ 6,699,018
<b>Average 2014-2019</b>	<b>845.17</b>	<b>\$ 13,970,584</b>	<b>\$ 4,656,861</b>	<b>66.17</b>	<b>\$ 2,867,323</b>	<b>\$ 955,774</b>	<b>\$ 5,612,636</b>

### Resilient Homes Equity Pilot Program

Staff would design the program with existing capacity and return to Council with a full budget request, implementation strategy, and timelines.

### CURRENT SITUATION AND ITS EFFECTS

On November 27, 2018, the City Council adopted a referral, sponsored by Councilmembers Harrison and Davila, to expand the existing Seismic Transfer Tax Rebate Program for qualifying electrification, energy efficiency and water conservation retrofits. The referral was intended to increase use of the program to advance the community's greenhouse gas reductions, address the urgency of the Climate Emergency Declaration, and increase the community's resilience. The referral asked staff to evaluate options for additional qualifying measures, evaluate how the program expansion should interact with the existing seismic program, and consider the framework for a just and equitable transition as set out in the Climate Emergency Declaration.

In response to the referral, staff conducted outreach over many months with staff from multiple City departments, the Energy Commission, the Disaster and Fire Safety Commission, as well as several technical experts and stakeholders. As developed through those efforts, staff developed proposed changes to amend BMC Chapter 7.52 to:

1. Add qualifying measures for the expanded Resilience Transfer Tax Rebate Program to include electrification, sustainability and resilience measures that require a building permit, in addition to the seismic measures already included in the program;
2. Expand the program to apply to all residential, commercial, and mixed-use buildings at time of property transfer, augmenting the current program which applies to only residential or mixed-use buildings with two or more dwelling units; and

<sup>4</sup> From City of Berkeley Finance Department.

3. Expand the deadline of the program so applicants have two years to apply for the rebate plus the opportunity to apply for a one-year extension, instead of the current program's one year deadline with a one-year extension.

Staff is recommending delaying approval of these changes, which would have potentially significant impacts to the General Fund. Staff will return next year and make another recommendation based on the budget situation at that time. If these changes are approved, staff would develop Administrative Regulations including qualifying measures, an implementation strategy, and timelines. In order to develop and administer the proposed changes, the next recommendation would include additional staff capacity to support the increased application review and processing.

### ***Proposal for Resilient Homes Equity Pilot Program***

Communities of color and low-income communities are not only most impacted by financial disparities, they are also the frontline communities most impacted by climate change and other disasters. The City of Berkeley values equity and strives to be a leader in developing creative approaches for addressing the affordability and housing crises the City faces, leading to displacement of people of color and low-income community members. The City also has ambitious goals to combat climate change and to become a more resilient City. Further, in the referral, Council urged staff to consider “the framework for a just and equitable transition” as laid out in the Climate Emergency.<sup>5</sup> These goals can all be aligned together to achieve multiple benefits in a new Resilient Homes Equity Pilot Program proposed by City staff.

An equity analysis of the impacts of the Transfer Tax Rebate Program considers who benefits, who is burdened and who is excluded. A transfer tax rebate program only benefits Berkeley residents who can afford to purchase a home, currently selling for an average of \$1.27 million<sup>6</sup>. Low-income residents often live in older homes that are most in need of home improvements for safety, health, comfort, efficiency, and resilience. Attachment 2 is an Equity White Paper written by Noel Simpkin, a UC Berkeley Masters of Planning graduate student. This paper applies an equity lens to the Seismic Retrofit Refund Program and recommends developing an equity pilot program that targets Berkeley's underserved residents.

A concurrent Resilient Homes Equity Pilot Program would provide direct funding to low-income residents to improve their homes as a parallel program to the proposed expanded Resilience Transfer Tax Rebate, for home improvements. This equity pilot program would aim to provide a valuable benefit to low-income residents, long-term homeowners with limited incomes, and renters, who are not able to access the existing

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<sup>5</sup> City of Berkeley, November 27, 2018 Council Referral:

[https://www.cityofberkeley.info/Clerk/City\\_Council/2018/11\\_Nov/Documents/Item\\_24\\_Rev\\_Harrison.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/11_Nov/Documents/Item_24_Rev_Harrison.aspx)

<sup>6</sup> Zillow, “Berkeley Home Prices & Values”: <https://www.zillow.com/berkeley-ca/home-values/>. Last accessed 3/5/2020.

Seismic or future Resilience Transfer Tax Rebate Program. This program could support homeowners' ability to remain in their homes, improve occupant health and increase resilience in an aging building stock. An equity pilot program would create a replicable example of how City programs can operationalize equity in residential buildings and assure equitable distribution of City resources.

This program, once developed and approved, may provide additional funding and/or free resources for homeowners and leverage work in existing programs that benefit low income residents and homeowners. Staff would design the program in collaboration with community stakeholders to ensure that it will meet the needs of frontline communities such as low-income communities, communities of color, and those most affected by the impacts of climate change. If approved by Council, staff will:

1. Design the program in collaboration with community stakeholders;
2. Develop a detailed budget;
3. Identify potential funding sources for the program;
4. Determine necessary staffing for program administration and implementation;
5. Prepare an implementation strategy including timelines; and
6. Return to Council for approval of the budget and implementation of the program.

This equity pilot program concept was discussed with and received support from the Berkeley Energy Commission, Disaster & Fire Safety Commission, and other stakeholders.

### ***Related Initiatives***

Staff is concurrently advancing other programs and initiatives which may be directly impacted by an expansion of the Resilience Transfer Tax Rebate Program:

- *Building Energy Savings Ordinance (BESO)*<sup>7</sup>: The BESO program has just completed its evaluation, and will be updated to better align with the City's priorities of building electrification and resilience. The proposed update to BESO would prioritize electrification and provide recommendations at time of listing that would align with the transfer tax rebate eligible measures. This change, along with possible future mandatory requirements, has the potential to increase Transfer Tax Rebate Program participation.
- *Existing Building Electrification Strategy*: In April 24, 2018, Council requested the development of "policies to incentivize energy efficiency and electrification, in support of Climate Action Plan (CAP) goals" and referred \$50,000 to the budget process to fund the Existing Building Efficiency Strategy. Staff is working with a team of experts to identify how Berkeley can electrify its existing buildings as soon as

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<sup>7</sup> BESO requires building owners and homeowners to complete and publicly report comprehensive energy assessments to uncover energy saving opportunities. More information at: <https://www.cityofberkeley.info/BESO/>.

possible. This report will include equitable strategies, policies, and programs that will help Berkeley achieve its goal of becoming a fossil fuel-free City, and will include specific building measures that can be supported by the proposed Resilience Transfer Tax Rebate Program and Resilient Homes Equity Pilot Project.

- *Automatic Gas Shutoff Valve Referral:* Another Council referral asked the Disaster & Fire Safety Commission to consider an ordinance amending BMC 19.34.040 to expand requirements for automatic natural gas shut-off valves or excess flow valves. The referral would expand use of such devices in multifamily, condominium and commercial buildings undergoing renovations, and in all existing buildings prior to execution of a contract for sale or close of escrow. It also asks the Commission to consider other triggers as appropriate. Installation of an automatic gas shutoff valve has been included as a qualifying measure under the proposed Resilience Transfer Tax Rebate Program.

Amending the BMC to update the Resilience Transfer Tax Rebate Program as proposed and approving the development of a Resilient Homes Equity Pilot Project would advance the City Strategic Plan goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment. It also advances the following goals:

- Create affordable housing and housing support service for our most vulnerable community members.
- Create a resilient, safe, connected, and prepared city.
- Champion and demonstrate social and racial equity.

## BACKGROUND

### ***Existing Seismic Transfer Tax Rebate Program***

In 1991 the City created the Seismic Retrofit Refund Program which provides refunds for voluntary seismic upgrades to residential properties. Up to one-third of the base 1.5% transfer tax rate may be refunded on a dollar-for-dollar basis, for all expenses incurred on or after October 17, 1989 for voluntary seismic upgrades to residential property. This program applies to structures that are used exclusively for residential purposes, or any mixed-use structures that contains two or more dwelling units. Applicants have up to one year from the recordation of transfer to complete all seismic retrofit work, then apply for the rebate. The ordinance allows this deadline to be extended for good cause for up to one additional year.

Since July 2002, the City has distributed over \$12 million to homeowners through the Seismic Transfer Tax Rebate Program, which reduces the real estate transfer tax to

building owners who perform seismic safety work.<sup>8</sup> As shown in the table below, between 2014-2019 an average of 13% of homeowners took advantage of the program.

*Table 2 - Seismic Transfer Tax Rebates, 2014-2019*

Fiscal Year:	# Residential Transfers	Total # Seismic Transfer Tax Rebates	Total Seismic Rebate Amount Spent (\$)	Eligible Residential Rebate Amount	% Seismic Rebate Uptake (#)	% Seismic Rebate Amount Spent	Total Residential 1.5% Transfer Tax Amount
2014	945	171	\$ 823,352	\$ 4,111,341	18%	20%	\$ 12,334,024
2015	886	140	\$ 781,447	\$ 4,158,022	16%	19%	\$ 12,474,066
2016	874	142	\$ 826,994	\$ 4,505,355	16%	18%	\$ 13,516,064
2017	710	77	\$ 518,058	\$ 4,470,107	11%	12%	\$ 13,410,320
2018	793	94	\$ 676,042	\$ 4,837,273	12%	14%	\$ 14,511,819
2019	863	63	\$ 427,581	\$ 5,859,070	7%	7%	\$ 17,577,210
<b>Average 2014-2019</b>	<b>845.17</b>	<b>114.5</b>	<b>\$ 675,579</b>	<b>\$ 4,656,861</b>	<b>13%</b>	<b>15%</b>	<b>\$ 13,970,584</b>

### ENVIRONMENTAL SUSTAINABILITY

Amending the Resilience Transfer Tax Rebate Program would advance the City's ambitious climate action goals, by incentivizing energy efficiency, electrification, and other resilience improvements in Berkeley's buildings.

Developing a Resilient Homes Equity Pilot Program would extend the City's sustainability efforts further by providing these benefits to more buildings, serving a broader and more diverse set of Berkeley residents than would otherwise have access to the Resilience Transfer Tax Rebate Program.

### RATIONALE FOR RECOMMENDATION

Given the need to address COVID-19 response and recovery, and the associated budgetary impacts, staff recommends that Council delay approving the proposed changes to the B.M.C. Chapter 7.52. Staff will return next year for Council to consider approval at that time.

In the future, expanding the current Transfer Tax Rebate Program would encourage and incentivize sustainability and resilience upgrades in homes.

Developing the Resilient Homes Equity Pilot Program is aligned with the City's Strategic Plan Goal to champion and demonstrate social and racial equity, and is aligned with the City's Resilience Strategy goal to advance racial equity. This program would aim to serve as an anti-displacement strategy for low-income homeowners as well as to incorporate equity into existing City policies. This could serve as a pilot equity pilot program that could be replicated and scaled.

<sup>8</sup> City of Berkeley 2019 Local Hazard Mitigation Plan, Summary-11:  
[https://www.cityofberkeley.info/uploadedFiles/Fire/Level\\_3\\_-\\_General/City%20of%20Berkeley%202019%20LHMP%20-%20FINAL%2012-10-19%20-%20REDUCED%20SIZE.pdf](https://www.cityofberkeley.info/uploadedFiles/Fire/Level_3_-_General/City%20of%20Berkeley%202019%20LHMP%20-%20FINAL%2012-10-19%20-%20REDUCED%20SIZE.pdf)

ALTERNATIVE ACTIONS CONSIDERED

Rather than delaying approval of this proposal, Council could consider adopting the proposed changes to the BMC Chapter 7.52 at this time. This would provide a benefit to home buyers sooner, but would have ongoing budget impacts.

Whenever Council does consider adopting the proposed changes to the BMC Chapter 7.52, other potential alternative actions for this proposal include:

- **Qualifying Measures:** Council could consider expanding the qualifying measures to include work that does not require a building permit. This would provide additional options and flexibility to the building owner, but would require design, development, and implementation of a new process to validate the measures, plus additional ongoing staff resources, because it would be staff time-intensive to verify completion of qualifying work.
- **Building Types:**
  - Council could continue to limit the program to residential and mixed-use buildings with two or more dwelling units. This approach would not generate as significant greenhouse gas emissions reductions, electrification, or resilience improvements in buildings.
  - Council could consider including industrial building types, for which sufficient information was not available for analysis in this report.
- **Application Deadline:** Council could keep the current program timeline as is, at one year plus a one year extension, or it could further extend timelines to provide even greater flexibility to applicants.

**Resilient Homes Equity Pilot Program:** Council could reject the proposal for a Resilient Homes Equity Pilot Program. Eliminating this program would mean no new benefits would be provided to low income residents, and would have no financial impact on the current budget.

CONTACT PERSON

Billi Romain, Sustainability Manager, Office of Energy and Sustainable Development, Planning & Development Department, 510-981-7432.

Katie Van Dyke, Climate Action Program Manager, 510-981-7403.

## Attachments:

1. Draft Ordinance language to expand existing Seismic Transfer Tax Rebate Program for possible future action
2. Equity White Paper
3. Potential list of qualifying measures for consideration in Administrative Regulations
4. Original Referral Report from November 27, 2018

ORDINANCE NO. XXXX-N.S.

AMENDMENTS TO THE BERKELEY MUNICIPAL CODE TO EXPAND THE  
TRANSFER TAX REBATE PROGRAM FOR RESILIENCE MEASURES

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

Section 1. That Berkeley Municipal Code Chapter 7.52.060 is amended to read as follows:

**7.52.060 Exceptions.**

K. 1. Up to one-third of the tax imposed by this chapter shall be reduced, on a dollar for dollar basis, for all expenses incurred on or after October 17, 1989 to perform a "~~resilience seismically retrofit~~ retrofit" ~~on either~~ any structure which is used ~~exclusively~~ for residential, mixed-use, or commercial purposes, ~~or any mixed use structure which contains two or more dwelling units.~~

2. The term "~~resilience seismically~~ retrofit" within the meaning of this chapter means any of the following:

- a. That work which is needed and directly related to make the structure capable of withstanding lateral loads equivalent to the force levels defined by Chapter 23 of the 1976 Uniform Building Code;
- b. Replacement or repair of foundations; replacement or repair of rotted mud sills; bracing of basement or pony walls; bolting of mud sills to standard foundations; installation of shear walls; anchoring of water heaters; and/or securing of chimneys, stacks or water heaters;
- c. Corrective work on buildings which fit the criteria in subsection K.1, which are listed on the City of Berkeley inventory of potentially

hazardous, unreinforced masonry buildings when such work is necessary to meet City standards or requirements applicable to such buildings;

d. Any other work found by the building official to substantially increase the capability of those structures, specified in subsection K.1, to withstand destruction or damage in the event of an earthquake.

e. Any other work as defined in the list of qualifying measures for the Resilience Transfer Tax Rebate Program Administrative Regulations, including but not limited to measures that provide the following types of benefits: safety, health, electrification, efficiency, or other resilience measures.

3. The work to perform resilience seismically retrofits on structures as provided herein shall be completed either prior to the transfer of property or as provided in subsection K.4.

4. If the work to perform resilience seismically retrofits on the structures provided for herein is to be performed after the transfer of property which is subject to the tax imposed by this chapter, upon completion of such work and certification by the building official as to the amount of the expenses of such work the City Manager or his/her designee may refund such expenses not to exceed one-third of the base 1.5% transfer tax imposed to the parties to the sale in accordance with the terms of such sale. Any remaining tax shall be retained by the City.

5. From the date of the recordation of the transfer document, the applicant shall have one two years to complete all seismic-resilience retrofit work and submit a resilience seismic-retrofit verification application to ~~the codes and inspection division of~~ the City of Berkeley. If the work is not completed at the end of one two years, that portion which has been completed may be credited to the applicant upon submission of a resilience seismic-retrofit



verification application and substantiating documentation, as required by the ~~codes and inspections division of the~~ City of Berkeley, showing the dollar amount of work completed up to that date. All other monies remaining in escrow will be returned to the City of Berkeley upon written request by the Finance Department.

6. Within the ~~one~~two-year period established by paragraph 5, an applicant may request, and the City Manager may approve, an extension of up to one year. The City Manager or his/her designee may grant such an extension only for good cause. The decision of the City Manager or his/her designee shall be entirely within his or her discretion and shall be final.

a. "Good cause" includes (i) the inability of the applicant, after a prompt and diligent search to find and retain the services of an architect, engineer, contractor or other service provider whose services are necessary for the seismic-resilience retrofit work; (ii) unforeseen and unforeseeable circumstances such as a significant change in the scope of the seismic-resilience retrofit work due to circumstances in the field which could not reasonably have been known earlier; and (iii) serious illness or other extraordinary and unforeseeable circumstances that prevented the timely commencement or completion of the seismic-resilience retrofit work.

b. "Good cause" does not include (i) ignorance of the applicable City ordinances or regulations concerning the seismic-resilience retrofit rebate provided in this chapter or state or local laws relating to the standards with which seismic-resilience retrofit work must comply; or (ii) any delays which were within the control or responsibility of the applicant. (Ord. 6971-NS § 1, 2007: Ord. 6741-NS § 1, 2003: Ord 6539-NS § 1, 2000: Ord. 6262-NS § 1, 1994: Ord. 6146-NS §§ 1, 2, 1992: Ord. 6072-NS § 2, 1991: Ord. 6069-NS § 1, 1991: Ord. 5061-NS § 5, 1978)

# RESILIENCE FOR ALL

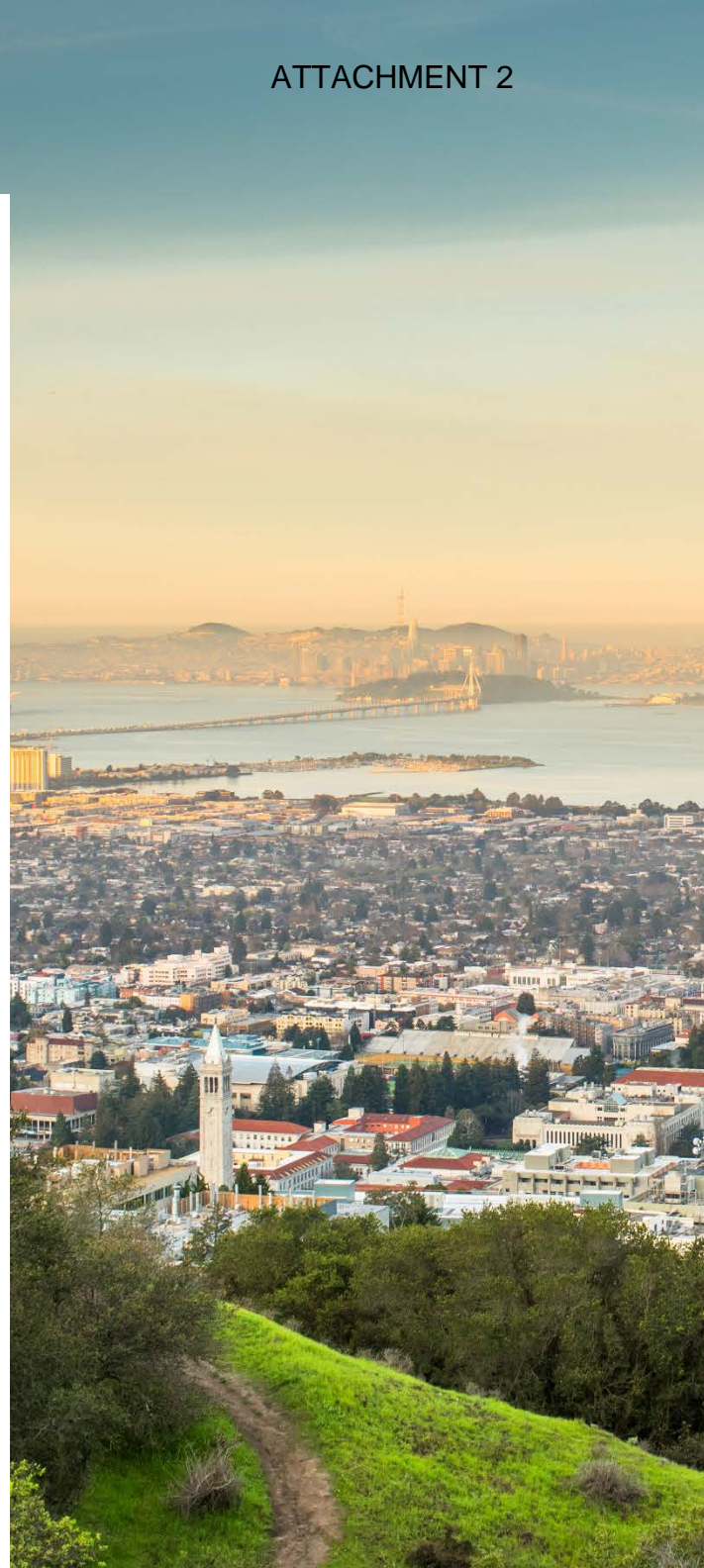
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## Applying an Equity Lens to Berkeley's Seismic Transfer Tax Rebate Program

MARCH 2020

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**NOEL SIMPKIN**  
**MASTER OF CITY PLANNING, CLASS OF 2020**  
**UNIVERSITY OF CALIFORNIA, BERKELEY**



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# I. Executive Summary

The City of Berkeley (City) has long had a reputation for tolerance and inclusiveness, and yet social and racial inequity remains a significant challenge.<sup>1</sup> In its 2018-2019 Strategic Plan, the City identified a goal to “champion and demonstrate social and racial equity” and has prioritized integrating equity considerations throughout City operations and services.<sup>2</sup> To support this work, the City developed a Racial Equity Lens Toolkit (Toolkit) to assess city policies, plans, programs, and budgets in order to identify biases and help ensure equitable access to opportunities for all community members. Incorporating equity is particularly important in City programs aimed at increasing resilience for two reasons: without careful and deliberate planning, resilience strategies can actually exacerbate inequalities,<sup>3</sup> and true resilience can only be achieved when physical challenges as well as social challenges are addressed.<sup>4</sup>

The City’s current Seismic Transfer Tax Rebate Program (Program) offers an example of a resilience strategy that addresses physical vulnerabilities but fails to advance social and racial equity. The current Program allows a portion of the City’s transfer tax to be refunded to residential property owners for seismic upgrades, thus incentivizing homeowners who recently purchased a home to make important safety improvements. However when analyzing the Program through an equity lens it becomes clear that the Program is not reaching underserved members of the community, despite the fact that low-income and minority communities are more vulnerable to natural disasters and the impacts of climate change.<sup>5</sup> The current median sale price for a single-family home in Berkeley is over \$1.2 million, which suggests that many recent homebuyers in Berkeley are economically advantaged.<sup>6</sup> In addition, 75 percent of the City’s homeowners are white, and income disparities in the region demonstrate the challenge people of color face to purchase a home in Berkeley.<sup>7</sup>

In 2018, Berkeley City Council declared a Climate Emergency and established a goal of becoming a Fossil Fuel Free city. That same year, Council passed a referral to the City Manager and Office of Energy and Sustainable Development to expand the existing Seismic Transfer Tax Rebate Program in an effort to accelerate the transition toward more sustainable buildings. The referral identified the need for expanding the Program in order to reduce greenhouse gas (GHG) emissions, address the urgency of the Climate Emergency Declaration, and increase the City’s resilience. In response, staff is providing recommendations to Council to expand the Program to include specific sustainability and resilience upgrades, as well as to establish a Resilient Homes Equity Pilot Program (Equity Pilot) that would provide similar home-improvement benefits to frontline communities. A new, equity-centered program that parallels the existing Program can help the City more quickly achieve its Fossil Fuel Free

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<sup>1</sup> *City of Berkeley Resilience Strategy 2016*

<sup>2</sup> *City of Berkeley Strategic Plan 2018*

<sup>3</sup> *Anguelovski 2016*

<sup>4</sup> *100 Resilient Cities 2019*

<sup>5</sup> *City of Berkeley Resilience Strategy 2016*

<sup>6</sup> *Zillow 2020*

<sup>7</sup> *ACS 2017 5-Year Estimates; Table DP05, Universe: Total Population; and Table B25003H, Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.*

goal, while benefitting low-income residents, long-term homeowners with limited incomes, and renters, who are not able to access the current Program.

This paper analyzes the current Seismic Transfer Tax Rebate Program through an equity lens, and aims to demonstrate the need for a more inclusive approach to increasing Berkeley's resilience. In addition, it recommends Berkeley City Council take the following actions to build both physical and social resilience:

1. Approve the development of a Resilient Homes Equity Pilot Program that leverages the City's Racial Equity Lens Toolkit in collaboration with community organizations and stakeholders.
2. Confirm a commitment to dedicate additional future funding to implement the Equity Pilot, with the exact annual amount to be determined during the program design phase.

An Equity Pilot offers many potential benefits, including: increased safety, improved health outcomes, reduction in GHG emissions, and it enables a Just Transition. It is also an opportunity to operationalize the City's Toolkit, and learnings can inform how other City programs and policies can incorporate equity and assure equitable distribution of City resources. Through the Equity Pilot, the City will be better positioned to achieve its goals of demonstrating social equity and becoming Fossil Fuel Free, while building a safer, healthier, more sustainable, and more resilient community.

## II. Introduction

The City's Resilience Strategy, released in 2016, prioritizes both physical and social resilience: through a combination of long-term goals and short-term actions, the strategy aims to build the capacity of residents, institutions, and businesses to manage physical challenges, such as earthquakes and sea level rise, as well as social challenges, including racial inequity.<sup>8</sup> The City reaffirmed this holistic approach more recently in its 2018-2019 Strategic Plan, which articulates a goal to "create a resilient, safe, connected and prepared city" as well as a "responsibility to advance social and racial equity."<sup>9</sup> In order to make progress in these areas, City policies and programs must be designed to enable *all* residents to participate in, contribute to, and benefit from building Berkeley's resilience – especially historically underserved residents. There is an opportunity to make meaningful progress toward achieving these goals while prioritizing those most in need by examining the City's Seismic Transfer Tax Rebate Program, historically referred to as the Seismic Retrofit Rebate Program, through an equity lens. The current Program allows a portion of the City's transfer tax to be refunded to residential property owners for seismic upgrades. This program incentivizes homeowners who recently purchased a home to make important safety improvements and creates a more resilient housing stock. However, because the median price to purchase a home in Berkeley is currently over \$1.2 million,<sup>10</sup> the Program is primarily supporting higher-income households and fails to reach low-income or long-term members of the community.

<sup>8</sup> *City of Berkeley Resilience Strategy 2016*

<sup>9</sup> *City of Berkeley Strategic Plan 2018*

<sup>10</sup> *Zillow 2020*

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***“We have a responsibility to advance social and racial equity.”***

*- City of Berkeley 2018-2019 Strategic Plan*

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In November 2018 Berkeley City Council passed a referral to the City Manager and the Office of Energy and Sustainable Development to expand the existing Program to include subsidies beyond seismic retrofit and potentially include qualifying electrification, energy efficiency, and water conservation retrofits. In addition, Council urged staff to consider “the framework for a just and equitable transition” as laid out in the Climate Emergency.<sup>11</sup> In response, staff has conducted an analysis with stakeholder input.<sup>12</sup> and is providing recommendations to Council to expand the Program to include specific sustainability and resilience upgrades, as well as to establish a Resilient Homes Equity Pilot Program that would provide similar home-improvement benefits to frontline communities. An Equity Pilot, that parallels the existing Program, can improve physical resilience and advance equity by enabling underserved residents to improve their physical environments – making them safer, more comfortable, more sustainable, and less susceptible to disasters and climate change (more on potential impact in Section VII). The following sections describe how an Equity Pilot aims to address the impacts of harmful racist policies that favor high-income, white homeowners while furthering the City’s goals of resilience and equity.

### III. Equity Principles & Frameworks

Income inequality and health disparities are unfortunate realities in Berkeley: white families earn roughly three times more than African American families, and African American residents experience higher rates of hospitalization due to high blood pressure, stroke, asthma, and diabetes compared to other groups.<sup>13</sup> Improving these and other outcomes requires the City and its partners to address the “underlying social, economic, and environmental inequities that perpetuate them.”<sup>14</sup> However, addressing these inequities is rarely simple or straightforward and without intentional, strategic planning even well-intentioned efforts can reinforce injustices. When discussing equity principles and frameworks, it’s important to first define what is meant by “equity”. Equity is focused on giving communities what they need to thrive, while equality is about treating everyone the same (see Figure 1).

Equity frameworks are a valuable tool for governments, community development practitioners, and others to design and evaluate equitable policies and programs. By identifying who will benefit from or be burdened by decisions and potential unintended consequences of an intervention, equity frameworks help decision-makers mitigate negative effects and implement solutions that emphasize *equity* instead of *equality*.<sup>15</sup> In addition, it’s important to clearly identify the ‘who’ when assessing

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<sup>11</sup> City of Berkeley Short-Term Referral Item 24, Nov. 27, 2018

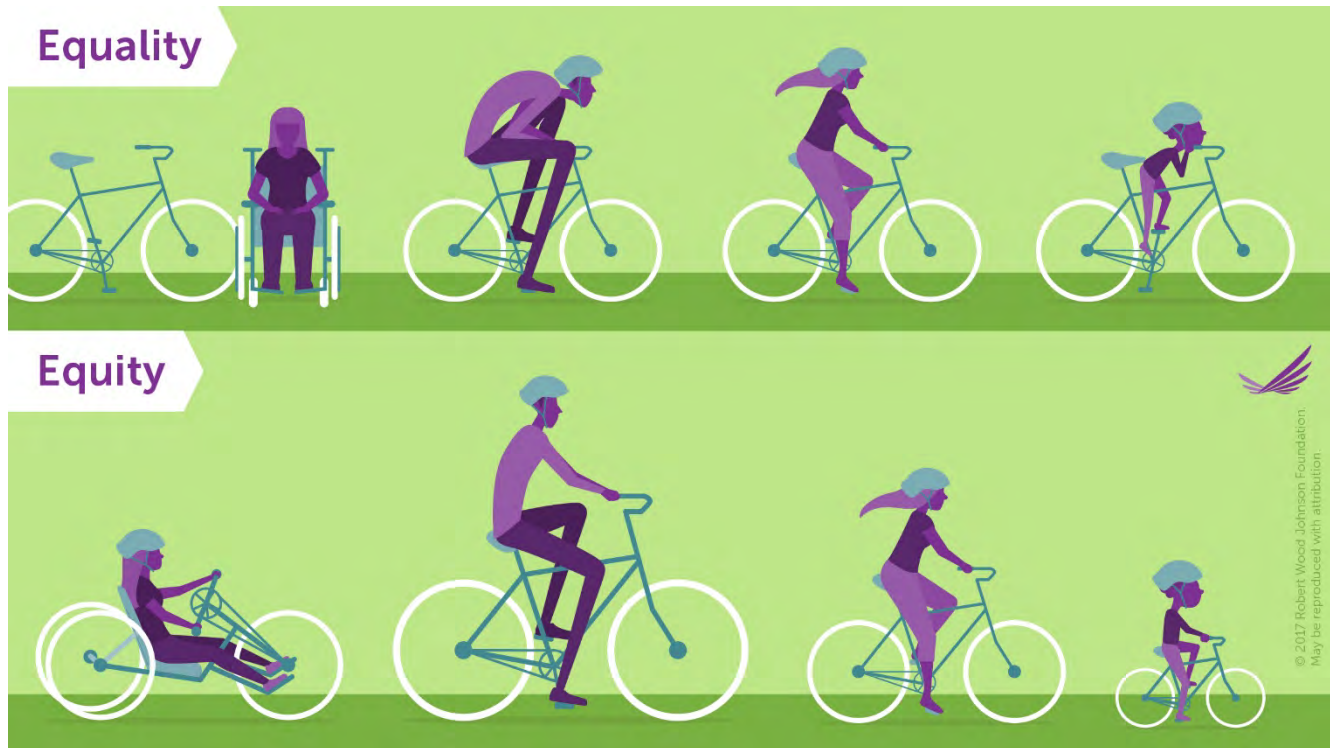
<sup>12</sup> Including the Energy Commission, Disaster & Fire Safety Commission, as well as other internal and external stakeholders

<sup>13</sup> City of Berkeley Health Status Report 2018

<sup>14</sup> *Ibid.*

<sup>15</sup> GARE 2016

**Figure 1: Equity is focused on giving communities what they need to thrive, while equality is about treating everyone the same**



Source: Robert Wood Johnson Foundation 2017

who may benefit or be burdened by interventions, and use the appropriate language to describe this group. There are a variety of terms that can describe potential target groups, such as frontline, underserved, vulnerable, low-income, and marginalized. These terms are often used interchangeably in development programs, despite the fact that they each have different definitions. According to The Greenlining Institute, “in conversations about social equity, terms such as underserved, vulnerable, low-income, disadvantaged, or environmental justice community are often interchanged but can potentially have different meaning depending the context.”<sup>16</sup> As a result, it’s important when designing an equitable program to clearly identify and define the target communities it aims to impact. In addition to providing clarity on specific target populations, terms are important because words can “promote compassion, empowerment, inclusiveness and equity.”<sup>17</sup> For example, the term ‘vulnerable’ can describe a population group that is socioeconomically disadvantaged, but it can also be a term that communities choose not to identify with because it can feel disempowering. For the purposes of this paper, the terms ‘underserved’ and ‘frontline’ are used interchangeably, and refers to “communities that are already facing environmental, health and socioeconomic inequities, and that are disproportionately impacted by climate change” as well as disasters..<sup>18</sup>

The following is a set of equity frameworks the City has engaged with and/or implemented in various planning processes and projects in recent years. In addition, principles from each framework presented

<sup>16</sup> The Greenlining Institute 2019

<sup>17</sup> National Collaborating Centre for Determinants of Health 2013

<sup>18</sup> The Greenlining Institute 2019

below have helped to inform this analysis of the current Seismic Transfer Tax Rebate Program through an equity lens, and may be further leveraged in the development of the Equity Pilot.

## 1 | Community-Driven Engagement

Engaging communities is a critical part of developing equitable programs, however in order to be effective involving community members must be done in an authentic, strategic manner. Staff may use the following Continuum of Community Engagement as a way to strengthen its approach to creating a collaborative planning process (see Figure 2). Developed by the Urban Sustainability Directors Network, this continuum demonstrates increasing levels of engagement and partnership from left to right. The USC Program for Environmental and Regional Equity as well as The Greenlining Institute – organizations committed to racial and economic justice – advocate for program development that creates “authentic partnerships that center the perspectives of vulnerable communities, support community-based participation and power, and result in shared decision-making”.<sup>19</sup> The California Public Utilities Commission (CPUC) recently leveraged principles of joint decision-making in its San Joaquin Valley Disadvantaged Communities Pilot Project, which brings clean, affordable energy options to frontline communities. The project aims to empower communities who rely on propane or wood-burning appliances for heating and cooking to choose an energy solution that worked best for

**Figure 2: Continuum of Community Engagement**

Inform	Consult	Involve	Shared Leadership	Community-Driven
Local government initiates an effort, coordinates with departments, and uses a variety of channels to inform the community to take action	Local government gathers information from the community to inform local government-led interventions	Local government engages community members to shape government priorities and plans	Community and local government share in decision-making to co-create solutions together	Community initiates and directs strategy and action with participation and technical assistance from local government
<b>Characteristics of Engagement</b>				
- Primarily one-way channel of communication - One interaction - Term-limited to project - Addresses immediate need of local government	- Primarily one-way channel of communication - One to multiple interactions - Short to medium-term - Shapes and informs local government programs	- Two-way channel of communication - Multiple interactions - Medium to long-term - Advancement of solutions to complex problems	- Two-way channel of communication - Multiple interactions - Medium to long-term - Advancement of solutions to complex problems	- Two-way channel of communication - Multiple interactions - Medium to long-term - Advancement of solutions to complex problems
<b>Strategies</b>				
Media releases, brochures, pamphlets, outreach to population groups, translated information, new and social media	Focus groups, interviews, community surveys, public hearings, public comment periods	Forums, advisory boards, stakeholder involvement, coalitions, policy development and advocacy, including legislative briefings, and testimony, workshops, community-wide events	Co-led community meetings, advisory boards, coalitions, and partnerships, policy development and advocacy, including legislative briefings and testimony	Community-led planning efforts, community-hosted forums, collaborative partnerships, coalitions, policy development and advocacy including legislative briefings and testimony

Source: Urban Sustainability Directors Network 2017 (Adapted from King County, Washington and IAP2)

<sup>19</sup> The Greenlining Institute 2019



**Figure 3: Tripartite approach to equity in resilience planning**



Source: Meerow et al. 2019

32 cities selected by the Rockefeller Foundation to participate in 100 Resilient Cities (100RC), an initiative aimed at building community resilience to face social, economic, and physical challenges.<sup>23</sup> Last year, researchers at Arizona State University and the University of Toronto released a study analyzing the goals, priorities, and strategies of the 100RC initiative, and developed a tripartite framework of equity that includes distributional, recognitional, and procedural dimensions (see Figure 3). In their analysis, researchers found that many cities that participated in the 100RC program emphasized the distributional aspect of equity, but focused less on the recognitional and procedural dimensions. They go on to advocate for resilience strategies that “explicitly consider resilience for whom, while at the same time promoting the equitable distribution of social and material goods, meaningful participation and engagement in decision-making processes, and acknowledgment of social, cultural, and political differences.”<sup>24</sup>

them. Ten out of the 11 pilot communities will receive cleaner energy through electrification, and one community will implement a joint gas and electrification approach.<sup>20</sup> This project demonstrates “community members can decide the best ways to overcome the challenges they see”.<sup>21</sup> and serves as a model for community decision-making.

## 2 | Targeted Universalism

Targeted Universalism, a framework developed by the Othering & Belonging Institute at UC Berkeley, promotes establishing a universal goal with corresponding, specific strategies that target different groups to achieve that goal. This approach focuses on advancing all people toward the same goal through diverse implementation strategies that account for how different groups “are situated within structures, culture, and across geographies.”<sup>22</sup> The City is incorporating a Targeted Universalism approach in its Pathway to Clean Energy Buildings work to ensure that proposed programs and policies benefit all communities.

## 3 | Tripartite Approach to Equity

In 2014 the City of Berkeley was one of the first

<sup>20</sup> The Greenlining Institute 2019

<sup>21</sup> Ibid.

<sup>22</sup> Powell et al. 2019

<sup>23</sup> City of Berkeley Agenda Item 1, June 6 2015

<sup>24</sup> Meerow et al. 2019

#### 4 | GARE Racial Equity Toolkit

The GARE (Government Alliance on Race & Equity), a national network of governments working to achieve racial equity, developed the Racial Equity Toolkit in 2015. The toolkit presents a multi-layered approach to integrating racial equity into city decisions and processes, and is incorporated into the City of Berkeley’s Resilience Strategy as well as the 2018-2019 Strategic Plan. As described in the toolkit, when “racial equity is not explicitly brought into operations and decision-making, racial inequities are likely to be perpetuated.”<sup>25</sup> Questions in the toolkit, such as – Who will benefit from or be burdened by your proposal? What are your strategies for advancing racial equity or mitigating unintended consequences? – help decision-makers place racial equity at the center of every strategy and make more thoughtful, informed decisions.

#### 5 | City of Berkeley Racial Equity Lens Toolkit

As part of its Adeline Corridor Specific Plan process, the City of Berkeley developed its own Racial Equity Lens Toolkit to assess city policies, plans, programs, and budgets in order to identify biases and help ensure equitable access to opportunities for all community members. This Toolkit, which was adapted from the City of Madison’s racial equity work and builds on principles outlined in the GARE toolkit, was created not only to inform work on the Adeline Corridor, but to enable City staff to integrate equity considerations into all operations and services. Through a series of questions, the Toolkit is designed to help users think about the interaction between race and place, and design successful neighborhood change efforts with a focus on underserved populations.<sup>26</sup> A few of the guiding questions include:

- How can our approaches to increasing affordable housing, health, wealth, and equitable development become more effective – particularly for the most racially, socially, and economically vulnerable?
- How do we know if we are being successful without ensuring that success is measured through an equity lens?
- How do we get neighborhood transformation right?

The Toolkit offers a number of tactics to help users get neighborhood transformation right, such as engaging communities in the design and development process, building the capacity of local community members, and analyzing data not only to understand the story that it tells but also to consider what stories may be missing. The Toolkit also provides guidance on how to determine the appropriate language for target communities by working toward mutually agreed upon language that is both clear and works to reduce power imbalances.

Developing a Resilient Homes Equity Pilot Program as a parallel program to the City’s Seismic Transfer Tax Rebate Program presents a perfect opportunity to operationalize this Toolkit and use the tactics, as well as other equity principles mentioned above, to enable a more equity-centered approach to increasing the City’s resilience. Furthermore, this approach can serve as a valuable example of how to

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<sup>25</sup> GARE 2016

<sup>26</sup> City of Berkeley Racial Equity Lens Toolkit 2019 (adapted from City of Madison, Race Forward)

incorporate equity into a City program, and learnings can help the City scale use of the Toolkit to other activities and operations – enabling the City to further its goal of championing social and racial equity.

## IV. Berkeley’s Seismic Transfer Tax Rebate Program

In response to the 1989 Loma Prieta earthquake, the City took multiple steps to improve the seismic safety of buildings. One of those measures included the Seismic Transfer Tax Rebate Program, which allows up to 1/3 of the base 1.5 percent City Transfer Tax to be refunded on a dollar-for-dollar basis for voluntary seismic upgrades to residential property within one year of purchase.<sup>27</sup> Examples of qualifying seismic retrofits include: work to repair or replace substandard foundations, securing chimneys, and anchoring existing water heaters. The Program has been extremely successful at increasing seismic safety, and has contributed to roughly 75 percent of Berkeley’s homes becoming more seismically safe over a 20-year period.<sup>28</sup> Since July 2002, more than 3,000 rebates have been processed resulting in over \$12 million to property owners.<sup>29</sup> With fewer homes needing seismic retrofits, the Program has seen a decline in program participation in recent years (see Figure 3). Between 2014 and 2019, the number of rebates decreased by 63 percent. As a result of this trend, as well as a desire to make progress on the City’s broader goals around electrification and GHG emission reduction targets, Council is considering expansion of the Program to include rebates for other sustainability-related improvements.

**Figure 4: Seismic Transfer Tax Rebate**

Fiscal Year	# Residential Transfers	Total # Seismic Transfer Tax Rebates	Total Seismic Rebate Amount Spent (\$)	Eligible Residential Rebate Amount	% Seismic Rebate Uptake (#)	% Seismic Rebate Amount Spent
2014	945	171	\$823,352	\$4,111,341	18%	20%
2015	886	140	\$781,447	\$4,158,022	16%	19%
2016	874	142	\$826,993	\$4,505,354	16%	18%
2017	710	77	\$518,057	\$4,470,106	11%	12%
2018	793	94	\$676,042	\$4,837,272	12%	14%
2019	863	63	\$427,581	\$5,859,070	7%	7%
<b>Average 2014–2019</b>	845	114	\$675,579	\$4,656,861	13%	15%

Source: City of Berkeley Finance Department

## V. Applying an Equity Lens to the Seismic Transfer Tax Rebate Program

Expanding the Program to include specific sustainability upgrades is a strong strategy to increase program participation and to accelerate progress toward the City’s broader resilience and sustainability goals. However, the Program only benefits those who can afford to purchase a home in Berkeley.

<sup>27</sup> The Program applies to structures that are used exclusively for residential purposes, or any mixed-use structure that contains two or more dwelling units.

<sup>28</sup> Bohland et al. 2018

<sup>29</sup> City of Berkeley Local Hazard Mitigation Plan 2019

When assessing the Program in the context of the City’s Racial Equity Lens Toolkit, it becomes clear that the Program has failed on a number of fronts:

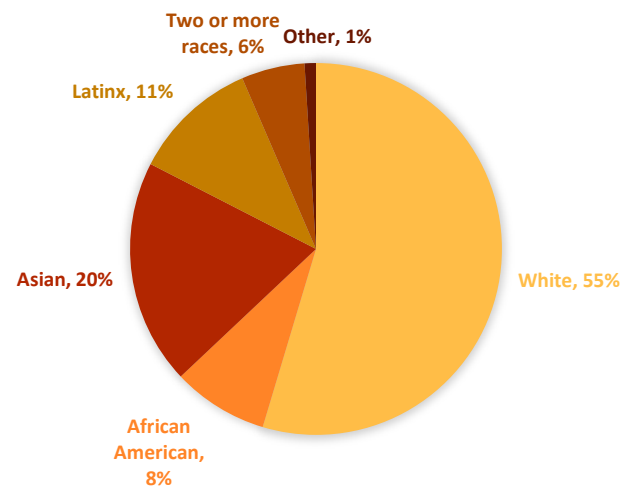
- Success is not measured through an equity lens: Program metrics focus on number of rebates and total funding issued, and data related to race/ethnicity, age, ability, gender, or other social factors are unavailable.
- It does not consider how access to the rebate may be limited for certain groups: barriers likely prevent individuals in certain racial/ethnic or socioeconomic groups from benefitting from this program, as it primarily benefits homeowners.<sup>30</sup>

Although Program data is limited, current homeownership trends and other information related to income, segregation, and displacement helps to illustrate how the current Program excludes frontline communities. Exclusion not only keeps resilience out of reach for these communities, but it perpetuates social and racial inequality in the City.

## 1 | Current Homeownership

The City is nearly equally split among homeowners and renters, with homeowners representing 46 percent of the population.<sup>31</sup> Homeownership rates are not distributed evenly, however, among Berkeley residents: while white residents make up 55 percent of Berkeley’s population they represent 75 percent of the City’s homeowners (see Figure 5 and 6).<sup>32</sup> The current median sale price for a single-family home in Berkeley is over \$1.2 million, which requires an annual household income of approximately \$200,000.<sup>33</sup> Income disparities in the region demonstrate one barrier people of color face to purchase a home in Berkeley (see Figure 7). In addition, since the rebate is only available for one year after purchasing a property, long-time Berkeley homeowners do not qualify for the Program. These residents may struggle to find the capital needed to make home improvements – making them more susceptible to unsafe living conditions and/or displacement.

Figure 5: There are significantly more white homeowners in Berkeley compared to any other racial group



Source: ACS 2017 5-Year Estimates; Table DP05, Universe: Total Population, N=120,179

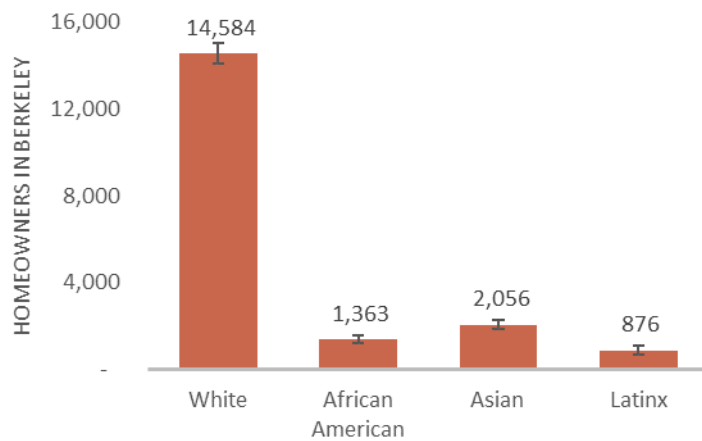
<sup>30</sup> Buyers of multifamily properties are eligible for the rebate, which in some situations may benefit low-income renters; however, the rebate is primarily used by single-family residential properties.

<sup>31</sup> American Community Survey (ACS) 2017 5-Year Estimates; Table B25033; Universe: Total Population in Occupied Housing Units; N = 107,408

<sup>32</sup> ACS 2017 5-Year Estimates; Table DP05, Universe: Total Population; and Table B25003H, Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.

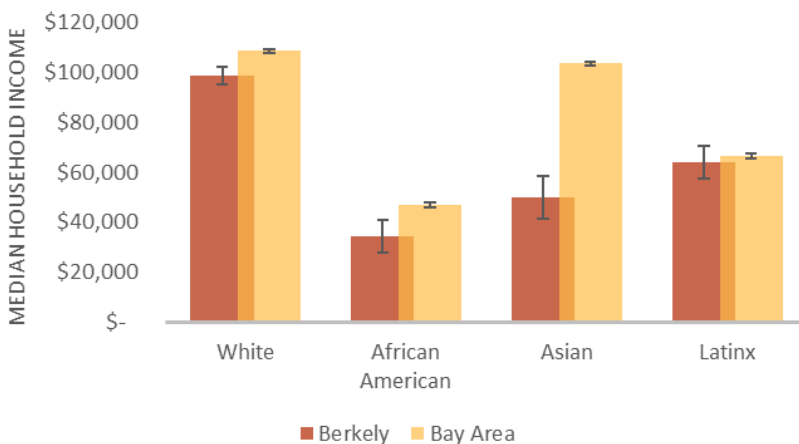
<sup>33</sup> Data from Zillow 2019, expects 20 percent down payment.

**Figure 6: There are significantly more white homeowners in Berkeley compared to any other racial group**



Source: ACS 2017 5-Year Estimates; Tables B25003B, B25003D, B25003H, B25003I; Universe: Occupied housing units; Note: Figure 4 does not include the race & ethnicity categories for American Indian & Alaska Native, Native Hawaiian and Other Pacific Islander, Some Other Race, or Two or More Races; Margins of Error expressed at 90 percent confidence level

**Figure 7: On average, white households in Berkeley make almost three times more than African American households**



Source: ACS 2017 5-Year Estimates; Tables B19013B, B19013D, B19013H, B19013I; Universe: Households; Note: 'Bay Area' consists of San Francisco, Alameda, Marin, Contra Costa, and San Mateo counties; Margins of Error expressed at 90 percent confidence level

## 2 | Segregation and Displacement

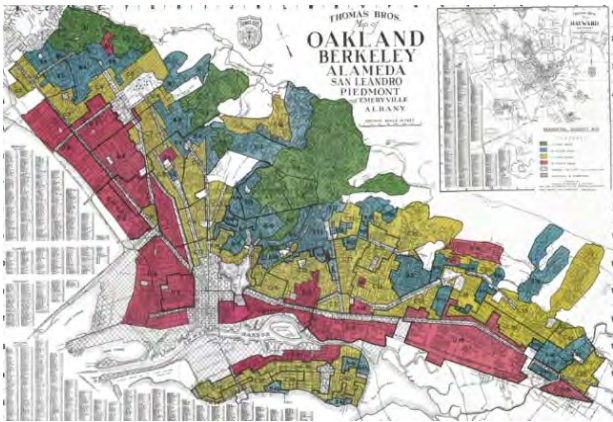
Institutional and structural racism has and continues to contribute to unequal outcomes, not only in homeownership and income, as described above, but also in terms of segregation and displacement. These issues are interrelated, and a result of racist and discriminatory practices such as slavery, Jim Crow laws, racially restrictive covenants, and redlining. Although these policies have been banned, they have resulted in severe and lasting impacts on communities of color.

The history of redlining is particularly important for understanding how segregation and displacement affect the Berkeley community still today, and helps shed light on how programs aimed at recent homebuyers – such as the Seismic Transfer Tax Rebate Program – support racial exclusion. The Home Owners' Loan Corporation (HOLC), a federal agency

created in 1933 as part of President Roosevelt's New Deal legislation, was designed to provide relief for homeowners that were in default or at risk of foreclosure by refinancing mortgages; indeed, it successfully refinanced over one million mortgages, saving 80 percent of homes for the original owner.<sup>34</sup>

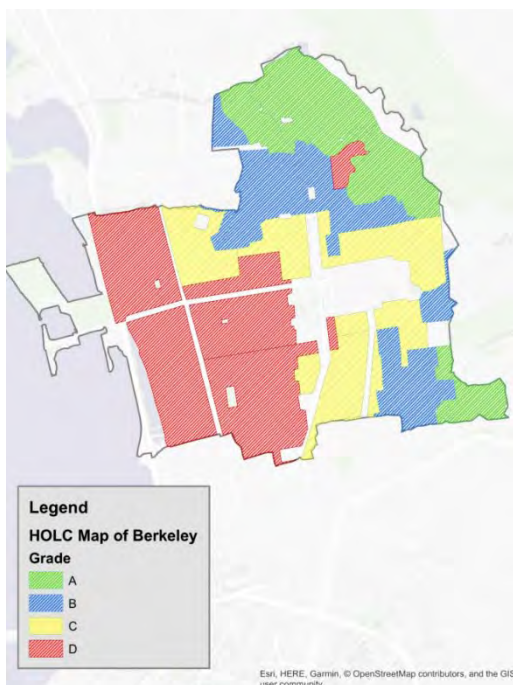
<sup>34</sup> TIME 1951

**Figure 8: A 1937 San Francisco “residential security map” created by the Home Owners’ Loan Corporation**



Source: Green 2016

**Figure 9: Redlining in Berkeley**



Source: Barber 2018

However, access to these government-backed, low-interest mortgages was not equal.<sup>35</sup> HOLC developed and relied on ‘residential security maps’ to evaluate mortgage lending risk in large American cities. Neighborhoods were classified as Best (green), Desirable (blue), Declining (yellow), or Hazardous (red) based on criteria such as: age and condition of housing stock, as well as economic class, employment status, and racial and ethnic composition of residents.<sup>36</sup> Potential borrowers in neighborhoods classified as Hazardous were often “redlined,” or denied access to credit based on the location of their property in minority or economically disadvantaged neighborhoods. As a result of limited access to traditional loans, many potential borrowers in these neighborhoods could not purchase property or fell victim to high-interest loans or other discriminatory practices. Because access to credit is a critical part of economic inclusion and purchasing a home can lead to building wealth within families over generations, we can see a lasting effect of redlining through racial disparities in poverty. On a national level, the median net worth of white families is nearly 10 times the size of black families, and nearly 1 in 5 black families have zero or negative net worth – twice the rate of white families.<sup>37</sup> In Berkeley today, “the proportion of families living in poverty is 8 times higher among African American families, 5 times higher among Latin[x] families, and 3 times higher among Asian families, compared to White families.”<sup>38</sup>

Although redlining was prohibited under the Fair Housing Act of 1968, its enduring effect is still evident across the US, including in Berkeley – not only in poverty rates, homeownership, and income, but also in segregation and displacement. According to the Urban Displacement Project, 83 percent of today’s

<sup>35</sup> Mitchell & Franco 2018

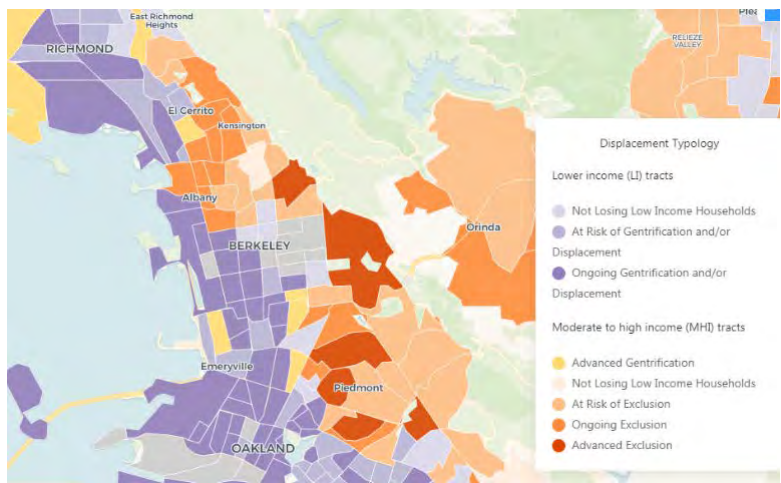
<sup>36</sup> Ibid.

<sup>37</sup> Jan 2017

<sup>38</sup> City of Berkeley Health Status Report 2018

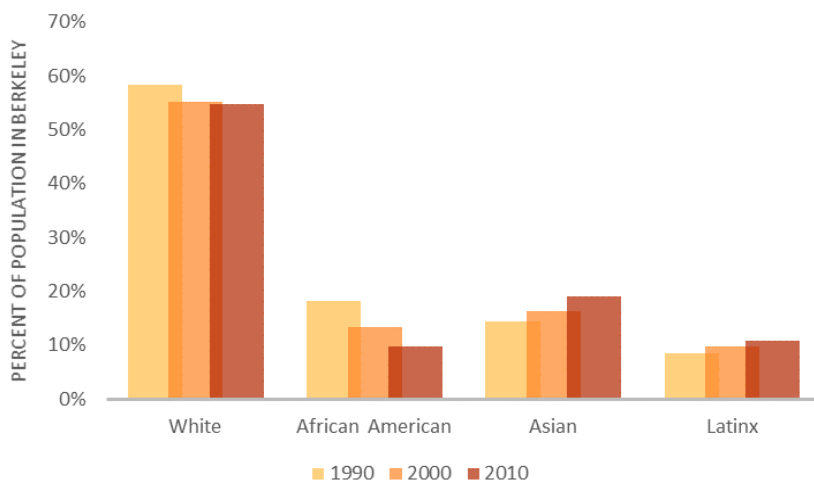
gentrifying areas in the East Bay were rated as hazardous (red) or declining (yellow) by HOLC, and 75 percent of today’s exclusionary areas were rated as best (green) or desirable (blue).<sup>39</sup> Redlining led to racial and economic segregation in cities, and South and West Berkeley – historically redlined communities – still contain more of Berkeley’s low-income communities and communities of color.<sup>40</sup> In addition, as the cost of living increases along with increased urbanization, these communities are also facing the greatest risk of gentrification and displacement (see Figure 10). As a result, Berkeley is losing its communities of color and low-income communities. For example, the African American population across Berkeley fell from 13.3 percent in 2000 to 9.7 percent in 2010 (see Figure 11). The change is even more pronounced in South and West Berkeley: between 2000 and 2017 the number of African American residents declined by 40 percent (see Figure 12). This trend is not only impacting the diversity of Berkeley, but also highlights the continual disenfranchisement of people of color.

**Figure 10: Formerly redlined communities are experiencing higher rates of gentrification and displacement**



Source: Urban Displacement Project

**Figure 11: Berkeley is losing its African American population**

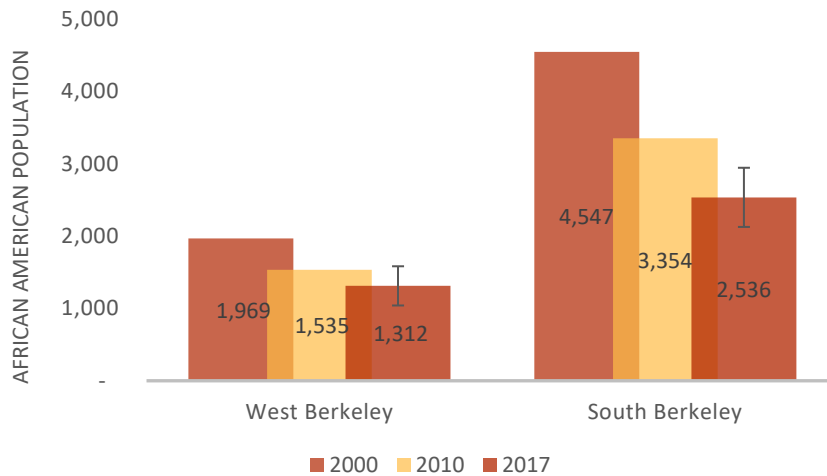


Source: Decennial Census 1990, 2000, 2010; Table DP-1 and Table P004; Universe: Total Population; Note: 1990 N=102,724, 2000 N=102,743, and 2010 N=112,580

<sup>39</sup> Urban Displacement Project

<sup>40</sup> City of Berkeley Agenda Item 22, April 30 2019

**Figure 12: West Berkeley and South Berkeley have experienced the highest rate of decline in the African American population**



Source: Decennial Census 2000 & 2010; Table DP-1; and ACS 2017 5-Year Estimates; Table B03002; Universe: Total Population; Note: Margins of Error expressed at 90 percent confidence level. Census tracts for West Berkeley include 4220, 4221, 4232, and South Berkeley include 4232, 4235, 4239.01, 4240.01

## VI. Recommendations

The City of Berkeley has committed to creating institutional change on racial equity,<sup>41</sup> and the Resilient Homes Equity Pilot Program is a perfect opportunity for the City to further its commitment. The City has already invested in creating a Racial Equity Lens Toolkit, which can be used to guide program expansion in a manner that reduces racial disparities and increases social resilience. As a result, this paper recommends Berkeley City Council take the following actions to build both physical and social resilience:

- 1. Approve the development of a Resilient Homes Equity Pilot Program that leverages the City's Racial Equity Lens Toolkit in collaboration with community organizations and stakeholders.**
- 2. Confirm a commitment to dedicate additional future funding to implement the Equity Pilot, with the exact annual amount to be determined during the program design phase.**

If these requests are approved by Council, staff will work with community-based organizations to determine a target group for the Equity Pilot and co-create it with community members. Using the City Toolkit as a guide, staff should also focus on creating an evaluation framework for the Equity Pilot that measures success through an equity lens, including program metrics that reflect data related to race/ethnicity, age, ability, gender, or other social factors when available.

<sup>41</sup> *City of Berkeley Resilience Strategy 2016*



At a high level, the Equity Pilot may enable underserved households to make seismic, sustainability, electrification and resilience upgrades through subsidies or other mechanisms leading to safer, healthier, and more sustainable living environments. More research is required to determine the most appropriate mechanism, but rebates (like the existing Program structure) will likely not be an effective method for low-income groups because they require households to have cash upfront to make costly improvements. More work is also required to determine the Pilot's specific target group. The Seismic Transfer Tax Rebate Program, as it is currently designed, reinforces economic inequality by benefitting recent homebuyers who are already economically advantaged.<sup>42</sup> To enable more equitable outcomes, the Equity Pilot should focus on reaching frontline communities, including communities of color, low-income communities, and long-term homeowners with limited incomes. More specifically, the Equity Pilot may target benefitting renters, residents with disabilities or elderly residents, and others who are not able to access the Seismic Transfer Tax Rebate Program.

### Potential Target Groups

One group the Pilot may target is renters. Renters are generally less secure financially<sup>43</sup> and more vulnerable to displacement,<sup>44</sup> and could benefit greatly from home improvements that they (or their landlords) could otherwise not afford. In California, 70 percent of low-income households are renters and 47 percent live in multifamily housing.<sup>45</sup> In Berkeley, 83 percent of households earning less than \$50,000 in annual income are renters.<sup>46</sup> Focusing on renters may also mean impacting more communities of color: 67 percent of Berkeley's African American households are renters<sup>47</sup> and 74 percent of Latinx households are renters.<sup>48</sup>

Other potential target groups for the Pilot include priority populations that are homeowners, such as differently abled residents, seniors, and communities of color. Differently abled homeowners have more complex energy reliability needs, and often need more support preparing for and after a disaster. Because senior homeowners often have fixed incomes, they may struggle with housing maintenance costs.<sup>49</sup> Additionally, research shows that seniors may be more vulnerable to displacement.<sup>50</sup> With the number of residents 65-years and older expected to more than double by 2030 in Berkeley,<sup>51</sup> the need for services or additional support may also increase. Another important trend is the change in Berkeley's diversity: between 2000 and 2010 the largest change to Berkeley's ethnic diversity was the decline in its African American population.<sup>52</sup> – and this trend has continued in recent years. Instituting

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<sup>42</sup> Recent buyers in Berkeley can be considered economically advantaged because they have the resources and capital to purchase a property in a highly-competitive housing market. However, we recognize there is a range of home prices in the City, and not all buyers can afford a million-dollar home. We believe the Program offers real value for buyers in the lower range of home prices and who may not have the disposable income to spend on important safety or sustainability upgrades.

<sup>43</sup> Scally 2018

<sup>44</sup> Florida 2017

<sup>45</sup> Scavo 2016

<sup>46</sup> ACS 2017 5-Year Estimates; Table B25118; Universe: Occupied Housing Units

<sup>47</sup> ACS 2017 5-Year Estimates; Table B25003B; Universe: Occupied housing units with a householder who is Black or African American alone

<sup>48</sup> ACS 2017 5-Year Estimates; Table B25003I; Universe: Occupied housing units with a householder who is Hispanic or Latino

<sup>49</sup> City of Berkeley Housing Element 2015

<sup>50</sup> Nyden et al. 2006

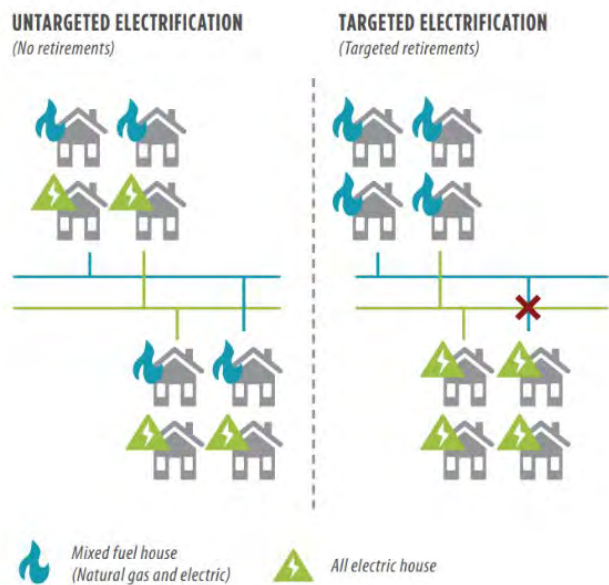
<sup>51</sup> Age-Friendly Berkeley Action Plan 2018

<sup>52</sup> City of Berkeley Housing Element 2015

additional anti-displacement measures, such as a Resilient Homes Equity Pilot, can slow this trend and enable more long-term members of the community to stay in their homes. Enabling homeowners to make important repairs is an effective strategy for preventing displacement.<sup>53, 54</sup>

Another way staff may choose to focus the Pilot is based on location of existing natural gas infrastructure. Targeting a group of underserved households that rely on the same segment of the gas distribution system, and helping them transition to all-electric, could lead to that entire gas line segment becoming decommissioned (see Figure 13). Strategic decommissioning of gas lines can help the overall system maintain sufficient pressure and reliable service, and may even lead to savings on maintenance costs.<sup>55</sup> Electrification of these homes would also provide health and safety benefits to the residents, as discussed in more detail below.

**Figure 13: Approaches to neighborhood-level electrification**



Source: Gridworks 2019

## VII. Potential Impact

An equity-centered Pilot offers several potential benefits for Berkeley residents. As previously mentioned, the Equity Pilot is a great opportunity to operationalize the City’s existing Equity Toolkit – and can provide valuable learnings for how to integrate the Toolkit across other City programs. In addition, while the specifics of the Pilot need to be developed in partnership with community members and various stakeholders, several high-level impacts can be inferred based on a preliminary understanding of what the Pilot might include. Enabling underserved residents to improve their living space not only benefits them as individuals, but the community as a whole can benefit from a safer, healthier, more sustainable, and more inclusive environment.

### 1 | Increased Safety

It is estimated that in the event of a major earthquake over 600 housing units in Berkeley would be destroyed and 20,000 would be damaged, with low-income housing units experiencing the highest rate of damage.<sup>56</sup> Extending the Program to low-income residents (or landlords with low-income tenants) can enable them to make the necessary seismic improvements to better protect themselves and their homes during an earthquake. Improving the stability of buildings to withstand a major earthquake not

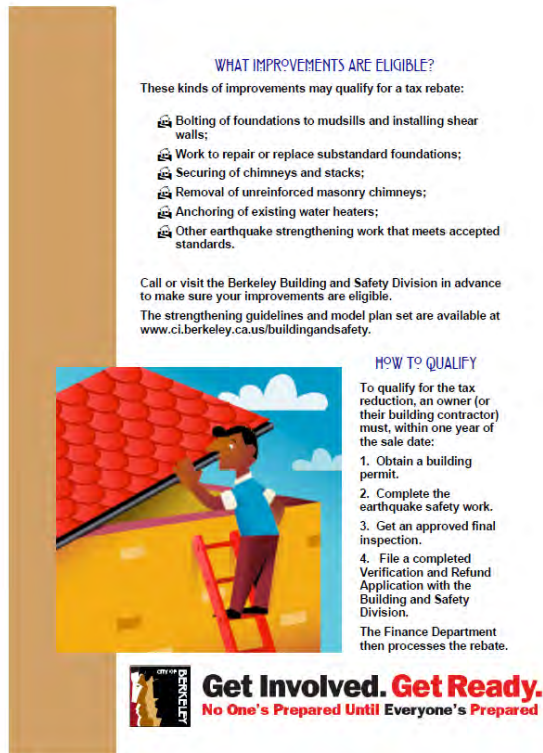
<sup>53</sup> *The Housing Development Consortium of Seattle-King County 2019*

<sup>54</sup> *Alameda County 2018 The Housing Development Consortium of Seattle-King County 2019*

<sup>55</sup> *Gridworks 2019*

<sup>56</sup> *City of Berkeley Resilience Strategy 2016*

**Figure 14: Berkeley Seismic Transfer Tax Rebate Program Flier**



Source: City of Berkeley

quality, which can have dramatic effects on health.<sup>61</sup> Gas stoves release nitrogen dioxide and other particulates while burning, and prolonged exposure to these can lead to asthma or other respiratory illnesses – especially among children and seniors.<sup>62</sup> One study found that children living in a home with a gas stove have a 42 percent increased risk of asthma and have a 24 percent increased risk of asthma over their lifetime.<sup>63</sup> Electric stoves do not emit particulates and, since electric stoves do not rely on combustion, there is also no risk of carbon monoxide poisoning. In addition, the risk of carbon monoxide poisoning can be reduced by replacing gas furnaces with electric heat pumps. According to the Center for Disease Control (CDC), approximately 50,000 people in the U.S. visit the emergency room each year as a result of accidental carbon monoxide poisoning and at least 430 people die from accidental exposure.<sup>64</sup> Electric heat pumps, which provide both heating and cooling, can also provide critical temperature control during heat waves. In 2017, 14 people died in the Bay Area as a result of extreme heat.<sup>65</sup> It is predicted that by 2100, Berkeley will have 6-10 additional heat waves each year,

only reduces an individual’s risk of displacement, loss of property or loss of life, but better positions the city as a whole to recover more rapidly after an earthquake.<sup>57</sup> The Berkeley Seismic Transfer Tax Rebate Program flier says it best: “Get Involved. Get Ready. No One’s Prepared Until Everyone’s Prepared” (see Figure 14).

Offering qualifying electrification upgrades as part of the Equity Pilot can also significantly reduce the risk of gas leaks following an earthquake. Gas leaks in general pose a safety risk, as can be seen in the Porter Ranch incident.<sup>58</sup> and San Bruno gas explosion,<sup>59</sup> thus lessening the City’s reliance on natural gas can improve public safety. In addition, because repairing electric infrastructure post-disaster can happen faster than repairing gas lines, increasing electrification can position the city to recover more quickly post-disaster.<sup>60</sup>

## 2 | Improved Health Outcomes

Many aspects of the physical environment can directly affect people’s health. Enabling more households to switch to electric appliances can improve indoor air

<sup>57</sup> FEMA 2016

<sup>58</sup> Siders 2016

<sup>59</sup> Bowe et al. 2015

<sup>60</sup> City of Berkeley Adopt an Ordinance, Item 21, July 9, 2019

<sup>61</sup> Barron 2017

<sup>62</sup> The Greenlining Institute 2019

<sup>63</sup> Lin et al. 2013

<sup>64</sup> CDC 2020

<sup>65</sup> Peterson 2018

which will disproportionately impact seniors, children under five, and low-income community members.<sup>66</sup> As heat waves grow more frequent and more severe due to climate change, enabling low-income and underserved communities to access clean cooling technology can be an important public health strategy.<sup>67</sup>

By prioritizing communities of color, the Equity Pilot can also contribute to reducing health disparities. People of color in Berkeley are more likely than white people to experience a wide variety of health problems throughout their lives and die prematurely.<sup>68</sup> Asthma hospitalization rates for African American children under five is 10 times higher than the rate among white children, and for Latinx children it is 2.8 times higher.<sup>69</sup> A key piece to improving health outcomes is ensuring access to environments that support health,<sup>70</sup> and a program that enables low-income and communities of color to improve their living environment and have access to clean technology can support better health and lead to better health outcomes.

### 3 | Reduction in GHG Emissions

Berkeley has been a longtime leader in climate change mitigation. In 2006, Berkeley voters overwhelmingly endorsed a ballot measure to reduce the community's GHG emissions by 80 percent below 2000 levels by 2050,<sup>71</sup> and three years later the City adopted a Climate Action Plan that included a vision to achieve zero net energy consumption for all new and existing buildings by 2050.<sup>72</sup> In 2018, the City Council declared a Climate Emergency and established a goal of becoming a Fossil Fuel Free City. That same year, Berkeley Mayor Jesse Arreguin set a goal to reach 100 percent renewable electricity by 2035 and achieve net-zero carbon emissions by the year 2050. Because energy use in homes and commercial buildings is the second largest contributor of greenhouse gases in Berkeley (making up almost 40 percent of overall GHG emissions),<sup>73</sup> electrification of buildings is essential to reducing emissions and energy usage. Roughly 72 percent of Berkeley residents rely on gas for heating their homes, thus strategies aimed at accelerating the electrification of buildings could contribute significantly to the City's goal of achieving Fossil Fuel Free status (see Figure 15).

The City has made progress toward these goals and is leading the state and nation in pursuing stricter green building standards through the adoption of a natural gas ban in new residential buildings as well as through stretch and reach codes (codes beyond the minimum imposed by the state).<sup>74</sup> However, more action is needed if the City intends to meet its goals.<sup>75</sup> Council has identified building retrofits as a key strategy, and recommended staff consider offering financial incentives to subsidize the transition toward sustainable buildings, including expanding the existing transfer tax subsidy.<sup>76</sup> The Equity Pilot

<sup>66</sup> *City of Berkeley Local Hazard Mitigation Plan 2014*

<sup>67</sup> *E3 2019*

<sup>68</sup> *City of Berkeley Health Status Report 2018*

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> *City of Berkeley Electric Mobility Roadmap 2019*

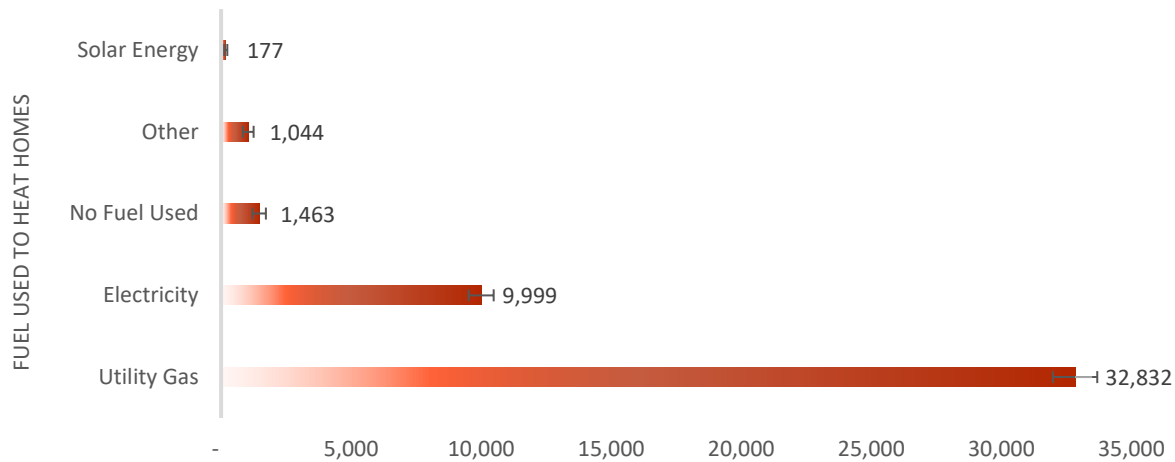
<sup>72</sup> *Arreguin 2018*

<sup>73</sup> *City of Berkeley Pathway to Clean Energy Building Report RFP March 20, 2019*

<sup>74</sup> *City of Berkeley Short-Term Referral Item 24, Nov. 27, 2018*

<sup>75</sup> *According to the 2016 GHG emissions inventory, the City has achieved 15 percent reductions below 2000 levels.*

<sup>76</sup> *City of Berkeley Short-Term Referral Item 24, Nov. 27, 2018*

**Figure 15: Roughly 72 percent of Berkeley households rely on natural gas for heating**

Source: ACS 2017 5-Year Estimates; Table B25040; Universe: Occupied Housing Units;  
 Note: Margins of Error expressed at 90 percent confidence level

builds on this strategy of encouraging fuel switching to clean energy, and helps prevent low-income households from being left behind. All residents, regardless of their income or whether they own or rent their home, should have the opportunity to benefit from clean energy and contribute to Berkeley’s climate action goals.

#### 4 | Enables a Just Transition

Accelerating progress towards the City’s Fossil Fuel Free goal is an important part of Berkeley’s fight against climate change; however, efforts to achieve this goal must be carried out in a manner that reduces (not perpetuates) harmful inequalities. Council urged staff to consider “the framework for a just and equitable transition,” and the Equity Pilot helps to enable a just transition. More specifically, it can address three critical elements:

- Transitioning buildings away from fossil fuels to cleaner electricity is a key strategy for Berkeley; however, high upfront costs can make this transition difficult for low-income homeowners. For example, electrical panel upgrades range between \$2,000-\$4,000.<sup>77</sup> and heat pump water heaters are currently more expensive than traditional gas water heaters. Subsidies or similar mechanisms can help households cover the higher upfront cost of such technologies, enabling households to benefit from cleaner, more efficient appliances.
- As more buildings transition away from natural gas, the cost of gas will inevitably rise: the gas distribution system is expensive to maintain, and as the number of ratepayers decreases the costs will be distributed across fewer ratepayers – leading to higher bills for those who are still using it.<sup>78</sup> The cost today for natural gas is roughly \$1.50 per therm, and estimates place the cost as high as \$19 per therm by 2050.<sup>79</sup> The last customers relying on the gas system could experience unreasonably high rates; and these customers “may well be those among us who

<sup>77</sup> E3 2019

<sup>78</sup> Gridworks 2019

<sup>79</sup> Ibid.

are least able to afford high rates and least able to finance the new appliances needed to convert to electricity.”<sup>80</sup> It is therefore critical to develop strategies that enable more low-income communities to transition to all-electric and not be left to pay for an expensive, aging gas system. The City is in the process of developing an Existing Building Electrification Strategy, which will identify and assess the potential pathways to phasing out fossil fuels across all existing buildings in Berkeley as soon as possible and will incorporate an emphasis on a just transition.

- Because many low-income households are renters, strategies must consider how to incentivize landlords to invest in clean technology in a way that does not lead to higher rents (and prevents the cost of upgrades being passed through to tenants). Furthermore, tenants should benefit from the bill savings of more energy efficient appliances.

## VIII. Conclusion

Berkeley’s Seismic Transfer Tax Rebate Program has no doubt contributed to making the City more resilient to earthquakes and expanding the Program to include sustainability and energy efficiency upgrades will further build the City’s resilience to natural disasters and climate change. However, the current Program fails to reach underserved members of the community despite the fact that low-income and minority communities are more vulnerable to natural disasters and the impacts of climate change.<sup>81</sup> Exclusion not only keeps resilience out of reach for frontline communities, but it perpetuates social and racial inequality in the City. Establishing a new, equity-centered program that incorporates key strategies from the City’s Racial Equity Lens Toolkit can enable all residents to contribute to and benefit from building Berkeley’s resilience – especially those most in need and historically underserved. With Council’s support, a Resilient Homes Equity Pilot Program can help the City further its commitment to social and racial equity and secure its position as a leader in climate change, while also building a safer, healthier, more inclusive and more resilient community.

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***A Resilient Homes Equity Pilot can help Berkeley further its commitment to social and racial equity and secure its position as a leader in climate change, while also building a safer, healthier, more inclusive and more resilient community.***

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<sup>80</sup> *Gridworks 2019*

<sup>81</sup> *City of Berkeley Resilience Strategy 2016*

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### Potential Qualifying Measures for Consideration

Below is a list of potential qualifying measures being considered for the expanded Resilience Transfer Tax Rebate Program. Measures are listed by color according to the type of resilience benefit they provide, and those with multiple benefits are shown with multiple colors.

The list of final qualifying measures will be specified in the Administrative Regulations.

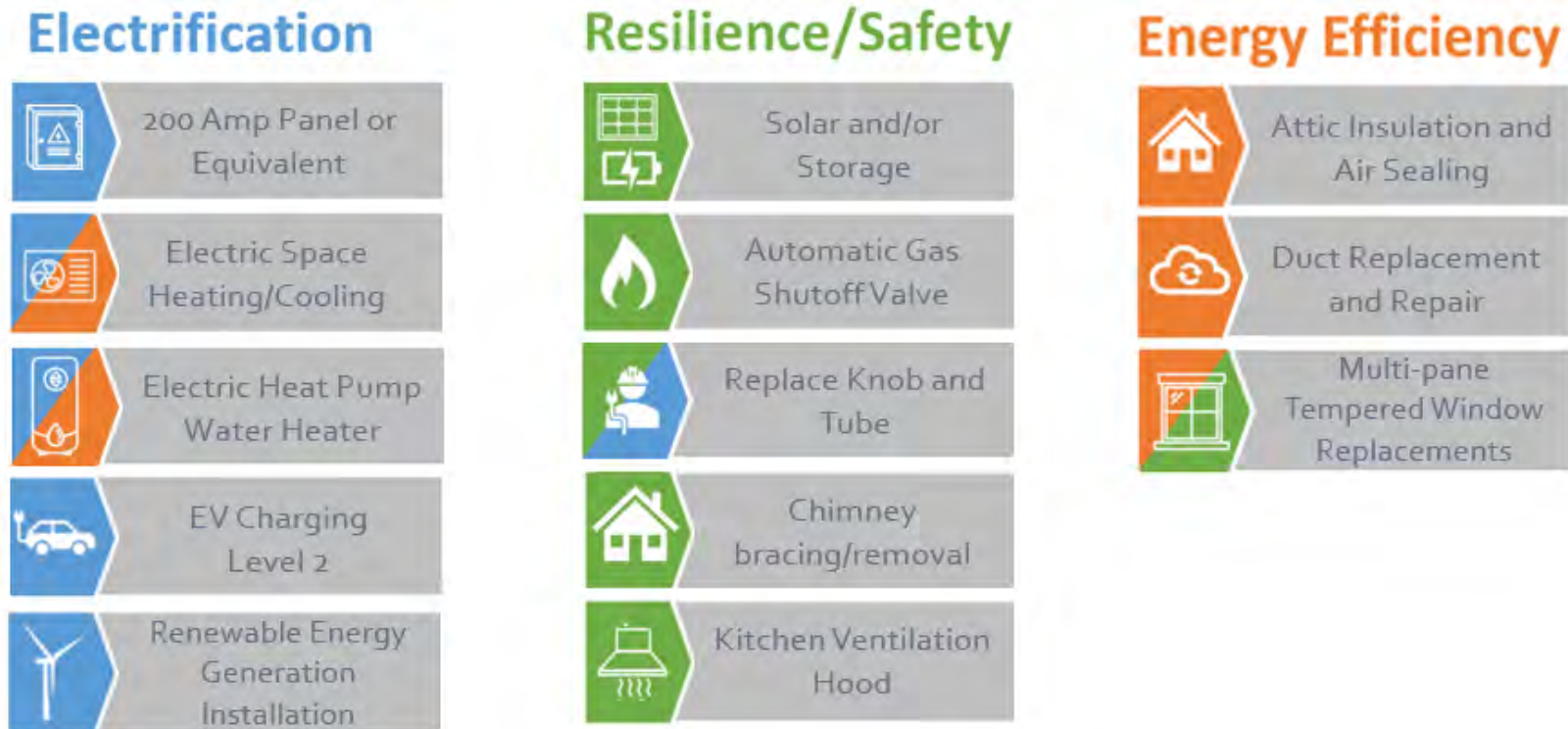


Figure A - Potential Qualifying Measures



Kate Harrison  
Councilmember, District 4

## **REVISED AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** November 27, 2018

**Item Number:** 24

**Item Description:** Short-Term Referral to City Manager and Office of Energy and Sustainable Development to Draft Ordinance Amending Berkeley Municipal Code Chapter 7.52, Reducing Tax Imposed for Qualifying Electrification, Energy Efficiency and Water Conservation Retrofits

**Submitted by:** Councilmember Harrison

Added Councilmember Hahn as a cosponsor.



Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
November 27, 2018

To: Honorable Mayor and Members of the City Council

From: Councilmembers Harrison, ~~and Davila~~ and Hahn

Subject: Short-Term Referral to City Manager and Office of Energy and Sustainable Development to Draft Ordinance Amending Berkeley Municipal Code Chapter 7.52, Reducing Tax Imposed for Qualifying Electrification, Energy Efficiency and Water Conservation Retrofits

RECOMMENDATION

Short-term referral to the City Manager and the Office of Energy and Sustainable Development to draft an ordinance amending Berkeley Municipal Code (BMC) Chapter 7.52, reducing tax imposed for qualifying electrification, energy efficiency, and water conservation retrofits.

BACKGROUND

The City of Berkeley faces climate change and water usage emergencies. A recent UN Intergovernmental Panel on Climate Change report highlighted the immediacy of the climate emergency, suggesting that in order to keep warming under 1.5 degrees Celsius, carbon emissions would need to be cut 45% by 2030.<sup>1</sup> Though California is no longer in extreme drought, Berkeley is still categorized as abnormally dry, almost 50% of the state is in moderate drought or worse, and we can expect to face major droughts in the future.<sup>2</sup>

The City is already leading the state and nation in pursuing stricter green building standards through the adoption of stretch and reach codes (codes beyond the minimum imposed by the state) favoring sustainable buildings and time of sale energy audits, but progress is still hindered by a significant lack of financial incentives to encourage the replacing and phasing-out of energy inefficient, carbon and water-intensive infrastructure in new and existing buildings. For example, even though electric heat pump water heaters can prevent significant carbon emissions and save money on heating bills, the relatively higher purchase and installation costs associated with heat pumps as compared to gas-fired heaters remains a major disincentive.

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<sup>1</sup> IPCC Press Release, Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C approved by Governments, 8 October 2018, [http://www.ipcc.ch/pdf/session48/pr\\_181008\\_P48\\_spm\\_en.pdf](http://www.ipcc.ch/pdf/session48/pr_181008_P48_spm_en.pdf)

<sup>2</sup> National Integrated Drought Information System, Drought in California, <https://www.drought.gov/drought/states/california>.

The City has identified building retrofits as a key part of reducing emissions and energy and water usage. To achieve the ambitious sustainability goals set by the Council, the City cannot rely solely upon the market, state, federal and utility level incentives. It would do well to explore offering significant financial incentives to subsidize the transition towards sustainable building, including expanding the existing transfer tax subsidy for seismic retrofits to include qualifying sustainability retrofits.

Following the devastating 1989 Loma Prieta earthquake, the Council passed Ordinance 6072-NS in 1991 to reduce up to one-third of the transfer tax imposed on property owners who seismically retrofit any structure which is used exclusively for residential purposes, or any mixed use structure which contains two or more dwelling units. In passing the ordinance, forward-looking leaders acted independently of the state and federal government to subsidize critical building improvements in anticipation of relatively infrequent but exceedingly devastating earthquake emergencies. The seismic retrofit subsidy program offers a model for accelerating opportunities to address the major emergencies of our time.

This referral asks the City Manager and Office of Energy & Sustainable Development (OESD) to develop amendments to BMC Chapter 7.52 that expand the existing seismic retrofit subsidy in order to include appropriate reductions in transfer tax imposed on sales of property for qualifying electrification, energy efficiency, and water conservation retrofits. According to a 2018 City Manager report, 737 Berkeley residences were transferred in 2017.<sup>3</sup>

In drafting the ordinance, staff should consider existing City sustainability goals such as the 2009 Berkeley Climate Action Plan, and the framework for a just and equitable transition as set out in the Climate Emergency Declaration. Staff should tailor the subsidy to be commensurate with the emergency at hand and should design it to result in quantifiable reductions in emissions as well as energy and water waste.

OESD staff recently issued a request for proposals (RFP) for expert analysis identifying a set of measureable policies and programs to transition Berkeley's building stock to efficient and 100% clean energy.<sup>4</sup> The resulting analysis report should help inform staff in determining which types of greenhouse gas reduction measures transfer tax reductions could fund. Additionally, within the context of the City's sustainability goals

<sup>3</sup> Placing a Measure on the November 6, 2018 Ballot to Increase the Transfer Tax on Property Sales to Pay for General Municipal Services Including Funding Homeless Services, City Manager, July 31, 2018, [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/07\\_Jul/Documents/2018-07-31\\_Item\\_05\\_Placing\\_a\\_Measure\\_on\\_the\\_November\\_6.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/07_Jul/Documents/2018-07-31_Item_05_Placing_a_Measure_on_the_November_6.aspx)

<sup>4</sup> Request for Proposals (RFP) Specification No. 19-11256-C for Pathway to Clean Energy Buildings Report: Existing Building Program Evaluation and Recommendations, OESD, October, 10, 2018, [https://www.cityofberkeley.info/uploadedFiles/Finance/Level\\_3\\_-\\_General/19-11256-C%20-%20RFP%20Pathway%20to%20Clean%20Energy%20Building%20Report\\_rev%201017.pdf](https://www.cityofberkeley.info/uploadedFiles/Finance/Level_3_-_General/19-11256-C%20-%20RFP%20Pathway%20to%20Clean%20Energy%20Building%20Report_rev%201017.pdf).

and the RFP analysis, staff should specifically consider developing and codifying definitions of qualifying improvements, including but not limited to:

- Electric service panel upgrades for the purpose of transitioning to electric appliances
- Transitioning home appliances to efficient electric versions, e.g. replacing gas burning appliances and systems such as fossil fuel HVACs, cooktops and ovens, washers and dryers, and water heaters.
- Solar or other clean energy generation installations
- Electric vehicle charging stations
- Building weatherization upgrades in coordination with the Building Energy Saving Ordinance (BESO)
- Graywater recapture systems
- Water efficient fixtures and irrigation systems

The seismic retrofit program was limited to residential and mixed use buildings, but staff should consider the appropriateness and effectiveness of extending the subsidy program to commercial and/or industrial properties for the purpose of achieving city-wide sustainability goals. It should also review whether the existing requirement for completing seismic retrofits following property transfers is appropriate for the sustainability retrofits outlined in this referral.

Finally, staff should attempt to estimate the carbon, electrical, and water savings that are likely to result from adoption of their proposal, and determine whether alternatives exist which, at a similar cost the city, would result in greater reductions.

This referral is compatible with OESD's 2017 Climate Action Report update suggesting that the Council take bold steps to meet Berkeley's 2050 emission reduction goals. The report highlighted the urgency of identifying resources for incentivizing electrification measures, building efficiency, generation of renewable electricity, and transitioning buildings and vehicles away from fossil fuel.<sup>5</sup>

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<sup>5</sup> Berkeley Climate Action Plan Update, Office of Energy and Sustainable Development, December 7, 2017, [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/2017-12-07%20WS%20Item%2001%20Climate%20Action%20Plan%20Update.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/2017-12-07%20WS%20Item%2001%20Climate%20Action%20Plan%20Update.pdf)

Short-Term Referral to City Manager and Office of Energy and Sustainable Development to Draft Ordinance Amending Berkeley Municipal Code Chapter 7.52, Reducing Tax Imposed for Qualifying Electrification, Energy Efficiency and Water Conservation Retrofits

CONSENT CALENDAR  
November 27, 2018

FINANCIAL IMPLICATIONS

Possible reduction in tax revenue, the magnitude of which is dependent on which retrofits are found to be qualifying.

ENVIRONMENTAL SUSTAINABILITY

Incentivizing electrification, energy efficiency, and water savings is directly in line with the City's climate and environmental goals.

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, (510) 981-7140

Attachments:

1. BMC Section 7.52.060

### **7.52.060 Exceptions.**

A. Any tax imposed pursuant to this chapter shall not apply to any instrument in writing given to secure a debt.

B. Any deed, instrument or writing to which the United States, or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, is a party shall be exempt from any tax imposed pursuant to this chapter when the exempt agency is acquiring title.

C. Any tax imposed pursuant to this chapter shall not apply to the making, delivery, or filing of conveyances to make effective any plan of reorganization or adjustment:

1. Confirmed under the Federal Bankruptcy Act, as amended;
2. Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in subdivision (m) of Section 205 of Title 11 of the United States Code, as amended;
3. Approved in an equity receivership proceeding in a court involving a corporation, as defined in subdivision (3) of Section 506 of Title 11 of the United States Code, as amended; or
4. Whereby a mere change in identity, form or place of organization is effected.

Subdivisions 1 to 4, inclusive, of this section shall only apply if the making, delivering or filing of instruments of transfer of conveyance occurs within five years from the date of such confirmation, approval or change.

D. Any tax imposed pursuant to this chapter shall not apply to the making or delivering of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954; but only if:

1. The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;
2. Such order specifies the property which is ordered to be conveyed;
3. Such conveyance is made in obedience to such order.

E.



1. In the case of any realty held by a partnership, no levy shall be imposed pursuant to this chapter by reason of any transfer of an interest in a partnership or otherwise, if:
  - a. Such partnership (or another partnership) is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1954; and
  - b. Such continuing partnership continues to hold the realty concerned.
2. If there is a termination of any partnership within the meaning of Section 708 of the Internal Revenue Code of 1954, for purposes of this chapter, such partnership shall be treated as having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership at the time of such termination.
3. Not more than one tax shall be imposed pursuant to this chapter by reason of a termination described in subdivision 2, and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of such termination.

F.

1. Any tax imposed pursuant to this chapter shall not apply to any transfer of property from one spouse or domestic partner to the other in order to create a joint tenancy or tenancy in common of their common residence.
2. Any tax imposed pursuant to this chapter shall not apply to any transfer of property from one spouse to the other in accordance with the terms of a decree of dissolution or in fulfillment of a property settlement incident thereto; provided, however, that such property was acquired by the husband and wife or husband or wife prior to the final decree of dissolution. Any tax imposed pursuant to this chapter also shall not apply to any transfer from one domestic partner, as that term is used in the City of Berkeley's policy establishing domestic partnership registration, to another, where (1) prior to such transfer an affidavit of domestic partnership has been filed with the City Clerk pursuant to Section IV of the City of Berkeley's policy establishing domestic partnership registration; (2) subsequent to the filing of such affidavit of domestic partnership, either or both domestic partner(s) files a statement of termination with the City Clerk pursuant to Section V of the domestic partnership policy; (3) such transfer of real property is made pursuant to a written agreement between the domestic partners upon the termination of their domestic partnership; and (4) the real property was acquired by either or both domestic partner(s) prior to the filing of the statement of termination.

G. Any tax imposed pursuant to this chapter shall not apply to transfers, conveyance, lease or sub-lease without consideration which confirm or correct a deed previously recorded or filed.

H. Any tax imposed pursuant to this chapter shall not apply to transfers recorded prior to the effective date of the ordinance codified in this chapter.

I. The tax imposed pursuant to this chapter shall not apply with respect to any deed, instrument, or writing to a beneficiary or mortgagee, which is taken from the mortgagor or trustor as a result of or in lieu of foreclosure; provided, that such tax shall apply to the extent that the consideration exceeds the unpaid debt, including accrued interest and cost foreclosure. Consideration, unpaid debt amount and identification of grantee as beneficiary or mortgagee shall be noted on said deed, instrument or writing or stated in an affidavit or declaration under penalty of perjury for tax purposes.

J. Reserved.

K.

1. Up to one-third of the tax imposed by this chapter shall be reduced, on a dollar for dollar basis, for all expenses incurred on or after October 17, 1989 to "seismically retrofit" either any structure which is used exclusively for residential purposes, or any mixed use structure which contains two or more dwelling units.

2. The term "seismically retrofit" within the meaning of this chapter means any of the following:

a. That work which is needed and directly related to make the structure capable of withstanding lateral loads equivalent to the force levels defined by Chapter 23 of the 1976 Uniform Building Code;

b. Replacement or repair of foundations; replacement or repair of rotted mud sills; bracing of basement or pony walls; bolting of mud sills to standard foundations; installation of shear walls; anchoring of water heaters; and/or securing of chimneys, stacks or water heaters;

c. Corrective work on buildings which fit the criteria in subsection K.1, which are listed on the City of Berkeley inventory of potentially hazardous, unreinforced masonry buildings when such work is necessary to meet City standards or requirements applicable to such buildings;

d. Any other work found by the building official to substantially increase the capability of those structures, specified in subsection K.1, to withstand destruction or damage in the event of an earthquake.

3. The work to seismically retrofit structures as provided herein shall be completed either prior to the transfer of property or as provided in subsection K.4.

4. If the work to seismically retrofit the structures provided for herein is to be performed after the transfer of property which is subject to the tax imposed by this chapter, upon completion of such work and certification by the building official as to the amount of the expenses of such work the City Manager or his/her designee may refund such expenses not to exceed one-third of the tax imposed to the parties to the sale in accordance with the terms of such sale. Any remaining tax shall be retained by the City.

5. From the date of the recordation of the transfer document, the applicant shall have one year to complete all seismic retrofit work and submit a seismic retrofit verification application to the codes and inspection division of the City of Berkeley. If the work is not completed at the end of one year, that portion which has been completed may be credited to the applicant upon submission of a seismic retrofit verification application and substantiating documentation, as required by the codes and inspections division of the City of Berkeley, showing the dollar amount of work completed up to that date. All other monies remaining in escrow will be returned to the City of Berkeley upon written request by the Finance Department.

6. Within the one-year period established by paragraph 5, an applicant may request, and the City Manager may approve, an extension of up to one year. The City Manager or his/her designee may grant such an extension only for good cause. The decision of the City Manager or his/her designee shall be entirely within his or her discretion and shall be final.

a. "Good cause" includes (i) the inability of the applicant, after a prompt and diligent search to find and retain the services of an architect, engineer, contractor or other service provider whose services are necessary for the seismic retrofit work; (ii) unforeseen and unforeseeable circumstances such as a significant change in the scope of the seismic retrofit work due to circumstances in the field which could not reasonably have been known earlier; and (iii) serious illness or other extraordinary and unforeseeable circumstances that prevented the timely commencement or completion of the seismic retrofit work.

b. "Good cause" does not include (i) ignorance of the applicable City ordinances or regulations concerning the seismic retrofit rebate provided in this chapter or state or local laws relating to the standards with which seismic retrofit work must comply; or (ii) any delays which were within the control or responsibility of the applicant.