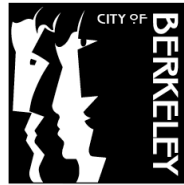


# AGENDA



## BERKELEY CITY COUNCIL MEETING

Tuesday, February 19, 2019

6:00 PM

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

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, 981-6900.*

*The City Council may take action related to any subject listed on the Agenda. The Mayor may exercise a two minute speaking limitation to comments from Councilmembers. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.*

### Preliminary Matters

#### Roll Call:

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

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

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

## Consent Calendar

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

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

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

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

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

## Consent Calendar

- 1. Single Use Disposable Foodware and Litter Reduction Ordinance; Adding BMC Chapter 11.64**  
**From: Councilmember Hahn and Mayor Arreguin**  
**Recommendation:** Adopt second reading of Ordinance No. 7,639-N.S., the Single Use Foodware and Litter Reduction Ordinance, adding Chapter 11.64 to the Berkeley Municipal Code.  
**First Reading Vote:** All Ayes  
**Financial Implications:** See report  
Contact: Sophie Hahn, Councilmember, District 5, 981-7150
- 2. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on February 19, 2019**  
**From: City Manager**  
**Recommendation:** Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager’s threshold will be returned to Council for final approval.  
**Financial Implications:** Various Funds - \$3,291,500  
Contact: Henry Oyekanmi, Finance, 981-7300

## Consent Calendar

**3. Annual Purchase Orders for Turnouts, Personal Protective Equipment, Firefighting Tools and Equipment: L.N. Curtis and Sons**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute annual purchase orders and any amendments with L.N. Curtis and Sons for the purchases of: -Turnouts, and personal protective equipment (PPE) such as wildland coats and pants, firehoses, gloves, helmets, gear for hearing and eye protection, fire boots; and -Other firefighting tools and equipment such fire extinguishers, foam, firehose, ladders, bumps, and related devices on apparatus. The purchase order for FY 2019 shall not exceed \$220,000, with an annual increase no more than 5% each year up to a maximum of five years. A 20% contingency is added to cover costs arising from unforeseen incidents or operations for a total amount not to exceed (NTE) \$1,361,286.

**Financial Implications:** See report

Contact: Dave Brannigan, Fire Chief, (510) 981-3473

**4. FY19 Expanded Winter Shelter: Additional Allocation of Funding and Authorization of Contract Amendment with Dorothy Day House for Winter Shelter Operations**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to amend Contract No. 10577D with Dorothy Day House to add \$114,960 to extend the Dorothy Day House Shelter at the Veteran's Building for a total contract amount not to exceed \$754,608 for the period July 1, 2017 through June 30, 2019; and allocate an additional \$59,000 in General Fund to support pest control, janitorial services and emergency maintenance costs at the expanded winter shelter.

**Financial Implications:** See report

Contact: Kelly Wallace, Housing and Community Services, 981-5400

**5. Contract: Recruiting Advertising and Marketing Strategy for the Berkeley Police Department**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a police recruiting and marketing strategy contract with Epic Recruiting, in an amount not to exceed \$100,000 for a one-year period. The services provided in the contract are designed to assist the Berkeley Police Department with website design, video production, photography, branding, and social media/digital marketing with the goal of increasing the number of qualified recruit and lateral applicants.

**Financial Implications:** General Fund - \$100,000

Contact: Andrew Greenwood, Police, 981-5900

## Consent Calendar

- 6. Contract: D’Arcy & Harty Construction, Inc. for Sanitary Sewer Rehabilitation and Replacement at Various Locations**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the Sanitary Sewer Project, located on Mathews Street, Euclid Avenue and Backline, Mabel Street, Oregon Street, Derby Street, Fairview Street, Catalina Avenue Backline, Fairlawn Drive Backline, and Arlington Avenue; accepting the bid of the lowest responsive and responsible bidder, D’Arcy & Harty Construction, Inc.; and authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$1,363,373, which includes a 10% contingency of \$123,943.  
**Financial Implications:** Sanitary Sewer Fund - \$1,363,373  
Contact: Phillip Harrington, Public Works, 981-6300
- 7. Filling Vacancies Among the Elected Representatives of the Poor – Confirmation of Ms. Lisa Romo**  
**From: Human Welfare and Community Action Commission**  
**Recommendation:** Adopt a Resolution confirming the appointment of Ms. Lisa Romo (District 3), as an elected representative of the poor on the Human Welfare Community Action Commission (HWCAC), having been selected by the commission members at the HWCAC November 28, 2018 meeting, and that her term expires November 28, 2022.  
**Financial Implications:** None  
Contact: Marie-Claire Katz, Commission Secretary, 981-5400
- 8. Filling Vacancies Among the Elected Representatives of the Poor – Confirmation of Ms. Denah Bookstein and Ms. Saba Deyhim**  
**From: Human Welfare and Community Action Commission**  
**Recommendation:** Adopt a Resolution confirming the appointments of Ms. Denah Bookstein (District 1) and Ms. Saba Deyhim (District 2) as elected representatives of the poor on the Human Welfare and Community Action Commission (HWCAC), having been voted at the HWCAC January 16, 2019 meeting, and that their terms expire November 28, 2022.  
**Financial Implications:** None  
Contact: Marie-Claire Katz, Commission Secretary, 981-5400



## Council Consent Items

9. **Short-Term Referral: Develop Ordinance permitting Cannabis Events and designate Cesar Chavez Park as an Approved Venue**  
**From: Mayor Arreguin**  
**Recommendation:** Short-Term Referral to the City Manager to develop ordinance amendments permitting cannabis events in the City of Berkeley and designating Cesar Chavez Park as an approved location for cannabis events, provided such events are organized and licensed as required by the State of California. The ordinance shall: 1. reference Resolution No. 68,326-N.S., declaring that Berkeley is a sanctuary for adult use cannabis, 2. specify procedures for such events that replicate similar alcohol related event protocols.  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, 981-7100
10. **Declaring a California Homelessness State of Emergency**  
**From: Mayor Arreguin, and Councilmembers Hahn, Davila, and Harrison**  
**Recommendation:** Adopt a Resolution requesting that Governor Newsom declare a California Homelessness State of Emergency, and direct more resources to State Departments (e.g. Caltrans). Send a copy of the Resolution to Governor Newsom, Congresswoman Barbara Lee, State Senator Nancy Skinner, State Assemblymember Buffy Wicks, State Superintendent of Public Education Tony Thurmond and Caltrans District Director Tony Tavares.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, 981-7100
11. **Berkeley Youth Alternatives' 15th Annual Crab Feed Fundraiser: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**  
**From: Councilmember Davila**  
**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$180 from Councilmember Cheryl Davila, to Berkeley Youth Alternatives, for their 15th Annual Crab Feed Fundraiser on February 28, 2019, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila and any other Councilmembers who would like to contribute.  
**Financial Implications:** Councilmember's Discretionary Funds - \$180  
Contact: Cheryl Davila, Councilmember, District 2, 981-7120

## Council Consent Items

- 12. Ohlone Park 50th Anniversary Celebration: City Sponsorship and Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**  
**From: Councilmember Harrison**  
**Recommendation:**  
1. Adopt a Resolution co-sponsoring the celebration of Ohlone Park's 50th anniversary on June 1st, 2019.  
2. Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember including \$250 from Councilmember Harrison, to the Friends of Ohlone Park, the fiscal sponsor of the 50th anniversary celebration, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Harrison and any other Councilmembers who would like to contribute.  
**Financial Implications:** Councilmember's Discretionary Fund - \$250  
Contact: Kate Harrison, Councilmember, District 4, 981-7140
- 13. Support for AB 161 (Skip the Slip)**  
**From: Councilmembers Harrison, Robinson, and Davila**  
**Recommendation:** Send a letter of support for AB 161, which requires that proof of purchase (receipts) be provided only in electronic form unless the customer specifically requests paper, to Senator Skinner and Assemblymember Wicks  
**Financial Implications:** None  
Contact: Kate Harrison, Councilmember, District 4, 981-7140

## Action Calendar

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

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

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

## Action Calendar – Public Hearings

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

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

## Action Calendar – Public Hearings

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

- 14. Density Bonus Ordinance Revisions - Repeal Existing Section 23C.12.050 (State of California Density Bonus Requirements) and Adopt New Chapter 23C.14 (Density Bonus) (Continued from January 29, 2019. Item contains revised material.)**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing, and upon conclusion, adopt the first reading of Zoning Ordinance amendments that repeal obsolete Density Bonus regulations (Section 23C.12.050: State of California Density Bonus Requirements) and adopt a new, standalone Density Bonus chapter (Chapter 23C.14) that complies with California State Government Code 65915–65918: Density Bonuses and Other Incentives.  
**Financial Implications:** None  
Contact: Timothy Burroughs, Planning and Development, 981-7400

## Action Calendar

- 15. Contract: Pride Industries for Citywide Janitorial Services at Various Locations**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a three-year contract and any amendments with Pride Industries to provide Citywide Janitorial Services at twenty nine (29) various City locations and facilities for the period May 1, 2019 to April 30, 2022, in an amount not to exceed \$3,725,735, with an option for two (2) one-year extensions for a maximum five (5) year contract for an amount not to exceed \$6,414,881, subject to the City’s annual budget appropriation process.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300

## Action Calendar – Old Business

- 16. Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program (Continued from January 22, 2019.)**  
**From: Councilmembers Bartlett, Worthington, and Davila**  
**Recommendation:** That the Council provides requested direction to the Planning Department on how to proceed with the Equity Program recommended by the Cannabis Commission in the October 9, 2018 staff report. Recommending allowing 4 equity applicants and 2 non-equity applicants to apply and be processed by the City within 2 years.  
**Financial Implications:** Minimal  
Contact: Ben Bartlett, Councilmember, District 3, 981-7130

## Action Calendar – Old Business

**17a. Council Referral-Proposed Amendments to Berkeley’s Living Wage Ordinance: Berkeley Municipal Code Chapter 13.27** *(Continued from January 29, 2019.)*

**From: Commission on Labor**

**Recommendation:** Adopt first reading of an Ordinance proposing revisions to Berkeley’s Living Wage Ordinance (LWO), BMC Chapter 13.27, revising Sections .020, .050, .070, .080 and .090 and adding Sections .045, .110, .120, .130, and .140 to make the application and administration of the LWO consistent with the Minimum Wage Ordinance (MWO) where appropriate, and modifying Sections .040 and .050 to 1. limit waivers of the LWO for a maximum of one year, and 2. clarifying when employees covered by the LWO are entitled to receive the cash value of the health care benefit..

**Financial Implications:** None

Contact: Delfina Geiken, Commission Secretary, 981-5400

**17b. Companion Report: Council Referral-Proposed Amendments to Berkeley’s Living Wage Ordinance: Berkeley Municipal Code Chapter 13.27** *(Continued from January 29, 2019.)*

**From: City Manager**

**Recommendation:** Adopt first reading of an Ordinance amending BMC Chapter 13.27, which proposes: 1. adding a definition of “Department” in Section 13.27.020, 2. limiting new waivers of the Living Wage Ordinance (LWO) to one year in Section 13.27.040, 3. clarifying language related to wages and benefits in the Section 13.27.050 and adding Section 13.27.110 related to severability.

**Financial Implications:** None

Contact: Kelly Wallace, Housing and Community Services, 981-5400

## Action Calendar – New Business

**18. Referral Response: Updated Policy for Emergency Standby Officers for the Mayor and Councilmembers**

**From: City Manager**

**Recommendation:** Adopt a Resolution updating the selection process and criteria for the appointment of Standby Officers for the Mayor and each Councilmember to serve in the event the elected official is unavailable during an emergency, and rescinding Resolution No. 57,906-N.S.

**Financial Implications:** None

Contact: Mark Numainville, City Clerk, 981-6900; Farimah Brown, City Attorney, 981-6950

## Action Calendar – New Business

### 19a. Assessment of Vacant Properties

**From:** Human Welfare and Community Action Commission

**Recommendation:** Direct the City Manager to develop a plan to locate the 3,754 “vacant housing units” noted in the “Employment, Economy, Housing “ data in the “City of Berkeley Fiscal years 2018 & 2019 Adopted Biennial Budget” and to assess what would be required to bring as many of the properties to market as possible.

**Financial Implications:** See report

Contact: Marie-Claire Katz, Commission Secretary, 981-5400

### 19b. Companion Report: Assessment of Vacant Properties

**From:** City Manager

**Recommendation:** Refer the issue of vacant housing units to Council’s process for setting priorities for Measure O funds.

**Financial Implications:** See report

Contact: Kelly Wallace, Housing and Community Services, 981-5400

### 20a. Resolution declaring City of Berkeley will not invest City funds in any entity involved in the production or upgrading of weapons

**From:** Peace and Justice Commission

**Recommendation:** Adopt Resolution submitted by the Peace and Justice Commission declaring the City of Berkeley will not invest City funds in any entity involved in the production or upgrading of weapons.

**Financial Implications:** None

Contact: Shallon Allen, Commission Secretary, 981-7071

### 20b. Companion Report: Resolution Declaring City of Berkeley Will Not Invest City Funds in Any Entity Involved in the Production or Upgrading of Weapons

**From:** City Manager

**Recommendation:** Continue to support the City of Berkeley’s existing investment policy which prohibits investments in gun manufacturers.

**Financial Implications:** None

Contact: Paul Buddenhagen, City Manager's Office, 981-7000

## Council Action Items

21. **Refer to the Planning Commission an amendment to BMC Chapter 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) and the Affordable Housing Mitigation Fee Resolution to Close a Loophole for Avoiding the Mitigation Fee through Property Line Manipulation**  
**From: Councilmembers Harrison, Robinson, and Hahn**  
**Recommendation:** Refer to the Planning Commission an amendment to BMC Section 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) to close a loophole allowing prospective project applicants to avoid inclusionary affordable housing requirements for owner occupied projects by modifying property lines so that no lot is large enough to construct five or more units. Adopt an updated resolution pursuant to BMC 22.20.065 (Affordable Housing Mitigation Fee) addressing the same issue for rental projects.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, 981-7140

## Information Reports

22. **Referral Response: Supporting Worker Cooperatives**  
**From: City Manager**  
Contact: Jordan Klein, Economic Development, 981-7530
23. **Referral Response: City Maintained Below Market Rate Units (BMR) Online Resource**  
**From: City Manager**  
Contact: Kelly Wallace, Housing and Community Services, 981-5400
24. **Mental Health Commission 2018/2019 Work Plan**  
**From: Mental Health Commission**  
Contact: Karen Klatt, Commission Secretary, 981-5400

## Public Comment – Items Not Listed on the Agenda

## Adjournment

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

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

Archived indexed video streams are available at <http://www.cityofberkeley.info/citycouncil>. Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk Department at 2180 Milvia Street. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

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

Agendas and agenda reports may be accessed via the Internet at <http://www.cityofberkeley.info/citycouncil> and may be read at reference desks at the following locations:

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

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

**COMMUNICATION ACCESS INFORMATION:**

This meeting is being held in a wheelchair accessible location.

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

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



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

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***I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on February 7, 2019.***

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

Mark Numainville, City Clerk

## Communications

*Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.*

### **Item #1: Single Use Disposable Foodware and Litter Reduction Ordinance; Adding BMC Chapter 11.64**

1. Alison Piccoli
2. Diana Bohn
3. Carol Denney
4. Jan Cecil
5. Steve
6. Rose Schweig

### **Encampments & Homelessness**

7. Richard James
8. Erik Dreher (2)
9. Josh Maddox
10. Dorothea Dorenz
11. Unknown
12. Bree Jenkins
13. Summi Kaipa

### **San Pablo Park**

14. Barbara Gilbert
15. Jenny Strauss
16. Kelly Zito
17. Kester Allen

### **Bike Lanes**

18. Chuck Siegel
19. Marco Facioni
20. Liza Lutzker
21. Dan Leaverton
22. Katy Love
23. Jonathan Walden
24. James Sayre
25. Karl Wanaselja
26. Caroline Swinehart
27. Roger Pritchard
28. Lori Hines

### **ISP Sonic & 5G**

29. Phoebe Anne Sorgen (2)
30. Soula Culver
31. Max Ventura



**North Berkeley BART**

- 32. Sarah Bardeen
- 33. Phil Erickson
- 34. Vicki Sommer
- 35. Alan Louwerse
- 36. Dana Moskowitz
- 37. Councilmember Harrison
- 38. Harvey Smith
- 39. Diana Damonte
- 40. Bob Whalen
- 41. Mary Behm-Steinberg

**Sugar Sweetened Beverages**

- 42. Holly Scheider

**Neo Nazi**

- 43. Judy Ann Alberti
- 44. Fred Dodsworth
- 45. Donald Goldmacher

**Climate Emergency**

- 46. Sierra Club of San Francisco Bay
- 47. Kelly Hammargren
- 48. Jane Kelly
- 49. Alan Gould
- 50. Thomas Lord

**West Berkeley Senior Center**

- 51. Richard Castrillon, on behalf of the Commission on Aging (2)

**Police Transparency (SB 1421)**

- 52. George Lippman
- 53. Donald Goldmacher
- 54. Sheila Goldmacher
- 55. Janice Schroeder

**1155-73 Hearst**

- 56. Yashu Jiang

**1444 5<sup>th</sup> Street**

- 57. Stuart Knowles of Trilogy Asset Management
- 58. Daro Quiring, President of the Oceanview Townhouse Assoc.

**People's Park**

- 59. Barryett Enge

**Undergrounding**

60. Bryce Nesbitt

**Business License**

61. Arthur Stopes III

**Berkeley Marina**

62. Dave Marcolini

**Strategic Plan**

63. Steve Kromer

**Construction Parking**

64. Maria Bogakos

**Self-Driving Cars**

65. Rhiannon

**Delivering Mail While Black**

66. Margy Wilkinson

**Kent's Tiny Home**

67. Margy Wilkinson

**Human Rights Worldwide**

68. Chairperson, Peace and Justice Commission

**Right to Daylight**

69. Fred Dodsworth

**Lawsuit**

70. Pil Orbison

**Sales Tax Fraud**

71. Arthur Stopes III

**2-1-1 Monthly Report for December**

72. Eden I&R, Inc.

**Transit Passes for Tenants**

73. Rhiannon

**Paradise Fire**

74. Kelly Hammargren

### **State and National Eviction Law**

75. Autumn Moon

### **Pacific Steel Bankruptcy**

76. Janice Schroeder

### **Zero Waste Commission**

77. Kelly Hammargren

### **Save the House of Mr. Powell**

78. Diana Bohn

### **Supplemental Communications and Reports**

*Items received by the deadlines for submission will be compiled and distributed as follows. If no items are received by the deadline, no supplemental packet will be compiled for said deadline.*

- **Supplemental Communications and Reports 1**  
Available by 5:00 p.m. five days prior to the meeting.
- **Supplemental Communications and Reports 2**  
Available by 5:00 p.m. the day before the meeting.
- **Supplemental Communications and Reports 3**  
Available by 5:00 p.m. two days following the meeting.



ORDINANCE NO. 7,639-N.S.

ADDING CHAPTER 11.64 TO THE BERKELEY MUNICIPAL CODE TO ADOPT A SINGLE USE FOODWARE AND LITTER REDUCTION ORDINANCE

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

Section 1. That a new Chapter 11.64 is hereby added to the Berkeley Municipal Code to read as follows:

**Chapter 11.64**

**SINGLE USE FOODWARE AND LITTER REDUCTION**

**Sections:**

- 11.64.010 Findings and Purpose.**
- 11.64.020 Definitions.**
- 11.64.030 Accessory disposable foodware items.**
- 11.64.040 Reusable customer cups.**
- 11.64.050 Compostable disposable foodware.**
- 11.64.060 Reusable foodware for dining on the premises.**
- 11.64.070 Disposable foodware standards.**
- 11.64.080 Separate disposable foodware waste receptacles.**
- 11.64.090 Waivers: process to obtain.**
- 11.64.100 Regulations applicable to all prepared food vendors.**
- 11.64.110 Duties responsibilities and authority of the City of Berkeley.**
- 11.64.120 City of Berkeley: purchases prohibited.**
- 11.64.130 Liability and enforcement.**
- 11.64.140 Severability.**
- 11.64.150 Chapter supersedes existing laws and regulations.**

**11.64.010 Findings and Purpose.**

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

A. Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, "clamshells" and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions.

B. The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources. Plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world's oceans.

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 SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health conditions.

D. Food and beverage SUDs make up approximately 25% of all waste produced in California. In the Bay Area, food and beverage packaging comprises the majority of street litter, and is a significant contributor to the total amount of waste entering the waste stream.

E. 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.

F. 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 single-use food and beverage packaging furthers this goal.

G. 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.

#### **11.64.020 Definitions.**

A. "Prepared Food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing and which require no further preparation to be consumed. Prepared Food does not include raw uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed, or raw uncooked meat products.

B. "Takeout Food" means Prepared Food which is purchased to be consumed off a Prepared Food Vendor's premises. Takeout Food includes Prepared Food carried out by the customer or delivered by a Prepared Food Vendor or by a Takeout Food Delivery Service.

C. "Prepared Food Vendor" means any establishment located within the City of Berkeley, including a Bakery, Cafeteria, Drive In, Food Products Store, Food Service Establishment (Carry Out, Quick Service, Full Service), Drugstore or Theater, as defined in BMC 23F.04, Mobile Food Facility, Temporary Food Facility (CA Health and Safety Code Sections 113831 and 113930 and as amended), bar and other similar establishment, selling Prepared Food to be consumed on and/or off its premises.

D. "Disposable Foodware" means all containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids, sleeves, condiment containers, spill plugs, paper or foil wrappers, liners and any other items used to hold, serve, eat, or drink Prepared Food, which are designed for single use and in which Prepared Food is placed or packaged on a Prepared Food Vendor's premises.

E. "Disposable Cup" is a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks and alcoholic beverages.

F. "Accessory Disposable Foodware Item" means any Disposable Foodware item such as straws, stirrers, napkins and utensils; condiment cups and packets; cup sleeves, tops, lids, and spill plugs; and other similar accessory or accompanying Disposable Foodware items used as part of food or beverage service or packaging.

G. "Reusable Foodware" means all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.

H. "Takeout Food Delivery Service" is a third party delivery service which picks up Takeout Food from a Prepared Food Vendor and delivers it to the customer for consumption off the premises.

#### **11.64.030 Accessory Disposable Foodware Items.**

A. Accessory Disposable Foodware items shall be provided only upon request by the customer or at self-serve stations, except that for safety reasons Disposable Cups for delivery by a Prepared Food Vendor or a Takeout Food Delivery Service may include lids, spill plugs and sleeves without request.

B. Prepared Food Vendors and Takeout Food Delivery Services must provide options for customers to affirmatively request Accessory Disposable Foodware Items separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person.

C. Prepared Food Vendors that customarily offer straws are encouraged to maintain a small supply of plastic-type straws which meet the Disposable Foodware Standards set forth in Section 11.64.070, which may be provided to customers upon specific request for a "plastic" straw.

D. Prepared Food Vendors offering condiments are encouraged to use dispensers rather than pre-packaged disposable condiment packets.

#### **11.64.040 Reusable Customer Cups.**

A. Except as provided in Chapter 11. Temporary Food Facilities of the California Health and Safety Code, Section 114353, customers may provide their own Reusable Foodware cups for beverage service in accordance with California State Health Code 114075(e) and as amended. Prepared Food Vendors may refuse, at their sole discretion, any customer-provided Reusable Foodware cup that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage, or that appears to be excessively soiled or unsanitary, and instead require use of a Reusable Foodware cup for a beverage consumed on the premises, or a Disposable Cup that conforms to the Disposable Foodware Standards in 11.64.070 for a beverage to be consumed off the premises, with any charge required pursuant to Section 11.64.050.D.

#### **11.64.050 Compostable Disposable Foodware.**

Effective January 1, 2020:

A. Takeout Food shall only be served in Disposable Foodware that conforms to the Disposable Foodware Standards in Section 11.64.070.

B. Accessory Disposable Foodware Items shall conform with the Disposable Foodware Standards in 11.64.070.

C. Takeout Food Delivery Services shall only deliver Takeout Food from a Prepared Food Vendor that is served in Disposable Foodware and with Accessory Disposable Foodware Items, if any, that conform to the Disposable Foodware Standards in 11.64.070.

D. Prepared Food Vendors shall charge customers twenty five cents (\$0.25) for every Disposable Cup provided.

1. Income from the Disposable Cup charge shall be retained by the Prepared Food Vendor.

2. All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and as amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the Disposable Cup charge.

3. Charges for Disposable Cups shall be identified separately on any post-sale receipt provided and, pre-sale, shall be clearly identified for the customer on media such as menus, ordering platforms and/or menu boards. Customers placing orders by telephone shall be informed verbally of Disposable Cup charges.

E. Notwithstanding the requirements at Section 11.64.050, subsections A-C, a Prepared Food Vendor may request a waiver or waivers pursuant to Section 11.64.090 for specific Disposable Foodware items. To obtain a waiver for a Disposable Foodware item, the Prepared Food Vendor must demonstrate that:

1. No Disposable Foodware item exists with substantially similar size, performance and/or utility that conforms with the Disposable Foodware Standards in Section 11.64.070 or, if such an item exists, that costs of using such item would cause undue financial hardship, and;

2. The non-conforming Disposable Foodware item to be used in lieu of a conforming item is recyclable in the City of Berkeley recyclable collection program.

3. The Prepared Food Vendor must provide documentation of good faith efforts to obtain a substantially similar compliant item at a non-prohibitive price.

4. Records of attempts to obtain a compliant item may include:

a. Emails, letters or other correspondence with vendors that furnish Compostable Disposable Foodware, seeking the compliant item.

b. Responses from such Compostable Disposable Foodware vendors including, where applicable, specifications and pricing for such item.



c. Specifications and pricing for the recyclable non-conforming item sought to be used, demonstrating its substantial superiority and/or affordability, and

d. Any other verifiable records which demonstrate a good faith effort to comply with Disposable Foodware Standards for such item.

5. Reasonable added cost for a conforming item as compared to a substantially similar recyclable non-conforming item shall not by itself constitute adequate grounds to support a waiver for such item.

#### **11.64.060 Reusable Foodware for Dining on the Premises.**

Effective July 1, 2020:

A. Prepared Food served for consumption on the premises of a Prepared Food Vendor shall only be served using Reusable Foodware, except that disposable paper food wrappers, sleeves and bags; foil wrappers; paper napkins; straws and paper tray- and plate-liners shall be allowed for dining on the premises, so long as they meet the Disposable Foodware Standards in Section 11.64.070.

B. Notwithstanding the requirements at Section 11.64.060.A, Prepared Food Vendors that do not have on-site or off-site dishwashing capacity or are unable to contract for services to wash, rinse and sanitize Reusable Foodware in compliance with the California State Health Code may request a waiver or partial waiver pursuant to Section 11.64.090. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints, undue financial hardship and/or other extraordinary, insurmountable circumstances.

C. All Disposable Foodware used on the premises by Prepared Food Vendors that are operating under full or partial waivers obtained pursuant to 11.64.090 shall conform to the Disposable Foodware Standards in Section 11.64.070.

#### **11.64.070 Disposable Foodware Standards.**

A. Disposable Foodware must be accepted by City of Berkeley municipal compost collection programs and be free of all intentionally added fluorinated chemicals, as certified by the Biodegradable Product Institute or other independent third party certifying organization or agency recognized by the City, except that non-compostable foil wrappers that are accepted in the City of Berkeley recyclable collection program may be used for burritos, wraps, and other items that require foil to contain and form the food item.

B. The City shall maintain on its website a list of suppliers that offer Disposable Foodware that complies with these Disposable Foodware Standards.

C. Changes, if any, to Disposable Foodware Standards shall become effective on January 1 of the next calendar year, and the City of Berkeley shall provide notice of any such changes to Prepared Food Vendors at least 90 days prior.

#### **11.64.080 Separate Disposable Foodware Waste Receptacles.**

All Prepared Food Vendors, except Full Service Restaurants as defined in Chapter 23F.04 of the Berkeley Municipal Code and other Prepared Food Vendors that provide full bussing service and do not customarily provide waste receptacles for customer use, must provide at least one set of three easily accessed receptacles for discarded items to be composted, recycled, and, if needed, to be landfilled or otherwise wasted.

A. To the extent possible given space constraints, all three receptacles should be placed together in the same location.

B. The City shall identify materials accepted for each collection program on the City's website, and signage must be posted on and/or above each receptacle, indicating the materials to be deposited into such receptacle. Receptacles and signage shall be color-coded as follows:

1. Blue for recyclables
2. Green for compostables
3. Black or gray for items to be landfilled or otherwise wasted

C. Prepared Food Vendors that share premises may share receptacles.

**11.64.090 Waivers: process to obtain.**

A. The City Manager shall prescribe and adopt rules, regulations and forms for Prepared Food Vendors to obtain full or partial waivers from any requirement of this ordinance that is explicitly subject to waiver.

B. Waivers shall be granted by the City Manager or his or her designees, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.

C. The City Manager or his or her designees shall act on a waiver application no later than 180 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.

D. Waivers may be granted for a specified term of up to two (2) years. During the waiver term, the Prepared Food Vendor shall make diligent efforts to become compliant. Under extraordinary circumstances, should a Prepared Food Vendor demonstrate that, at the close or expiration of a granted waiver term, and with diligent efforts to become compliant, compliance remains infeasible, additional waivers of up to two (2) years each may be granted. It shall be the Prepared Food Vendor's responsibility to apply for any subsequent waivers in a timely manner.

E. Notwithstanding the two (2) year maximum term for waivers set forth in Section 11.64.090 (D), in certain limited and unique circumstances existing prior to adoption of this ordinance, where the Prepared Food Vendor demonstrates diligent efforts to comply but, due to insurmountable space or economic constraints and/or other unique and extraordinary circumstances, may never be reasonably able to comply, the City Manager or his or her designee may grant a waiver for a longer specified term.

F. All waivers shall expire automatically in the event of a significant remodel, renovation or other alteration of the premises with a construction valuation that exceeds \$60,000 or if the Prepared Food Vendor ceases operations at the location for which the waiver has been granted.

**11.64.100 Regulations applicable to all Prepared Food Vendors.**

A. Each Prepared Food Vendor shall maintain written records evidencing compliance with this Chapter.

B. All records required by this Chapter shall be made available for inspection by the City Manager or his or her designated representative. It shall be unlawful for anyone having custody of such records to fail or refuse to produce such records upon request by the City Manager or his or her designated representative.

**11.64.110 Duties responsibilities and authority of the City of Berkeley.**

The City Manager or his or her 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 Prepared Food Vendor's premises to verify compliance.

**11.64.120 City of Berkeley: purchases prohibited.**

The City of Berkeley shall not purchase any Disposable Foodware that does not comply with the Disposable Foodware Standards in Section 11.64.070, nor shall any City-sponsored event utilize non-compliant Disposable Foodware.

**11.64.130 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.

**11.64.140 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 proscribed 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.

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

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

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.

At a regular meeting of the Council of the City of Berkeley held on January 22, 2019, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.



Office of the City Manager

CONSENT CALENDAR  
February 19, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Henry Oyekanmi, Director, Finance  
 Subject: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on February 19, 2019

RECOMMENDATION

Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.

FISCAL IMPACTS OF RECOMMENDATION

Total estimated cost of items included in this report is \$3,291,500.

| <u>PROJECT</u>                                                       | <u>Fund</u> | <u>Source</u>                         | <u>Amount</u>      |
|----------------------------------------------------------------------|-------------|---------------------------------------|--------------------|
| Derelict Vessel Removal & Disposal                                   | 608         | Marina Operations                     | \$143,000          |
| Echo lake and select recreation division bus transportation services | 125<br>011  | Playground Camp<br>Discretionary Fund | \$162,500          |
| Bus Transportation for Summer Day Camps                              | 011         | Discretionary                         | 401,000            |
| Berkeley Tuolumne Camp Construction Management                       | 125         | Playground Camp                       | \$2,200,000        |
| George Florence Park Playground Renovation                           | 511         | Measure T1                            | \$385,000          |
| <b>Total:</b>                                                        |             |                                       | <b>\$3,291,500</b> |

**CURRENT SITUATION AND ITS EFFECTS**

On May, 6, 2008, Council adopted Ordinance No. 7,035-N.S. effective June 6, 2008, which increased the City Manager's purchasing authority for services to \$50,000. As a result, this required report submitted by the City Manager to Council is now for those purchases in excess of \$100,000 for goods; and \$200,000 for playgrounds and construction; and \$50,000 for services. If Council does not object to these items being sent out for bid or proposal within one week of them appearing on the agenda, and upon final notice to proceed from the requesting department, the IFB or RFP may be released to the public and notices sent to the potential bidder/respondent list.

**BACKGROUND**

On May 6, 2008, Council adopted Ordinance No. 7,035-N.S., amending the City Manager's purchasing authority for services.

**ENVIRONMENTAL SUSTAINABILITY**

The Finance Department reviews all formal bid and proposal solicitations to ensure that they include provisions for compliance with the City's environmental policies. For each contract that is subject to City Council authorization, staff will address environmental sustainability considerations in the associated staff report to City Council.

**CONTACT PERSON**

Shari Hamilton, General Services Manager, Finance, 510-981-7329

**Attachments:**

- 1: Formal Bid Solicitations and Request for Proposals Scheduled For Possible Issuance After Council Approval on February 19, 2019

**Sanitary Sewer Rehabilitation:**

- a) Derelict Vessel Removal & Disposal
- b) Echo Lake and Select Recreation Division Bus Transportation Services
- c) Bus Transportation for Summer Day Camps
- d) Berkeley Tuolumne Camp Construction Management
- e) George Florence Park Playground Renovation

Note: Original of this attachment with live signature of authorizing personnel is on file in General Services.

DATE SUBMITTED: January 22, 2019

| SPECIFICATION NO. | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED                      | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                                                                                                                                                                                                  | ESTIMATED COST | BUDGET CODE TO BE CHARGED                                                                                                                            | DEPT. / DIVISION | CONTACT NAME & PHONE                                            |
|-------------------|----------------------------------------------------------------------|----------------------|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|-----------------------------------------------------------------|
| 19-11297-C        | Derelect Vessel Removal & Disposal                                   | 2/21/2019            | 3/14/2019                | Hire marine contractor to remove/dispose of 26 derelict vessels at Berkeley Marina (total project cost \$143,000; total COB cost \$13,000)                                                                                                                                                                                                    | \$143,000      | 608-52-544-592<br>0000-000-472 -612990-<br>(\$13,000 of City match budgeted; remainder is pending City's receipt of grant)                           | PRW- Waterfront  | Stephen H. Bogner<br>981-6744                                   |
| 19-11298-C        | Echo Lake and Select Recreation Division Bus Transportation Services | 2/21/2019            | 3/14/2019                | Charter Bus Transportation services for Echo Lake Camp and select Recreation Division Programs, including Teens, Field Trips, Pre-K, and other programs.<br><br>(5 yr contract for approximately \$32,500/yr.), two one-year options to extend.<br><br>Echo Lake Camp:<br>\$117,500<br><br>Teen Program:<br>\$45,000 Estimated Cost \$162,500 | \$162,500      | FUNDS: 330-5996-450.50-20<br>ERMA: 125-52-543-582-0000-000-461-625120-<br><br>FUNDS: 010-5994-450.50-20<br>ERMA: 011-52-543-570-0000-000-461-625120- | PRW / Recreation | Craig Veramay,<br>Recreation Program Supervisor<br><br>981-6717 |

DATE SUBMITTED: January 22, 2019

| SPECIFICATION NO. | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                                                                                                    | ESTIMATED COST                                                                                              | BUDGET CODE TO BE CHARGED                                                                                                                                                                                                                                                                                                                                                                    | DEPT. / DIVISION | CONTACT NAME & PHONE                                            |
|-------------------|-------------------------------------------------|----------------------|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|-----------------------------------------------------------------|
| 19-11299-C        | Bus Transportation for Summer Day Camps         | 2/28/2019            | 3/21/2019                | Local transportation services to and from Berkeley Day Camp location sites.<br>*Berkeley Day Camp<br><br>James Kenney<br><br>Live Oak<br><br>Francis Albrier<br><br>Young Adult Project<br><br>(5year contract for approximately \$80,200/year) | \$300,000<br><br>\$26,000<br><br>\$22,500<br><br>\$19,000<br><br>\$33,500<br>Estimated Total Cost \$401,000 | FUND\$: 330-5999-450-5020<br>ERMA:011-52-543-584-0000-000-461-625120-<br><br>FUND\$:010-5980-450-5020<br>ERMA: 011-52-543-579-0000-000-461-625120-<br><br>FUND\$: 010-5981-450-5020<br>ERMA: 011-52-543-572-0000-000-461-625120-<br><br>FUND\$: 010-5982-450-5020<br>ERMA: 011-52-543-573-0000-000-461-625120-<br><br>FUND\$: 010-5990-450-5020<br>ERMA: 011-52-543-580-0000-000-461-625120- | PRW / Recreation | Craig Veramay,<br>Recreation Program Supervisor<br><br>981-6717 |
| 19-11300-C        | Berkeley Tuolumne Camp Construction Management  | 3/1/2019             | 4/2/2019                 | Construction Management, including Bid Support Services, for Berkeley Tuolumne Camp Reconstruction                                                                                                                                              | \$2,200,000                                                                                                 | 125-52-543-583-0000-000-461-612310<br>PRWCP19001                                                                                                                                                                                                                                                                                                                                             | PRW/<br>Capital  | Liza McNulty<br>981-6437                                        |



DATE SUBMITTED: January 22, 2019

| SPECIFICATION NO.  | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                          | ESTIMATED COST     | BUDGET CODE TO BE CHARGED                     | DEPT. / DIVISION        | CONTACT NAME & PHONE            |
|--------------------|-------------------------------------------------|----------------------|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-----------------------------------------------|-------------------------|---------------------------------|
| 19-11301-C         | George Florence Park Playground Renovation      | 4/22/2019            | 5/14/2019                | Renovations include play equipment replacement at the tot playground (Age 2-5), the school-age play area (Age 5-12), and related site and accessibility improvements. | \$385,000          | 511-52-545-000-0000-000-461-663110-PRWT119008 | PRW/<br>Capital Project | Taylor Lancelot<br><br>981-6421 |
| <b>DEPT. TOTAL</b> |                                                 |                      |                          |                                                                                                                                                                       | <b>\$3,291,500</b> |                                               |                         |                                 |
| <b>GRAND TOTAL</b> |                                                 |                      |                          |                                                                                                                                                                       | <b>\$3,291,500</b> |                                               |                         |                                 |





Office of the City Manager

CONSENT CALENDAR  
February 19, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Dave Brannigan, Fire Chief

Subject: Annual Purchase Orders for Turnouts, Personal Protective Equipment, Firefighting Tools and Equipment: L.N. Curtis and Sons

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute annual purchase orders and any amendments with L.N. Curtis and Sons for the purchases of:

- Turnouts, and personal protective equipment (PPE) such as wildland coats and pants, firehoses, gloves, helmets, gear for hearing and eye protection, fire boots;
- Other firefighting tools and equipment such fire extinguishers, foam, firehose, ladders, bumps, and related devices on apparatus.

The purchase order for FY 2019 shall not exceed \$220,000, with an annual increase no more than 5% each year up to a maximum of five years. A 20% contingency is added to cover costs arising from unforeseen incidents or operations for a total amount not to exceed (NTE) \$1,361,286.

FISCAL IMPACTS OF RECOMMENDATION

The funding for turnouts, PPE, firefighting tools and equipment for FY 2019 is budgeted in the General Fund budget codes: 011-72-742-835-0000-000-422-645110 (\$150,000 Clothing), 011-72-742-835-0000-000-422-642990 (\$50,000 Field Supplies), and 011-72-742-835-0000-000-422-642120 (\$20,000 Miscellaneous Supplies). The future year amounts will be included in the budgets for that fiscal year and will be subject to Council approval of the Adopted Budget and the Annual Appropriations Ordinance.

The number of turnouts and PPE purchased each fiscal year depends on the number of recruits hired and the number of turnouts and PPE that need to be replaced. Firefighting tools and equipment are replaced due to normal wear and tear during fire suppression operations. For budgetary purposes and fiscal management, the

purchases shall not exceed \$220,000 in FY 2019, and with no more than 5% annual increase in each of the subsequent four fiscal years, plus a 20% contingency.

| Year         | Amount (With 5% Annual Increase) | 20% Contingency  | Total Not to Exceed |
|--------------|----------------------------------|------------------|---------------------|
| FY2019       | \$220,000                        | \$0              | \$220,000           |
| FY2020       | \$231,000                        | \$46,200         | \$277,200           |
| FY2021       | \$242,550                        | \$48,510         | \$291,060           |
| FY2022       | \$254,678                        | \$50,936         | \$305,614           |
| FY2023       | \$267,412                        | \$53,482         | \$320,894           |
| <b>Total</b> | <b>\$1,215,640</b>               | <b>\$145,646</b> | <b>\$1,361,286</b>  |

**CURRENT SITUATION AND ITS EFFECTS**

Turnouts and PPE are necessary protective safety gear for firefighting personnel and are required to fully comply with updated CAL-OSHA and National Fire Protection Association (NFPA) 1971, Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting. The Fire Department needs to procure an approved NFPA compliant standardized style and color of department turnouts for firefighting personnel. Firefighting equipment are also needed for fire suppression and responding to emergency calls.

This purchase piggybacks off a publicly solicited cooperative contract (# 00000170) awarded to L.N. Curtis & Sons. The contract is established through a formal competitive Request for Proposal (RFP) process conducted by Public Procurement Authority (PPA) in cooperation with National Purchasing Partners (NPP). The RFP was issued on October 26, 2016 and awarded on April 27, 2017. Piggybacking off a cooperative contract is an effort to streamline the procurement process, reducing administrative costs and delays associated with a RFP.

**BACKGROUND**

Each year the Fire Department purchases turnouts and PPE for firefighters performing in the line of duty. In addition, reliable mission critical tools and equipment are needed for them to perform their duties. The products offered by L.N. Curtis and Sons meet the updated safety standards that provide safety for firefighters engaging in fire suppression and rescue operations. The Fire Department is requesting that the City Council approve the execution of an annual purchase order for turnouts, PPE, firefighting tools and equipment with L.N. Curtis and Sons.

**ENVIRONMENTAL SUSTAINABILITY**

There are no identifiable environmental effects associated with the subject of this report.

Annual Purchase Orders for Turnouts, Personal Protective Equipment, Firefighting Tools and Equipment

CONSENT CALENDAR  
February 19, 2019

RATIONALE FOR RECOMMENDATION

Under State law, CAL-OSHA mandates structural turnouts for uniformity and level of protection. L.N. Curtis and Sons provides protective safety gears that are compliant with CAL-OSHA requirements. Relying on PPA's competitive firefighting equipment bid will save the City of Berkeley numerous staff hours on products that have already been bid.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions are considered. The Berkeley City Charter Article XI, Public Works and Supplies, Section 67.2 allows for the use of competitively bid pricing from a public agency. L.N. Curtis is the successful bidder of a publicly solicited contract (#00000170) awarded by Public Procurement Authority.

CONTACT PERSON

Dave Brannigan, Fire Chief, (510) 981-3473

Attachments:

1: Resolution

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

ANNUAL PURCHASE ORDERS FOR TURNOUTS, PERSONAL PROTECTIVE EQUIPMENT, FIREFIGHTING TOOLS AND EQUIPMENT: L.N. CURTIS AND SONS

WHEREAS, turnouts and personal protective equipment are necessary protective safety gears for firefighting personnel and are required to fully comply with updated CAL-OSHA and National Fire Protection Association (NFPA) 1971, Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting; and

WHEREAS, the Fire Department needs to procure an approved NFPA compliant standardized style and color of department turnouts for firefighting personnel. In addition, reliable mission critical tools and equipment are also needed for fire suppression and rescue operations; and

WHEREAS, the Berkeley City Charter Article XI, Public Works and Supplies, Section 67.2 allows for the use of competitively bid pricing from a public agency; and

WHEREAS, on October 26, 2016, the Public Procurement Authority (PPA) issued a Request for Proposal solicitation No. 1605 for fire equipment. The RFP was published in USA Today on November 2, 2016 and posted on the following websites: [www.nppgov.com](http://www.nppgov.com), [www.ppa-or.gov](http://www.ppa-or.gov), and [www.findrfp.com](http://www.findrfp.com). The RFP was closed on December 12, 2016. PPA received six proposals. Proposals were evaluated by PPA based on the criteria contained in the RFP. L.N. Curtis & Sons was a successful bidder and awarded Contract No. 00000170 for firefighting equipment; and

WHEREAS, L.N. Curtis & Sons is a local vendor based in Oakland, California; and

WHEREAS, L.N. Curtis and Sons offers products that meet the updated safety standards that provide safety for firefighters engaging in fire suppression and rescue operations; and

WHEREAS, the funding for turnouts, PPE, firefighting tools and equipment for FY 2019 is budgeted in the General Fund budget codes: 011-72-742-835-0000-000-422-645110 (\$150,000 Clothing), 011-72-742-835-0000-000-422-642990 (\$50,000 Field Supplies), and 011-72-742-835-0000-000-422-642120 (\$20,000 Miscellaneous Supplies). The future year amounts will be included in the budgets for that fiscal year and will be subject to Council approval of the Adopted Budget and the Annual Appropriations Ordinance; and

WHEREAS, a 20% contingency is needed to cover costs arise from unforeseen incidents or operations each year. The contingencies and excess above the budget will be appropriated in the General Fund as an amendment to the Annual Appropriations Ordinance on an as-needed basis in each respective fiscal year.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized under City Charter Article XI, Section 67.2 to execute annual purchase orders and any amendments with L.N. Curtis & Sons to purchase turnouts, PPE,

firefighting tools and equipment for \$220,000 in FY 2019, with an annual increase no more than 5% each year up to a maximum of five years and a 20% contingency to cover costs arising from unforeseen incidents or operations, for a total amount not to exceed (NTE) \$1,361,286.

| <b>Year</b>  | <b>Amount (With 5% Annual Increase)</b> | <b>20% Contingency</b> | <b>Total NTE</b>   |
|--------------|-----------------------------------------|------------------------|--------------------|
| FY2020       | \$220,000                               | \$0                    | \$220,000          |
| FY2021       | \$231,000                               | \$46,200               | \$277,200          |
| FY2022       | \$242,550                               | \$48,510               | \$291,060          |
| FY2023       | \$254,678                               | \$50,936               | \$305,614          |
| FY2024       | \$267,412                               | \$53,482               | \$320,894          |
| <b>Total</b> | <b>\$1,215,640</b>                      | <b>\$145,646</b>       | <b>\$1,361,286</b> |







Office of the City Manager

CONSENT CALENDAR  
February 19, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Kelly Wallace, Interim Director, Health, Housing and Community Services Department

Subject: FY19 Expanded Winter Shelter: Additional Allocation of Funding and Authorization of Contract Amendment with Dorothy Day House for Winter Shelter Operations

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to amend Contract No. 10577D with Dorothy Day House to add \$114,960 to extend the Dorothy Day House Shelter at the Veteran's Building for a total contract amount not to exceed \$754,608 for the period July 1, 2017 through June 30, 2019; and allocate an additional \$59,000 in General Fund to support pest control, janitorial services and emergency maintenance costs at the expanded winter shelter.

FISCAL IMPACTS OF RECOMMENDATION

On June 26, 2018, Council approved an allocation of \$400,000 for an FY 2019 Expanded Emergency Shelter Program. To date, \$334,432 has been expended, leaving \$65,568 to support Winter Shelter costs for the remainder of FY19.

An additional \$173,960 in costs are estimated to keep the winter shelter open until June 30. To meet those costs, City Council will need to allocate an additional \$108,392 to the winter shelter program and bring them into the budget in the second Appropriations Ordinance. If these additional funds are authorized, General Fund of \$114,960 in Budget Code 011-51-507-506-0000-000-459-636110 will support Dorothy Day House (Contract No. 010577D (CMS #DF4MG)); and \$59,000 in budget code 011-51-504-535-0000-000-444-612990 will support pest management, janitorial and emergency maintenance costs.

CURRENT SITUATION AND ITS EFFECTS

In FY 2018, Dorothy Day House (DDH) operated its BESS program out of 1925 9<sup>th</sup> Street. The shelter was expanded to operate not only during inclement weather, but was awarded \$310,101 to operate nightly from December 23, 2017 through August 31, 2018. City Council allocated \$400,000 for FY 2019 for an "expanded shelter program" again augmenting the resources available to enable DDH to operate a nightly shelter program. During the month of September, DDH operated the expanded shelter, rotating

between Francis Albrier Community Center and the North Berkeley Senior Center. Since October 1, 2018, the expanded shelter, now called the Dorothy Day House Shelter, has operated in the basement at 1931 Center Street. The DDH Shelter provides nightly shelter for up to 52 literally homeless people each night. The funds allocated to Dorothy Day House cover the costs of basic shelter operations, staffing and insurance.

Since the opening of the DDH shelter in the basement of 1931 Center Street, the City has covered the costs of janitorial and pest control services. Additionally, Public Works staff made necessary repairs to the shelter space and continues to be responsible for the maintenance and repair of the basement’s electrical, plumbing, heating/ventilation and fire sprinkler systems.

In addition to operating the nightly DDH shelter, DDH continues to provide an inclement weather shelter at Old City Hall, which can accommodate up to 27 people.

**BACKGROUND**

Dorothy Day House (DDH) has operated the Berkeley Emergency Storm Shelter (BESS) for fifteen years. Up until FY 2017, DDH operated BESS as an overnight emergency shelter on a first-come, first served basis for up to 45 nights for a maximum capacity of 65 people each night. The BESS shelter would open if rain or temperatures at or below 40 degrees were expected overnight. For the past several years, DDH has operated the BESS at different faith-based and City of Berkeley owned sites. In addition to operating the BESS, through its contract with the City of Berkeley, DDH also operates the Monday through Saturday breakfast program at Christ Church in Berkeley.

The last couple of years, DDH has operated expanded and extended winter shelters on a nightly basis increasing the number of people it could serve. The DDH shelter moved from University Center to the Veteran’s Building at 1931 Center Street on October 1, 2018, and in December 2018, the Berkeley Emergency Storm Shelter was re-located to Old City Hall. To prepare the University Center, 1931 Center Street, and Old City Hall as shelter sites, Public Works incurred \$43,141 in one-time costs for cleaning, pest treatment and various facility repairs and necessary upgrades.

On June 26, 2018, Council approved an allocation of \$400,000 for an FY 2019 Expanded Emergency Shelter Program. The chart below captures the allocation and expenditures towards that allocation. Public Works costs captured below represent one-time costs to prepare facilities for winter shelter operations at University Avenue, 1931 Center Street and Old City Hall.

|                                                    |             |
|----------------------------------------------------|-------------|
| FY 19 Council Allocation Winter Shelter Allocation | \$400,000   |
| Dorothy Day House Contract                         | (\$217,000) |

|                                                                       |           |
|-----------------------------------------------------------------------|-----------|
| Winter Shelter Costs (Various Departments)                            | (74,291)  |
| One-Time Public Works Costs                                           | (43,141)  |
| Remaining Allocation                                                  | 65,568    |
| Additional Expenditures for Winter Shelter Operations through 6/30/19 | (173,960) |
| Current Allocation Request                                            | 108,392   |

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

Dorothy Day House has a long history of operating the winter shelter, including an expanded and extended nightly shelter for the past two winter seasons. Dorothy Day House has successfully operated a nightly shelter for more than one year.

ALTERNATIVE ACTIONS CONSIDERED

If additional funding is not allocation for the expanded shelter, the shelter will close on February 28. Alternately, the winter shelter could be extended part-way through the fiscal year. Should council wish to fund the expanded winter shelter for a shorter amount of time, the approximate monthly cost is \$42,000.

CONTACT PERSON

Jennifer Vasquez, Community Services Specialist III, HHCS, 981-5431

Attachments:

- 1: Resolution

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

FY19 EXPANDED WINTER SHELTER: ADDITIONAL ALLOCATION OF FUNDING  
AND AUTHORIZATION OF CONTRACT AMENDMENT WITH DOROTHY DAY  
HOUSE FOR WINTER SHELTER OPERATIONS

WHEREAS, the City of Berkeley is committed to providing a humane response to addressing homelessness; and

WHEREAS, on June 26, 2018 City Council allocated \$400,000 to Expanded Emergency Shelter Program efforts in FY19, which included funding for Dorothy Day House and for other costs incurred by City staff; and

WHEREAS, total spending on the Expanded Emergency Shelter Program so far totals \$334,432 for both an allocation to Dorothy Day House to operate the shelter and for other costs incurred by the City and necessary to continue shelter operations, including janitorial, pest services and one-time public works costs; and

WHEREAS, the existing budget will fund shelter operations through February 28, 2019 and \$114,960 is needed to extend the shelter through June 30, 2019; and

WHEREAS, \$59,000 is needed to cover the monthly costs of janitorial, pest control and emergency maintenance costs to enable the expanded winter shelter to operate out of 1931 Center Street; and

WHEREAS, \$108,392 in additional funds are needed to add to the original allocation of \$400,000 to provide expanded winter shelter through June 30, 2019 and will be brought into the budget in the second Appropriations Ordinance; and

WHEREAS, Dorothy Day House has an existing contract (Contract No. 010577D) with the City of Berkeley totaling \$639,648 for both winter shelter and homeless breakfast services; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Council authorizes the City Manager to execute an amendment to Contract No. 10577E with Dorothy Day House to add \$114,960 to extend the operation of the Berkeley Emergency Storm Shelter (BESS) through June 30, 2019, for a total contract amount not to exceed \$754,608. A record copy of said agreement is on file with the City Clerk.

BE IT FURTHER RESOLVED that the City Council authorizes an additional allocation of \$59,000 to be added to 011-51-504-535-0000-000-444-612990 to support pest control, janitorial services and emergency maintenance costs at the expanded winter shelter.



Office of the City Manager

CONSENT CALENDAR  
February 19, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Andrew Greenwood, Chief of Police  
 Subject: Contract: Recruiting Advertising and Marketing Strategy for the Berkeley Police Department

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a police recruiting and marketing strategy contract with Epic Recruiting, in an amount not to exceed \$100,000 for a one year period.

The services provided in the contract are designed to assist the Berkeley Police Department with website design, video production, photography, branding, and social media/digital marketing with the goal of increasing the number of qualified recruit and lateral applicants.

FISCAL IMPACTS OF RECOMMENDATION

Funds for this contract are allocated in FY 2019 General Fund budget code: 011-71-704-816-0000-000-421-612990.

CURRENT SITUATION AND ITS EFFECTS

The Berkeley Police Department, like many other law enforcement agencies around the nation, has struggled in recent years to attract sufficient qualified applicants. One of the most challenging internal issues facing agencies is recruiting, selecting, and retaining both sworn and professional staff. Given the current climate of the law enforcement profession, recruiting the next generation of police officers has proven to be more difficult than ever. Bay Area law enforcement agencies are competing for the same diminishing pool of applicants.

Our current hiring process consists of posting job announcements on the City of Berkeley website, and other local media outlets. Career and job fairs have been the cornerstone of police recruiting efforts. The Department has continued to use these and other outreach strategies to attract candidates, such as advertising in magazines, professional social networking, traditional job fairs, and proactive community partnerships. The fact remains that the Berkeley Police Department continues to struggle with losing police officers either to other agencies or due to retirement. Recruiting and retaining quality officers and professional staff is an issue that needs to

be solved by creative solutions. We must expand our recruitment efforts to hire qualified personnel who are diverse and reflective of our community.

### BACKGROUND

On December 7, 2018, the City of Berkeley issued Request for Proposal No. 19-11276 for a Recruiting Advertising and Marketing Strategy for the Berkeley Police Department. After receiving four bidders, staff selected Epic Recruiting as the proposal that best met the criteria contained in the RFP.

Epic Recruiting is solely dedicated to online police organization recruiting services. Unlike other recruiting agencies, Epic targets the next generation of law enforcement and caters to improving and modernizing existing hiring strategies. Epic uses online technologies and strategies such as online search, recruitment videos, and social networking. Professional recruitment videos for both sworn and professional employees produced by Epic can be placed on electronic billboards and on social media for a good return on investment.

A recruiting website is a 24-hour, nationwide job fair machine that never stops. In addition, a properly marketed and dedicated website increases recruitment of the types of applicants and recruits we want because it is marketed to a certain audience. It is also designed to not just highlight our department but will be developed to specifically appeal to the type of officers and professional staff we want, need, and desire in our organization.

Epic Recruiting contains the skill set of an advertising agency, a video production company, and a web development firm, all in a single entity designed to serve the law enforcement community. They use no sub-contractors or outsourcing of any kind. Every aspect of the Berkeley Police Department recruitment campaign will be handled by an Epic staff member, from project management, to web design, to the production crew that films recruiting videos.

### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

### RATIONALE FOR RECOMMENDATION

The selection panel awarded Epic Recruiting the highest points based on the criteria established in the RFP; furthermore this vendor comes highly recommended by their current and former clients. While Epic Recruiting did not offer the lowest bid for services, the evaluation team selected the company which provided the best value and service based on the overall scope of services.

Contract: Epic Recruiting for Recruiting Advertising  
and Marketing Strategy for the Berkeley Police Department

CONSENT CALENDAR  
February 19, 2019

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Jen Tate, Sergeant, Police, 510-981-5734

Attachments:

1: Resolution

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

CONTRACT: EPIC RECRUITING FOR RECRUITING ADVERTISING AND  
MARKETING STRATEGY FOR THE BERKELEY PD

WHEREAS, on December 7, 2018, the City of Berkeley issued Request for Proposal No. 19-11277 for a recruiting advertising and marketing strategy for the Police Department; and

WHEREAS, four prospective vendors submitted proposals in response to the RFP to provide Recruiting Advertising and Marketing Strategies; and

WHEREAS, key stakeholders comprised the selection panel, which evaluated the proposals; and

WHEREAS, Epic Recruiting was ranked highest by the selection panel as the vendor that best met the criteria listed in the RFP; and

WHEREAS, funds for this contract have been allocated in FY 2019 Police Department General Fund budget code 011-71-704-816-0000-000-421-612990.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute a contract and any amendments with Epic Recruiting to provide recruiting advertising and marketing strategies over a one year period not to exceed \$100,000.





Office of the City Manager

CONSENT CALENDAR  
February 19, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Phillip L. Harrington, Director, Department of Public Works  
Subject: Contract: D’Arcy & Harty Construction, Inc. for Sanitary Sewer Rehabilitation and Replacement at Various Locations

RECOMMENDATION

Adopt a Resolution approving plans and specifications for the Sanitary Sewer Project, located on Mathews Street, Euclid Avenue and Backline, Mabel Street, Oregon Street, Derby Street, Fairview Street, Catalina Avenue Backline, Fairlawn Drive Backline, and Arlington Avenue; accepting the bid of the lowest responsive and responsible bidder, D’Arcy & Harty Construction, Inc.; and authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$1,363,373, which includes a 10% contingency of \$123,943.

FISCAL IMPACTS OF RECOMMENDATION

Funding is available in the FY 2019 Sanitary Sewer Fund 611-54-623-676-0000-000-473-665130-PWENSR1901.

|                                      |                    |
|--------------------------------------|--------------------|
| Low bid by D’Arcy & Harty .....      | \$1,239,430        |
| 10% Contingency .....                | \$123,943          |
| <b>Total construction cost .....</b> | <b>\$1,363,373</b> |

The contract has been entered into the Contract Management System (CMS) as CMS No. IH881.

CURRENT SITUATION AND ITS EFFECTS

This sanitary sewer project is part of the City's ongoing program to rehabilitate or replace its aging sanitary sewer system, and to eliminate potential health hazards to the public. The project will be sited at various locations throughout the City as shown on the Location Map (Attachment 2). The sanitary sewer collection system in these areas needs immediate rehabilitation to prevent impending pipe failures, sewer blockages, and leakage problems. Field investigations performed using a closed circuit television camera revealed deteriorated piping and pipe defects in the existing sanitary sewer mains. These conditions are similar to problems previously

found in other sanitary sewer mains prior to their replacement.

Planned work entails replacement or rehabilitation of approximately 2,455 linear feet of 6-inch and 8-inch diameter sanitary sewer mains; manhole construction; replacement of 4-inch and 6-inch diameter sanitary sewer laterals; and other related work. To reduce traffic impacts, minimize inconvenience to residents, and reduce cost, a majority of this sanitary sewer rehabilitation work will be performed using the pipe bursting method. This trenchless method allows replacement of pipelines buried below street level (such as sewer or water pipes) without the need for a traditional open trench construction. This method of pulling a new high-density polyethylene pipe (HDPE) through the existing clay pipe with a cone-shaped hammerhead to "burst" the surrounding clay pipe, allows for cost savings, and avoids street closures and traffic disruptions caused by open trenches.

The scope of work also includes provisions for urgent/emergent actions related to acute sewer defects that will be undertaken at other citywide locations on an as-needed basis. As required by the United States Environmental Protection Agency (EPA) and Regional Water Quality Control Board Consent Decree, acute defects must be addressed no later than one year after they are identified. The 95 working day contract term includes a 50 working day performance period and an additional 45 working days for project closeout. Finally, a 10% contract contingency of \$123,943 is included to pay for related unexpected future construction events.

## BACKGROUND

To remain compliant with the September 22, 2014 Consent Decree, the City has implemented a long-term mandated Sanitary Sewer Capital Improvement Program to eliminate sanitary sewer overflows (SSOs) and reduce storm water infiltration and inflow into the sanitary sewer system. Under this program, the City utilizes a comprehensive asset management approach based on complex and evolving hydrologic and hydraulic modeling and condition assessments to repair, replace, or upgrade the City's portion of the sanitary sewer system. Ultimately, these actions will assist East Bay Municipal Utility District (EBMUD) in their goal of eliminating discharges from their wet weather facilities by the end of 2035.

This is the fifth year of the twenty-two-year Consent Decree program, which stipulates the City shall perform collection system repair and rehabilitation to control infiltration and inflow.<sup>1</sup> This is in support of and in addition to ongoing work previously identified in the City's Sanitary Sewer Management Plan (SSMP) and Asset Management Implementation Plan (AMIP).

An Invitation for Bids (Specification. No. 17-11140-C) was released on December 13, 2018 and seven non-local bids were received, ranging from a low of \$1,239,430 to a high of \$1,715,960 (Attachment 3, Bid Results). The engineer's estimate for the project was

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<sup>1</sup> At an average annual rate of no less than 22,120 feet of sanitary sewer mains on a three-fiscal-year rolling average.

\$1,750,000. D'Arcy & Harty of San Francisco, California was the lowest responsive and responsible bidder. Previous work and references of D'Arcy & Harty proved satisfactory, thus staff recommends award of the contract to D'Arcy & Harty.

The Living Wage Ordinance does not apply to this project as Department of Public Works construction contracts are subject to State prevailing wage laws. D'Arcy & Harty has submitted a Certification of Compliance with the Equal Benefits Ordinance. Because the project's estimated value exceeds \$500,000, the Department of Public Works intends to continue honoring the Community Workforce Agreement (CWA) and will apply its terms to this agreement. As a result, the successful bidder and all subcontractors must agree to be bound by the terms of the CWA.

#### ENVIRONMENTAL SUSTAINABILITY

Improvements to the City's sanitary sewer system will help protect water quality by reducing the frequency of SSOs, and infiltration and inflows into the City's sanitary sewer system that can negatively affect the San Francisco Bay.

#### RATIONALE FOR RECOMMENDATION

Contracted services are required for these large projects, as the City lacks in-house resources needed to complete scheduled sanitary sewer rehabilitation and replacement projects. Further, the City must take timely action to address urgent/emergent sewer repairs without delay. Finally, subject to fines and stipulated penalties, the Consent Decree demands the City to repair acute defects within one year of discovery, and complete sanitary sewer main rehabilitation and replacement at a three-year annual average minimum of 22,120 feet per fiscal year. The City will have a three year annual average of approximately 23,530 linear feet of replaced or rehabilitated sewer mains after completing the FY 2019 work by June 30, 2019.

#### ALTERNATIVE ACTIONS CONSIDERED

No reasonable alternative exists as the City's sanitary sewer pipelines are in poor condition and in need of timely rehabilitation to prevent an increased probability of infiltration and inflows, sanitary sewer leakages, and backup problems in the sanitary sewer system.

#### CONTACT PERSON

Andrew Brozyna, Deputy Director, Public Works, (510) 981-6396  
Nisha Patel, Manager of Engineering, Public Works, (510) 981-6406  
Ricardo Salcedo, Assistant Civil Engineer, Public Works, (510) 981-6407

#### Attachments:

- 1: Resolution
- 2: Location Map
- 3: Bid Results

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

CONTRACT: D'ARCY & HARTY CONSTRUCTION, INC. FOR SANITARY SEWER REHABILITATION AND REPLACEMENT – MATHEWS STREET, EUCLID AVENUE AND BACKLINE, MABEL STREET, OREGON STREET, DERBY STREET, FAIRVIEW STREET, CATALINA AVENUE BACKLINE, FAIRLAWN DRIVE BACKLINE, AND ARLINGTON AVENUE.

WHEREAS, the Sanitary Sewer Project is part of the City's on-going Sanitary Sewer Capital Improvement Program to rehabilitate or replace the aging and deteriorated sanitary sewer system; and

WHEREAS, the Capital Improvement Program is a requirement of compliance with the National Pollution Discharge Elimination System Permit and California Regional Water Quality Control Board Consent Decree; and

WHEREAS, the City has neither the staff nor the equipment necessary to undertake this Sanitary Sewer Rehabilitation and Replacement Project and other urgent/emergent sewer repairs; and

WHEREAS, on December 13, 2018 the City released an Invitation for Bids (Specification #17-11140-C) for sanitary sewer rehabilitation and replacement; and

WHEREAS, the City received 7 submissions, and D'Arcy & Harty Construction, Inc. was found to be the lowest responsive and responsible bidder; and

WHEREAS, funds are available in the FY 2019 budget Sanitary Sewer Fund 611 and the contract has been entered as CMS No. IH881.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Plans and Specifications No. 17-11140-C for the Sanitary Sewer Rehabilitation and Replacement Project are approved.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments with D'Arcy & Harty Construction, Inc., until completion of the project in accordance with the approved specifications for the Sanitary Sewer Rehabilitation and Replacement Project located on Mathews Street, Euclid Avenue and Backline, Mable Street, Oregon Street, Derby Street, Fairview Street, Catalina Avenue Backline, Fairlawn Drive Backline, and Arlington Avenue, in an amount not to exceed \$1,363,373 which includes a 10% contingency for unforeseen circumstances. A record signature copy of said agreement and any amendments will be on file in the Office of the City Clerk.





City of Berkeley  
Abstract of Bids Worksheet

Finance Department  
General Service Division

For: *Sanitary Sewer Rehab*

Specification#: *17-1140-C*

Engineer's Estimate: *1,750,000.00*

Bid Date: *01/08/19*

|    | Bidders                        | Base Bid            | Nuc Free | Work Force Comp | Opp. States | Living Wage | EBO | Bid Bond | Addendum   |
|----|--------------------------------|---------------------|----------|-----------------|-------------|-------------|-----|----------|------------|
|    |                                |                     |          |                 |             |             |     |          | <i>142</i> |
| 1  | <i>Dancy &amp; Hardy Inc</i>   | <i>1,239,430.00</i> | /        |                 | /           |             | /   | /        |            |
| 2  | <i>Westland Contractors</i>    | <i>1,274,980.00</i> | /        |                 | /           |             | /   | /        |            |
| 3  | <i>Delaney Engineering</i>     | <i>1,447,375.00</i> | /        |                 | /           |             | /   | /        |            |
| 4  | <i>Cratus Inc.</i>             | <i>1,450,000.00</i> | /        |                 | /           |             | /   | /        |            |
| 5  | <i>Quiles Construction Inc</i> | <i>1,527,057.00</i> | /        |                 | /           |             | /   | /        |            |
| 6  | <i>Pacific Touchless Inc</i>   | <i>1,530,524.00</i> | /        |                 | /           |             | /   | /        |            |
| 7  | <i>Express Plumbing</i>        | <i>1,715,960.00</i> | /        |                 | /           |             | /   | /        |            |
| 8  |                                |                     |          |                 |             |             |     |          |            |
| 9  |                                |                     |          |                 |             |             |     |          |            |
| 10 |                                |                     |          |                 |             |             |     |          |            |

Bid Recorder: *Paula Kouszick*

*01/08/19*

Bid Opener: *[Signature]*

*1/8/19*

Project Manager: *Priscilla Delab*

*1/8/19*





Human Welfare and  
Community Action Commission

CONSENT CALENDAR  
February 19, 2019

To: Honorable Mayor and Members of the City Council  
 From: Human Welfare and Community Action Commission  
 Submitted by: Samuel Kohn, Temporary Chairperson, Human Welfare and Community Action Commission  
 Subject: Filling Vacancies Among the Elected Representatives of the Poor – Confirmation of Ms. Lisa Romo

RECOMMENDATION

Adopt a Resolution confirming the appointment of Ms. Lisa Romo (District 3), as an elected representative of the poor on the Human Welfare Community Action Commission (HWCAC), having been selected by the commission members at the HWCAC November 28, 2018 meeting, and that her term expires November 28, 2022.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On November 28, 2018, the HWCAC held its regularly scheduled biennial election to fill six vacancies in the Representatives of the Poor category. District 3 candidate Lisa Romo was present at the meeting with the required ten signatures. Commissioner Omodele made a motion to nominate Lisa Romo to the HWCAC as a Representative of the Poor. The motion was seconded and carried by Commissioner Kohn and passed with the following vote: Ayes – Omodele, Kohn, Dunner, Sood; Absent – Whitson, Holman; Noes – None; Abstain – Romo.

BACKGROUND

The HWCAC is made up of fifteen members, nine of whom are appointed by Berkeley City Council members and six of whom are elected representatives of the poor. Berkeley Municipal Code Section 3.78.080 stipulates that elections of representatives of the poor are held biennially in the month of November in even numbered years. The next election will take place in November 2020. Subsection C of the code states, "...the remaining representatives of the poor...shall select a person to fill the vacancy until the next election..." and that the, "...name of the selected representatives shall be submitted to the City Council for confirmation." BMC 3.78.030 (b) also states in part, that the remaining elected commission members shall recommend to the Council that the newly elected person fill out the term of the appointment.

At the November 28, 2018 HWCAC meeting, the commissioners selected Ms. Romo to fill one of the current vacancies.

ENVIRONMENTAL SUSTAINABILITY

There are no environmental impacts in adopting this resolution.

RATIONALE FOR RECOMMENDATION

Failure to maintain full membership on the HWCAC, which also acts as the Board of the Berkeley Community Action Agency (CAA), could result in a loss of Community Services Block Grant (CSBG) funding.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

CONTACT PERSON

Mary-Claire Katz, Commission Secretary, HHCS, 981-5414

Attachments:

1: Resolution



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

CONFIRMING THAT MS. LISA ROMO MAY FILL ONE VACANCY AMONG THE ELECTED REPRESENTATIVES OF THE POOR THAT EXISTS ON THE HUMAN WELFARE AND COMMUNITY ACTION COMMISSION (HWCAC)

WHEREAS, Berkeley Municipal Code Section 3.78.080 stipulates that election of representatives of the poor are held biennially in the month of November in even numbered years, and the next election will take place in November 2020; and

WHEREAS, Subsection C states "...the remaining representatives of the poor...shall select a person to fill the vacancy until the next election..." and that the "...name of the selected representatives shall be submitted to the City Council for confirmation"; and

WHEREAS, at the November 28, 2018 HWCAC regular meeting, the remaining commissioners selected Ms. Lisa Romo (District 3) to fill one vacancy with her term ending November 28, 2022.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that Ms. Lisa Romo (District 3) is confirmed as an elected representative of the poor serving on the Human Welfare and Community Action Commission until November 28, 2022 and that her term expires November 28, 2022.





Human Welfare and  
Community Action Commission

CONSENT CALENDAR  
February 19, 2019

To: Honorable Mayor and Members of the City Council  
 From: Human Welfare and Community Action Commission  
 Submitted by: Samuel Kohn, Temporary Chairperson, Human Welfare and Community Action Commission  
 Subject: Filling Vacancies Among the Elected Representatives of the Poor – Confirmation of Ms. Denah Bookstein and Ms. Saba Deyhim

RECOMMENDATION

Adopt a Resolution confirming the appointments of Ms. Denah Bookstein (District 1) and Ms. Saba Deyhim (District 2) as elected representatives of the poor on the Human Welfare and Community Action Commission (HWCAC), having been voted at the HWCAC January 16, 2019 meeting, and that their terms expire November 28, 2022.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Failure to maintain full membership on the HWCAC, which also acts as the Board of the Berkeley Community Action Agency (CAA), could result in a loss of Community Services Block Grant (CSBG) funding. Vacancies on the Berkeley CAA Board were noted as a “finding” during the most recent desk review of this program conducted by the State Department of Community Services and Development.

BACKGROUND

The HWCAC is made up of fifteen members, nine of whom are appointed by Berkeley City Council members and six of whom are elected representatives of the poor. Berkeley Municipal Code Section 3.78.080 stipulates that elections of representatives of the poor are held biennially in the month of November in even numbered years. The next election will take place in November 2020. Subsection C of the code states, “...the remaining representatives of the poor...shall select a person to fill the vacancy until the next election...” and that the, “...name of the selected representatives shall be submitted to the City Council for confirmation.” BMC 3.78.030 (b) also states in part, that the remaining elected commission members shall recommend to the Council that the newly elected person fill out the term of the appointment.

There were no elected representatives of the poor at the meeting; therefore, commissioners voted (M/S/C: Omodele/Dunner. Ayes – Omodele, Dunner, Sood, Kohn, Holman; Noes – None; Abstain – None; Absent: Vrankovecki, Whitson) to select Ms. Bookstein to fill one of the current vacancies;

and (M/S/C: Dunner/Omodele. Ayes – Omodele, Dunner, Sood, Kohn, Holman; Noes – None; Abstain – None; Absent: Vrankovecki, Whitson) to select Ms. Deyhim to fill one of the current vacancies.

#### ENVIRONMENTAL SUSTAINABILITY

There are no known environmental impacts associated with the recommendation of this report.

#### RATIONALE FOR RECOMMENDATION

Failure to maintain full membership on the HWCAC could threaten future CSBG funding.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

#### CONTACT PERSON

Mary-Claire Katz, Commission Secretary, HHCS, (510) 981-5414

Attachments:

1: Resolution

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

CONFIRMING THAT MS. DENAH BOOKSTEIN AND MS. SABA DEYHIM MAY FILL TWO VACANCIES AMONG THE ELECTED REPRESENTATIVES OF THE POOR THAT EXISTS ON THE HUMAN WELFARE AND COMMUNITY ACTION COMMISSION (HWCAC)

WHEREAS, Berkeley Municipal Code Section 3.78.080 stipulates that election of representatives of the poor are held biennially in the month of November in even numbered years, and the next election will take place in November 2020; and

WHEREAS, Subsection C states "...the remaining representatives of the poor...shall select a person to fill the vacancy until the next election..." and that the "...name of the selected representatives shall be submitted to the City Council for confirmation"; and

WHEREAS, at the January 16, 2019 HWCAC regular meeting, the Commission elected Ms. Denah Bookstein (District 1) to fill one vacancy with her term ending November 28, 2020; and

WHEREAS, at the January 16, 2019 HWCAC regular meeting, the Commission elected Ms. Saba Deyhim (District 2) to fill one vacancy with her term ending November 28, 2020; and

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that Ms. Denah Bookstein (District 1) and Ms. Saba Deyhim (District 2) are confirmed as elected representatives of the poor serving on the Human Welfare and Community Action Commission until November 28, 2020.





Office of the Mayor

CONSENT CALENDAR  
February 19, 2019

To: Members of the City Council

From: Mayor Jesse Arreguín

Subject: Short-Term Referral: Develop Ordinance permitting Cannabis Events and designate Cesar Chavez Park as an Approved Venue

RECOMMENDATION

Short-Term Referral to the City Manager to develop ordinance amendments permitting cannabis events in the City of Berkeley and designating Cesar Chavez Park as an approved location for cannabis events, provided such events are organized and licensed as required by the State of California. The ordinance shall: 1) reference Resolution No. 68,326-N.S., declaring that Berkeley is a sanctuary for adult use cannabis, 2) specify procedures for such events that replicate similar alcohol related event protocols.

BACKGROUND

The residents of Berkeley have long supported reform cannabis laws. In 1979, voters passed the Berkeley Marijuana Initiative, which recognized the negative impact of prosecuting marijuana users, called for city government to support all efforts towards the reform of marijuana laws, and directed the Berkeley Police Department to give the lowest priority to the enforcement of marijuana laws.

For over twenty years the City of Berkeley has also permitted medical cannabis dispensaries, authorized under state Proposition 215 and local law, to safely deliver medicine to patients. Allowing these services has had an overwhelmingly positive impact on our community, creating new options in patient care. In recognition of this and to further its support, the City Council adopted Resolution No. 63,966-N.S. in 2008, declaring the City of Berkeley a sanctuary for medical cannabis patients and providers, and opposing attempts by the U.S. Drug Enforcement Administration (DEA) to close medical marijuana dispensaries.

Most recently, in 2016, 83% of Berkeley voters and 57% of Californians voted in favor of Proposition 64, a statewide ballot initiative to legalize adult recreational cannabis for persons over 21 years old. In June 2017, Governor Brown signed SB94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). This bill is the foundation of the state's regulatory and enforcement framework for the burgeoning legal cannabis industry. Draft regulations were published in December of 2017, and final regulations are currently under review.

In anticipation of state regulations on adult use cannabis, and at City Council direction, staff have been developing ordinance modifications to allow Berkeley businesses to operate in accordance with state law, and a selection process for retailers and large cultivators. Draft documents were reviewed by the Cannabis Commission, Planning Commission and Community Health Commission in early 2018, and two Council Work Sessions have been held to present the proposed new regulatory framework. Once again, in support of safe access to cannabis and decriminalization, the City Council passed Resolution No. 68,326-N.S. on February 13, 2018, declaring that Berkeley will be a sanctuary for adult-use cannabis customers, businesses, providers, and landlords, specifying procedures regarding staff interaction with the Drug Enforcement Administration related to the enforcement of federal drug laws.

AB 2020 was passed by the California Legislature in 2018, which expanded locations where cannabis related events can occur beyond county fairgrounds. Such events can only be held by someone with a cannabis event organizer permit from the State of California. The event organizer must also acquire a temporary event permit from the State for each event, in addition to any local permits.

The City of Berkeley has been contacted by vendors that hold the required State of California cannabis event organizer permit requesting a venue for a cannabis and music event. These same vendors have held successful events, partnering with local jurisdictions all over the world, most recently in the cities of Sacramento and Santa Rosa.

During the October 2018 Work Session, Council requested that staff prioritize the adoption of adult use licenses for new cannabis businesses and also requested updates and a timeline on other cannabis matters. Consideration of special events specifically involving cannabis products - such as music festivals, judging events, and conventions - was included in that work plan (See Attachment 1). Upon the approval of developing an ordinance to designate Cesar Chavez Park as an approved venue for cannabis events, this task can be removed from the Planning Department's cannabis ordinance workplan that is due to return to the City Council in mid-2019.

Amending our Municipal Code to permit cannabis events, as authorized by state law, will provide a safe and regulated location for these types of events and provide significant economic benefits to the City of Berkeley. The City currently allows alcohol related events in City Parks. We are proposing that any ordinance undergo review by the appropriate City Departments: Planning, City Attorney, Environmental Health, Police, to ensure adequate safety protocols.

#### FINANCIAL IMPLICATIONS

According to reports of similar events held by state licensed operators, permitting such events at Cesar Chavez Park could contribute approximately \$200 per customer per day to the city's economy, adding up to \$10-12 million dollars.



ENVIRONMENTAL SUSTAINABILITY

Complies with City of Berkeley sustainability goals

CONTACT PERSON

Mayor Jesse Arreguín (510) 981-7100

ATTACHMENT:

1. Letter from City Manager dated November 9, 2018
2. Resolution No. 68,326-N.S.



Office of the City Manager

November 9, 2018

To: Honorable Mayor and Members of the City Council

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

Subject: Cannabis: Next steps following October 9, 2018 work session

On October 9, 2018, the Council held a work session related to draft cannabis ordinances. The Council requested that staff prioritize adoption of adult use licenses for new cannabis businesses and create a path to approve conversion of existing nurseries into cannabis retail nurseries. This memo provides the status of the two prioritized items and the next steps for cannabis ordinances.

**Adult use licenses for new cannabis businesses:** On September 13, 2018, the Council approved changes that allow cannabis distributors and small cultivators to operate in Berkeley. These changes included new and revised definitions as considered by the Cannabis, Planning and Community Health Commissions. The new definitions removed references to 'medical cannabis' and replaced it with 'cannabis' in order to conform to State regulations. In effect, this change allowed all cannabis businesses, existing and new, to choose to operate as a medicinal business, an adult use business, or both. Therefore, as of October 31, 2018, when the distributors and small cultivator ordinances came into effect, all new and existing cannabis businesses that are currently allowed in Berkeley can apply for adult use business licenses.

**Retail nurseries:** Staff has developed draft ordinance language which would allow up to two of the eight existing nurseries in Berkeley to convert to a cannabis nursery with retail sales. This type of business would be called a Retail Nursery Microbusiness (RNM). This language will be considered by the Cannabis, Planning, and Community Health Commissions in late 2018 and will be folded into other cannabis ordinance language going to Council in early 2019 (see below).

**Next steps for completing Berkeley's cannabis ordinances:** Staff will bring forward draft cannabis ordinance language to Council in two separate meetings in 2019.

The first meeting is proposed for January 2019 and will focus on issues for which staff has already received direction from Council and previous commission review. The draft language presented by staff will also restructure the cannabis ordinance for clarity, removing obsolete language and applying general regulations to all cannabis businesses. The changes will include:

Page 2

November 9, 2018

Re: Cannabis next steps following October 9, 2018 work session

- Relocating and consolidating text within the ordinance for clarity and ease of use;
- Advertising and signage regulations for cannabis businesses;
- Language for Retail Nursery Microbusinesses;
- Recommendations for quotas for retail cannabis businesses; and
- Revised retail buffers requirements (include a 600' buffer around six youth centers and increase the buffer around middle and high schools from 600' to 1,000').

Additional issues requiring further commission consideration and/or staff analysis will be presented for Council consideration in spring 2019. These include:

- Regulations for delivery-only businesses;
- Options for integrating equity considerations into cannabis business selection processes;
- Consideration of cannabis lounges;
- Consideration of special events specifically involving cannabis products, such as music festivals, judging events, and conventions;
- Consideration of buffers for non-retail cannabis businesses;
- Consideration of expansion of cultivation use outside the Manufacturing (M) District;
- Further consideration of Community Health Commission recommendations designed to address public health concerns related to cannabis.

Per Council direction, staff looks forward to moving expeditiously to provide clear rules and regulations for cannabis businesses that also address community questions and concerns. Please contact Timothy Burroughs, Director of the Department of Planning & Development, if you have any questions.

cc: Paul Buddenhagen, Interim Deputy City Manager  
Timothy Burroughs, Planning and Development Director  
Kelly Wallace, Interim Health Housing and Community Services Director  
Mark Numainville, City Clerk  
Matthai Chakko, Assistant to the City Manager  
Ann-Marie Hogan, City Auditor

RESOLUTION NO. 68,326-N.S.

DECLARING THE CITY OF BERKELEY AS A SANCTUARY FOR RECREATIONAL CANNABIS AND OPPOSING ATTEMPTS BY THE U.S. DRUG ENFORCEMENT ADMINISTRATION TO CLOSE CANNABIS BUSINESSES

WHEREAS, since the adoption of the Berkeley Marijuana Initiative by voters in 1979, Berkeley has recognized the harmful impacts of prosecuting marijuana users, instructs the city government to support all efforts towards the reform of marijuana laws, and directs the Berkeley Police Department to give the lowest priority to the enforcement of marijuana laws; and

WHEREAS, the federal government continues to classify all forms of cannabis as Schedule I under the federal Controlled Substances Act, and therefore does not recognize medical or recreational marijuana; and

WHEREAS, Resolution No. 63,966-N.S. adopted in 2008, declares the City of Berkeley as a sanctuary for medicinal cannabis and opposes attempts by the U.S. Drug Enforcement Administration to Close Medical Marijuana Dispensaries; and

WHEREAS, legalizing marijuana is an important social justice issue; and

WHEREAS, millions of peaceful Americans have been fined, arrested, imprisoned, or otherwise needlessly criminalized and stigmatized, potentially for life, because of their use of marijuana; and

WHEREAS, over \$1 trillion dollars has been spent enforcing drug laws, including those pertaining to marijuana, since the War on Drugs was initiated by President Richard Nixon in the 1970s; and

WHEREAS, because of aggressive enforcement of drug laws, including marijuana laws, the United States has become a nation of mass incarceration – imprisoning 2 million American citizens which represents the highest imprisonment rate of any nation on Earth, representing 25% the world's prisoners; and

WHEREAS, the enforcement of marijuana and other drug laws has had a disproportionate impact on communities of color– evidenced by the fact comparable usage by whites and Blacks, a Black person is four times as likely to be arrested for marijuana possession than a white person; and

WHEREAS, an April 2, 2014, Pew Research Center poll found that 75% of Americans believe the use and sale of marijuana will eventually be legal in the United States nationwide; and

WHEREAS, in November 2016, 57% of California voters and 83% of Berkeley voters voted in favor of Prop 64 to legalize adult recreational cannabis for persons over 21 years old; and

WHEREAS, Prop 64 includes an important provision for anyone who has been or currently is imprisoned, on probation, or on parole to apply for resentencing or redesignation – a small but important step in reducing the unjust and unequal impact of decades of harmful and costly marijuana laws and prosecution; and

WHEREAS, in 2011, when national and statewide momentum for cannabis legalization was growing, the Department of Justice issued guidance for federal prosecutors widely known as the “Cole Memo” that outlined both the Department’s enforcement priorities and that state and local law enforcement and regulation should “remain the primary means of addressing marijuana-related activity” when there is a strong and effective regulatory and enforcement system in place; and

WHEREAS, for 20 years, the City of Berkeley has permitted medical cannabis dispensaries, authorized under state Proposition 215 and local law, to safely delivered medicine to patients. These established businesses have not had a negative impact on the surrounding community or resulted in any increase in crime; and

WHEREAS, the City of Berkeley staff and local cannabis businesses have been working diligently since the passage of Proposition 64 to build upon the City’s robust regulatory and enforcement system for medicinal cannabis in preparation for statewide legal adult-use cannabis, a system that is designed to explicitly address the concerns in the Cole memo; and

WHEREAS, in June 2017 Governor Brown signed SB94 the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), wherein the State of California formally recognized adult-use cannabis cultivators, testing laboratories, distributors and retailers (dispensaries), as legally taxable entities; and

WHEREAS, as a result of Prop 64 and MAUCRSA the State of California could potentially generate \$1 Billion annually in tax revenue and \$100 million in savings; and

WHEREAS, the City of Berkeley will also generate significant tax revenue locally, with estimates of up to \$3 million dollars annually; and

WHEREAS, in January 2018, U.S. Attorney General Jeff Sessions presented a Memorandum on Marijuana Enforcement which rescinded previous guidelines, including those established by the Cole Memo, increasing confusion about the legal risk of cannabis-related activity in the State of California; and

WHEREAS, because marijuana is currently legal in some form in 28 states and the District of Columbia, this action represents an attack on cities where legal, safe, and highly

regulated recreational sale and use occurs, and the majority of states where the voters have made their voices heard; and

WHEREAS, prior activities of the Drug Enforcement Administration to shut down medical marijuana dispensaries and collectives by targeting their landlords and seizing their landlord's properties will have serious consequences if they are repeated and targeted at either the medical or adult-use cannabis industry; and

WHEREAS, increased federal enforcement may force established medical and adult-use cannabis-related businesses to close or move underground, impeding the development of a newly regulated market, and threatening public safety; and

WHEREAS, the economic impact to cities and the statewide economy would be significant with hundreds of existing workers statewide will lose well-paying jobs with benefits and the state and City of Berkeley will lose significant amounts of tax revenue; and

WHEREAS, it is fundamental that the City of Berkeley take a strong stance against threats by the Trump Administration to interfere with the right of the State of California to tax and regulate cannabis, and protect our patients and local economy.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley is declared to be a sanctuary for recreational cannabis customers, providers, and landlords.

BE IT FURTHER RESOLVED that no department, agency, commission, officer or employee of the City of Berkeley shall use any City funds or resources to assist in the enforcement of Federal drug laws related to cannabis landlords, property owners, cultivators, distributors, retailers, laboratory testers, or customers who are operating within California state law and local ordinances.

BE IT FURTHER RESOLVED that the City of Berkeley does not support cooperation with the Drug Enforcement Administration in its efforts to undermine state and local marijuana laws, and further calls upon the Berkeley Police Department, the District Attorney for the County of Alameda, the Alameda County Sheriff's Department, and the Attorney General of the State of California to uphold the laws of the State, and specifically to not assist in the harassment, arrest or prosecution of cannabis landlords, owners, cultivators, distributors, retailers, laboratory testers, or customers who are licensed and attempting to comply with MAUCRSA and local laws and regulations.

BE IT FURTHER RESOLVED that the City Attorney shall transmit copies of this Resolution to the California Attorney General, the Governor of California, and to Senators Dianne Feinstein and Kamala Harris and U.S. Representative Barbara Lee.

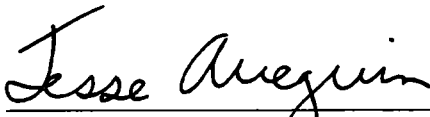
\* \* \* \* \*

The foregoing Resolution was adopted by the Berkeley City Council on February 13, 2018 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, City Clerk







Office of the Mayor

CONSENT CALENDAR

February 19, 2019

To: Honorable Members of the City Council  
 From: Mayor Jesse Arreguín, Councilmembers Sophie Hahn, Cheryl Davila and Kate Harrison  
 Subject: Declaring a California Homelessness State of Emergency

RECOMMENDATION

Adopt a Resolution requesting that Governor Newsom declare a California Homelessness State of Emergency, and direct more resources to State Departments (e.g. Caltrans). Send a copy of the Resolution to Governor Newsom, Congresswoman Barbara Lee, State Senator Nancy Skinner, State Assemblymember Buffy Wicks, State Superintendent of Public Education Tony Thurmond and Caltrans District Director Tony Tavares.

BACKGROUND

Like many cities in California, Berkeley is facing a crisis, with homelessness rising by 17% between 2015 and 2017. Currently, approximately 1000 individuals experience homelessness every day, with almost 70% (664) unsheltered.<sup>1</sup>

While homelessness has long been a challenge, increases in the scope and duration of homelessness have provided a new sense of urgency. In 2016, Berkeley declared a Homeless Shelter Crisis (Resolution No. 67,357-N.S.), which allowed the City to explore a wide variety of response options to address the crisis, and to remove obstacles to their implementation. This declaration was extended to January 19, 2018, and again to January 19, 2020.<sup>2</sup> Since then, the City has taken steps to quickly strengthen existing programs, services and facilities, while developing new ones. Berkeley voters also passed ballot measures in 2018 that will provide \$135M for affordable housing and approximately \$6M in resources annually to support homeless resources.

Despite continued efforts to address this crisis, resources continue to fall short of needs. Even with the addition of resources allocated through Governor Newsom's 2019 Budget and from Alameda County, Berkeley is not able to shelter all who are living on our streets from night to night, or meet the complex and costly challenges of providing health and mental health services, job training, housing counselling and other services. As a result, encampments continue to proliferate and grow creating a health crisis for those residing there and for the community at large.

Homelessness is not unique to Berkeley; it is a regional and statewide crisis that knows few jurisdictional boundaries. Cities and counties across California are also struggling to meet the

<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/07\\_Jul/Documents/2017-07-25\\_Item\\_53\\_2017\\_Berkeley\\_Homeless.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/07_Jul/Documents/2017-07-25_Item_53_2017_Berkeley_Homeless.aspx)

<sup>2</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/10\\_Oct/Documents/2017-10-31\\_Item\\_10\\_Extension\\_of\\_Housing\\_Crisis\\_-\\_Rev\\_2.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/10_Oct/Documents/2017-10-31_Item_10_Extension_of_Housing_Crisis_-_Rev_2.aspx)

housing and service needs of homeless individuals. In 2017, homelessness rose nearly 14% in California<sup>3</sup> and by only 1% nationally.<sup>4</sup> California also accounts for a disproportionate share of the nation's homeless, with 12% of the total US population and 22% of the homeless. Also, a much higher rate of California's homeless are unsheltered; 68% compared to a national average of 24%.<sup>5</sup>

A May 12, 2018 San Francisco Chronicle Opinion piece<sup>6</sup> entitled, "The Bay Area's Housing Crisis Has Become an Emergency," clearly identifies our State's predicament as an *emergency*. It calls attention to California's crisis of homelessness, reporting that fewer and fewer low-income Californians are able to afford the basic cost of living, and asserting that efforts to provide housing for lower-income residents cannot succeed without state support.

California is facing an emergency unprecedented in scope and impact. Cities and counties cannot address this crisis without emergency resources and support from the State, in all of its departments. Section 8558 of Title 2, Division 1, Chapter 7 of the California Government Code, defines a State of Emergency as:

*"the duly proclaimed existence of conditions of ... extreme peril to the safety of persons and property within the state caused by ... conditions ... which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat"*<sup>7</sup>

The homeless crisis is creating a statewide health and safety crisis. Conditions have reached a magnitude such that they are beyond the control of the services, personnel, equipment and facilities available within our city and county governments and school districts. Our public right-of-ways, highway over and underpasses, railway lines and other lands are burgeoning with homeless. These encampment communities are outside of local control and must be serviced with sanitary facilities and waste removal.

For these reasons, we must call upon Governor Newsom to declare a Homelessness State of Emergency and to make additional State resources available to address the crisis of homelessness, especially in the encampments that occupy State controlled properties.

#### FINANCIAL IMPLICATIONS

None.

#### ENVIRONMENTAL SUSTAINABILITY

There are no environmental opportunities or risks associated with this recommendation.

#### CONTACT PERSON

Mayor Jesse Arreguin, (510) 981-7100

#### ATTACHMENTS

1. Resolution

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3 <https://www.sfchronicle.com/opinion/editorials/article/Editorial-The-Bay-Area-s-housing-crisis-has-12908782.php?t=b56c5082c0>

4 <http://www.vhcorp.org/wp-content/uploads/2017/06/2017-Homeless-Count-Results.pdf>

5 [https://www.urban.org/sites/default/files/publication/96506/final\\_report\\_and\\_recommendations\\_on\\_homelessness\\_in\\_alameda\\_county\\_california\\_0.pdf](https://www.urban.org/sites/default/files/publication/96506/final_report_and_recommendations_on_homelessness_in_alameda_county_california_0.pdf)

6 <https://www.sfchronicle.com/opinion/editorials/article/Editorial-The-Bay-Area-s-housing-crisis-has-12908782.php?t=b56c5082c0>

7 [http://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=8558](http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=8558)

RESOLUTION NO. ##, ###-N.S.  
CALLING ON GOVERNOR NEWSOM TO DECLARE A CALIFORNIA HOMELESSNESS STATE  
OF EMERGENCY

WHEREAS, Berkeley is facing an emergency, with homelessness rising by 17% between 2015 and 2017; and

WHEREAS, approximately 1000 individuals experience homelessness every day in Berkeley, with almost 70% unsheltered, many living in encampments; and

WHEREAS, the 2019 Point In Time Homeless Count results are pending and the expectation is that the number of people homeless will increase; and

WHEREAS, increases in the scope and duration of homelessness in Berkeley, and throughout the State of California, have provided a new sense of urgency to address the crisis; and

WHEREAS, in 2016, Berkeley declared a Homeless Shelter Crisis (Res. No. 67,357-N.S.), which allowed the City to explore a wide variety of response options to address the crisis, and to remove obstacles to their implementation, recently extending the crisis until January 19th, 2020 (Res. No. 68,206-N.S.); and

WHEREAS, the State of California required jurisdictions to declare a Homeless Shelter Crisis in order to access HEAP funding; and

WHEREAS, even with the addition of new State of California and Alameda County resources, Berkeley is unable to shelter all of its homeless residents, or to meet the complex and costly challenges of providing affordable housing, health and mental health services, job training, housing counselling and other desperately needed services to those in need; and

WHEREAS, homelessness is a regional and statewide crisis that not one city, county, or school district is able to solve on its own, and jurisdictions across the State are struggling to meet the housing and service needs of the homeless; and

WHEREAS, encampment communities are proliferating in our public right-of-ways, highway over and underpasses, railway lines and other lands homelessness; and

WHEREAS, cities and counties cannot address the homeless crisis without emergency funding and support from the State and all of its departments (e.g. Caltrans) in order to mitigate the rising health and safety issues that arise from people living on our streets and in encampments.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley does hereby call upon Governor Gavin Newsom to exercise his executive power to declare a California Homelessness State of Emergency, and to direct resources and State Departments to support the State's overwhelmed cities and counties.

BE IT FURTHER RESOLVED that the City Clerk shall transmit copies of this resolution to Governor Gavin Newsom, Congresswoman Barbara Lee, State Senator Nancy Skinner, State Assemblymember Buffy Wicks, State Superintendent of Public Education Tony Thurmond, and Caltrans District Director Tony Tavares.





Councilmember  
Cheryl Davila  
District 2

CONSENT CALENDAR  
February 19, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmember Cheryl Davila  
Subject: Berkeley Youth Alternatives' 15<sup>th</sup> Annual Crab Feed Fundraiser: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$180 from Councilmember Cheryl Davila, to Berkeley Youth Alternatives, for their 15<sup>th</sup> Annual Crab Feed Fundraiser on February 28, 2019, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila and any other Councilmembers who would like to contribute.

FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact; \$180 is available from Councilmember Cheryl Davila's Council Office Budget discretionary account (budget code 011 11 102 000 0000 000 411).

ENVIRONMENTAL SUSTAINABILITY

None.

BACKGROUND

Berkeley Youth Alternatives (BYA) is community based 501(c)3 organization that was established in 1969 as a runaway youth shelter. BYA has since expanded its operations to include support for youth and families, with an emphasis on education, health/well-being and economic self-sufficiency. BYA provides quality services such as mental health, case management, academic support, mentoring, health education, sports, fitness, recreation, job training and youth internships. BYA will be holding their 15<sup>th</sup> Annual Crab Feed Fundraiser on February 28, 2019. The fundraiser is a joyous celebration of food and entertainment.

CONTACT PERSON

Cheryl Davila, Councilmember, District 2                      510.981.7120

ATTACHMENT: 1: Resolution

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

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

WHEREAS, Councilmember Cheryl Davila has discretionary funds in her office expenditure account (budget code 011 11 102 000 0000 000 411); and

WHEREAS, Berkeley Youth Alternatives (BYA) is community based 501(c)3 organization that was established in 1969 as a runaway youth shelter; and

WHEREAS, BYA has since expanded its operations to include support for youth and families, with an emphasis on education, health/well-being and economic self-sufficiency; and

WHEREAS, BYA provides quality services such as mental health, case management, academic support, mentoring, health education, sports and fitness, recreation, job training and youth internships; and

WHEREAS, BYA will be holding their 15<sup>th</sup> Annual Crab Feed Fundraiser on February 28, 2019; and

WHEREAS, the fundraiser is a joyous community celebration of food, and entertainment.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to \$250 per office shall be granted to Berkeley Youth Alternative to fund the above services for their 15<sup>th</sup> Annual Crab Feed.



Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
February 19<sup>th</sup>, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kate Harrison  
Subject: Ohlone Park 50<sup>th</sup> Anniversary Celebration: City Sponsorship and Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION

1. Adopt a Resolution co-sponsoring the celebration of Ohlone Park's 50<sup>th</sup> anniversary on June 1<sup>st</sup>, 2019
2. Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember including \$250 from Councilmember Harrison, to the Friends of Ohlone Park, the fiscal sponsor of the 50th anniversary celebration, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Harrison and any other Councilmembers who would like to contribute.

BACKGROUND

Ohlone Park was created in 1969 as a result of the BART tunnel which runs directly underneath it. As a monument to both our modern mass transportation system and to the Ohlone peoples who have lived on this land for millennia, the park has significant symbolic value for our City, as well as aesthetic and functional benefits. Ohlone Park includes four playlots, a dog park, a four-sided mural commemorating the Ohlone people, a community garden, sports fields, and open spaces.

Acting as a liaison with the City Parks Department and Parks and Waterfront Commission, Friends of Ohlone Park preserves and enhances the beauty and functionality of the park by consulting with neighbors and undertaking surveys about the needs of the area, including lighting and garbage removal.

We are proposing that City Councilmembers make individual grants of up to \$500 to the Friends of Ohlone Park to commemorate and honor the park and all it stands for. The event is being held on June 1<sup>st</sup>, 2019.

FISCAL IMPACTS OF RECOMMENDATION

No impact to the General Fund.

ENVIRONMENTAL SUSTAINABILITY

Minimal.

CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

Attachments:

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



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

CITY SPONSORSHIP OF THE OHLONE PARK 50<sup>TH</sup> ANNIVERSARY CELEBRATION

WHEREAS, the Ohlone Park 50<sup>th</sup> Anniversary Celebration will take place on June 1, 2019; and

WHEREAS, Ohlone Park represents a significant point of pride for the City of Berkeley by providing open space, beauty, recreation, and history; and

WHEREAS, the Ohlone Park 50<sup>th</sup> Anniversary Celebration will enrich the City and people of Berkeley through cultural education provided by members of the Muwekma Ohlone tribe, as well as celebrating the Park more generally;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley hereby co-sponsors the Ohlone Park 50<sup>th</sup> Anniversary Celebration, has permission to use the City's name and logo in the event's promotional materials and signage naming the City of Berkeley as a co-sponsor solely for the purpose of the City indicating its endorsement of the event.

BE IT FURTHER RESOLVED that this co-sponsorship does not: (1) authorize financial support, whether in the form of fee waivers, a grant or provision of City services for free; (2) constitute the acceptance of any liability, management, or control on the part of the City for or over the Ohlone Park 50<sup>th</sup> Anniversary Celebration; or (3) constitute regulatory approval of the event.

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

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

WHEREAS, Councilmember Kate Harrison has surplus funds in her office expenditure account; and

WHEREAS, a California non-profit tax exempt corporation, the Friends of Ohlone Park, seeks funds in the amount of \$500 to provide the following public services to publicly commemorate and honor the 50 year history of Ohlone Park; and

WHEREAS, the celebration will include invaluable educational benefits for the people of Berkeley presented by members of the Muwekma Ohlone tribe;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to \$500 per office shall be granted to the Friends of Ohlone Park to fund the celebration of Ohlone Park and related cultural activities.



Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
February 19, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Kate Harrison, Rigel Robinson, and Cheryl Davila  
Subject: Support for AB 161 (Skip the Slip)

RECOMMENDATION

Send a letter of support for AB 161, which requires that proof of purchase (receipts) be provided only in electronic form unless the customer specifically requests paper, to Senator Skinner and Assemblymember Wicks

BACKGROUND

AB 161 (Ting) requires that following retail sale of food, goods, and services, the proof of purchase be provided only in electronic form unless the customer specifically requests a paper receipt. Violations would result in small administrative fines assessed on the noncompliant business, enforced by the same officers authorized to enforce the California Retail Food Code.

According to Green America<sup>1</sup> 10 million trees and 21 billion gallons of water are used to create proof of purchase receipts every year in America. After they are produced, receipts generate 686 million pounds of solid waste and 12 billion pounds of carbon dioxide. These 10 million trees represent more than 15% of the 68 million trees used to produce paper.

A 2018 study<sup>2</sup> showed that 93% of tested paper receipts had elements of bisphenol A (BPA) or bisphenol S (BPS), chemicals with notable negative effects on hormones and metabolism. Exposure to BPA or BPS during pregnancy has been found to affect fetal impact and is linked to ADHD, obesity, and type 2 diabetes. Retail workers and other people who handle receipt paper as a part of their job are at especially high risk of exposure; though the chemicals are present in some plastics, roughly 88% of BPS exposure comes from handling receipts. The City of Berkeley has already acknowledged the negative effects of BPA-treated receipt paper. On September 25<sup>th</sup>, 2018, the City Council voted to implement a community education effort on the adverse

<sup>1</sup> <https://greenamerica.org/skiptheslip>

<sup>2</sup> [https://www.ecocenter.org/sites/default/files/healthy-stuff/Ecology%20Center%20Receipt%20Study%202018%20Report%20final\\_0.pdf](https://www.ecocenter.org/sites/default/files/healthy-stuff/Ecology%20Center%20Receipt%20Study%202018%20Report%20final_0.pdf)

health effects of BPA-treated paper. AB 161 represents a tangible way to reduce everyday exposure to BPA.

In addition to the health impacts, thermal paper cannot be recycled, and traces of BPA contaminate other recovered fibers.

Decreasing reliance on receipt paper would improve California's environmental and human health.

FISCAL IMPACTS OF RECOMMENDATION

None.

ENVIRONMENTAL SUSTAINABILITY

The production and disposal of paper receipts generates billions of pounds of carbon dioxide every year. Decreasing California's reliance on paper receipts would have a significant positive effect on the environment.

CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

Attachments:

- 1: Draft Letter of Support
- 2: Text of AB 161 (Ting)

The Honorable Buffy Wicks  
Member of the Assembly  
State Capitol, Room 5160  
Sacramento, CA, 95814

Re: AB 161 (Ting)

Dear Assemblymember Wicks,

Berkeley City Council writes in support of AB 161 (Ting), which would reduce our state's reliance on receipt paper.

Receipt paper is wasteful to produce and dispose of. The solid waste of old receipts produces 12 billion pounds of carbon dioxide every year in America alone. When receipts are printed on thermal paper, the bisphenol A or bisphenol S can cause significant health defects. BPA is an endocrine disruptor that can alter the functions of hormone receptors, affect fertility, and cause fetal defects when pregnant women are exposed to the chemical.

AB 161 would require all businesses to offer electronic receipts as a default, providing paper receipts only upon specific request. Businesses that do not comply would be issued nominal fines according to the California Retail Food Code. These small fines would lead to significant decreases in paper receipts, which will benefit human and environmental health across California.

Respectfully,  
Berkeley City Council

CC: Senator Nancy Skinner  
Assemblymember Buffy Wicks

**ASSEMBLY BILL**

**No. 161**

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**Introduced by Assembly Member Ting**

January 7, 2019

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An act to add Chapter 5.8 (commencing with Section 42359) to Part 3 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 161, as introduced, Ting. Solid waste: paper waste: electronic proofs of purchase.

Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for, and provides for regulation by the State Department of Public Health of, retail food facilities, as defined. Existing law defines “enforcement officer,” for purposes of enforcing these provisions, to mean certain appointees of the State Public Health Officer, and all local health officers, directors of environmental health, and their duly authorized registered environmental health specialists and environmental health specialist trainees.

Existing law prohibits certain stores from providing a single-use carryout bag to a customer at the point of sale and prohibits full-service restaurants from providing single-use plastic straws to consumers unless requested by the consumer.

This bill would require, on and after January 1, 2022, a proof of purchase for the retail sale of food, alcohol, or other tangible personal property, or for the provision of services, provided to a consumer, as defined, by a business to be provided only in electronic form, unless the consumer requests that the proof of purchase be provided in paper form. The bill would specify that the first and 2nd violations of these provisions would result in a notice of violation and any subsequent

violation would be an infraction punishable by a fine of \$25 for each day the business is in violation, but not to exceed an annual total of \$300. The provisions would be enforced by the same enforcement officers authorized to enforce the California Retail Food Code. By creating a new crime and imposing additional enforcement duties on local health agencies, this bill would impose a state-mandated local program.

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

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

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

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The report titled “Skip the Slip: Environmental Costs &
- 4 Human Health Risks of Paper Receipts with Proposed Solutions”
- 5 from Green America found that 10 million trees and 21 billion
- 6 gallons of water in America are used to create proof of purchase
- 7 receipts.
- 8 (b) Receipts generate 686 million pounds of waste and 12 billion
- 9 pounds of carbon dioxide, the equivalent of one million cars on
- 10 the road, and most paper receipts contain chemicals that would
- 11 contaminate other recyclable paper materials.
- 12 (c) The Green America report also found that 93 percent of
- 13 paper receipts are coated with Bisphenol-A (BPA) or Bisphenol-S
- 14 (BPS) chemicals, which the United States Food and Drug
- 15 Administration has banned from baby bottles because those
- 16 chemicals are known to disrupt hormones, causing cancerous
- 17 tumors, birth defects, and other developmental issues.
- 18 (d) The BPA or BPS on receipts can enter people’s bodies
- 19 simply through touch, which poses a major risk to retail workers,

1 who have 30 percent more BPA or BPS found in their bodies than  
2 others who do not have regular contact with receipts.

3 (e) Data from Square, a company that provides mobile payment  
4 services, shows that their sellers send over 10 million digital  
5 receipts each month.

6 (f) Prohibiting businesses from providing paper receipts except  
7 upon request would have significant positive environmental and  
8 public health effects.

9 SEC. 2. Chapter 5.8 (commencing with Section 42359) is added  
10 to Part 3 of Division 30 of the Public Resources Code, to read:

11  
12 CHAPTER 5.8. PROOF OF PURCHASE

13  
14 42359. For purposes of this chapter, the following definitions  
15 apply:

16 (a) “Consumer” means a person who purchases, and does not  
17 offer for resale, food, alcohol, other tangible personal property, or  
18 services.

19 (b) “Electronic form” includes, but is not limited to, a form sent  
20 through email or text message.

21 (c) “Enforcement officer” has the same meaning as specified  
22 in Section 113774 of the Health and Safety Code.

23 42359.1. (a) On and after January 1, 2022, a proof of purchase  
24 for the retail sale of food, alcohol, or other tangible personal  
25 property, or for the provision of services, provided to a consumer  
26 by a business shall be provided only in electronic form, unless the  
27 consumer requests that the proof of purchase be provided in paper  
28 form.

29 (b) This section shall be enforced by an enforcement officer.  
30 The first and second violations of subdivision (a) shall result in a  
31 notice of violation, and any subsequent violation shall constitute  
32 an infraction punishable by a fine of twenty-five dollars (\$25) for  
33 each day the business is in violation, but not to exceed three  
34 hundred dollars (\$300) annually.

35 SEC. 3. No reimbursement is required by this act pursuant to  
36 Section 6 of Article XIII B of the California Constitution for certain  
37 costs that may be incurred by a local agency or school district  
38 because, in that regard, this act creates a new crime or infraction,  
39 eliminates a crime or infraction, or changes the penalty for a crime  
40 or infraction, within the meaning of Section 17556 of the



**AB 161**

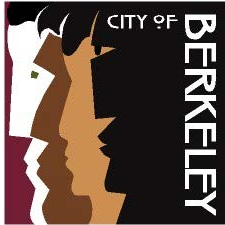
— 4 —

1 Government Code, or changes the definition of a crime within the  
2 meaning of Section 6 of Article XIII B of the California  
3 Constitution.

4 However, if the Commission on State Mandates determines that  
5 this act contains other costs mandated by the state, reimbursement  
6 to local agencies and school districts for those costs shall be made  
7 pursuant to Part 7 (commencing with Section 17500) of Division  
8 4 of Title 2 of the Government Code.

O





Office of the City Manager

## REVISED AGENDA MATERIAL

**Meeting Date:** February 19, 2019

**Item Number:** 14

**Item Description:** Density Bonus Ordinance Revisions - Repeal Existing Section 23C.12.050 (State of California Density Bonus Requirements) and Adopt New Chapter 23C.14 (Density Bonus)

**Supplemental/Revision Submitted By:** Timothy Burroughs, Director, Planning and Development Department

The attached version of the proposed Ordinance has been revised to fully comply with State mandates, to better articulate definitions of terms for consistency, and to reflect additional input received since the item was continued from Council's Jan. 29 meeting.

DENSITY BONUS ORDINANCE - SUPPLEMENTAL

ORDINANCE NO. -N.S.

RESCINDING SUB-SECTION 23C.12.050 OF THE BERKELEY MUNICIPAL CODE AND ADDING CHAPTER 23C.14 TO THE BERKELEY MUNICIPAL CODE

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

Section 1. That Sub-Section 23C.12.050 is hereby rescinded.

Section 2. That Chapter 23C.14 is hereby added to read as follows:

Chapter 23C.14 Density Bonus

|            |                                           |
|------------|-------------------------------------------|
| 23C.14.010 | Purpose                                   |
| 23C.14.020 | Definitions                               |
| 23C.14.030 | Application Requirements                  |
| 23C.14.040 | Density Bonus Calculations and Procedures |
| 23C.14.050 | Incentives and Concessions                |
| 23C.14.060 | Waivers and Reductions                    |
| 23C.14.070 | Qualifying Units                          |
| 23C.14.080 | Special Provisions                        |
| 23C.14.090 | Regulatory Agreements                     |

23C.14.010 Purpose

The purpose of this Chapter is to establish procedures and local standards for the implementation of California Government Code Section 65915, 65916, and 65917 consistent with local zoning regulations and development standards, and to provide special provisions consistent with the intent of State and local law.

23C.14.020 Definitions

Whenever the following terms are used in this Chapter, they have the meaning established by this Section. Other capitalized terms have the meaning set forth in Berkeley Municipal Code Chapter 23A.08 and/or Chapter 23F.04, or in California Government Code Section 65915, 65916, and 65917, as applicable.

- A. "Administrative Regulations" means guidelines and procedures promulgated by the Planning Director that may be modified from time to time to effectively implement this ordinance.
- B. "Base Project" means the maximum allowable residential density (lots, number and type-size of residential units, floor area ratio, or number of beds or bedrooms, as determined by City or State law or regulation) on a housing development site

DENSITY BONUS ORDINANCE - SUPPLEMENTAL

pursuant to the applicable zoning district or, where no density standard is provided, as set forth in the Administrative Regulations before applying the density bonus.

C. "Density Bonus ~~Units~~" means those lots, residential units, floor area, rental beds or bedrooms added to the Base Project pursuant to the provisions of Section 65915 and this Chapter.

D. "Eligible Housing Development" has the meaning set forth in Section 65917.2.

E. "Floor Area Ratio" has the meaning set forth in Section 65917.2.

~~D.F.~~ "Housing Development" has the meaning set forth in Section 65915(i).

~~E.G.~~ "Incentive and Concession" means an incentive or a concession as the terms are used in Section 65915 and in particular as defined in Section 65915(k) thereof.

~~F.H.~~ "Qualifying Unit" means a unit that is provided at a below market-rate rent or sales price as set forth in Section 65915 in order to receive a Density Bonus and/or Waivers and Reductions and/or Incentives and Concessions.

~~G. "Section 65915" means California Government Code Section 65915, as it may be amended from time to time.~~

~~H.I.~~ "Waiver and Reduction" means a waiver or a reduction as the terms are used in Section 65915 and in particular in Section 65915(e) thereof, and means any and all changes to or exemptions from physical lot development standards that are required to avoid precluding the construction of a Housing Development with Density Bonus Units, as set forth in Section 65915(e).

**23C.14.030 Application Requirements**

In addition to any other information required by this Title, an application for a Density Bonus must include the following information:

A. How the proposed project will satisfy the eligibility requirements of Section 65915 or 65917.2.

B. For those districts without density standards, a density bonus schematic as set forth in the ~~administrative~~ Administrative regulations ~~Regulations~~;

C. The ~~proposed size of the requested~~ Density Bonus pursuant to Section 23C.14.040.

D. Any Waivers and Reductions that are sought under Section 65915(e) that would be required to accommodate the Housing Development including the Density Bonus Units.

## DENSITY BONUS ORDINANCE - SUPPLEMENTAL

- 1 E. Any Incentives and Concessions that are sought under Section 65915(d)  
 2 accompanied by documentation of resulting cost reductions to provide for affordable  
 3 housing costs.  
 4  
 5 F. Any requested additional bonus units under Section 65915(n).  
 6  
 7 G. Any requested parking reductions under Section 65915(p).  
 8  
 9 H. ~~An~~ Whether the applicant ~~may elects in writing~~ to receive a Density Bonus  
 10 that is less than that mandated by Section 65915, including a Density  
 11 Bonus of 0 (zero). In such cases, the applicant ~~will retain~~s their entitlement  
 12 to Incentives and Concessions.  
 13  
 14 I. Documentation of how project complies with regulations regarding  
 15 replacement units as described in Section 65915(c)(3).  
 16

**23C.14.040 Density Bonus Calculations and Procedures**

- 17  
 18  
 19 A. Density Bonuses must be calculated as set forth in Section 65915,  
 20 65917.2, and pursuant to the Administrative Regulations.  
 21  
 22 B. Density Bonus requests must accompany Housing Development permit  
 23 applications and will be decided upon by the highest governing body  
 24 concurrent with the underlying Permit for the project.  
 25

**23C.14.050 Incentives and Concessions**

- 26  
 27  
 28 A. For purposes of this Chapter, the number of Incentives and Concessions are  
 29 counted as follows:  
 30  
 31 1. Any Incentive and Concession that would otherwise require discretionary  
 32 approval by the Zoning Officer or Zoning Adjustments Board of any single  
 33 dimensional lot development standard, such as height or setbacks, or any single  
 34 quantitative lot development standard, such as parking or open space, counts as  
 35 one.  
 36  
 37 2. A proposed Incentive and Concession that would involve exceedance of a single  
 38 physical lot development standard counts as one even if that exceedance would  
 39 otherwise require more than one Permit (e.g., extra height may require Permits  
 40 for height, FAR floor area ratio, and/or number of stories but would count as one  
 41 Incentive and Concession for height).  
 42  
 43 3. Where it is ambiguous as to whether a proposed Incentive and Concession  
 44 involves one or more dimensional or quantitative lot development standards, the  
 45 stricter interpretation shall apply, as determined by the Zoning Officer, and  
 46 Zoning Adjustments Board, or the City Council, as the case may be.

## DENSITY BONUS ORDINANCE - SUPPLEMENTAL

- 1  
2 B. In determining whether it can make the finding set forth in Section 65915(d)(1)  
3 related to the necessity for, efficacy of, and adverse effects of a requested Incentive  
4 and Concession, the City will base its determination and any finding on a  
5 comparison of the project including the Density Bonus and requested Incentives and  
6 Concessions to the Base Project.  
7  
8 C. The City is not required to deny a proposed Incentive and Concession solely  
9 because it is able to make a finding under Section 65915(d)(1). The City bears the  
10 burden of proof for the denial of a requested Incentive and Concession, and may not  
11 require the applicant to prepare a pro forma.  
12  
13 D. Unless denied under Section 65915, Incentives and Concessions will be exempt  
14 from discretionary review or Permits under this Title, other than design review, and  
15 do not modify the CEQA review status of a project.  
16  
17 ~~E. Incentives and Concessions must be justified based on the financial needs of the~~  
18 ~~project, including reduced costs and increased revenue, to provide for the affordable~~  
19 ~~housing costs of the qualifying units and for the project overall.~~  
20

**23C.14.060 Waivers and Reductions**

- 21  
22  
23 A. An applicant may submit to the City a proposal for Waivers and Reductions of  
24 development standards that physically preclude construction of a development  
25 Housing Development project and Density Bonus Units meeting the criteria of  
26 Section 65915(b).  
27  
28 ~~B. The applicant may request, and the City shall hold, a meeting to discuss Waivers~~  
29 ~~and Reductions.~~  
30  
31 B. The City may negotiate changes to the requested Waivers and Reductions as part of  
32 the Use Permit and Design Review process, in coordination with the applicant, in  
33 order to address aspects of the project that may be of concern in the community or  
34 inconsistent with overarching principles of the General Plan, Zoning Ordinance and  
35 Design Guidelines.  
36  
37 C. The City may deny Waivers and Reductions if a Waiver or Reduction would have  
38 adverse impacts and/or there is no mitigation for such impacts, as described in  
39 Section 65915(e)(1).  
40

**23C.14.070 Qualifying Units**

41  
42  
43 Upon completion of project construction, Qualifying Units must be ~~reasonably dispersed~~  
44 ~~throughout the Housing Development, be~~ of the same size and contain, on average, the  
45 same number of bedrooms as the non-Qualifying Units in the project, and must be  
46 comparable to the non-Qualifying Units in terms of design, use, appearance, materials

DENSITY BONUS ORDINANCE - SUPPLEMENTAL

1 and finish quality. ~~In determining whether dispersal of Qualifying Units is reasonable,~~  
2 ~~the decision-making body may consider special benefits provided by, as well as special~~  
3 ~~constraints on, the project.~~

4  
5 **23C.14.080 Special Provisions**

6  
7 In addition to requirements set forth in Section 65915 and this Chapter, the following  
8 Special Provisions apply to Density Bonuses in the City of Berkeley.

9  
10 A. [RESERVED]

11  
12 ~~B. In addition to other required findings, Special Provisions may be awarded only when~~  
13 ~~the City finds that the Density Bonus project complies with the purposes of the~~  
14 ~~district in which the project is located.~~

15  
16 **23C.14.090 Regulatory Agreements**

17  
18 Prior to issuance of a Certificate of Occupancy for a Housing Development that has  
19 received a Density Bonus, the applicant must enter into a regulatory agreement in a  
20 form provided by the City that implements Section 65915 and this Chapter.

21  
22  
23  
24  
25 Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the  
26 display case located near the walkway in front of Council Chambers, 2134 Martin Luther  
27 King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each  
28 branch of the Berkeley Public Library and the title shall be published in a newspaper of  
29 general circulation.

30  
31  
32





Office of the City Manager

PUBLIC HEARING

February 19, 2019

*(Continued from January 29, 2019)*

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Timothy Burroughs, Director, Planning and Development Department  
Subject: Density Bonus Ordinance Revisions - Repeal Existing Section 23C.12.050 (State of California Density Bonus Requirements) and Adopt New Chapter 23C.14 (Density Bonus)

RECOMMENDATION

Conduct a public hearing, and upon conclusion, adopt the first reading of Zoning Ordinance amendments that repeal obsolete Density Bonus regulations (Section 23C.12.050: State of California Density Bonus Requirements) and adopt a new, standalone Density Bonus chapter (Chapter 23C.14) that complies with California State Government Code 65915–65918: Density Bonuses and Other Incentives.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley’s Density Bonus ordinance is currently embedded in the Inclusionary Housing Requirements chapter of the Zoning Ordinance (Chapter 23C.12). That ordinance (Section 23C.12.050: State of California Density Bonus Requirements) was most recently amended in 2005 and needs updating because it references obsolete State regulations and includes requirements that are no longer in effect. The proposed amendments (see *Attachment 1*) create a stand-alone Density Bonus chapter in the Zoning Ordinance that accurately reflects and complies with State law.<sup>1</sup>

The proposed amendments comprise the first part of Planning Commission’s response to six Density Bonus-related City Council referrals. Some of these referrals specifically mention modifications to Density Bonus, whereas others suggest modifying Berkeley’s development standards. The common thread that ties the referrals together is clarity around density standards or increased residential densities in return for community benefits most often valued as affordable housing (see *Attachment 2*). The Planning Commission and its Subcommittee on Affordable Housing reviewed the six referrals and

---

<sup>1</sup> [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=65915&lawCode=GOV](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65915&lawCode=GOV)

developed a multi-phase approach to address referrals through an updated Density Bonus ordinance:

- 1) Bring the Zoning Ordinance into compliance with State Density Bonus requirements and document existing practices;
- 2) Develop a local density incentive program that would result in affordable housing production in excess of what is provided by State Density Bonus; and
- 3) Analyze and recommend modifications to Berkeley’s density standards.

The proposed Zoning Ordinance amendment included with this report, if adopted, will complete Phase 1. This step is necessary to set a new framework within which Phase 2 and Phase 3 policies can be implemented.

**BACKGROUND**

State Density Bonus provides incentives for developers to include affordable housing units within market-rate projects by granting increased density, and relief through concessions related to financial feasibility of the proposed project and waivers to development standards.

Density bonuses of up to 35% of the base project are mandated by the State and are based on the percentage of affordable units provided at various income levels<sup>2</sup>. See below for a summary of the relationship between income levels for the inclusionary units, the percentage of affordable units provided, and the density bonus awarded.

| Summary of Density Bonus Awards |                                                        |                                   |
|---------------------------------|--------------------------------------------------------|-----------------------------------|
| Household Income Level          | Percentage of Affordable Units in Base Project (range) | Density Bonus (market rate units) |
| Very Low Income                 | 5%                                                     | 20%                               |
| Very Low Income                 | 11%                                                    | 35%                               |
| Low Income                      | 10%                                                    | 20%                               |
| Low Income                      | 20%                                                    | 35%                               |
| Moderate Income                 | 10%                                                    | 5%                                |
| Moderate Income                 | 40%                                                    | 35%                               |

To illustrate how this works, a 100-unit base project with 11 very low income units would receive a 35-percent density bonus, resulting in 135 units (11 affordable and 124 market rate). If that same 100-unit base project included 10 moderate income units, it would only receive a 5-percent density bonus, resulting in 105 units (10 affordable and 95 market rate). This structure balances the public and private outcomes based on the

<sup>2</sup> Very Low Income is defined as 30-50% of Area Median Income, Low Income is defined as 50-80% Area Median Income, and Moderate Income is defined as 80-120% Area Median Income.

assumed value and cost of the affordable units, targeted income levels, and remaining market rate units.

All cities and counties are required to adopt an ordinance specifying how they will comply with State Density Bonus regulations.

On December 6, 2017, and February 7, 2018, the Planning Commission's Subcommittee on Affordable Housing (the Subcommittee) reviewed the City's Density Bonus zoning language and related referrals. Due to the complexity of State Density Bonus regulations and the scope of the six referrals, the Subcommittee suggested a three-phased approach to accomplish this work. This multi-stage approach is currently underway. Below is a summary of the work that has been accomplished to date and on-going research that will inform next steps:

- Phase 1: Develop Zoning Ordinance Amendments and Administrative Regulations

Staff prepared Zoning Ordinance language to support Phase 1 for Planning Commission consideration on February 21, 2018. Planning Commission discussed these changes, then conducted a Public Hearing on March 21, 2018 on Zoning Ordinance amendments related to Phase 1 of Density Bonus. Along with Zoning Ordinance amendments, staff revised Administrative Regulations (see *Attachment 3*) to document the process by which the Planning Department evaluates density bonus projects. Administrative Regulations are intentionally written in simple terms and provide a step-by-step procedure for staff to follow, maintaining consistency between projects and amongst staff. Administrative Regulations also allow the Planning Department to remain nimble in its workflow as State Density Bonus law continues to change.

- Phases 2 & 3: Conduct Research to Guide Local Enhancements to Density Bonus

In April 2018, the Joint Subcommittee for the Implementation of State Housing Law (JSISHL) inherited the work of the Planning Commission's Subcommittee on Affordable Housing. JSISHL considered modifications to Berkeley's Density Bonus program at its May and July meetings. During the July meeting, a number of questions were posed that either related to on-going projects or prompted new research. These efforts are described below. As information is collected and analyzed, staff will share results with JSISHL and Planning Commission. Phases 2 and 3 are expected to be completed in 2019.

### **Analysis of State Laws**

In October 2017, the California legislature passed and the Governor signed a package of 15 housing bills, all of which went into effect on or before January 1, 2018. These laws addressed a variety of issues related to California's housing crisis, such as the timing of land use approvals, limits on local discretionary authority over housing projects, requirements and reporting deadlines for Regional Housing Needs Allocation (RHNA) and housing element reports, and new funding measures. Staff

presented an analysis of these laws to JSISHL on May 17, 2018 (see *Attachment 4*). This analysis included a discussion of Density Bonus.

One year later, the Governor signed into law 16 new housing laws that went into effect on January 1, 2019. Four of these bills amend State Density Bonus law (e.g. allow use of floor area ratio (FAR) and student housing projects in Density Bonus) and relate directly to Berkeley's Density Bonus efforts. This package of housing legislation is intended to further the effectiveness of the bills introduced in 2017 and increase affordable housing production in the state. The Planning Department has developed a matrix of 2017 and 2018 State housing legislation (see *Attachment 5*) to track newly adopted regulations and determine steps necessary to comply with changing State law.

Separately, in an effort to understand the challenges of administering State Density Bonus in the context of Berkeley's zoning regulations, the Planning Department has been analyzing proposed, entitled and completed Density Bonus projects applications. This effort includes review of best practices from neighboring and similar cities, and conversation with staff and developers to better understand how Density Bonus is being administered and its outcome in Berkeley.

### **Analysis of Development Standards**

Parallel to the work mentioned above, the Planning Department is analyzing existing development standards in order to address the referrals presented in *Attachment 2*. Described below are four separate yet related projects that aim to better understand existing conditions and inform development of Density Bonus policies in Phase 2 and Phase 3.

Student Housing in the Southside – Staff is researching a number of questions in order to respond to ideas presented in the *More Student Housing Now Resolution* (see *Attachment 6*) and in Southside-focused referrals. The overarching theme of this work focuses on mechanisms that allow for increased density to accommodate new and affordable student housing. Research ranges from a capacity analysis to better understand built conditions in the Southside to interviews with property-owners to gauge interest in development incentives that could be implemented in Phase 2.

Density Standards in Commercial Corridors – The City of Berkeley has not established parcel-based density standards for higher density residential districts (R-3 and above) or for commercial/mixed-use zoning districts. Density Bonus projects rely on zoning development standards and basic Building Code considerations to define a “base project” from which bonus calculations are derived. The Planning Department is currently working with a consultant to assess Density Bonus project outcomes along Berkeley's commercial corridors, where most high-density residential projects are locating. These results will be compared to best practices from other cities and will guide development of potential new density standards in Phase 3.

GIS Analysis of Development Standards – In order to evaluate referrals that request additional density and/or modifications to development standards, the Planning Department is collaborating with Berkeley’s Information Technology Department to use available technology and data to visualize existing development conditions. This same methodology will be used to evaluate future scenarios that reflect findings from concurrent research projects mentioned in this report. This effort will inform Phases 2 and 3.

Adeline Corridor Plan – During the Adeline Corridor planning process the community has voiced their desire for community benefits, including affordable housing for displaced residents and communities of color, in return for development in the Adeline Corridor. Although not directly related to the referrals presented in *Attachment 2*, the work informing the community benefit structure and/or zoning regulations can be used to guide city-wide proposals related to Phases 2 and 3.

### **Analysis of Development Fees**

In order to understand the City’s ability to incentivize affordable housing development, the Planning Department has hired a consultant to analyze fees imposed on Berkeley development projects and assess development feasibility under a variety of fee scenarios. The results of this study will be used in Phase 2 to help develop policies that encourage construction of affordable housing above and beyond the parameters of State Density Bonus.

### ENVIRONMENTAL SUSTAINABILITY

Density Bonus is a State mandated planning and permitting tool that brings flexibility into the zoning process by providing developer incentives in exchange for affordable housing. Development projects that include affordable units encourage social interactions of diverse residents thereby building a connected, resilient community. Density Bonus projects also address Berkeley’s Climate Action Plan goal to increase compact development patterns throughout the City.

### RATIONALE FOR RECOMMENDATION

Zoning Ordinance amendments in this report codify existing practice, respond to changes in State law, and provide a framework for future local programs and policies.

### ALTERNATIVE ACTIONS CONSIDERED

None.

### CONTACT PERSON

Timothy Burroughs, Director, Planning and Development Department, 510-981-7400  
Steven Buckley, Land Use Planning Manager, Land Use Planning Division, 510-981-7411

Alene Pearson, Principal Planner, Land Use Planning Division, 510-981-7489

Attachments:

- 1: Ordinance
- 2: Council Referrals
- 3: Administrative Regulations
- 4: May 17, 2018 JSISHL Staff Report on 2017 Housing Package
- 5: Matrix of 2018 & 2019 Housing Regulations
- 6: *More Student Housing Now* City Council Resolution
- 7: Public Hearing Notice

ORDINANCE NO. -N.S.

RESCINDING SECTION 23C.12.050 OF THE BERKELEY MUNICIPAL CODE AND ADDING CHAPTER 23C.14 TO THE BERKELEY MUNICIPAL CODE REGARDING DENSITY BONUS

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

Section 1. That Section 23C.12.050 of the Berkeley Municipal Code is hereby rescinded.

Section 2. That Chapter 23C.14 is hereby added to the Berkeley Municipal Code to read as follows:

**Chapter 23C.14 Density Bonus**

|                   |                                                  |
|-------------------|--------------------------------------------------|
| <b>23C.14.010</b> | <b>Purpose</b>                                   |
| <b>23C.14.020</b> | <b>Definitions</b>                               |
| <b>23C.14.030</b> | <b>Application Requirements</b>                  |
| <b>23C.14.040</b> | <b>Density Bonus Calculations and Procedures</b> |
| <b>23C.14.050</b> | <b>Incentives and Concessions</b>                |
| <b>23C.14.060</b> | <b>Waivers and Reductions</b>                    |
| <b>23C.14.070</b> | <b>Qualifying Units</b>                          |
| <b>23C.14.080</b> | <b>Special Provisions</b>                        |
| <b>23C.14.090</b> | <b>Regulatory Agreements</b>                     |

**23C.14.010 Purpose**

The purpose of this Chapter is to establish procedures and local standards for the implementation of California Government Code Section 65915 consistent with local zoning regulations and development standards, and to provide special provisions consistent with the intent of State and local law.

**23C.14.020 Definitions**

Whenever the following terms are used in this Chapter, they have the meaning established by this Section. Other capitalized terms have the meaning set forth in Berkeley Municipal Code Chapter 23A.08 and/or Chapter 23F.04, or in California Government Code Section 65915, as applicable.

- A. "Administrative Regulations" means guidelines and procedures promulgated by the Planning Director that may be modified from time to time to effectively implement this ordinance.
- B. "Base Project" means the maximum allowable residential density (number and type of units) on a housing development site pursuant to the applicable zoning district or,

where no density standard is provided, as set forth in the Administrative Regulations before applying the density bonus.

- C. "Density Bonus Units" means those residential units added to the Base Project pursuant to the provisions of Section 65915 and this Chapter.
- D. "Housing Development" has the meaning set forth in Section 65915.
- E. "Incentive and Concession" means an incentive or a concession as the terms are used in Section 65915 and in particular as defined in Section 65915(k) thereof.
- F. "Qualifying Unit" means a unit that is provided at a below market-rate rent or sales price as set forth in Section 65915 in order to receive a Density Bonus and/or Waivers and Reductions and/or Incentives and Concessions.
- G. "Section 65915" means California Government Code Section 65915, as it may be amended from time to time.
- H. "Waiver and Reduction" means a waiver or a reduction as the terms are used in Section 65915 and in particular in Section 65915(e) thereof, and means any and all changes to or exemptions from physical lot development standards that are required to avoid precluding the construction of a Housing Development with Density Bonus Units, as set forth in Section 65915(e).

### **23C.14.030 Application Requirements**

In addition to any other information required by this Title, an application for a Density Bonus must include the following information:

- A. How the proposed project will satisfy the eligibility requirements of Section 65915.
- B. For those districts without density standards, a density bonus schematic as set forth in the administrative regulations;
- C. The proposed size of the Density Bonus pursuant to Section 23C.14.040.
- D. Any Waivers and Reductions that are sought under Section 65915(e) that would be required to accommodate the Housing Development including the Density Bonus Units.
- E. Any Incentives and Concessions that are sought under Section 65915(d) accompanied by documentation of resulting cost reductions to provide for affordable housing costs.
- F. Any requested additional bonus units under Section 65915(n).



- G. Any requested parking reductions under Section 65915(p).
- H. An applicant may elect in writing to receive a Density Bonus that is less than that mandated by Section 65915, including a Density Bonus of 0 (zero). In such cases, the applicant will retain their entitlement to Incentives and Concessions.
- I. Documentation of how project complies with regulations regarding replacement units as described in Section 65915(c)(3).

#### **23C.14.040 Density Bonus Calculations and Procedures**

- A. Density Bonuses must be calculated as set forth in Section 65915 and pursuant to the Administrative Regulations.
- B. Density Bonus requests must accompany Housing Development applications and will be decided upon by the highest governing body.

#### **23C.14.050 Incentives and Concessions**

- A. For purposes of this Chapter, the number of Incentives and Concessions are counted as follows:
  - 1. Any Incentive and Concession that would otherwise require discretionary approval by the Zoning Officer or Zoning Adjustments Board of any single dimensional lot development standard, such as height or setbacks, or any single quantitative lot development standard, such as parking or open space, counts as one.
  - 2. A proposed Incentive and Concession that would involve exceedance of a single physical lot development standard counts as one even if that exceedance would otherwise require more than one Permit (e.g., extra height may require Permits for height, FAR, and/or number of stories but would count as one Incentive and Concession for height).
  - 3. Where it is ambiguous as to whether a proposed Incentive and Concession involves one or more dimensional or quantitative lot development standards, the stricter interpretation shall apply, as determined by the Zoning Officer.
- B. In determining whether it can make the finding set forth in Section 65915(d)(1), the City will base its determination and any finding on a comparison of the project including the Density Bonus and requested Incentives and Concessions to the Base Project.
- C. The City is not required to deny a proposed Incentive and Concession solely because it is able to make a finding under Section 65915(d)(1).

- D. Unless denied under Section 65915, Incentives and Concessions will be exempt from discretionary review or Permits under this Title, other than design review.
- E. Incentives and Concessions must be justified based on the financial needs of the project, including reduced costs and increased revenue, to provide for the affordable housing costs of the qualifying units and for the project overall.

#### **23C.14.060 Waivers and Reductions**

- A. An applicant may submit to the City a proposal for Waivers and Reductions of development standards that physically preclude construction of a development project meeting the criteria of Section 65915(b).
- B. The applicant may request, and the City shall hold, a meeting to discuss Waivers and Reductions.
- C. The City may deny Waivers and Reductions if a Waiver or Reduction would have adverse impacts and/or no mitigation for such impacts, as described in Section 65915(e)(1).

#### **23C.14.070 Qualifying Units**

Qualifying Units must be reasonably dispersed throughout the Housing Development, be of the same size and contain, on average, the same number of bedrooms as the non-Qualifying Units in the project, and must be comparable to the non-Qualifying Units in terms of design, use, appearance, materials and finish quality. In determining whether dispersal of Qualifying Units is reasonable, the decision-making body may consider special benefits provided by, as well as special constraints on, the project.

#### **23C.14.080 Special Provisions**

In addition to requirements set forth in Section 65915 and this Chapter, the following Special Provisions apply to Density Bonuses in the City of Berkeley.

- A. [RESERVED]
- B. In addition to other required findings, Special Provisions may be awarded only when the City finds that the Density Bonus project complies with the purposes of the district in which the project is located.

#### **23C.14.090 Regulatory Agreements**

Prior to issuance of a Certificate of Occupancy for a Housing Development that has received a Density Bonus, the applicant must enter into a regulatory agreement in a form provided by the City that implements Section 65915 and this Chapter.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old Berkeley City Hall, 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.



## Kriss Worthington

Councilmember, City of Berkeley, District 7  
 2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
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 kworthington@ci.berkeley.ca.us

### ACTION CALENDAR

July 12, 2016

*(Continued from May 24, 2016)*

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Kriss Worthington

Subject: Allow Increased Development Potential in the Telegraph Commercial (C-T) District Between Dwight Avenue and Bancroft Avenue and Refer to the City Manager to Develop Community Benefit Requirements, with a Focus on Labor Practices and Affordable Housing

### RECOMMENDATION

That the Council immediately amend the Berkeley Zoning Ordinance to allow increased development potential in the Telegraph Commercial (C-T) District between Dwight Avenue and Bancroft Avenue and refer to the City Manager to develop community benefit requirements, with a focus on labor practices and affordable housing.

### BACKGROUND

The City Council sent a referral to the Planning Commission on June 30, 2015, regarding the conflict between the 5.0 FAR adopted by the Council for the C-T District and the other development regulations in the district.

On April 20, 2016, the Planning Commission considered modifying the development standards and community benefits. The Planning Commission voted to recommend the following to the Berkeley City Council:

- a) That the staff proposed Zoning Ordinance development standards for buildings adjacent to Bancroft Way be applied to the entirety of the C-T District north of Dwight Way; and
- b) That the Council develop community benefit requirements, with a focus on labor practices and affordable housing, before implementation of the proposed Zoning Ordinance language.

### FINANCIAL IMPLICATIONS:

Minimal.

ENVIRONMENTAL SUSTAINABILITY:

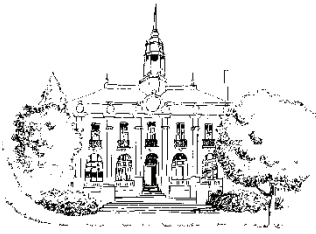
Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON:

Councilmember Kriss Worthington      510-981-7170

Attachment:

1. April 20, 2016 Planning Commission Staff Report on "Changes to the Zoning Ordinance to Allow Development Potential Increases in the Telegraph Avenue Commercial (C-T) District"



Kriss Worthington  
 Councilmember, City of Berkeley, District 7  
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 kworthington@ci.berkeley.ca.us

CONSENT CALENDAR  
 May 30, 2017

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Kriss Worthington and Ben Bartlett, and Mayor Arreguin  
 Subject: Planning Commission Referral for a Pilot Density Bonus Program for the Telegraph Avenue Commercial District to Generate Revenue to House the Homeless and Extremely Low-Income Individuals

RECOMMENDATION

That the Berkeley City Council refer a City Density Bonus policy for the Telegraph Avenue Commercial District to the Planning Commission to generate in-lieu fees that could be used to build housing for homeless and extremely low-income residents.

BACKGROUND

Under current state law, new development projects that get a density bonus, allowing up to 35 percent more density, are required to build inclusionary housing. Inclusionary housing is typically defined as below-market rate housing for people who earn 50 percent or 80 percent of the Area Median Income (AMI).

While it's great that developers are including some affordable housing in their market-rate projects, affordable housing for the homeless and extremely low-income who don't qualify for inclusionary units can be provided if developers instead paid fees into the Housing Trust Fund. This can be achieved through the use of a City Density Bonus for the Telegraph Avenue Commercial District, an area where many residents have expressed support for housing the homeless and the extremely low-income.

The City bonus fee would be equal to the in-lieu affordable housing mitigation fee, currently set at \$34,000 per unit. Fees paid into the fund could be leveraged with other Federal, State and Regional affordable housing sources, resulting in significantly more affordable housing built through the Housing Trust Fund than currently available. The City has important policy proposals to assist the homeless and extremely low-income residents that urgently need funding.

The pilot program of a City Density Bonus in the Telegraph Avenue Commercial District could go a long way toward easing Berkeley's critical housing shortage by increasing incentives for developers to add more housing and give the city greater ability to deliver affordable housing.

FISCAL IMPACTS

This proposal will generate millions in new revenue to the Housing Trust Fund.

ENVIRONMENTAL IMPACTS

The proposed change is consistent with City Climate Action Plan goals supporting increased residential density. Additionally, new residential construction is subject to more stringent green building and energy efficiency standards and will help reduce per capita greenhouse gas emissions.

CONTACT PERSON

Councilmember Kriss Worthington 510-981-7170

**ANNOTATED AGENDA  
BERKELEY CITY COUNCIL MEETING**

**Tuesday, July 11, 2017**

**6:00 P.M.**

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO  
DISTRICT 2 – CHERYL DAVILA  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – KRISS WORTHINGTON  
DISTRICT 8 – LORI DROSTE

**Preliminary Matters**

**Roll Call:** 6:03 p.m.

**Present:** Bartlett, Davila, Droste, Hahn, Maio, Wengraf, Worthington, Arreguin

**Absent:** Harrison

Councilmember Harrison present 6:14 p.m.

**Ceremonial Matters:**

- 1. Recognition of UN Association of California, Alpha Kappa Alpha, and Alpha Nu Omega

**City Auditor Comments:**

- 1. Recognition of Public Works for completing the Equipment Fund Audit

**City Manager Comments:**

- 1. Launch of Berkeley Bike Share Program on July 11, 2017

**Public Comment on Non-Agenda Matters:** 3 speakers.

**Public Comment on Consent Calendar and Information Items Only:** 1 speakers.

**Consent Calendar**

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

**Vote:** All Ayes.



## Action Calendar – Old Business

29. **Housing Accountability Act** *(Continued from June 13, 2017. Item includes supplemental materials.)*

**From: City Manager**

Contact: Zach Cowan, City Attorney, 981-6950

**Action:** 5 speakers. M/S/C (Arreguin/Davila) to refer to the City Manager, Planning Commission, Zoning Adjustments Board, and Design Review Committee to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion:

1. Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.
2. Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
3. Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
4. Quantify and set objective zooming standards and criteria under the first sentence of Government Code Section 65589.5(j) for views, shadows, and other impacts that often underlie detriment findings.

**Vote (Paragraphs 1-3):** Ayes – Maio, Davila, Harrison, Hahn, Wengraf, Worthington, Arreguin; Noes – Bartlett, Droste.

**Vote (Paragraph 4):** Ayes – Maio, Davila, Harrison, Hahn, Wengraf, Arreguin; Noes – Bartlett, Droste, Worthington.

Recess: 9:10 p.m. – 9:27 p.m.

30. **Amend BMC Sections 3.78.030, 040, and 050 Related to Commission Procedures** *(Continued from June 13, 2017)*

**From: Human Welfare and Community Action Commission**

**Recommendation:** Adopt a Resolution requesting that the City Manager examine the addition of language to the Berkeley Municipal Code that clarifies aspects of the management of City of Berkeley commissions and the removal and appointment of commissioners.

**Financial Implications:** See report

Contact: Wing Wong, Commission Secretary, 981-5400

**Action:** Moved to Consent Calendar. No action taken by the City Council on this item.

**Vote:** Ayes – Maio, Bartlett, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – Davila.



## Kriss Worthington

Councilmember, City of Berkeley, District 7  
 2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
 PHONE 510-981-7170, FAX 510-981-7177,  
 EMAIL [kworthington@ci.berkeley.ca.us](mailto:kworthington@ci.berkeley.ca.us)

CONSENT CALENDAR  
 10/31/2017

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Kriss Worthington and Kate Harrison, and Mayor Arreguin  
 Subject: City Manager and Planning Commission Referral: Facilitate primarily Student Housing by a twenty feet height increase and adjust Floor Area Ratio in the R-SMU, R-S and R-3 areas only from Dwight to Bancroft and from College to Fulton

RECOMMENDATION: Refer to the City Manager and Planning Commission to facilitate primarily Student Housing by amending the Zoning Ordinance to add a twenty feet height increase and adjust the Floor Area Ratio in the R-SMU, R-S and R-3 areas only from Dwight to Bancroft and from College to Fulton.

BACKGROUND:

In the last few years, students have become increasingly active in proposing ways to increase student housing. Housing is urgently needed in close proximity to the UC Berkeley campus as rents increase and the University population steadily rises. Students, recent graduates, employees of the University, and local businesses contribute to the local economy, create jobs for the local community, and greatly enrich the community through their presence. Implementing this action would provide a place to live for many individuals who would otherwise have to reside far from campus. Oftentimes, the quest to find living spaces is emotionally taxing for students and can decrease academic performance or leave students without affordable and safe places to live.

Increasing density in the area surrounding campus proves better for the environment, better for campus area businesses, and better for students. By reducing commute times, students will opt to walk or bike to class, reducing congestion on the road. A shorter commute will also increase student safety and allow students to participate in extracurricular activities that may run into the evening because students will not have to worry about how they will get home. An enhanced sense of safety in the surrounding region is beneficial for all in the community. Finally, higher density benefits campus area businesses because it brings them more customers, which supports the local economy. Previous efforts to increase south-side campus housing improved project viability specifically for the very small area of the C-T zoned blocks. Unfortunately, even blocks on Bancroft directly across from the University still have excessive restrictions.

FINANCIAL IMPLICATIONS: Minimal.

ENVIRONMENTAL SUSTAINABILITY: Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON: Councilmember Kriss Worthington      510-981-7170



**ANNOTATED AGENDA  
BERKELEY CITY COUNCIL MEETING  
Tuesday, November 28, 2017  
6:00 P.M.**

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO  
DISTRICT 2 – CHERYL DAVILA  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – KRISS WORTHINGTON  
DISTRICT 8 – LORI DROSTE

### **Preliminary Matters**

**Roll Call:** 6:04 p.m.

**Present:** Bartlett, Davila, Hahn, Harrison, Worthington, Droste, Arreguin

**Absent:** Maio, Wengraf

### **Ceremonial Matters:**

1. Recognition of Tom Kelly
2. Recognition of Berkeley Humane
3. Recognition of Berkeley Fire Department/Berkeley Police Department Responders to North Bay Fires

### **City Auditor Comments:**

1. The Auditor highlighted the importance of funding the reserves in light of pension liabilities and possible economic slowdowns. The Auditor also provided an update on the Measure GG audit report.

### **City Manager Comments:**

1. Planning Department Open House – 12/6 from 3:00 - 6:00 p.m. at 1947 Center Street
2. Grove Park Reopening – 12/2 at 11:00 a.m. – 1:00 p.m.
3. Live Oak Holiday Tots Carnival – 12/2 at 10:00 a.m. – 2:30 p.m. at Live Oak Recreation Center
4. Winter on the Waterfront – 12/9 at 1:00 p.m. – 6:30 p.m. at the Berkeley Yacht Club

**Public Comment on Non-Agenda Matters:** 8 speakers.

**Public Comment on Consent Calendar and Information Items Only:** 4 speakers.

## Action Calendar – Old Business

### 22. Implementation Plan for Affordable Housing Action Plan Referrals *(Continued from November 14, 2017. Item contains revised materials.)*

**From: City Manager**

**Recommendation:** Adopt the attached interdepartmental implementation plan for Affordable Housing Action Plan referrals.

**Financial Implications:** None

Contact: Paul Buddenhagen, Housing and Community Services, 981-5400, and Timothy Burroughs, Planning and Development, 981-7400

**Action:** On the severed portion to include density standards.

**Vote:** Ayes – Bartlett, Davila, Hahn, Harrison, Worthington, Arreguin; Noes – Droste; Abstain – None; Absent – Maio, Wengraf.

**Action:** On the severed portion regarding the California Construction Cost Index.

**Vote:** Ayes – Bartlett, Davila, Hahn, Harrison, Worthington, Arreguin; Noes – None; Abstain – Droste; Absent – Maio, Wengraf.

**Action:** 3 speakers. M/S/C (Arreguin/Davila) to Approve the following priority order for Affordable Housing Action Plan referrals, and adopt the interdepartmental implementation plan as revised:

#### High Priority

1. Develop a Small Sites Program to assist non-profits in acquiring multi-unit properties of 25 units or less. Consider giving priority to the creation of limited and non-equity cooperatives affiliated with a democratic community land trust. Consider master leasing as a mechanism for managing distinct, smaller properties.
2. Develop an ordinance modeled after Washington D.C.'s Tenant Opportunity to Purchase Act (TOPA) that offers existing tenants in multi-unit properties of three units or more the first right of refusal when property owners place rental property on the sale market, which can be transferred to a qualifying affordable housing provider.
3. **A) Draft an ordinance creating a pilot Density Bonus policy for the Telegraph Commercial District to grant additional density for projects in the Telegraph area which pay Affordable Housing Fees in lieu of units on-site. B) Study the creation of a new City Density Bonus plan to allow developers of multi-family housing to add up to 15% more density in exchange for fees only.**
4. Examine and eliminate barriers to developing student housing and senior housing.
5. **Create specific per acre density standards, including standards for projects that include density bonus units.**
6. Develop enforcement tools for Short-Term Rental Ordinance and Section 8 Non-Discrimination Ordinance (BMC Chapter 13.31, "Discrimination based on source of income prohibited"). Request that the City Manager direct staff to draft a fine schedule for violations of the short-term rental ordinance for multi-unit properties with multiple units used as STRs that are out of compliance with the host ordinance, including fines for when non-owner/tenant occupied dwelling units are made available for short-term rentals (from June 9, 2015 STR referral).
7. Refer to the City Manager and Planning Commission, and/or Housing Advisory Commission an ordinance to clarify existing preferences in allocating City affordable housing units to Berkeley residents living within 1/2 mile of any new development and tenants evicted under the Ellis Act, expand the second category of preference for eligible tenants displaced under the Ellis Act to include certain tenants displaced through an Owner Move-In or (Measure Y) eviction, and other forms of displacement as defined by Council.



## Action Calendar – Old Business

8. Increase commercial linkage fee by California Construction Cost Index CCCI.
9. Identify Parcels of City owned land appropriate for siting assisted-living modular micro-unit buildings; take affirmative steps to speed the permitting and approvals process; obtain zoning approval and a building permit and approvals process for the creation of below market housing; identify a housing non-profit to be responsible for managing and operating the building; and establish criteria for selecting individuals and determining eligibility.
10. Utilize list of city properties developed by city staff and further examine opportunities for placing affordable housing on these sites.
11. Investigate the feasibility of developing workforce housing, in conjunction with Berkeley Unified School District, for teachers and other school district employees. The investigation should include research into what other California jurisdictions (such as San Francisco, Oakland, Santa Clara, and San Mateo County) are considering as part of their pursuit of School District workforce housing.
12. a) Streamline the Affordable Housing Permitting process for Projects with majority of Affordable Housing (50% affordable units or more, Worthington referral 1/19/16); b) Remove Structural barriers to Affordable Housing (Green Affordable Housing Package Policy #2, Droste); c) waive or reduce permit fees for affordable housing projects (Hahn), including previously adopted streamlining measures from 2017.
13. Examine and eliminate barriers to building and renting Accessory Dwelling Units.
14. Develop Measure U1 Priorities and Implementation Criteria. Include consideration of ability to leverage funds and placing a measure on the November 2018 ballot to allow possible bonding against revenues.
15. Establish a City maintained online resource that would provide a brief overview of the history and purpose of Below Market Rate (BMR) units, a current list of all buildings that contain BMR units and the characteristics of the units, the percent of median income qualification levels for the units, the HUD published income guidelines for percentage of median and family size, the property owner, rental agent, and/or management company contact information, and other relevant information that would be helpful to potential renters of BMR units. The City shall update the information as more units become available, and quarterly, to ensure that information is current.

### Medium Priority

16. Impose fees when multifamily properties are destroyed due to fault of property owner (Demolition ordinance, RHSP, Relocation fees, fines).
17. Green Affordable Housing Package policy #1: Prioritize housing over parking in new developments. Reduce parking in R-4.
18. Amend Zoning code to allow housing and other non-commercial uses on the ground floor.
19. To encourage landlords to accept Section 8 and Shelter + Care vouchers study a program that is intended to encourage rehabilitation of substandard units that could be leased to recipients of Section 8 and Shelter + Care vouchers. Possible assistance that the City could provide including: creating a list of qualified, efficient, and affordable contractors vetted by the City, and a discount or waiver of permit fees, to support bringing their unit(s) to code.
20. Collaborate with Berkeley Housing Authority Board to invest capital funds from sale of the public housing for more affordable housing (Longer term referral).
21. To encourage landlords to accept Section 8 and Shelter + Care vouchers: identify organizations who can support financial literacy and management for Section 8 tenants, including establishing bank accounts with direct deposit to Landlords.
22. Establish Office of Anti-Displacement, and hire Anti-Displacement Advocate (non-city funded position).

## Action Calendar – Old Business

23. Provide housing counseling and legal services for Berkeley's low-income, elderly or disabled distressed homeowners.

**Vote:** Ayes – Bartlett, Davila, Hahn, Harrison, Worthington, Droste, Arreguin; Noes – None; Abstain – None; Absent – Maio, Wengraf.

## Action Calendar – New Business

### 23. FY 2017 Year-End Results and FY 2018 First Quarter Budget Update

**From:** City Manager

**Recommendation:** 1. Adopt a Resolution allocating the General Fund excess equity as follows: \$1,930,415 to the General Fund Stability Reserve, \$1,579,430 to the General Fund Catastrophic Reserve and incorporate additional allocations as amended by subsequent Council action. 2. Discuss and determine funding allocations based on the Mayor's June 27, 2017, revised amendments to the FY 2018 & FY 2019 Biennial Budget and as amended by subsequent Council action.

**Financial Implications:** See report

Contact: Teresa Berkeley-Simmons, Budget Manager, 981-7000

**Action:** 3 speakers. M/S/C (Worthington/Arreguin) to continue the item to December 5, 2017 and include the allocations from Mayor Arreguin in Supplemental Reports Packet #2 including a new resolution for the allocation to Dorothy Day House.

**Vote:** Ayes – Bartlett, Davila, Hahn, Harrison, Worthington, Droste, Arreguin; Noes – None; Abstain – None; Absent – Maio, Wengraf.

### 24a. Recommendation for Audit and Legal Review of Measure GG Expenditures with Attention to Allocation of Measure GG Funds for Fire Department Overtime

**From:** Disaster and Fire Safety Commission

**Recommendation:** We recommend that City Council request from the City Auditor an audit of Measure GG expenditures specifically regarding the allocation of Measure GG funds for Fire Department overtime pay. We additionally suggest a legal review by the City Attorney to determine if the decreasing budget for Fire Department overtime in the General Fund and the coordinated increase of Measure GG funds allocated to overtime pay is in compliance with Measure GG and State and Federal laws, and to provide corrective guidance if it is not.

**Financial Implications:** See report

Contact: Keith May, Commission Secretary, 981-3473

|                          | Bill (Sponsor)                          | Focus Area           | Title                                          | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Action Required by COB                                                                       | Next Steps                                                                                                                           |
|--------------------------|-----------------------------------------|----------------------|------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| 2017 Housing Legislation | SB 35 (Wiener)                          | Streamline           | Streamline Approval Process                    | Creates a streamlined approval process for developments in localities that have not yet met their housing targets, provided that the development is on an infill site and complies with existing residential and mixed use zoning. Participating developments must provide at least 10 percent of units for lower-income families. All projects over 10 units must be prevailing wage and larger projects must provide skilled and trained labor.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Yes                                                                                          | Review SB35 applications as they are submitted.                                                                                      |
|                          | AB 73 (Chiu)                            | Overlay              | Streamline and Incentivize Housing Production  | Provides state financial incentives to cities and counties that create a zoning overlay district with streamlined zoning. Development projects must use prevailing wage and include a minimum amount of affordable housing.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Optional                                                                                     | If COB wants to create overlay zone, identify resources.                                                                             |
|                          | SB 540 (Roth)                           | Specific Plan        | Workforce Housing Opportunity Zones            | Authorizes the state to provide planning funds to a city or county to adopt a specific housing development plan that minimizes project level environmental review. Requires at least 50 percent of total housing units within that plan to be affordable to persons or families at or below moderate income, with at least 10 percent of total units affordable for lower income households. Developments projects must use prevailing wage.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Optional                                                                                     | If COB wants to create a WHOZ, identify resources.                                                                                   |
|                          | AB 1515 (Daly)                          | Approvals            | Reasonable Person Standard                     | States that a housing development conforms with local land use requirements if there is substantial evidence that would allow a reasonable person to reach that conclusion.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Yes                                                                                          | Review and update development standards.                                                                                             |
|                          | AB 1397 (Low)                           | Zoning               | Adequate Housing Element Sites                 | Requires cities to zone more appropriately for their share of regional housing needs and in certain circumstances require by-right development on identified sites. Requires stronger justification when non-vacant sites are used to meet housing needs, particularly for lower income housing.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Yes                                                                                          | Review zoning during 2023 Housing Element updates                                                                                    |
|                          | SB 166 (Skinner)                        | Housing Element      | No Net Loss                                    | Requires a city or county to identify additional low-income housing sites in their housing element when market- rate housing is developed on a site currently identified for low-income housing.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Yes                                                                                          | Review zoning during 2023 Housing Element updates                                                                                    |
|                          | AB 879 (Grayson)                        | Housing Element      | Updates to Housing Element law                 | Make various updates to housing element and annual report requirements to provide data on local implementation including number of project application and approvals, processing times, and approval processes. Charter cities would no longer be exempt from housing reporting. Requires HCD to deliver a report to the Legislature on how local fees impact the cost of housing development.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Yes                                                                                          | Provide data to HCD as required. Waiting on updated guidelines from HCD.                                                             |
|                          | SB 2 (Atkins)                           | Funding              | Building Jobs and Homes Act                    | Imposes a fee on recording of real estate documents excluding sales for the purposes of funding affordable housing. Provides that first year proceeds will be split evenly between local planning grants and HCD's programs that address homelessness. Thereafter, 70 percent of the proceeds will be allocated to local governments in either an over-the-counter or competitive process. Fifteen percent will be allocated to HCD, ten percent to assist the development of farmworker housing and five percent to administer a program to incentivize the permitting of affordable housing. Fifteen percent will be allocated to CalHFA to assist mixed-income multifamily developments.                                                                                                                                                                                                                                                                                                                                         | Yes                                                                                          | Provide documentation to HCD in order to receive funding. Waiting on guidance from HCD.                                              |
|                          | SB 3 (Beall)                            | Funding              | Veterans and Affordable Housing Bond Act       | Places a \$4 billion general obligation bond on the November 2018 general election ballot. Allocates \$3 billion in bond proceeds among programs that assist affordable multifamily developments, housing for farmworkers, transit-oriented development, infrastructure for infill development, and homeownership. Also funds matching grants for Local Housing Trust Funds and homeownership programs. Provides \$1 billion in bond proceeds to CalVet for home and farm purchase assistance for veterans.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | No                                                                                           |                                                                                                                                      |
|                          | AB 1505 (Bloom)                         | Inclusionary Housing | Inclusionary Ordinances                        | Authorizes the legislative body of a city or county to require a certain amount of low-income housing on-site or off-site as a condition of the development of residential rental units.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Completed                                                                                    | COB has an Inclusionary Ordinance.                                                                                                   |
|                          | AB 1521 (Bloom)                         | Subsidized Housing   | Preserve the Existing Affordable Housing Stock | Requires the seller of a subsidized housing development to accept a bona-fide offer to purchase from a qualified purchaser, if specified requirements are met. Gives HCD additional tracking and enforcement responsibilities to ensure compliance.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Yes                                                                                          | Discuss next steps with HHCS.                                                                                                        |
|                          | AB 571 (Garcia)                         | Tax Credits          | Low Income Housing Credits for Farmworkers     | Makes modifications to the state's farmworker housing tax credit to increase use. Authorizes HCD to advance funds to operators of migrant housing centers at the beginning of each season to allow them to get up and running. Extends the period of time that migrant housing centers may be occupied to 275 days.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | No                                                                                           |                                                                                                                                      |
|                          | AB 2923 (Chiu and Grayson)              | BART zoning          | Development on BART-Owned Land                 | Gives BART the authority to rezone any BART-owned land within a half-mile of a BART station to set the lowest permissible limit for height, density and floor area ratio and the highest permissible parking minimums and maximums. Local jurisdictions must then adopt conforming zoning amendments within two years after BART adopts standards for a district. Qualifying projects may apply for streamlined, ministerial processing as specified in SB 35 – without having to otherwise qualify separately for ministerial processing under SB 35. Developers may also secure vested rights to develop in accordance with the newly adopted standards after entering into an exclusive negotiating agreement to develop an eligible project. Among the qualifying criteria, developers must make at least 20 percent of housing units affordable to very low-income and low-income households, with additional affordable requirements for projects that would displace housing or take place within the district's boundaries. | Not required, but COB will be actively engaged these efforts.                                | Collaboration with community, BART, City Council, HAC and PC on visioning and zoning of North Berkeley BART and Ashby BART stations. |
|                          | AB 2753 (Friedman)                      | Density Bonus        | State Density Bonus Process Reforms            | Expedites the processing of density bonus applications pursuant to the State Density Bonus Law. Amendments now require local governments to provide determinations to developers regarding the amount of density bonus for which a development is eligible, all reductions in parking requirements for which the applicant is eligible and whether the applicant has provided adequate information for the local government to make a determination regarding any requested incentives, concessions, waivers or reductions in required parking. The law further requires such determinations to be based on the development project at the time the application is deemed complete, and provides that the local government shall adjust the amount of density bonus and required parking based on any changes during the course of the development processing.                                                                                                                                                                      | Yes                                                                                          | Review and determine necessary modifications to policies and/or procedures.                                                          |
|                          | AB 2372 (Gloria)                        | Density Bonus        | State Density Bonus Law Floor Area Ratio Bonus | Authorizes cities or counties to grant a developer of an eligible housing development under the State Density Bonus Law a floor area ratio bonus in lieu of a bonus on the basis of dwelling units per acre. The floor area bonus is calculated based on a formula prescribed in the new statute (i.e., allowable residential base density x (site area in square feet / 43,500) x 2,250). An eligible housing development under the law is a multifamily housing development that provides at least 20 percent affordable units, is located within a transit priority area or a half-mile from a major transit stop, meets requirements for the replacement of existing units and complies with height requirements applicable to the underlying zone. The law also prohibits cities and counties from imposing parking requirements in excess of specified ratios and allows an applicant for an eligible development to calculate impact fees based on square feet and not per unit.                                             | Not required, but COB will be considering modifications to Berkeley's Density Bonus Program. | Review and determine Zoning Ordinance amendments needed to implement                                                                 |
|                          | SB 1227 (Sen. Nancy Skinner)            | Density Bonus        | Density Bonus for Student Housing              | Extends the State Density Bonus Law to apply to student housing. It allows student housing projects where at least 20 percent of the units are affordable for lower income students to receive a 35 percent density bonus. The law also provides that the development must provide priority to students experiencing homelessness. The density bonus under the law will be calculated based on the number of beds instead of units.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Yes                                                                                          | Review and determine Zoning Ordinance amendments needed to implement                                                                 |
|                          | AB 2797 (Assembly Member Richard Bloom) | Density Bonus        | State Density Bonus Law and the Coastal Act    | Reconciling the State Density Bonus Law and the Coastal Act requires the State Density Bonus Law to be harmonized with the California Coastal Act so that both statutes can be given effect within the coastal zone to increase affordable housing in the coastal zone while protecting coastal resources and access. This law supersedes the Second District Court of Appeal's opinion in <i>Kalnel Gardens, LLC v. City of Los Angeles</i> (2016) 3 Cal.App.5th 927, 944 holding that the State Density Bonus Law is subordinate to the Coastal Act.                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | No action required by COB.                                                                   |                                                                                                                                      |



## 2018 Housing Legislation

|                                       |                    |                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                            |                                                                                                              |
|---------------------------------------|--------------------|----------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|--------------------------------------------------------------------------------------------------------------|
| AB 3194<br>(Assembly Member Tom Daly) | HAA                | Housing Accountability Act Amendments                                      | Strengthens the Housing Accountability Act (HAA). First, if the zoning for a project site is inconsistent with the general plan, a proposed housing development project cannot be considered "inconsistent" with a jurisdiction's zoning standards and cannot be required to seek a rezoning, as long as the project complies with the jurisdiction's objective general plan standards. Second, local agencies must now apply zoning standards and criteria to facilitate and accommodate development at the density allowed on the site by the general plan. Third, the Legislature declared its intent that a "specific, adverse impact on the public health and safety" – the only permissible basis on which a local government can reject or reduce the size of a project that complies with objective standards—will "arise infrequently."                                                                                                                                               | Yes                        | COB staff will review HAA to ensure modifications are understood and accurately communicated to applicants.  |
| SB 765 (Sen. Scott Wiener)            | SB 35              | SB 35 Amendments                                                           | Makes a series of "cleanup" revisions to SB 35 including 1) explicitly stating that the California Environmental Quality Act (CEQA) does not apply to the agency's determination of whether an application for a development is subject to the streamlined ministerial approval process and 2) stating that "it is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply."                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Yes                        | COB staff will review SB35 to ensure modifications are understood and accurately communicated to applicants. |
| AB 2263<br>(Friedman)                 | Parking            | Parking Reductions for Historic Reuse Projects                             | Authorizes parking reductions for a development project in which a designated historical resource is being converted or adapted. For projects converting or adapting a designated historical resource to a residential use that is located within a half-mile of a major transit stop, an agency shall not require the project to provide parking spaces greater than the number of parking spaces that existed on the project site at the time the project application was submitted. For a project converting or adapting a designated historical resource to a nonresidential use, a local agency shall provide a 25 percent reduction in the amount of parking spaces that would otherwise be required.                                                                                                                                                                                                                                                                                    | Yes                        | Review historic re-use projects as they are submitted for compliance with State law.                         |
| AB 2162 (Chiu and Daly)               | Supportive Housing | Supportive Housing Use "By Right"                                          | Requires supportive housing to be considered a use "by right" in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses, if the proposed housing development meets specified criteria. Supportive housing is housing linked to an onsite or offsite service that assists the resident in retaining the housing, improving his or her health status and ability to live and work in the community. Qualifying criteria relates to affordability, long-term deed restrictions, nonresidential floor use providing supportive services and other design requirements. The law requires a local government to approve, within specified periods, supportive housing developments that comply with these requirements. The law prohibits the local government from imposing any minimum parking requirement for units occupied by supportive housing residents if the development is located within a half-mile of a public transit stop. | Yes                        | Review Zoning Ordinance for required updates.                                                                |
| AB 829 (Chiu)                         | State Funding      | Prohibitions on Local Government Requirements for State Funding Assistance | Prohibits local governments from requiring a developer of obtain a letter of acknowledgment or similar document prior to applying for state assistance for a housing development. The law defines state assistance as any state funds, a state tax credit or a federal tax credit administered by the state. The legislative analysis for the bill explained that in at least one case in the state, city council members have delayed projects for supportive housing requiring financial assistance by conditioning a project to receive official sign-off from the local elected official in order to receive funding. This law ends that practice for all jurisdictions.                                                                                                                                                                                                                                                                                                                   | Yes                        | Review requirements for projects requesting state funding assistance to ensure compliance with State law.    |
| SB 828 (Wiener) and AB 1771 (Bloom)   | RHNA               | RHNA Process Amendments                                                    | Makes changes to the RHNA process to use more data to more accurately and fairly reflect job growth and housing needs, with an emphasis on fair housing goals. New amendments revise the data that the COG must provide to HCD as part of the RHNA process. That data must now include new information regarding overcrowding rates, vacancy rates and cost-burdened housing (among other new data points). This law adds more opportunities for public comment and HCD adjustments to the council of governments' methodology for selecting RHNA targets, as well an ability for local governments to appeal RHNA targets. Additionally, the law prohibits a council of governments from using prior underproduction of housing, or stable population numbers, as justification for a determination or reduction in a local government's share of the RHNA.                                                                                                                                   | No action required by COB. | COG and State will make modifications and share next steps with local municipalities as necessary.           |
| AB 686<br>(Santiago)                  | Fair Housing       | Affirmatively Further Fair Housing                                         | Requires a public agency to administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing and not take any action that is inconsistent with this obligation. "Affirmatively furthering fair housing" means, among other things, "taking meaningful actions ... that overcome patterns of segregation and foster inclusive communities" and "address significant disparities in housing needs and in access to opportunity." Additionally, an assessment of fair housing practices must now be included in upcoming housing elements.                                                                                                                                                                                                                                                                                                                                                                                  | Yes                        | Review and assess Fair Housing Practices during 2023 Housing Element updates                                 |
| SB 1333<br>(Wieckowski)               | General Plan       | Planning Requirements for Charter Cities                                   | Makes charter cities subject to a number of planning laws that previously only applied to general law cities. These include laws related to general plan amendment processing, accessory dwelling unit permitting and the preparation of housing elements. Notably, the new law now requires a charter city's zoning ordinances to be consistent with its adopted general plan.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Yes                        | Ensure Zoning Ordinance is consistent with General Plan.                                                     |
| AB 1919 (Wood)                        | Disaster Planning  | Anti-"Price Gouging" During Emergencies                                    | Expands the existing crime of price gouging to include new rentals that were not on the market at the time of the emergency within the types of goods and services that are price-controlled in the immediate aftermath of an emergency. The law also makes other related reforms to limit rent increases and evictions following an emergency.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Yes                        | Check with Rent Control Board on next steps.                                                                 |
| AB 2913 (Wood)                        | Building Permits   | Extending the Duration of Building Permits                                 | extends the duration of a building permit from six months (180 days) to 12 months, as long as construction has started and has not been abandoned. The law also provides that a permit is subject to the building standards in effect on the date of original issuance, and if the permit does expire, the developer may obtain approval from the local building official for one or more six-month extensions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Yes                        | Update BMC to reflect building permit time lines.                                                            |

## STAFF REPORT

DATE: May 17, 2018

TO: Joint Subcommittee on the Implementation of State Housing Law

FROM: Steve Buckley, Land Use Planning Manager  
Alene Pearson, Associate Planner

SUBJECT: State Housing Laws in the Berkeley Context

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### INTRODUCTION

The Legislature passed and the Governor signed a package of 15 housing bills last fall, all of which went into effect on or before January 1, 2018. These laws address a range of issues related to California's housing crisis, ranging from the timing of land use approvals to limits on local discretionary authority over housing projects to requirements and reporting deadlines for Regional Housing Needs Allocation (RHNA) and housing element reports to new funding measures. This report briefly summarizes the bills that relate to JSISHL's goals and explains the bills in the context of Berkeley's current practices and City Council's priorities. In the Discussion section, JSISHL will identify a focus area and future work based on the information presented in this memo and attachments.

### BACKGROUND

Bills from the 2017 Housing Package that relate to the work of JSISHL fall into four categories:

- Amendments to the Housing Accountability Act (HAA)
- Streamlining Approvals
- Inclusionary Housing Laws
- Enforcement Bills

Bills are explained below with commentary on their relevance to the City of Berkeley<sup>1</sup> and their relation to City Council Referrals and Housing Action Plan Items (See *Attachment 1: Referral Matrix* and *Attachment 2: Referral Table*). Some of the bills (e.g. SB 167, AB 678, AB 1515, SB 35, AB 494, and SB 229) obligate the city to specific actions and require

<sup>1</sup> Bills included in 2017 Housing Package are complex. This report was authored by City of Berkeley Land Use Planning staff and is intended to provide JSISHL with a cursory overview of the laws. It is intended for JSISHL discussion purposes only.

adjustments to current practices. Other bills provide new processes and mechanisms that Berkeley can employ to achieve State and local goal towards housing development.

### AMENDMENTS TO THE HOUSING ACCOUNTABILITY ACT (HAA)

**SB 167 / AB 678 / AB 1515 (Amendments to the Housing Accountability Act)** jointly amend the Housing Accountability Act (HAA) to provide protections for housing development projects. Protections prohibit municipalities from denying a project or reducing its density if proposed project, regardless of affordability, adheres to General Plan and Zoning Ordinance “objective standards” and has no adverse impacts on public health and safety. For affordable projects, jurisdictions would have to make additional findings to deny a project or lower project density.

Berkeley Context: The HAA was passed to hold jurisdictions accountable for lack of housing construction. Jurisdictions -- although not in control of many factors that affect housing construction and developers choice – do control zoning approvals. It is in this context that Berkeley will need to review existing practices to stay in compliance with the HAA. Specifically:

*Applicability:* The HAA applies broadly to all residential development projects including mixed-use projects where 2/3 of the square footage is set aside for residential use. The HAA also applies to transitional and supportive housing, including emergency shelters.

*Objective Standards:* The HAA references “objective standards” without providing a definition of this term. See SB 35 under STREAMLINING BILLS for discussion of defining “objective standards” in the Berkeley context.

*Consistency:* The HAA changes the standards for determining whether or not a project conforms to local regulations. The HAA mandates that a project shall be deemed consistent with applicable standards if substantial evidence allows a reasonable person to conclude the project is consistent with local regulations. In addition, receipt of Density Bonus is not a basis for finding a housing project inconsistent with applicable development standards.

*Findings:* Currently, findings made to deny a housing project are supported by substantial evidence. The new legislation mandates that findings made to deny a housing project be supported by a preponderance of evidence. This is a less deferential standard of review and will make it difficult for staff to deny projects. It will also make it difficult for project opponents to challenge an approved project.

*Response Times:* The HAA requires jurisdictions to notify housing project applicants of compliance/non-compliance within 30-days (for projects with 150 or fewer units) or 60-days (for projects with more than 150 units). If a jurisdiction misses this deadline, the proposed project will default to an approval.

*Financial Repercussions:* Courts can issue a court order to approve a project if they rule that a jurisdiction's findings are not supported by a preponderance evidence. If the jurisdiction does not comply the court order, the jurisdiction can be fined \$10,000 per unit. Furthermore, if the court finds that the jurisdiction acted in bad faith in making these findings, the fine *must* be multiplied by 5.

*Overall:* The overall effect of these amendments to the HAA depends to some extent upon the definition of objective standards. Once this is established, the Planning Department will need to take extreme care to review and consider evidence, make findings through the lens of a reasonable person – as opposed to a technical expert – and to pay close attention to HAA response times. Depending upon the volume of applications, the City may need to identify resources to have staff available to address project workload.

*Relation to Council Referrals:* The following referrals are focused on establishing density standards and /or development standards and overlap with the HAA's importance of jurisdictions having clear objective standards:

- Revise General Plan and Zoning Ordinance to add written standards regarding 1) density by parcel; 2) health and safety detriments; 3) design review; and 4) view and shadow impacts. (Arreguin: July 11, 2017)
- Create specific per acre density standards, including standards for projects that include density bonus units. (Housing Action Plan Item 5)

## STREAMLINING BILLS

**SB 35 (Streamlined Approval for Housing Projects)** allows a developer to request streamlined approval of eligible multi-family housing projects in a city that has 1) failed to issue enough building permits to meet its share of RHNA by income category or 2) has not submitted its Housing Element Annual Progress Report to the State for two consecutive years. Projects that are eligible to receive streamlining through SB 35 are granted ministerial approval without CEQA review or public input. See *Attachment 3* for SB 35 Eligibility Criteria List.

### Berkeley Context:

One of the first projects to request streamlining through SB 35 is located in the City of Berkeley. As Berkeley planners work through this application, the law is being tested. The specifics of the application will not be discussed with JSISHL; however, the following information provides background on SB 35 and explains the law in the context of Berkeley's Zoning Ordinance and current practices.

*City Obligation:* Berkeley is subject to SB 35 streamlining for proposed developments with  $\geq 50\%$  affordability. Berkeley has made insufficient progress towards issuing building permits for affordable housing -- units available to households making below 80 percent of the area median income. Insufficient

progress is defined as less than 25% permitting progress toward 5th Cycle regional housing needs assessment (RHNA) for an income category in 2017. After Berkeley submits two consecutive annual progress reports (APRs) that show sufficient progress toward its Lower income RHNA (Very Low and Low income), the City will no longer be subject to SB 35 streamlining for proposed developments with at least 50% affordability.

*Site Criteria:* Eligible sites can be located in districts zoned for residential or mixed use. In Berkeley, this translates to all districts except Manufacturing (M), Mixed Manufacturing (MM), Mixed Use-Light Industrial (MULI), Specific Plan (SP), or Unclassified (U). Within the eligible districts, development sites are not eligible if there is evidence of past/present soil or groundwater contamination (e.g. on the Cortese List) and the Department of Toxic Substance Control has not declared site clean for residential use. Furthermore, development sites are not eligible if a proposed project demolishes a historic structure<sup>2</sup>, any rental housing occupied by tenants in the last ten years, or any housing subject to rent or pricing control.

*Project Requirements:* Eligible projects must comply only with current zoning standards and other objective standards identified by the City. The project developer must pay prevailing wages and use a “skilled and trained” workforce. “Objective standards and objective design guidelines” need to be clearly documented in the Zoning Ordinance to ensure Berkeley processes applications accurately. The passage of SB 35 presents an opportunity for Berkeley to review/modify findings/standards and develop application checklists/procedures to ensure objective standards are explicit and used to expedite processing of streamlined projects. Some of the funds available through SB 2 can be used to make these modifications. Guidance on the application process will be published in 2018.

*Ministerial Approval:* If proposed development project conflicts with objective design and zoning standards, then the City needs to provide documentation to the applicant within 60 day (for projects with 150 units or less) or 90 days (for projects with more than 150 units). Approvals for qualifying projects must be completed within 90 days (for projects with 150 units or less) or 180 days (for projects with more than 150 units). Approvals last indefinitely for projects that include public investment in housing affordability beyond tax credits where 50% of the units are set aside for low income households (income is less than 80% of AMI). Approval of all other projects expire within three years, although a one year extension may be granted if significant progress has been made towards construction. This is an incredibly expedited timeline. The Planning Department will need to dedicate staff to SB 35 applications in order to ensure deadlines are met. Missing a deadline can result in an automatic project approval.

<sup>2</sup> The definition of “historic structure” is currently being evaluated. Staff has no information on the outcome of this discussion.

*Relation to Council Referrals:* The following referrals overlap in intent and action with the requirements of SB 35:

- Investigate and remove barriers to housing production. (Droste: December 1, 2015 and June 27, 2017 and Housing Action Plan Item 12)
- Streamline permit process for housing projects which include greater than 50% affordable units. (Worthington: January 19, 2016 and Housing Action Plan Item 12)
- Revise General Plan and Zoning Ordinance to add written standards regarding 1) density by parcel; 2) health and safety detriments; 3) design review; and 4) view and shadow impacts. (Arreguin: July 11, 2017)
- Allow ministerial approval of zoning-compliant affordable housing projects. (Droste: December 15, 2017)
- Create specific per acre density standards, including standards for projects that include density bonus units. (Housing Action Plan Item 5)

**SB 540 (Streamlined Workforce Housing Zone Projects)** allows jurisdictions to establish Workforce Housing Opportunity Zones (WHOZs) which prioritize workforce and affordable housing in close proximity to jobs and transit. WHOZs must also conform to California's greenhouse gas reduction laws. WHOZ development requires environmental review (e.g. EIR) and public input, similar to the process of adopting a specific area plan. Once a WHOZ is established, WHOZ-consistent development projects are guaranteed a 60-day approval process and can be requested for 5-years after WHOZ adoption.

Berkeley Context: Berkeley's Planning Department is currently focused on a specific area plan for the Adeline Corridor. The next specific area plan that has been referred to the City Manager is focused on San Pablo Avenue. There is potential to evaluate the feasibility of including WHOZs into this specific area plan, although at this time, no resources have been allocated to this project.

*Relation to Council Referrals:* The following referrals overlap in intent and action with the requirements of SB 540:

- Initiate an area planning process with community outreach regarding future development on San Pablo Avenue. (Moore and Maio: July 14, 2015)
- Work with Berkeley Unified School District regarding housing affordability for local teachers in the context of SB 1413. (Worthington: September 27, 2016 and Housing Action Plan Item 11)

**AB 73 (Streamlined Housing Sustainability District Projects)** incentivizes municipalities to create housing in Housing Sustainability Districts (HSDs). An HSD in an overlay created with oversight from California State Housing and Community Development (HCD) on infill sites in close proximity to public transit. Establishing an HSD requires preparation of an EIR. Once established, 20% of the units built in an HSD must be affordable. Streamlined consideration of HSD housing projects are considered within 10 years of the HSD EIR and if the project pays prevailing wages.

Berkeley Context: Berkeley could leverage this law to establish an overlay in an area (near transit) where new development includes at least 20% affordable units. This could be implemented near BART, Amtrak, or bus stops that meet specific headway requirements. The City would need to identify resources for environmental analysis of proposed overlay zoning districts.

*Relation to Council Referrals:* The following referral tangentially overlaps in intent and action with the goals of AB 73:

- Create a zoning overlay for Adeline Corridor that would result in Community Benefits Agreements. (Bartlett: July 25, 2017)

**AB 494 / SB 229 (Streamlined Accessory Dwelling Units)** provides minor clarifications to State Accessory Dwelling Unit (ADU) regulations intended to streamline permitting of ADUs. Clarifications expand applicability to proposed single family homes and to residential districts where single family homes are allowed. These bills also reduce parking requirements for ADUs.

Berkeley Context: Modifications to Berkeley's ADU Ordinance that expand application to proposed single family homes and expand allowable districts for ADUs will be considered by City Council on May 15, 2018. Berkeley's ADU Ordinance currently requires no parking for ADUs.

*Relation to Council Referrals:* The following referrals overlap in intent and action with the goals of AB 494 and SB 229:

- Examine and eliminate barriers to building and renting Accessory Dwelling Units (ADUs). (Housing Action Plan Item 13).

## INCLUSIONARY HOUSING LAWS

**AB 1505: Inclusionary Housing Requirements for Rental Projects:** Allows jurisdictions to adopt ordinances that require a percentage of projects in rental development projects to be deed restricted as affordable. This law is considered a

“fix” to the Palmer Decision, which invalidated inclusionary housing ordinances that applied to rental properties.

Berkeley Context: The City of Berkeley has an Inclusionary Ordinance that requires payment of an Affordable Housing Mitigation Fee (AHMF) for 20% of the units, but allows in lieu on-site units instead of payment of the inclusionary fee for rental properties. Separate requirements apply to ownership and condominium conversion projects. The City is reviewing the existing ordinances and may need to amend them.

*Relation to Council Referrals:* The following short term referral tangentially overlaps in intent and action with the goals of AB 1505:

- Conduct a development feasibility study of the effect of existing fees and development costs. (Droste: December 5, 2017)

#### MONITORING / ENFORCEMENT BILLS

Several bills modify State housing element requirements and annual reporting standards and mechanisms with a focus on new enforcement measures and responsibilities. These bills mandate jurisdictions to conduct more robust analysis and public review processes than previously required. Jurisdictions that are found to be out of compliance with these laws (both new and old) will be subject to steep penalties and repercussions.

**AB 72: HCD Review and Oversight:** Provides HCD with greater review and enforcement authority over laws that require jurisdictions to follow goals and programs identified in adopted housing elements. Though this law, HCD has the authority to review any actions-inactions that HCD believes are in conflict with a jurisdiction’s housing element and revoke certification of a non-compliant housing element.

**SB 166: No Net Loss:** Mandates that every jurisdiction maintain a current supply of sites in the housing element inventory to meet RHNA by income categories. If existing sites can’t accommodate unmet RHNA needs, a jurisdiction is required to rezone. This law does not apply to charter cities; however annual progress reports (APR), required by all cities, and must include related data. Note that APRs are used mid-cycle by HCD in their review of housing element compliance (see AB 72).

**AB 879: Annual Reporting Requirements:** Expands upon existing law that requires annual progress reports on a jurisdiction’s housing element. Analysis and reporting required by this new law is more robust and applies to general law and charter cities.

**AB 1397: Residential Development Inventory:** Makes numerous changes to how a jurisdiction establishes its housing element site inventory.



Berkeley Context: Planning staff and IT staff will need to collaborate in order to efficiently and accurately analyze permitting activities. As a first step, planning staff will need to develop a list of requirements to share with IT. Requirements will need to include a mechanism that tabulates various data fields in order to track compliance with RHNA and identify sites identified in the Housing Element inventory.

### **DENSITY BONUS**

Although State Density Bonus law was not part of the 2017 Housing Package, it warrants discussion in this report because it incentivizes development of affordable housing. Density Bonus is also mentioned in the purpose of JSISHL and in multiple City Council referrals. Density Bonus has been discussed by the Planning Commission and the Planning Commission's subcommittee on Affordable Housing and Density Bonus a number of times in the context of City Council referrals. Resulting from these efforts, an updated Density Bonus Ordinance will be considered by City Council this summer (agenda date yet to be determined). See Attachment 4 (*February 21, 2018 Planning Commission Density Bonus Staff Report*) for background information on Density Bonus and status of ongoing work and future work.

*Relation to Council Referrals*: The following referrals overlap in intent and action with State Density Bonus law:

- Allow increased development potential in the C-T district and develop community benefit requirements, with a focus on labor practices and affordable housing. (Worthington: July 12, 2016)
- Create a pilot Density Bonus program in the C- T district that allows for payment in lieu of providing qualifying onsite affordable units. (Worthington: May 30, 2017 and Housing Action Plan Item 3)
- Revise General Plan and Zoning Ordinance to add written standards regarding 1) density by parcel; 2) health and safety detriments; 3) design review; and 4) view and shadow impacts. (Arreguin: July 11, 2017)
- Increase density in the C-T, R-SMU, R-S and R-3 districts by adding 20 feet to maximum building heights and adjusting FAR. (Worthington: October 31, 2017).
- Create specific per acre density standards, including standards for projects that include density bonus units. (Housing Action Plan Item 5)

### **DISCUSSION**

JSISHL was created by City Council to look at issues around density bonuses, the Housing Accountability Act, inclusionary zoning, and permit streamlining to attain compliance with State law and take advantage of new opportunities for the development

of affordable housing. Preliminary analysis in the Background section of this report shows them path to achieving these goals through State law. For example, State law mandates that jurisdictions dial back discretion on eligible housing projects, accelerate the approval process for certain types of housing projects and face financial consequences for being out of compliance with State law.

As identified in the analysis above, City Council's priorities reflect and overlap with the goals of State. The next steps are twofold:

1. Identify where city of Berkeley needs to modify the Zoning Ordinance and/or current practices to be in compliance with State law.
2. Evaluate referrals in the context of State law and determine next steps of action to accomplish this work.

It is in this context, that JSISHL is asked to discuss the following questions:

***Does State law go far enough to accomplish the goals set forth in City Council referrals with respect to Density Bonus, HAA, Streamlining, and Inclusionary Housing? If no, what is missing?***

In some areas, State law is either too broad or too restrictive to accomplish Council's priorities. Staff recommends that the City explore the area in between by developing local, parallel programs (e.g. Local Density Bonus, Local Streamlining, Local Inclusionary), that offer alternate paths to achieve stated goals. Alternate paths could have different eligibility criteria, additional incentives and benefits, and a set of unique regulations and/or requirements. As an example, see Attachment 5 (*April 4, 2018 Palo Alto City Council Staff Report on Affordable Housing Combining District Ordinance*) which creates an overlay that provides flexible development standards for 100% affordable housing projects located on commercially-zoned sites near transit.

***Should City of Berkeley begin working on a parallel program that address items identified in the question above? If yes, what would be the focus of program and what may it include in order to archive the results outlined in City Council referrals?***

Staff believes there are tasks JSISHL can address in the context of State law and local referrals. Staff will return at the next meeting with analysis and options for JSISHL to consider.

## **ATTACHMENTS**

1. City Council Referral Matrix
2. City Council Referral Table
3. SB 35 Eligibility Checklist

4. Planning Commission Staff Report on Density Bonus Ordinance Amendments (February 21, 2018)
5. Palo Alto City Council Staff Report on Affordable Housing Combining District Ordinance (April 4, 2018)

## Procedures for Implementing State Density Bonus Law In Zoning Districts Without Numeric Density Standards

### Introduction

This is a description of the procedures followed by the City of Berkeley for the analysis of a project that qualifies as an affordable housing project pursuant to Government Code Section 65915, the State Density Bonus Law. Specifically, this document describes how to determine the base project in zoning districts that do not have numeric density standards (R-3, R-4, R-5, Commercial Districts, and Mixed-Use Districts).

The State Density Bonus Law was enacted in 1979 to encourage the creation of more housing and to address the severe shortage of affordable housing in California by allowing an applicant to exceed the otherwise maximum residential density for a parcel by including a specific percentage of deed-restricted affordable housing. This document outlines how the City of Berkeley evaluates proposed density bonus projects.

While this document establishes a general set of procedures, every density bonus project is unique and should be treated as such. Thus staff's analysis of each proposed project will require careful review and continued discussion with applicants, colleagues, and the City Attorney.

### Affordability Requirements

Pursuant to § 65915, Below Market Rate definitions:

|                        |                                                    |
|------------------------|----------------------------------------------------|
| <b>Very Low Income</b> | ≥ 30% to 50% Area Median Income (AMI) <sup>1</sup> |
| <b>Low Income</b>      | ≥ 50% to 80% AMI                                   |
| <b>Moderate Income</b> | ≥ 80% to 100% AMI                                  |

### Overview

| Requirement                       | Duration                     | Reference   | Applies to:                                      |
|-----------------------------------|------------------------------|-------------|--------------------------------------------------|
| Qualifying Units                  | 55 years                     | 65915(c)(1) | All projects                                     |
| Replacement Units                 | 55 years                     | 65915(c)(3) | Projects with existing units onsite <sup>2</sup> |
| Demolition Ordinance              | For the life of the building | 23C.08.020  | Projects with existing units onsite              |
| Affordable Housing Mitigation Fee |                              | 22.20.065   | Projects with units that are for rent            |
| Inclusionary Housing Ordinance    |                              | 23C.12      | Projects with units that are for sale            |

<sup>1</sup> AMI is median index of household earning as it is calculated for Alameda County. For a more detailed discussion of AMI please refer to the Housing Element of the General Plan.

<sup>2</sup> Per § 65915(c)(3), replacement units are required when the project is proposed on a "parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households."

**Affordable Housing Projects that Qualify for a Density Bonus**

If a project proposes to include dwelling units with affordability consistent with any one of the following levels (§ 65915(b)), it is considered a density bonus project:

- At least 10% of the total dwelling units are affordable to Lower Income households;
- At least 5% of the total dwelling units are affordable to Very Low Income households;
- A senior citizen housing development (requires at least 35 units) (see Civil Code Section 51.3 and 51.12 for definitions of qualified residents);
- At least 10% of the total dwelling units are affordable to Moderate Income households, when they are for sale (a “common interest development”); or
- At least 10% of the total dwelling units are for transitional foster youth or disabled veterans (Education Code Section 18541) that are affordable to Very Low Income households.

**Overview (Described in more detail below)**

Step 1: Calculate the “Base Project,” i.e. the project that meets the “maximum allowable density” for the project site, without any discretionary permits.

Step 2: Analyze the Fidelity between the Base Project and the Proposed Project.

Step 3: Calculate the Density Bonus, i.e. the allowed density increase.

Step 4: Accommodate the Density Bonus units (Waivers/Reductions and Concessions/Incentives)

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## Step 1. Calculate the Base Project

State Density Bonus Law requires a City to grant a density increase over “the otherwise maximum allowable gross residential density” for the specific zoning range and land use element of the general plan. Berkeley, however, does not have parcel-based density standards for higher density residential (R-3 and above) or commercial/mixed-use zoning districts. While the General Plan provides policy guidance for residential density, it cannot be applied on a per-parcel basis to set the maximum allowable residential density.

Because Berkeley does not have density standards in most zoning districts, we instead rely on zoning development standards and basic Building Code considerations to define a building envelope for a particular project site. The defining standards include setbacks, parking, height, lot coverage, open space, and floor area ratio. Allowable maximum residential density is therefore the residential floor area that these standards can accommodate on a given parcel. This envelope becomes the “base project” for the purpose of calculating density. In other words, per BMC Section 23C.14.040, the otherwise allowable maximum residential density is the floor area that can be achieved under the single use permit, which requires solely a finding of non-detriment under Chapter 23B.32.

### Overview of Procedures to Identify the Base Project:

- a. Using the floor area and unit count of the proposed final project, calculate average unit size of the project based on the units within the proposed project.<sup>3</sup>
- b. Determine the maximum floor area of a hypothetical base project that would fit on the site without needing a development code waiver or reduction, while fully complying with the building code.
- c. Divide this area by the average unit size of the proposed units. Any fractional unit must be rounded up.<sup>4</sup>

### Concepts for the Base Project:

- Must comply with all applicable development standards, without any discretionary permits to waive or modify a standard (such as additional height, reduced parking, setbacks or usable open space).<sup>5</sup>
- Must comply with applicable building and fire codes.
- Must be substantially consistent with the proposed project (not including waivers/reductions to allow the density bonus and any concessions).<sup>6</sup> See below, “Fidelity between Base and Proposed Project,” for further discussion.
- Must exclude any commercial space.
- Must include any non-residential uses, including non-dwelling residential amenities (such as common laundry rooms, lounges, etc.) in proposed project, unless these uses are requested as a concession.<sup>7</sup>

<sup>3</sup> This size will be larger than that typically placed on project plans, since it includes circulation space and other residential amenities that are above the ground floor.

<sup>4</sup> Per § 65915(q), “Each component of any density calculation, including base density and bonus density, resulting in any fractional units shall be separately rounded up to the next whole number.”

<sup>5</sup> All mechanical equipment and elevator penthouses must fit within the Base Project without the necessity of additional permits. Floor area that encroaches into the public right-of-way must be excluded, because it would require a permit from the Public Works Department.

<sup>6</sup> The base project must include all required parking, even if the proposed project reduces the parking and the applicant proposes to pay an in-lieu fee.

<sup>7</sup> This requirement is intended to prevent an applicant from counting non-residential space in the base project that is not actually intended for residential use, which would lead to a calculation of a larger bonus. Residential amenities (laundry rooms, bike parking, meeting rooms etc.) will not count towards the base project when located in areas of the project where residential uses are not allowed according to the Zoning Ordinance (i.e. residential uses on the ground floor in the C-1 District).

## Step 2. Fidelity between Base Project and Proposed Project

The base project must be substantially consistent with the footprint, configuration of parking and usable open space, and ceiling heights of the proposed project. In other words, the base project and proposed project must have fidelity. This requirement reflects the City's desire to ensure that the project that the applicant wishes to build is reflected in the base project, and is also intended to prevent applicants from creating a base project that would be far denser and/or poorer in design quality than the applicant actually desires to build, for the purpose of obtaining a larger density bonus.

In general, the following design choices should be consistent in order for the base project and proposed project to have fidelity:

- Average unit size must be substantially the same in the base and proposed project;
- If parking is proposed in the basement of a base project, it must also be in the basement of the proposed project; if lifts are proposed in the base, they must also be in the proposed project;
- If useable open space is proposed on the roof of the base project, it must also be on the roof of the proposed project.

However, determining whether there is fidelity between the base and proposed projects is not always straightforward. Applicants should review each case with the Planning Manager as well as the City Attorney to ensure that this principle is applied consistently.

## Step 3. Apply the Density Bonus

Once a base project has been established for a parcel given the characteristics of the proposed project, this base density is multiplied by the required density increase per § 65915(f). The result is the density bonus a qualifying affordable housing project is entitled to develop pursuant to State law. Below is a summary of the required procedures:

1. Determine percentage and income level of below market rate units based on § 65915(b), the 'qualifying units'
2. Calculate the allowable bonus (%) based on § 65915(f)<sup>8</sup>
3. Apply the number of bonus units to the base project. Round any fraction up to the next whole number.

## Step 4. Accommodate the Density Bonus Units

- A. Waivers/Reductions: In order to accommodate the proposed density bonus, the City must relax development standards that would otherwise have the effect of physically precluding the bonus floor area or units. § 65915(e) provides further direction on granting waivers/reductions.

An applicant is entitled to the prescribed density increase based on the number / affordability of qualifying units the project provides; the City does not have discretion over the density increase. However, staff can work with the applicant to determine which

<sup>8</sup> Per § 65915(n), a City may grant a density bonus that is greater than what is described in subdivision (f) only if permitted by local ordinance. Berkeley's ordinance only permits a greater bonus in the C-T District

waivers/reductions and concessions/incentives would result in the least detriment to the neighborhood and adjoining properties. A number of factors are considered in determining which standards to modify. These include neighborhood context, existing public policy or plan recommendations including the General Plan, Area Plans, Zoning Ordinance requirements, and environmental issues. In other words, staff will work to determine the options that would result in the least detriment to the neighborhood and adjoining properties. These determinations are subject to further review by the Zoning Adjustments Board and Design Review Committee.

In general, any combination of zoning development standards may be modified to accommodate the placement of bonus units. These include but are not limited to:

- Increased lot coverage
- Reduced setbacks
- Increased floor area ratio
- Increased building height or number of stories

- B. Concessions/Incentives: After requested waivers/reductions have been granted to accommodate the density bonus units, the applicant may request concessions/incentives, or modified development standards consistent with § 65915(k).

Per § 65915(d)(1), the City shall grant a concession or incentive unless it is able to make the finding that “the concession or incentive does not result in identifiable and actual cost reductions” or “would have a specific, adverse impact... upon public health and safety or the physical environment.” Projects are entitled to 1, 2, or 3 concessions/incentives, according to the criteria outlined in § 65915(d)(2).

Typical concessions include reduced parking or open space requirements.



## RESOLUTION NO. 68,304-N.S.

## MORE STUDENT HOUSING NOW RESOLUTION

WHEREAS, the student housing shortage is the foremost city issue mentioned by Berkeley students; and

WHEREAS, increased density close to campus reduces air pollution and traffic congestion, and encourages pedestrian, transit and bicycle travel; and

WHEREAS, on March 10, 2016, the Berkeley City Council voted unanimously to send a thank you letter to President Napolitano, which committed the city to addressing zoning barriers and obstacles preventing creating student housing; and

WHEREAS, the scarcity of available, accessible, and affordable student housing impacts individuals and families across demographics throughout the City and the lack of production near the UC campus pushes students deeper into the City's scarce and competitive housing market, forcing them to compete with and increasing pressure on the City's lower and middle-income family and aging populations; and

WHEREAS, most market rate units that are built close to campus are lived in by students. Even though market rate units are not defined as student housing, they provide much needed units primarily for middle class students. These units also contribute to creating affordable units because the inclusionary Ordinance is a major source of affordable housing in Berkeley. It requires 20% of a market rate project to be affordable, or the owner can pay an in-lieu fee of \$37,000 per unit; and

WHEREAS, Public Private Partnerships (PPP's) are a primary alternative to get funding for student housing on university property. The City of Berkeley continue to encourage PPP's provided they include student costs comparable to residence hall rate, labor standards and retaining or expanding UC sustainability standards to ensure greener buildings. Using University land in PPP has been done with success, including the 775-unit Bancroft project currently under construction.

NOW THEREFORE, BE IT RESOLVED that the City reaffirm our support for the thank you letter on March 10, 2016 to President Napolitano.

BE IT FURTHER RESOLVED that the City Council and the Planning Commission prioritize previous referrals from the City Council including the following:

- Facilitate primarily Student Housing by a Twenty Feet Height Increase and Adjust floor Area Ratio in the R-SMU, R-S and R-3 areas only from Dwight to Bancroft & from College to Fulton (Date: 10/31/2017)
- Create a Pilot Density Bonus Program for the Telegraph Avenue Commercial District (Date: 05/30/2017)
- Create a use permit process to allow non-commercial use on the Ground Floor in C-T Telegraph Commercial District excluding Telegraph Ave

(Date: 07/11/2017. This item is based on an original item submitted by Susan Wengraf on 01/20/2015)

- Develop an Ordinance Requiring New Residential Buildings to include essential wheelchair-accessible modifications, such as Auto-door Openers & Roll-in Shower (Date: 09/15/2015 & 07/11/2017)

BE IT FURTHER RESOLVED that the City and the Planning Commission will consider:

- Allowing conversion of vacant Telegraph area commercial space to housing only from Dwight to Bancroft & from College to Fulton (excluding Telegraph Avenue itself)
- Expanding the Car-Free Housing Overlay area between College and Fulton (including R-S & R-3 parcels between Fulton and Shattuck), Bancroft and Dwight.
- Allowing at least two high-rises for student housing in Southside campus area
- Investigate sites to build micro-units, which may create housing cheaper and faster
- Permitting and encouraging the construction of modular units

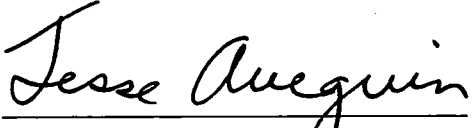
BE IT FURTHER RESOLVED that the City strongly support UC President Napolitano and Chancellor Carol Christ in their pursuit of implementation of a comprehensive plan addressing the housing needs of students across all income levels with a specific focus on extremely low income, immigrant, and disabled students. Furthermore, the City encourages a University Short Term Implementation Plan for the approximately 1,500 remaining units already approved in the current LRDP. The City of Berkeley encourages the University to seriously consider potential short term consensus sites including Fulton & Bancroft; University & Oxford, formerly designated for a hotel; Channing Ellsworth tennis courts, and Unit 3 densification if done as modular units built elsewhere during the school year and placed on site during summer. The City supports University high rise development up to 12 stories at three out of four of these sites.

The foregoing Resolution was adopted by the Berkeley City Council on January 23, 2018 by the following vote:

Ayes: Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: Bartlett.

  
 Jesse Arreguin, Mayor

Attest:

  
 Mark Numainville, City Clerk

## NOTICE OF PUBLIC HEARING BERKELEY CITY COUNCIL

### ZONING ORDINANCE AMENDMENTS THAT CREATE A DENSITY BONUS ORDINANCE THAT COMPLIES WITH STATE LAW

The proposed amendments to the City's Zoning Ordinance will remove outdated references to State Density Bonus from Berkeley Municipal Code Chapter 23C.12 (Inclusionary Housing Requirements) and create a new standalone Chapter 23C.14 (Density Bonus Ordinance) that is in compliance with State law and codifies current practices.

Changes recommended by the Planning Commission include:

- Repeal Section 23C.12.050 (State of California Density Bonus Requirements)  
Berkeley's Density Bonus language, currently found in Section 23C.12.050, lists outdated percentages and affordable housing requirements from State Density Bonus regulations and other provisions that do not reflect current practice, and so this section is recommended to be deleted.
- Adopt Chapter 23C.14 (Density Bonus)  
Proposed Chapter 23C.14 will create a new Density Bonus Ordinance that is organized logically and will reference – not restate – State regulations. The new Ordinance will refer to Administrative Regulations documenting Berkeley's method for base project calculation, among other things, necessary to implement the law.

Citywide, in all zoning districts except Manufacturing (M) and Mixed Manufacturing (MM). The zoning map is available online:

[http://www.ci.berkeley.ca.us/uploadedFiles/IT/Level\\_3\\_-\\_General/Zoning%20Map%2036x36%2020050120.pdf](http://www.ci.berkeley.ca.us/uploadedFiles/IT/Level_3_-_General/Zoning%20Map%2036x36%2020050120.pdf)

The hearing will be held on Tuesday, February 19, 2019 at 6:00 p.m. in the BUSD Board Room, 1231 Addison Street, Berkeley.

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of February 7, 2019.

For further information, please contact Alene Pearson at 510-981-7489.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please**

**note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

**Published:** Friday, February 8, 2019

**Noticing per California Government Code Sections 65856(a) and 65090**

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of Old Berkeley City Hall, 2134 Martin Luther King Jr. Way, as well as on the City's website, on February 7, 2019.

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Mark Numainville, City Clerk



Office of the City Manager

ACTION CALENDAR

February 19, 2019

(Continued from January 29, 2019)

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Timothy Burroughs, Director, Planning and Development  
Subject: Density Bonus Ordinance Revisions - Repeal Existing BMC Section 23C.12.050 (State of California Density Bonus Requirements) and Adopt New BMC Chapter 23C.14 (Density Bonus)

RECOMMENDATION

Adopt first reading of an Ordinance amending the Zoning Ordinance to repeal obsolete Density Bonus regulations (Berkeley Municipal Code Section 23C.12.050: State of California Density Bonus Requirements) and adopt a new, standalone Density Bonus Chapter (Berkeley Municipal Code Chapter 23C.14) that complies with California State Government Code 65915–65918: Density Bonuses and Other Incentives.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley's Density Bonus ordinance is currently embedded in the Inclusionary Housing Requirements chapter of the Zoning Ordinance (Chapter 23C.12). That Density Bonus section (State of California Density Bonus Requirements (Section 23C.12.050)) needs to be updated because it references obsolete State regulations and includes requirements that are no longer in effect. It was most recently amended in 2005. State law has continued to undergo amendments since then to mandate a clear local ordinance.

The proposed ordinance (*see Attachment 1*) also responds to City Council referrals to the City Manager that requested several modifications to Berkeley's Density Bonus. Some of these referrals specifically mention modifications to the Density Bonus program, whereas other suggest a parallel path to modifying development standards in order to allow for increased residential densities (*see Attachment 2*). The Planning Commission and its Subcommittee on Affordable Housing reviewed the referrals and developed an approach to create a more robust Density Bonus program. This multi-stage approach is underway; this proposed ordinance amendment is necessary to set a new framework within which other programs and policies can be implemented.

**BACKGROUND**

State Density Bonus law (SDBL)<sup>1</sup> provides incentives for developers to include affordable housing within their projects by granting increased density and relief from local regulations. Relief is delivered through concessions related to financial feasibility of the proposed project and waivers that apply to development standards.

Density Bonuses of up to 35% are mandated by the State and are based on the percentage of affordable units provided at various income levels. All cities and counties are required to adopt an ordinance specifying how they will comply with SDBL.

On December 6, 2017 and February 7, 2018, the Planning Commission's Subcommittee on Affordable Housing provided input and direction on an approach to referrals and modifications to City of Berkeley's Density Bonus regulations. The subcommittee suggested a three-phased approach to modifying the City's Density Bonus regulations that consisted of:

1. Create a Density Bonus Ordinance that codifies existing practice.
2. Respond to Density Bonus referrals that go beyond State Density Bonus laws to provide additional incentives for developing more affordable housing.
3. Develop numeric density standards and objective standards for all zoning districts.

Staff prepared Zoning Ordinance language to support Phase 1 for Planning Commission consideration on February 21, 2018. The Commission discussed these changes, then conducted a Public Hearing on March 21, 2018 on Zoning Ordinance amendments related to Phase 1 of the Density Bonus program. The Planning Commission has begun to consider modifications related to Phase 2 and aims to make recommendations to City Council by the end of the year. Staff is currently working on an RFP to bring in additional resources to help with Phase 3. This work is anticipated to start in the fall of 2018 and will be shared with Planning Commission and the Joint Subcommittee on Implementation of State Housing Law as appropriate. Phase 3 should be completed by the end of 2019.

**ENVIRONMENTAL SUSTAINABILITY**

Density Bonus is a State mandated planning and permitting tool that brings flexibility into the zoning process by providing developer incentives in exchange for affordable housing. Development projects that include affordable units encourage social interactions of diverse residents thereby building a connected, resilient community. Density Bonus projects also address Berkeley's Climate Action Plan goal to increase compact development patterns throughout the City.

**RATIONALE FOR RECOMMENDATION**

Zoning Ordinance amendments in this report codify existing practice, respond to changes in State law, and provide a framework for future local programs and policies.

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<sup>1</sup> [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=65915&lawCode=GOV](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65915&lawCode=GOV)

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Timothy Burroughs, Director, Planning and Development Department, 510-981-7400  
Steven Buckley, Land Use Planning Manager, Land Use Planning Division, 510-981-7411

Alene Pearson, Associate Planner, Land Use Planning Division, 510-981-7489

Attachments:

- 1: Ordinance
- 2: Council Referrals

ORDINANCE NO. #,###-N.S.

RESCINDING SECTION 23C.12.050 OF THE BERKELEY MUNICIPAL CODE AND ADDING CHAPTER 23C.14 TO THE BERKELEY MUNICIPAL CODE REGARDING DENSITY BONUS

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

Section 1. That Section 23C.12.050 is hereby rescinded.

Section 2. That Chapter 23C.14 is hereby added to read as follows:

**Chapter 23C.14 Density Bonus**

<b>23C.14.010</b>	<b>Purpose</b>
<b>23C.14.020</b>	<b>Definitions</b>
<b>23C.14.030</b>	<b>Application Requirements</b>
<b>23C.14.040</b>	<b>Density Bonus Calculations and Procedures</b>
<b>23C.14.050</b>	<b>Incentives and Concessions</b>
<b>23C.14.060</b>	<b>Waivers and Reductions</b>
<b>23C.14.070</b>	<b>Qualifying Units</b>
<b>23C.14.080</b>	<b>Special Provisions</b>
<b>23C.14.090</b>	<b>Regulatory Agreements</b>

**23C.14.010 Purpose**

The purpose of this Chapter is to establish procedures and local standards for the implementation of California Government Code Section 65915 consistent with local zoning regulations and development standards, and to provide special provisions consistent with the intent of State and local law.

**23C.14.020 Definitions**

Whenever the following terms are used in this Chapter, they have the meaning established by this Section. Other capitalized terms have the meaning set forth in Berkeley Municipal Code Chapter 23A.08 and/or Chapter 23F.04, or in California Government Code Section 65915, as applicable.

- A. "Administrative Regulations" means guidelines and procedures promulgated by the Planning Director that may be modified from time to time to effectively implement this ordinance.
- B. "Base Project" means the maximum allowable residential density (number and type of units) on a housing development site pursuant to the applicable zoning district or, where no density standard is provided, as set forth in the Administrative Regulations before applying the density bonus.



- C. "Density Bonus Units" means those residential units added to the Base Project pursuant to the provisions of Section 65915 and this Chapter.
- D. "Housing Development" has the meaning set forth in Section 65915.
- E. "Incentive and Concession" means an incentive or a concession as the terms are used in Section 65915 and in particular as defined in Section 65915(k) thereof.
- F. "Qualifying Unit" means a unit that is provided at a below market-rate rent or sales price as set forth in Section 65915 in order to receive a Density Bonus and/or Waivers and Reductions and/or Incentives and Concessions.
- G. "Section 65915" means California Government Code Section 65915, as it may be amended from time to time.
- H. "Waiver and Reduction" means a waiver or a reduction as the terms are used in Section 65915 and in particular in Section 65915(e) thereof, and means any and all changes to or exemptions from physical lot development standards that are required to avoid precluding the construction of a Housing Development with Density Bonus Units, as set forth in Section 65915(e).

### **23C.14.030 Application Requirements**

In addition to any other information required by this Title, an application for a Density Bonus must include the following information:

- A. How the proposed project will satisfy the eligibility requirements of Section 65915.
- B. For those districts without density standards, a density bonus schematic as set forth in the administrative regulations;
- C. The proposed size of the Density Bonus pursuant to Section 23C.14.040.
- D. Any Waivers and Reductions that are sought under Section 65915(e) that would be required to accommodate the Housing Development including the Density Bonus Units.
- E. Any Incentives and Concessions that are sought under Section 65915(d) accompanied by documentation of resulting cost reductions to provide for affordable housing costs.
- F. Any requested additional bonus units under Section 65915(n).
- G. Any requested parking reductions under Section 65915(p).
- H. An applicant may elect in writing to receive a Density Bonus that is less than that mandated by Section 65915, including a Density Bonus of 0 (zero). In

such cases, the applicant will retain their entitlement to Incentives and Concessions.

- I. Documentation of how project complies with regulations regarding replacement units as described in Section 65915(c)(3).

#### **23C.14.040 Density Bonus Calculations and Procedures**

- A. Density Bonuses must be calculated as set forth in Section 65915 and pursuant to the Administrative Regulations.
- B. Density Bonus requests must accompany Housing Development applications and will be decided upon by the highest governing body.

#### **23C.14.050 Incentives and Concessions**

- A. For purposes of this Chapter, the number of Incentives and Concessions are counted as follows:
  1. Any Incentive and Concession that would otherwise require discretionary approval by the Zoning Officer or Zoning Adjustments Board of any single dimensional lot development standard, such as height or setbacks, or any single quantitative lot development standard, such as parking or open space, counts as one.
  2. A proposed Incentive and Concession that would involve exceedance of a single physical lot development standard counts as one even if that exceedance would otherwise require more than one Permit (e.g., extra height may require Permits for height, FAR, and/or number of stories but would count as one Incentive and Concession for height).
  3. Where it is ambiguous as to whether a proposed Incentive and Concession involves one or more dimensional or quantitative lot development standards, the stricter interpretation shall apply, as determined by the Zoning Officer.
- B. In determining whether it can make the finding set forth in Section 65915(d)(1), the City will base its determination and any finding on a comparison of the project including the Density Bonus and requested Incentives and Concessions to the Base Project.
- C. The City is not required to deny a proposed Incentive and Concession solely because it is able to make a finding under Section 65915(d)(1).
- D. Unless denied under Section 65915, Incentives and Concessions will be exempt from discretionary review or Permits under this Title, other than design review.
- E. Incentives and Concessions must be justified based on the financial needs of the project, including reduced costs and increased revenue, to provide for the affordable housing costs of the qualifying units and for the project overall.

### **23C.14.060 Waivers and Reductions**

- A. An applicant may submit to the City a proposal for Waivers and Reductions of development standards that physically preclude construction of a development project meeting the criteria of Section 65915(b).
- B. The applicant may request, and the City shall hold, a meeting to discuss Waivers and Reductions.
- C. The City may deny Waivers and Reductions if a Waiver or Reduction would have adverse impacts and/or no mitigation for such impacts, as described in Section 65915(e)(1).

### **23C.14.070 Qualifying Units**

Qualifying Units must be reasonably dispersed throughout the Housing Development, be of the same size and contain, on average, the same number of bedrooms as the non-Qualifying Units in the project, and must be comparable to the non-Qualifying Units in terms of design, use, appearance, materials and finish quality. In determining whether dispersal of Qualifying Units is reasonable, the decision-making body may consider special benefits provided by, as well as special constraints on, the project.

### **23C.14.080 Special Provisions**

In addition to requirements set forth in Section 65915 and this Chapter, the following Special Provisions apply to Density Bonuses in the City of Berkeley.

- A. [RESERVED]
- B. In addition to other required findings, Special Provisions may be awarded only when the City finds that the Density Bonus project complies with the purposes of the district in which the project is located.

### **23C.14.090 Regulatory Agreements**

Prior to issuance of a Certificate of Occupancy for a Housing Development that has received a Density Bonus, the applicant must enter into a regulatory agreement in a form provided by the City that implements Section 65915 and this Chapter.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 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.



## Kriss Worthington

Councilmember, City of Berkeley, District 7  
2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
PHONE 510-981-7170, FAX 510-981-7177, EMAIL  
kworthington@ci.berkeley.ca.us

### ACTION CALENDAR

July 12, 2016

*(Continued from May 24, 2016)*

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kriss Worthington

Subject: Allow Increased Development Potential in the Telegraph Commercial (C-T) District Between Dwight Avenue and Bancroft Avenue and Refer to the City Manager to Develop Community Benefit Requirements, with a Focus on Labor Practices and Affordable Housing

### RECOMMENDATION

That the Council immediately amend the Berkeley Zoning Ordinance to allow increased development potential in the Telegraph Commercial (C-T) District between Dwight Avenue and Bancroft Avenue and refer to the City Manager to develop community benefit requirements, with a focus on labor practices and affordable housing.

### BACKGROUND

The City Council sent a referral to the Planning Commission on June 30, 2015, regarding the conflict between the 5.0 FAR adopted by the Council for the C-T District and the other development regulations in the district.

On April 20, 2016, the Planning Commission considered modifying the development standards and community benefits. The Planning Commission voted to recommend the following to the Berkeley City Council:

- a) That the staff proposed Zoning Ordinance development standards for buildings adjacent to Bancroft Way be applied to the entirety of the C-T District north of Dwight Way; and
- b) That the Council develop community benefit requirements, with a focus on labor practices and affordable housing, before implementation of the proposed Zoning Ordinance language.

### FINANCIAL IMPLICATIONS:

Minimal.

ENVIRONMENTAL SUSTAINABILITY:

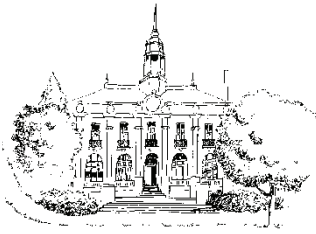
Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON:

Councilmember Kriss Worthington      510-981-7170

Attachment:

1. April 20, 2016 Planning Commission Staff Report on "Changes to the Zoning Ordinance to Allow Development Potential Increases in the Telegraph Avenue Commercial (C-T) District"



Kriss Worthington  
 Councilmember, City of Berkeley, District 7  
 2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
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 kworthington@ci.berkeley.ca.us

CONSENT CALENDAR  
 May 30, 2017

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Kriss Worthington and Ben Bartlett, and Mayor Arreguin  
 Subject: Planning Commission Referral for a Pilot Density Bonus Program for the Telegraph Avenue Commercial District to Generate Revenue to House the Homeless and Extremely Low-Income Individuals

RECOMMENDATION

That the Berkeley City Council refer a City Density Bonus policy for the Telegraph Avenue Commercial District to the Planning Commission to generate in-lieu fees that could be used to build housing for homeless and extremely low-income residents.

BACKGROUND

Under current state law, new development projects that get a density bonus, allowing up to 35 percent more density, are required to build inclusionary housing. Inclusionary housing is typically defined as below-market rate housing for people who earn 50 percent or 80 percent of the Area Median Income (AMI).

While it's great that developers are including some affordable housing in their market-rate projects, affordable housing for the homeless and extremely low-income who don't qualify for inclusionary units can be provided if developers instead paid fees into the Housing Trust Fund. This can be achieved through the use of a City Density Bonus for the Telegraph Avenue Commercial District, an area where many residents have expressed support for housing the homeless and the extremely low-income.

The City bonus fee would be equal to the in-lieu affordable housing mitigation fee, currently set at \$34,000 per unit. Fees paid into the fund could be leveraged with other Federal, State and Regional affordable housing sources, resulting in significantly more affordable housing built through the Housing Trust Fund than currently available. The City has important policy proposals to assist the homeless and extremely low-income residents that urgently need funding.

The pilot program of a City Density Bonus in the Telegraph Avenue Commercial District could go a long way toward easing Berkeley's critical housing shortage by increasing incentives for developers to add more housing and give the city greater ability to deliver affordable housing.

FISCAL IMPACTS

This proposal will generate millions in new revenue to the Housing Trust Fund.

ENVIRONMENTAL IMPACTS

The proposed change is consistent with City Climate Action Plan goals supporting increased residential density. Additionally, new residential construction is subject to more stringent green building and energy efficiency standards and will help reduce per capita greenhouse gas emissions.

CONTACT PERSON

Councilmember Kriss Worthington 510-981-7170

**ANNOTATED AGENDA  
BERKELEY CITY COUNCIL MEETING  
Tuesday, July 11, 2017  
6:00 P.M.**

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO  
DISTRICT 2 – CHERYL DAVILA  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – KRISS WORTHINGTON  
DISTRICT 8 – LORI DROSTE

**Preliminary Matters**

**Roll Call:** 6:03 p.m.

**Present:** Bartlett, Davila, Droste, Hahn, Maio, Wengraf, Worthington, Arreguin

**Absent:** Harrison

Councilmember Harrison present 6:14 p.m.

**Ceremonial Matters:**

1. Recognition of UN Association of California, Alpha Kappa Alpha, and Alpha Nu Omega

**City Auditor Comments:**

1. Recognition of Public Works for completing the Equipment Fund Audit

**City Manager Comments:**

1. Launch of Berkeley Bike Share Program on July 11, 2017

**Public Comment on Non-Agenda Matters:** 3 speakers.

**Public Comment on Consent Calendar and Information Items Only:** 1 speakers.

**Consent Calendar**

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

**Vote:** All Ayes.



## Action Calendar – Old Business

29. **Housing Accountability Act** *(Continued from June 13, 2017. Item includes supplemental materials.)*

**From: City Manager**

Contact: Zach Cowan, City Attorney, 981-6950

**Action:** 5 speakers. M/S/C (Arreguin/Davila) to refer to the City Manager, Planning Commission, Zoning Adjustments Board, and Design Review Committee to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion:

1. Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.
2. Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
3. Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
4. Quantify and set objective zooming standards and criteria under the first sentence of Government Code Section 65589.5(j) for views, shadows, and other impacts that often underlie detriment findings.

**Vote (Paragraphs 1-3):** Ayes – Maio, Davila, Harrison, Hahn, Wengraf, Worthington, Arreguin; Noes – Bartlett, Droste.

**Vote (Paragraph 4):** Ayes – Maio, Davila, Harrison, Hahn, Wengraf, Arreguin; Noes – Bartlett, Droste, Worthington.

Recess: 9:10 p.m. – 9:27 p.m.

30. **Amend BMC Sections 3.78.030, 040, and 050 Related to Commission Procedures** *(Continued from June 13, 2017)*

**From: Human Welfare and Community Action Commission**

**Recommendation:** Adopt a Resolution requesting that the City Manager examine the addition of language to the Berkeley Municipal Code that clarifies aspects of the management of City of Berkeley commissions and the removal and appointment of commissioners.

**Financial Implications:** See report

Contact: Wing Wong, Commission Secretary, 981-5400

**Action:** Moved to Consent Calendar. No action taken by the City Council on this item.

**Vote:** Ayes – Maio, Bartlett, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – Davila.



## Kriss Worthington

Councilmember, City of Berkeley, District 7  
2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
PHONE 510-981-7170, FAX 510-981-7177,  
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CONSENT CALENDAR  
10/31/2017

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Kriss Worthington and Kate Harrison, and Mayor Arreguin  
Subject: City Manager and Planning Commission Referral: Facilitate primarily Student Housing by a twenty feet height increase and adjust Floor Area Ratio in the R-SMU, R-S and R-3 areas only from Dwight to Bancroft and from College to Fulton

RECOMMENDATION: Refer to the City Manager and Planning Commission to facilitate primarily Student Housing by amending the Zoning Ordinance to add a twenty feet height increase and adjust the Floor Area Ratio in the R-SMU, R-S and R-3 areas only from Dwight to Bancroft and from College to Fulton.

BACKGROUND:

In the last few years, students have become increasingly active in proposing ways to increase student housing. Housing is urgently needed in close proximity to the UC Berkeley campus as rents increase and the University population steadily rises. Students, recent graduates, employees of the University, and local businesses contribute to the local economy, create jobs for the local community, and greatly enrich the community through their presence. Implementing this action would provide a place to live for many individuals who would otherwise have to reside far from campus. Oftentimes, the quest to find living spaces is emotionally taxing for students and can decrease academic performance or leave students without affordable and safe places to live.

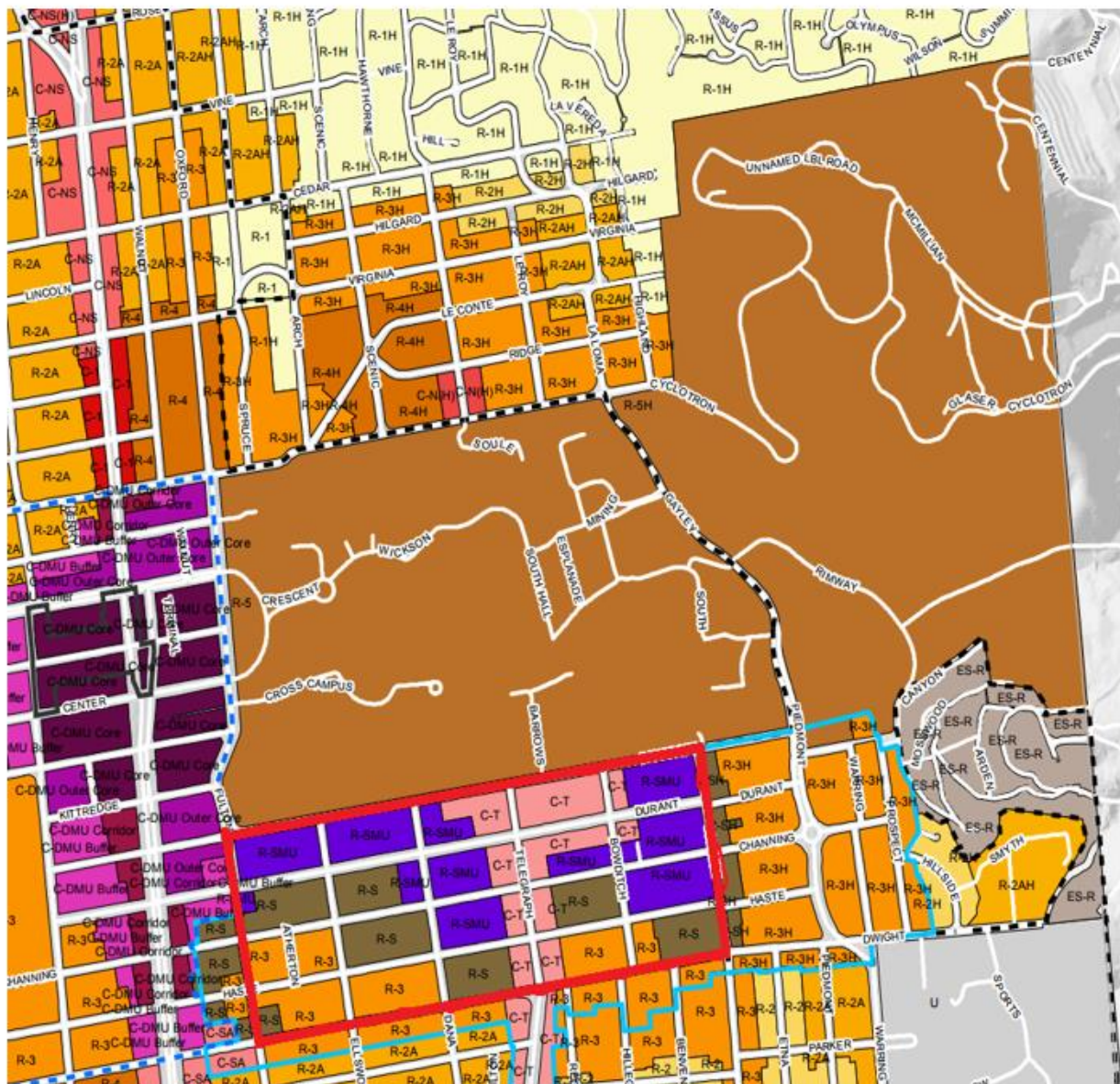
Increasing density in the area surrounding campus proves better for the environment, better for campus area businesses, and better for students. By reducing commute times, students will opt to walk or bike to class, reducing congestion on the road. A shorter commute will also increase student safety and allow students to participate in extracurricular activities that may run into the evening because students will not have to worry about how they will get home. An enhanced sense of safety in the surrounding region is beneficial for all in the community. Finally, higher density benefits campus area businesses because it brings them more customers, which supports the local economy. Previous efforts to increase south-side campus housing improved project viability specifically for the very small area of the C-T zoned blocks. Unfortunately, even blocks on Bancroft directly across from the University still have excessive restrictions.

FINANCIAL IMPLICATIONS: Minimal.

ENVIRONMENTAL SUSTAINABILITY: Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON: Councilmember Kriss Worthington      510-981-7170

Attachment:



	R-3	Multiple-family Residential
	R-S	Residential High Density Subarea
	R-SMU	Residential Mixed Use Subarea
	C-T	Telegraph Avenue Commercial

Proposed Area: South-North Boundary ---- Dwight to Bancroft  
 East-West Boundary ---- College to Fulton 10007

**ANNOTATED AGENDA  
BERKELEY CITY COUNCIL MEETING**

**Tuesday, November 28, 2017**

**6:00 P.M.**

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO  
DISTRICT 2 – CHERYL DAVILA  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – KRISS WORTHINGTON  
DISTRICT 8 – LORI DROSTE

**Preliminary Matters**

**Roll Call:** 6:04 p.m.

**Present:** Bartlett, Davila, Hahn, Harrison, Worthington, Droste, Arreguin

**Absent:** Maio, Wengraf

**Ceremonial Matters:**

1. Recognition of Tom Kelly
2. Recognition of Berkeley Humane
3. Recognition of Berkeley Fire Department/Berkeley Police Department Responders to North Bay Fires

**City Auditor Comments:**

1. The Auditor highlighted the importance of funding the reserves in light of pension liabilities and possible economic slowdowns. The Auditor also provided an update on the Measure GG audit report.

**City Manager Comments:**

1. Planning Department Open House – 12/6 from 3:00 - 6:00 p.m. at 1947 Center Street
2. Grove Park Reopening – 12/2 at 11:00 a.m. – 1:00 p.m.
3. Live Oak Holiday Tots Carnival – 12/2 at 10:00 a.m. – 2:30 p.m. at Live Oak Recreation Center
4. Winter on the Waterfront – 12/9 at 1:00 p.m. – 6:30 p.m. at the Berkeley Yacht Club

**Public Comment on Non-Agenda Matters:** 8 speakers.

**Public Comment on Consent Calendar and Information Items Only:** 4 speakers.

## Action Calendar – Old Business

### 22. Implementation Plan for Affordable Housing Action Plan Referrals *(Continued from November 14, 2017. Item contains revised materials.)*

**From: City Manager**

**Recommendation:** Adopt the attached interdepartmental implementation plan for Affordable Housing Action Plan referrals.

**Financial Implications:** None

Contact: Paul Buddenhagen, Housing and Community Services, 981-5400, and Timothy Burroughs, Planning and Development, 981-7400

**Action:** On the severed portion to include density standards.

**Vote:** Ayes – Bartlett, Davila, Hahn, Harrison, Worthington, Arreguin; Noes – Droste; Abstain – None; Absent – Maio, Wengraf.

**Action:** On the severed portion regarding the California Construction Cost Index.

**Vote:** Ayes – Bartlett, Davila, Hahn, Harrison, Worthington, Arreguin; Noes – None; Abstain – Droste; Absent – Maio, Wengraf.

**Action:** 3 speakers. M/S/C (Arreguin/Davila) to Approve the following priority order for Affordable Housing Action Plan referrals, and adopt the interdepartmental implementation plan as revised:

#### High Priority

1. Develop a Small Sites Program to assist non-profits in acquiring multi-unit properties of 25 units or less. Consider giving priority to the creation of limited and non-equity cooperatives affiliated with a democratic community land trust. Consider master leasing as a mechanism for managing distinct, smaller properties.
2. Develop an ordinance modeled after Washington D.C.'s Tenant Opportunity to Purchase Act (TOPA) that offers existing tenants in multi-unit properties of three units or more the first right of refusal when property owners place rental property on the sale market, which can be transferred to a qualifying affordable housing provider.
3. **A) Draft an ordinance creating a pilot Density Bonus policy for the Telegraph Commercial District to grant additional density for projects in the Telegraph area which pay Affordable Housing Fees in lieu of units on-site. B) Study the creation of a new City Density Bonus plan to allow developers of multi-family housing to add up to 15% more density in exchange for fees only.**
4. Examine and eliminate barriers to developing student housing and senior housing.
5. **Create specific per acre density standards, including standards for projects that include density bonus units.**
6. Develop enforcement tools for Short-Term Rental Ordinance and Section 8 Non-Discrimination Ordinance (BMC Chapter 13.31, "Discrimination based on source of income prohibited"). Request that the City Manager direct staff to draft a fine schedule for violations of the short-term rental ordinance for multi-unit properties with multiple units used as STRs that are out of compliance with the host ordinance, including fines for when non-owner/tenant occupied dwelling units are made available for short-term rentals (from June 9, 2015 STR referral).
7. Refer to the City Manager and Planning Commission, and/or Housing Advisory Commission an ordinance to clarify existing preferences in allocating City affordable housing units to Berkeley residents living within 1/2 mile of any new development and tenants evicted under the Ellis Act, expand the second category of preference for eligible tenants displaced under the Ellis Act to include certain tenants displaced through an Owner Move-In or (Measure Y) eviction, and other forms of displacement as defined by Council.



## Action Calendar – Old Business

8. Increase commercial linkage fee by California Construction Cost Index CCCI.
9. Identify Parcels of City owned land appropriate for siting assisted-living modular micro-unit buildings; take affirmative steps to speed the permitting and approvals process; obtain zoning approval and a building permit and approvals process for the creation of below market housing; identify a housing non-profit to be responsible for managing and operating the building; and establish criteria for selecting individuals and determining eligibility.
10. Utilize list of city properties developed by city staff and further examine opportunities for placing affordable housing on these sites.
11. Investigate the feasibility of developing workforce housing, in conjunction with Berkeley Unified School District, for teachers and other school district employees. The investigation should include research into what other California jurisdictions (such as San Francisco, Oakland, Santa Clara, and San Mateo County) are considering as part of their pursuit of School District workforce housing.
12. a) Streamline the Affordable Housing Permitting process for Projects with majority of Affordable Housing (50% affordable units or more, Worthington referral 1/19/16); b) Remove Structural barriers to Affordable Housing (Green Affordable Housing Package Policy #2, Droste); c) waive or reduce permit fees for affordable housing projects (Hahn), including previously adopted streamlining measures from 2017.
13. Examine and eliminate barriers to building and renting Accessory Dwelling Units.
14. Develop Measure U1 Priorities and Implementation Criteria. Include consideration of ability to leverage funds and placing a measure on the November 2018 ballot to allow possible bonding against revenues.
15. Establish a City maintained online resource that would provide a brief overview of the history and purpose of Below Market Rate (BMR) units, a current list of all buildings that contain BMR units and the characteristics of the units, the percent of median income qualification levels for the units, the HUD published income guidelines for percentage of median and family size, the property owner, rental agent, and/or management company contact information, and other relevant information that would be helpful to potential renters of BMR units. The City shall update the information as more units become available, and quarterly, to ensure that information is current.

### Medium Priority

16. Impose fees when multifamily properties are destroyed due to fault of property owner (Demolition ordinance, RHSP, Relocation fees, fines).
17. Green Affordable Housing Package policy #1: Prioritize housing over parking in new developments. Reduce parking in R-4.
18. Amend Zoning code to allow housing and other non-commercial uses on the ground floor.
19. To encourage landlords to accept Section 8 and Shelter + Care vouchers study a program that is intended to encourage rehabilitation of substandard units that could be leased to recipients of Section 8 and Shelter + Care vouchers. Possible assistance that the City could provide including: creating a list of qualified, efficient, and affordable contractors vetted by the City, and a discount or waiver of permit fees, to support bringing their unit(s) to code.
20. Collaborate with Berkeley Housing Authority Board to invest capital funds from sale of the public housing for more affordable housing (Longer term referral).
21. To encourage landlords to accept Section 8 and Shelter + Care vouchers: identify organizations who can support financial literacy and management for Section 8 tenants, including establishing bank accounts with direct deposit to Landlords.
22. Establish Office of Anti-Displacement, and hire Anti-Displacement Advocate (non-city funded position).

## Action Calendar – Old Business

23. Provide housing counseling and legal services for Berkeley's low-income, elderly or disabled distressed homeowners.

**Vote:** Ayes – Bartlett, Davila, Hahn, Harrison, Worthington, Droste, Arreguin; Noes – None; Abstain – None; Absent – Maio, Wengraf.

## Action Calendar – New Business

### 23. FY 2017 Year-End Results and FY 2018 First Quarter Budget Update

**From:** City Manager

**Recommendation:** 1. Adopt a Resolution allocating the General Fund excess equity as follows: \$1,930,415 to the General Fund Stability Reserve, \$1,579,430 to the General Fund Catastrophic Reserve and incorporate additional allocations as amended by subsequent Council action. 2. Discuss and determine funding allocations based on the Mayor's June 27, 2017, revised amendments to the FY 2018 & FY 2019 Biennial Budget and as amended by subsequent Council action.

**Financial Implications:** See report

Contact: Teresa Berkeley-Simmons, Budget Manager, 981-7000

**Action:** 3 speakers. M/S/C (Worthington/Arreguin) to continue the item to December 5, 2017 and include the allocations from Mayor Arreguin in Supplemental Reports Packet #2 including a new resolution for the allocation to Dorothy Day House.

**Vote:** Ayes – Bartlett, Davila, Hahn, Harrison, Worthington, Droste, Arreguin; Noes – None; Abstain – None; Absent – Maio, Wengraf.

### 24a. Recommendation for Audit and Legal Review of Measure GG Expenditures with Attention to Allocation of Measure GG Funds for Fire Department Overtime

**From:** Disaster and Fire Safety Commission

**Recommendation:** We recommend that City Council request from the City Auditor an audit of Measure GG expenditures specifically regarding the allocation of Measure GG funds for Fire Department overtime pay. We additionally suggest a legal review by the City Attorney to determine if the decreasing budget for Fire Department overtime in the General Fund and the coordinated increase of Measure GG funds allocated to overtime pay is in compliance with Measure GG and State and Federal laws, and to provide corrective guidance if it is not.

**Financial Implications:** See report

Contact: Keith May, Commission Secretary, 981-3473







Office of the City Manager

ACTION CALENDAR  
February 19, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Henry Oyekanmi, Director, Finance  
 Subject: Contract: Pride Industries for Citywide Janitorial Services at Various Locations

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a three-year contract and any amendments with Pride Industries to provide Citywide Janitorial Services at twenty nine (29) various City locations and facilities for the period May 1, 2019 to April 30, 2022, in an amount not to exceed \$3,725,735.34, with an option for two (2) one-year extensions for a maximum five (5) year contract for an amount not to exceed \$6,414,880.53, subject to the City's annual budget appropriation process.

FISCAL IMPACTS OF RECOMMENDATION

By awarding a citywide contract over the next several years, the City will continue to receive financial benefit from the economy of scale leveraged when services for various sites were combined into a single contract in 2013. The negotiated amounts for the recommended award reflect an average increase of 11%. This increase, in large part, can be attributed to the rise in the City of Berkeley Living Wage which increased 35% (from \$11.39 to \$15.45 dollars) since the execution of the current contract. Other factors contributing to the change in costs are: increased expenditures for "green" products/practices, utilization of web-based technology to track performance for key custodial services and a standard operations plan that includes management oversight, on-site supervision, regular client review with performance metrics and robust reporting capability. The funds for the contract will be available in each individual department's budget on an annual basis for both the original three-year term and any of the exercised extensions. This contract has been entered into the City's contract database and assigned CMS No. F1B2K.

The Scope of Service includes 29 sites which are listed below:

All Mental Health Facilities (4 Locations) 1521 and 1535 University, 3282 Adeline Street, 2636 and 2640 Martin Luther King Jr. Way and 1890 Alcatraz Ave. Budget Codes: 011-51-503-520-0000-000-451-622110, 011-51-503-522-2009-000-451-622110,

315-51-503-520-0000-000-451-622110, 315-51-503-525-2017-000-451-622110, 316-51-503-520-0000-000-451-622110, 316-51-503-522-2009-000-451-622110 \$57,474 annually.

Public Works Facilities (Five Locations): 1947 Center Street, 2100 Martin Luther King Jr. Way (Public Safety Building), Senior Centers: 2939 Ellis Street, 1900 Sixth Street, 1011 University Avenue. Budget Codes: 636-54-624-696-0000-000-474-622110, 011-54-624-702-0000-000-412-622110, 673-54-624-696-0000-000-474-622110 \$409,054 annually.

Parks, Recreation and Waterfront Facilities: (Nine Locations): 2720 Hillegass Ave., 1720 Eighth Avenue, 1301 Shattuck Avenue, 2800 Park Street, 1730 Oregon Street, 2701 Telegraph Avenue, 201 University Avenue, 125-127 University Avenue and the Berkeley Marina Restrooms. Budget Codes: 011-52-543-576-0000-000-461-622110, 011-52-543-579-0000-000-461-622110, 011-52-543-572-0000-000-461-622110, 011-52-543-573-0000-000-461-622110, 011-52-543-580-1011-000-461-622110, 011-52-543-576-0000-000-461-622110, 608-52-544-590-0000-000-474-622110, 608-52-544-590-0000-000-474-622110 \$215,584 annually.

Police Traffic Substation: 841 Folger Street Budget Code: 631-71-703-812-0000-000-474-624110 \$12,827 annually.

Fire: 997 Cedar Street, and all seven (7) Fire Station's semi-annual carpet cleanings. Budget Code: 011-72-742-836-0000-000-422-624110 \$16,184 annually.

Planning: 1947 Center Street Budget Code: 621-53-581-000-0000-000-471-622110 \$127,588 annually.

Animal Shelter: 1 Bolivar Drive Budget Code: 011-21-203-000-0000-000-424-624110 \$23,653 annually.

#### CURRENT SITUATION AND ITS EFFECTS

A Request for Proposal was advertised in September 2018. Upon reviewing the cost, references and financial capabilities, Pride Industries' proposal was determined to offer the best value for the City based on the selection criteria included in the RFP. The facilities covered by the RFP include sites previously serviced under contract. The services for these sites have been performed by an outside vendor and the RFP is the continuation of this service. No City of Berkeley employees are displaced by this contract. In accordance with State Law, California Labor Code Sections 1060-1065 Chapter 4.5 – Displace Janitor Opportunity Act, employees with the current contract holder, Universal Building Services, will be offered employment with Pride Industries.

**BACKGROUND**

Universal Building Services (UBS) has acted as the source of citywide janitorial services for over ten (10) years. A one-year contract extension was exercised to UBS by the City in July 2018. In September of 2018, the City released RFP (#18-11213-C) to provide citywide janitorial services. Eight (8) Janitorial Service providers responded to the RFP: Beatty's Services, Crossroads, Imperial Maintenance, Karla's Janitorial, Pride Industries, Quality Cleaning Professionals, SWA Services and Universal Building Services. Walk throughs for all of the Scope of Services were performed and six (6) proposals were provided for evaluation. A selection panel comprised of City staff, who would receive services under the resulting contract, met to evaluate the proposals. The panel evaluated the proposals in accordance with the criteria listed in the RFP:

Transition Plans & Daily Operational Approach	50%
Price	30%
Previous Experience	25%
Qualifications	25%
Environmental Plan & Sustainability	20%

The panel evaluated each proposal on its merits and identified the top two vendors, Pride Industries and SWA Services, for an in depth interview. References were checked before the interview process. The panel concluded after the interviews that there was no discernable difference in quality between the two finalists. A "Best and Final Offer" was asked from each to be provided to the City in 48 hours.

**ENVIRONMENTAL SUSTAINABILITY**

The RFP required all respondents to certify compliance with the City of Berkeley's strict environmental policy requirements. The recommended vendor is an International Sanitary Supply Association, Cleaning Industry Management Standards Green Building certified (ISSA CIMS-GB Certified with Honors) organization. The designation is awarded to ISSA members that demonstrate their organizations are "prepared to deliver quality, customer-focused services and ensures an organization is capable of delivering a comprehensive green cleaning program based on Leadership in Energy and Environmental Design: Existing Building Operations and Maintenance (LEED: EB O&M) green-cleaning criteria." The vendor also hold the ISSA Certification Experts (I.C.E.) designation awarded members that are "ready to provide training and consulting services to cleaning organizations interested in complying with and preparing to be certified to the Cleaning Industry Management Standard (CIMS)." The vendor also produces and will use its own certified Green Cleaning products that are recognized by the US Environmental Protection Agency's (EPA) Safer Choice Program and are packaged and labeled by people with disabilities. The vendor was named EPA Safer Choice Program Partner of the Year in 2017.

RATIONALE FOR RECOMMENDATION

Pride Industries' Best & Final offer came in under \$2 million dollars from the other finalist SWA Services. Pride Industries offers the best value for the City of Berkeley in terms of its experience, met all of the City's specifications and received the highest rating from the selection panel. Based on these factors, the panel recommends Pride Industries for the next citywide janitorial contract.

ALTERNATIVE ACTIONS CONSIDERED

None. The City went out to bid, exercised due diligence in evaluating the bids and satisfied the competitive process.

CONTACT PERSON

Shari Hamilton, General Services Manager, Finance Department, 981-7329

ATTACHMENT

1. Resolution

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

CONTRACT: PRIDE INDUSTRIES FOR CITYWIDE JANITORIAL SERVICE  
FOR VARIOUS CITY LOCATIONS AND FACILITIES

WHEREAS, janitorial services are critical for cleaning and maintaining service at various City locations and facilities; and

WHEREAS, the City does not have available staff to perform these janitorial services at these sites; and

WHEREAS, the facilities covered by the RFP include sites previously serviced under contract; and

WHEREAS, the services for these sites have been performed by an outside vendor and the RFP is a continuation of this service; and

WHEREAS, no City of Berkeley employees are displaced by this contract; and

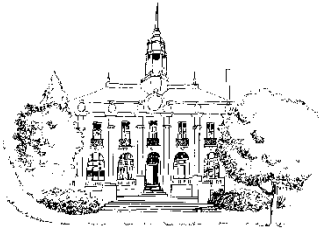
WHEREAS, the contract for each of these various locations and facilities will expire on June 30, 2019 and a Request for Proposal (RFP) was duly advertised in September 2018, resulting in the following six responses: Beatty's Services, Imperial Maintenance, Quality Pro Maintenance, Pride Industries, SWA Services and Universal Building Services; and

WHEREAS, as part of the competitive proposal solicitation that was held for providing janitorial services to various city locations and facilities, the proposal submitted by Pride Industries was determined to best meet the City's needs; and

WHEREAS, funds are available in the current year budget in the General Fund and this contract has been entered in the Citywide contract database and assigned CMS No. F1B2K.

NOW THEREFORE, BE RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with Pride Industries for Citywide janitorial service at 29 various City locations and facilities for the period May 1, 2019 to April 30, 2022 in an amount not to exceed \$3,725,735.34 with an option for two one-year extensions for a total five-year contract for an amount not to exceed \$6,414,880.53. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.





## Ben Bartlett

Councilmember, City of Berkeley, District 3  
 2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
 PHONE 510-981-7130,  
 EMAIL [bbartlett@cityofberkeley.info](mailto:bbartlett@cityofberkeley.info)

### ACTION CALENDAR

February 19, 2019

*(Continued from January 22, 2019)*

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Ben Bartlett, Kriss Worthington & Cheryl Davila  
 Subject: Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program

### RECOMMENDATION

That the Council provides requested direction to the Planning Department on how to proceed with the Equity Program recommended by the Cannabis Commission in the October 9, 2018 staff report. Recommending allowing 4 equity applicants and 2 non-equity applicants to apply and be processed by the City within 2 years.

### BACKGROUND

At the City Council special meeting on October 9, 2018, the Planning and Development Department and the City Manager requested direction from the Council on six main issues: quotas, buffers, discretion, equity, retail nurseries, and residential collectives. There were clear recommendations for many of the options presented by staff that work to complete Berkeley's comprehensive cannabis ordinances for Council consideration.

However, at the special meeting, the City Council did not provide specific recommendations regarding the creation of the proposed Equity Program and the number of equity and non-equity applicants that are able to apply.

On March 15, 2018, the Cannabis Commission held a meeting and made recommendations for the implementation of the City's Equity Program for Cannabis retailers. Recommendation No.1 outlines a clear need for an "Equity-based selection process." This will "prioritize businesses that are at least 51% owned by equity candidates" and ensure that those negatively affected by past Cannabis prohibition have a chance to enter the Berkeley Cannabis business and reap the benefits of the growing industry. This selection process will provide access to a group of business owners that would otherwise face significant barriers.

On October 9, 2018, the Planning Department and City Manager recommended slight changes to the Cannabis Commission's considerations while defining equity candidates in the same way as in the Commission proposal:

“Staff recommends an equity program that would prioritize businesses that are at least 40% owned by equity candidates... These candidates would be selected through a lottery and allowed time to identify and secure locations before applications from non-equity candidates would be considered.”

Firstly, this item seeks to support the Planning Department and the City Manager’s recommendation on the issue of equity. Berkeley is well behind the curve on using a specific equity process in the selection of retailers. Other cities such as Oakland and San Francisco have already implemented policies that prioritize equity candidates in their selection processes, which seek to allow impacted and historically disenfranchised groups to enter the Cannabis industry with little to no barriers. To bridge the gap between our City and others, the Council should move forward with the Cannabis Commission’s proposal for an Equity Program as amended by the Planning Department and City Manager.

Secondly, this item also provides the Council with the opportunity to provide a more clear direction on how to proceed with the number of Cannabis retail establishments. The clear direction being that the Council allows four equity and two non-equity applicants to apply to become storefront Cannabis retailers and that the City processes these applicants within 2 years of their application.

FISCAL IMPACTS OF RECOMMENDATION:

Minimal.

ENVIRONMENTAL SUSTAINABILITY:

No significant impact.

CONTACT PERSON:

Councilmember Ben Bartlett  
Malik Diaw

510-981-7130  
mdiaw17@berkeley.edu

ATTACHMENTS:

1. Equity Program Staff Report, Cannabis Commission Meeting 3-15-18
2. Options for Cannabis Regulations and Cannabis Business Selection Process Staff Report, City Council Special Meeting 10-09-18



Attachment 1

**Cannabis Commission**  
**March 15, 2018**

1 of 8

TO: Berkeley Cannabis Commission

FROM: Commissioner Brewster

RE: Berkeley Equity Program

**Task:** We have been asked to make a recommendation to the City Council regarding the City's Equity Program including defining language and recommendations for implementation. Specifically, I was tasked with working on the language of our Equity criteria for presentation to the Commission.

**Considerations:** it has become apparent that Berkeley is well behind the curve on addressing Equity as related to Cannabis. Jurisdictions including Oakland, San Francisco, and Portland have comprehensive (although arguably flawed) policies on the books. Municipalities that do not, Seattle for example, are feeling the negative effects. As a progressive City that supports inclusion and progressive values, it is incumbent on us to put forth clear and comprehensive language that demonstrates our support for the promotion of diversity within the Cannabis industry.

It is also apparent after speaking with other local jurisdictions, that Berkeley must devote additional effort (man-power) into getting the City's Equity program off the ground in a timely fashion. Cannabis is a multi-million-dollar industry and the City of Berkeley needs an "Office of Cannabis," and/or a "Cannabis Director," (or some other titled) City Administrator to exclusively oversee these efforts. Such a position may be created and funded from the revenue created from the Recreational Cannabis tax revenue and it is my strong suggestion that the Cannabis Commission immediately recommend the City Council create and fund such a position as soon as possible.

In terms of the Equity Program, I have approached it from the top-down and have endeavored to define our goals on a large scale and then move into the specifics. I have also included "recommendations" and "notes on recommendations," so that the Commission may consider my reasoning.

### **Equity Statement**

The City recognizes that certain communities have been disproportionately and generationally affected through law enforcement actions including: detentions, arrests, and convictions for cannabis, and cannabis *related* (see "*Related*" below) offenses. These communities also regularly and continually suffer economic disparities. The City intends to recognize and identify programmatic opportunities to address issues of equity by creating the NAME. The NAME will address these past disparities in the cannabis industry by:

- Identifying and minimizing barriers of entry into the emerging Cannabis industry for these affected individuals;
- *Recommendation No. 1 (ADD) and*
- *Dedicate a portion (1%?) of the recreational sales tax revenue towards investment into communities disproportionately impacted by Cannabis prohibition.*

To support this effort, the City will:

1. Develop an Equity based selection process to ensure that individuals who were directly, and generationally affected by previous Cannabis prohibition enforcement efforts, participate and are supported in the City's Cannabis industry. This process will identify applications in which 50% or more of owners can demonstrate that they, or their parent/guardian were directly impacted by the War on

Drugs. Applicants may demonstrate this personal impact when they meet criteria (A) or (B). Criteria (C) will be considered a preferential factor.

- A. Any conviction within the state of California, prior to January 2017, for a cannabis offense
    - **Recommendation No. 2 (ADD) or** a cannabis related offense including both non-violent felonies and misdemeanors; OR
  - B. Three (3) more citations or arrests within the State of California, prior to January 2017, for a cannabis, or cannabis related offense;
    - o To qualify as a related offense pursuant to this section, the applicant must demonstrate to the satisfaction of the City that the citation, arrest, or conviction, was directly attributable to a cannabis offense. The applicant may demonstrate that the offense was Cannabis related by submitting a personal statement which shall be supported by admissible official documentation. Examples of related offenses could include: Health & Safety Code violations: 11350, 11351.5, 11352, 11364, or Penal Code Sections 148(a) or 69.
    - o Driving Under the Influence (DUI) shall not be considered a related offense for purposes of this section.
  - C. The following documentation (or any combination thereof) may satisfy sections (A) & (B): Department of Justice Criminal History Summary, local agency police record, local agency police report, local agency citation, Municipal/Superior Court charging document, or any certified record of a court of competent jurisdiction;
    - **Recommendation No. 3** treat the Low-Income Threshold as a preferential, but not qualifying factor.
  - D. The applicants who demonstrate that they meet the Low-Income Threshold will be given additional preference in the application process when 50% or more of the principal applicants earned <80% AMI in the year immediately preceding the application.
    - o The following documentation (or any combination thereof) will satisfy this section: Tax Returns, CalFresh, Housing Vouchers ....
2. **Recommendation No. 4:** Develop a Community Equity Fund (CEF) which will be funded by a portion of the recreational sales tax revenue (1%?) and by voluntary contributions from General Cannabis Stakeholders during the licensing and renewal process. This fund will be used to support Equity Cannabis Business owners through fee waivers, low-interest loans, training, as well as investment in community programs directly benefiting larger populations impacted by past Cannabis prohibition enforcement actions.

**Notes:**

**Recommendation No. 1:** We must address the inequity created by the War on Drugs on more than one front. Solely implementing an Equity based selection process alone, may provide access in the most basic sense, but it fails to support ongoing efforts to attract and sustain businesses which are substantially owned by a diverse group. In light of the reality that the very definition of the equity applicant positively considers past challenges with criminal and social justice, we must acknowledge that these applicants will lack the resources necessary to successfully participate in an industry replete with well-funded stakeholders. Therefore, the City must do more than simply articulate an Equity policy. We must put our resources where our heart is. We must dedicate no less than 1% of our recreational tax revenue to supporting Equity based businesses. Some examples of where funding could be utilized include: licensing and permitting fees for equity applicants, community Cannabis business training programs, funding of expungement efforts, mentorship programs, etc.



#### 4. How can Berkeley integrate equity considerations into its cannabis regulations?

Current situation: There was no specific equity process in the most recent selection process for retailers in Berkeley. Other cities (Oakland and San Francisco) have adopted equity programs in order to address the effect of disproportionate enforcement of drug laws in historically disenfranchised communities.

##### Considerations:

- Individuals who have been arrested or incarcerated for growing or selling cannabis often lack the financial, real estate and other resources necessary to participate in the now-legal industry.
- An equity program could assist equity candidates (who meet certain criteria) by reducing barriers to entry into the cannabis industry, giving priority in a selection process, or creating a fund to assist communities that have been affected by disproportionate enforcement of drug laws.
- A cannabis business selection process that costs applicants significant time or money will harm those that are not well capitalized.
- There are substantial costs to the City to develop and run an equity program, especially one with on-going responsibilities such as collecting and distributing funds (like the Soda Tax) or monitoring business activities (like an incubator program).

Other cities: Oakland and San Francisco both have equity programs. Both programs give equity candidates priority in cannabis permit selection processes. Both programs also have options which prioritize non-equity businesses that assist (incubate) an equity business through provision of tenant space and/or sharing of business and technical expertise. San Francisco also waives permit fees for equity candidates and has a fund to provide money to equity candidates for business consulting, capital improvements and legal services. Oakland will develop a fund for equity candidates from cannabis tax revenue. Existing cannabis retailers, regardless of equity status, must submit plans to the city to demonstrate how they will further the city's equity goals. See [Attachment 6](#) for the staff recommendation.

Commission recommendations: The Cannabis Commission recommended an equity program that would prioritize businesses that are at least 51% owned by equity candidates. Equity candidates would be defined as individuals who have been impacted either directly or generationally by the War on Drugs in one of two ways: incarcerated for cannabis crimes, or a history of arrests related to cannabis. The Cannabis Commission also suggested setting aside some of the taxes from cannabis businesses to establish a fund to support equity based businesses. See [Attachment 6](#) for the Cannabis Commission recommendation.

The Community Health Commission recommended that if additional retailers are permitted, they be limited to a small number (1 or 2) and be restricted to equity candidates. The Planning Commission is focused on the zoning elements of Berkeley's cannabis regulations and therefore was not asked to comment on an equity program.

Staff recommendation: Staff recommends an equity program that would prioritize businesses that are at least 40% owned by equity candidates. Equity candidates would be defined in the same way as in the Cannabis Commission proposal. Half of the retail and large cultivation businesses permitted by the city moving forward would be reserved for equity candidates. These candidates would be selected through a lottery and allowed time to identify and secure locations before applications from non-equity candidates would be considered.

##### Other options:

- Develop an Equity Fund, funded by all cannabis businesses, to be administered by the City to fund programs and services designed to advance equity in Berkeley. Medical cannabis retailers would be exempt from this requirement since they are already required to donate the equivalent of 2% of all product sold to low-income patients.





Commission on Labor

## ACTION CALENDAR

February 19, 2019

*(Continued from January 29, 2019)*

To: Honorable Mayor and Members of the City Council

From: Commission on Labor

Submitted by: Libby Sayre, Chairperson, Commission on Labor

Subject: Council Referral-Proposed Amendments to Berkeley's Living Wage Ordinance: Berkeley Municipal Code Chapter 13.27

### RECOMMENDATION

Adopt first reading of an Ordinance proposing revisions to Berkeley's Living Wage Ordinance, BMC Chapter 13.27, revising Sections .020, .050, .070, .080 and .090 and adding Sections .045, .110, .120, .130, and .140 to make the application and administration of the LWO consistent with the MWO where appropriate, and modifying Sections .040 and .050 to 1) limit waivers of the LWO for a maximum of one year, and 2) clarifying when employees covered by the LWO are entitled to receive the cash value of the health care benefit.

### FISCAL IMPACTS OF RECOMMENDATION

None.

### CURRENT SITUATION AND ITS EFFECTS

At its September 16, 2014 City Council meeting, the Council referred to the Commission on Labor policy changes to the city's Living Wage Ordinance. The referral specifically directed the Commission to consider:

1. Amending Section 13.27.050.A to allow an employee the right to opt out of an employer provided medical benefit plan and still receive the higher compensation amount (currently \$15.99 per hour) as cash in lieu if they provide proof of alternative coverage under a medical benefit plan; and
2. Amending the posting requirements, retaliation, complaint process, and enforcement sections to conform to the language in the recently adopted Minimum Wage Ordinance.

Throughout 2015 and 2016, the Commission's focus prioritized policy changes to the city's Minimum Wage Ordinance (MWO) and Paid Sick Leave Ordinance (PSLO) and the Commission did not have any significant discussion or action on the Living Wage Ordinance referral.

After much discussion and consideration in 2017, the Commission approved two separate motions on two separate dates. On January 17, 2018 the Commission approved the following:

M/S/C (Wilkinson/Fillingim) to adopt revisions to the Living Wage Ordinance with all changes as discussed [and enumerated below] except for section 13.27.050A regarding compensation required to be paid on specified employees, which includes the employee health care opt-out provision. This will be discussed and decided at March meeting. (Ayes: J. Fillingim, S. Frankel, L. Sayre, W. Bloom, M. Wilkinson, N. McClintick, Noes: None. Absent: P. Castelli (departed @ 8:15pm). Recused: K. Schriener.

**Summary of the Commission's Recommended LWO Revisions from January 2018:**

- 1) Add a definition of "Service Charges" Section 13.27.020
- 2) Amend the language related to "Waivers" Section 13.27.040
- 3) Add a Section related to Notice, Posting and Payroll Records, adapted from the MWO, Section 13.27.045
- 4) Clean up the language in Section 13.27.050 to make the Ordinance consistent with the Minimum Wage Ordinance by:
  - a. deleting references in Section A to specific dollar amounts and replacing them with compliance with rates that are updated annually; and
  - b. adding language regarding rules for collection and distribution of Service Charges in Section E.
- 5) Remove an exemption for "on-call" workers, Section 13.27.070
- 6) Revise "Retaliation" language to be consistent with MWO, Section 13.27.080
- 7) Revise "Complaints to the City" language to be consistent with MWO, Section 13.27.090
- 8) Add "Relationship to other requirements" language, Section 13.27.110
- 9) Add "Application to Welfare-to-work programs", Section 13.27.120
- 10) Add "Fees" language, Section 13.27.130
- 11) Add "Severability" Language, Section 13.27.140

This action intended to make the provisions and application of the LWO more comprehensive and consistent with other labor standards programs, such as the MWO and the PSLO. This motion did not include any action on the Council referral to consider a policy recommendation related to an employee having the option to select the cash value of the medical benefit requirement. The motion did, however, include one significant policy proposal related to waivers of the LWO. The Commission recommended that the LWO be revised to allow only allow temporary waivers of the LWO requirement for up to one year.

At the March 21, 2018 and July 18, 2018 Commission meetings, the Commission discussed allowing employees to have the option to take the cash value of the medical benefit offered by an employer. At the July 18, 2018 meeting, the Commission opted not to recommend changes related to medical benefits due to concerns regarding potentially increasing the number of Employees that would seek the cash benefit and not maintain medical coverage and also due to the complexity of verification and enforcement of this provision. At their July 18, 2018 meeting, the Commission approved the following:

M/S/C (Fillingim/Castelli) to keep language related to the medical benefit as is and not change the Ordinance to allow Employees the option to take the cash value of the medical benefit. Ayes: Castelli, Frankel, Bloom, Fillingim, Schriener, Sayre. Noes: None Absent: McClintick. Leave of Absence: Jones, Wilkinson. Recused: K. Schriener.

As mentioned above, all of the proposed changes to the LWO, with exception of limiting the duration of an LWO waiver to one year, aim to make the language of the LWO more consistent with the provisions of the MWO so that staff can bring more efficiency and consistency to the guidelines and administration of the LWO as part of the labor standards and enforcement program.

#### BACKGROUND

The City of Berkeley's LWO was enacted June 21, 2000. The purpose of the ordinance is to ensure businesses in a contractual relationship with the City pay their employees a wage that can support a family at or above the poverty level. The Living Wage Ordinance requires that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors. HHCS staff manage the LWO as part of the city's labor standards and enforcement programs.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report

#### RATIONALE FOR RECOMMENDATION

The proposed changes will streamline investigations and enforcement and make administration more efficient and effective by bringing consistency with other city labor standards and ordinances.

#### ALTERNATIVE ACTIONS CONSIDERED

Make no changes to the LWO or adopt only some of the Commission's recommendations.

#### CITY MANAGER

See City Manager companion report.

CONTACT PERSON

Delfina Geiken, Commission Secretary, HHCS, 510-981-7551

Nathan Dahl, Community Development Project Coordinator, HHCS 510-981-5405

Attachments:

1: Ordinance – Track changes

2: Ordinance – Without track changes

3: September 16, 2014 City Council Referral to Commission on Labor



ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.27; PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS

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

Section 1. That Berkeley Municipal Code Chapter 13.27 is amended to read as follows:

PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS

Sections:

- 13.27.010 Title and purpose.
- 13.27.020 Definitions.
- 13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.
- 13.27.040 Waivers.
- 13.27.045 Notice, posting, and payroll records.
- 13.27.050 Compensation required to be paid to specified employees.
- 13.27.060 Required contract provision.
- 13.27.070 Exemptions.
- 13.27.080 Retaliation and discrimination prohibited.
- 13.27.090 Employee complaints to City.
- 13.27.100 Private rights of action.
- 13.27.110 Relationship to other requirements.
- 13.27.120 Application of Living Wage to Welfare-to-Work programs.
- 13.27.130 Fees.
- 13.27.140 Severability.

**Section 13.27.010 Title and purpose.**

This ordinance shall be known as the "Berkeley Living Wage Ordinance." The purpose of this ordinance is to protect the public health, safety and welfare. It does this by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors.

**Section 13.27.020 Definitions.**

The following definitions shall apply throughout this ordinance:

A. "City financial aid recipients" means all persons or entities that receive from the City direct assistance in the form of grants, loans, or loan guarantees, in-kind services, waivers of City fees, real property or other valuable consideration in an amount of more than \$100,000 in any 12-month period. This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations, ordinances, or charter provisions.

B. "Marina zone" shall mean all land held in trust by the City of Berkeley pursuant to the Public Trust Tidelands grant from the State of California to the City of Berkeley, Stats. 1962, Ch. 55; specifically, Aquatic Park and all land, including submerged land, which is west of Marina Boulevard as it is presently constructed and as if it were extended, in both northerly and southerly directions, to the Berkeley city limits and all land north of Spinnaker Way as it is presently constructed and as if it were extended to the shoreline, to the east, and to the Berkeley city limits, to the west.

C. "Non-profit" shall mean a non-profit organization described in Section 501c(3) of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c)(3) of that code, or any non-profit educational organization qualified under Section 23701(d) of the Revenue and Taxation Code.

G.D. "Service Charge" means all separately-designated amounts collected by an Employer from customers that are described in such a way that customers might reasonably believe that the amounts are for Employees or services rendered by Employees, including but not limited to those charges designated on receipts under the term "service charge," "automatic gratuity charge," "delivery charge," or "portage charge."

**Section 13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.**

The persons and entities described below shall comply with the minimum compensation standards established by this chapter to the employees specified herein:

A. For-profit vendors of services, which employ six or more employees and receive contract(s) for \$25,000 or more in a 12-month period. Compliance shall be required during the term of said contract(s) as to any employees who spend 25% or more of their compensated time engaged in work directly related to the said contract(s).

B. Non-profit vendors of services, which employ six or more employees and receive contracts of \$100,000 or more in a 12-month period. Compliance shall be required during the term of said contract as to any employees who spend 50% or more of their compensated time engaged in work directly related to a City contract.

C. Lessees of public property, licensees, concessionaires, and franchisees, which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required during the lease term with regard to any employees who spend 25% or more of their compensated time on the leased property, or engaged in work directly related to the license, concession or franchise.

D. City financial aid recipients, which receive more than \$100,000 in loans, or other cash and/or non-cash assistance in any 12-month period. Compliance shall be required for a period of five years following receipt of the aid with regard to employees who spend 25% or more of their compensated time engaged in work directly related to the purpose for which the City provided the aid.

E. Entities within the boundaries of the Marina Zone which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required with regard to any employees who spend 25% or more of their compensated time in the Marina Zone.

F. Subcontractors and sublessees of any of the entities, persons, or recipients

described in subparagraphs A through D. Compliance shall be required during the term of the contract between the City and the prime contractor, lessee, licensee, concessionaire, franchisee or City financial aid recipient as to any employees who spend 25% or more of their compensated time engaged in work directly related to the City contract, lease, license, concession, franchise or agreement providing financial aid.

**Section 13.27.040 Waivers.**

The City Council may temporarily waive the requirements of this chapter upon a finding and determination that such a waiver is in the best interests of the City. Such waivers may not cover a period longer than 365 days, and may not be renewed or reissued to the same party in order to cover additional time. All waivers previously issued by the City shall expire 365 days after this Chapter becomes effective.

**13.27.045 Notice, posting, and payroll records.**

A. By May 1 of each year, the Department shall publish and make available to Employers a bulletin announcing the adjusted Living Wage rate, which shall take effect on July 1. In conjunction with this bulletin, the Department shall by May 1 of each year publish and make available to Employers, in all languages spoken by more than five percent of the work force in the City, a notice suitable for posting by Employers in the workplace informing Employees of the current Living Wage rate and of their rights under this Chapter.

B. Every Employer subject to the Living Wage Ordinance shall post in a conspicuous place at any workplace or job site in the City where any Employee works, the notice published each year by the Department informing Employees of the current Living Wage rate and of their rights under this Chapter, including healthcare and Paid Sick Leave. Every Employer shall post such notices in any language spoken by at least five percent of the Employees at the work-place or job site. Every Employer shall also provide each Employee at the time of hire with the Employer's name, address, and telephone number in writing.

C. Employers shall retain payroll records pertaining to Employees for a period of four years, and shall allow the City access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. Where an Employer does not maintain or retain adequate records documenting wages paid or does not allow the City reasonable access to such records, the Employee's account of how much he or she was paid shall be presumed to be accurate, absent clear and convincing evidence otherwise. Such records shall include the amount of hours worked, wages paid, and shall state, in unambiguous terms, the manner in which the Employer made their required healthcare expenditures for each Employee.

D. Every Employer shall post a notice in a conspicuous place at any workplace or job site in the City where any Employee works explaining how Service Charges are distributed among Employees. Employers shall report the amount of money collected as Service Charges to Employees no later than the end of the pay period when they were collected. In order to ensure that the distribution of Service Charges is lawful, Employers shall, upon request by an Employee, make available their records of sales and associated Service Charges in a given pay period.

### **Section 13.27.050 Compensation required to be paid to specified employees.**

Except as provided in Section 13.27.060, an employer subject to this chapter pursuant to Section shall provide to its covered employees the following minimum compensation terms for the duration of the covered period:

~~A. Wages. If the employer pays at least \$1.62 per hour per employee towards an employee medical benefits plan, which allows the employees to receive employer-compensated care from a licensed physician, the employer shall pay employees an hourly wage of not less than \$9.75. If the employer does not provide the employees with such a medical benefit plan, the employer shall pay employees an hourly wage of not less than \$11.37. The hourly wage rate required by this section will be adjusted automatically or modified annually pursuant to subsection D.~~

A. Wages. All employers subject to this chapter shall pay the required Living Wage rate. In addition, all subject Employers shall offer a medical benefit plan equal to or higher than the benefit rate requirement. If the employer does not offer the employees with such a medical benefit plan, the employer shall pay employees an hourly wage of not less than the Living Wage rate plus the value of the medical benefit rate. The hourly wage rate and health care expenditure rate required by this section will be adjusted automatically or modified annually pursuant to subsection D. The new rates shall be announced by May 1 of each year and shall become effective on June 30 of that year.

B. Time-off. Employees shall be entitled to at least 22 days off per year for sick leave, vacation, or personal necessity. Twelve of the required days off shall be compensated at the same rate as regular compensation for a normal working day. Ten of the required 22 days may be uncompensated days off. Employees who work part-time shall be entitled to accrue compensated days off in increments proportional to that accrued by full-time employees. Employees shall be eligible to use accrued days off after the first six months of satisfactory employment or consistent with employer policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

C. Additional compensation permissible. Nothing in this chapter shall be construed to limit an employer's discretion to provide greater wages or time-off to its employees.

D. The wage rates required in subsection A shall be adjusted annually, effective June 30, to reflect increases during the preceding year in the Consumer Price Index for all urban consumers in the San Francisco-Oakland area, as published in April of each year by the U.S. Department of Labor, Bureau of Labor Statistics.

~~E. Notification of rights under chapter. Employers subject to this chapter pursuant to Section 13.27.030, shall give written notification to each current and new employee of his or her potential rights under this chapter in a form provided by the City. Such notice shall also be posted prominently in areas where it will be seen by all employees. (Ord. 6765-NS § 1, 2003; Ord. 6583-NS § 2, 2000; Ord. 6548-NS § 2, 2000)~~

E. Distribution of Service Charges. Service Charges shall be used by the Employer to directly benefit the Employees. No part of these charges may be paid to the Employer. This section does not apply to any tip, gratuity, money, or part of any tip, gratuity, or money that has been voluntarily paid or given to or left for an Employee by customers over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to the customer. No part of this chapter shall be construed to limit or prohibit the amount of any tip or gratuity left for an Employee. No Employer or agent

thereof shall deduct any amount from wages due to an Employee on account of a Service Charge or gratuity, or require an Employee to credit the amount, or any part thereof, of a Service Charge or gratuity against and as a part of the wages due to the Employee from the Employer or reduce required benefits of an Employee. Each Employer shall define the chain of service and associated job duties entitled to a portion of the distributed service charges and notify the Employees of the distribution formula as well as provide in writing to each employee its plan of distribution of service charges to employees. This Section shall not be applied to any events for which the employer already had a contract in place at the time the revised ordinance is adopted.

### **Section 13.27.060 Required contract provision.**

Every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid with an employer described in Section 13.27.030 or amendment thereto shall contain provisions requiring it to comply with the requirements of this chapter as they exist on the date when the employer entered its agreement with the City or when such agreement is amended. Such contract provisions shall address the employer's duty to promptly provide to the City documents and information verifying its compliance with the requirements of this chapter, and sanctions for non-compliance.

### **Section 13.27.070 Exemptions.**

The requirements of this chapter shall not be applicable to the following employees:

A. An employee participating in a temporary job-training program in which a significant component of the employee's training consists of acquiring specialized job readiness knowledge, abilities or skills (e.g., the importance of proper work attire, punctuality and workplace demeanor.)

B. An employee who is under 18 years of age, employed by a non-profit entity for after school or summer employment or as a trainee for a period not longer than 120 days.

C. An employee working for the employer for a period not exceeding six months in aggregate during any 12-month period.

D. Volunteers.

E. Employees of contractors on City public works projects subject to the requirements of Division 2, Part 7, of the California Labor Code, when said code requires compensation greater than that required by this chapter.

~~F. Employees who are standing by or on-call according to the criteria established by the Fair Labor Standards Act, 29 U.S.C. Section 201. This exemption shall apply only during the time when the employee is actually standing by or on-call.~~

~~G.F.~~ An employee for whom application of the requirements of this chapter is prohibited by state or federal law.

~~H.G.~~ An employee subject to a bona fide collective bargaining agreement where the waiver of the provisions of this chapter are set forth in clear and unambiguous terms in such an agreement.

### **Section 13.27.080 Retaliation and discrimination prohibited.**

~~A. No employer shall retaliate or discriminate against an employee in his or her terms and conditions of employment by reason of the person's status as an employee.~~



~~protected by the requirements of this chapter.~~

~~B. No employer shall retaliate or discriminate against a person in his or her terms and conditions of employment by reason of the person reporting a violation of this chapter or for prosecuting an action for enforcement of this chapter. (Ord. 6548-NS § 2, 2000) It shall be unlawful for an Employer or any other party to discriminate in any manner or take any adverse action (including action relating to any term, condition or privilege of employment) against any person in retaliation for exercising rights protected under this Chapter. Rights protected under this Chapter include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this Chapter; and the right to inform any person of his or her potential rights under this Chapter or otherwise educate any person about this Chapter or to assist him or her in asserting such rights. Protections of this Chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this Chapter. Taking adverse action against a person within ninety (90) days of the person's exercise of rights protected under this Chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.~~

### **Section 13.27.090 Employee complaints to City.**

~~A. An employee who alleges violation of any provision of the requirements of this chapter may report such acts to the City. The City Manager may establish a procedure for receiving and investigating such complaints and take appropriate enforcement action.~~

~~A. Guidelines. The Department shall be authorized to coordinate implementation and enforcement of this Chapter and may promulgate appropriate guidelines or rules for such purposes. The Department shall seek out partnerships with community-based organizations and collaborate with the Labor Commission to facilitate effective implementation and enforcement of this Chapter. Any guidelines or rules promulgated by the Department shall have the force and effect of law and may be relied on by Employers, Employees and other parties to determine their rights and responsibilities under this Chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this Chapter, including supplementary procedures for helping to inform Employees of their rights under this Chapter, for monitoring Employer compliance with this Chapter, and for providing administrative hearings to determine whether an Employer or other person has violated the requirements of this Chapter.~~

~~B. Reporting Violations. An Employee or any other person may report to the Department any suspected violation of this Chapter. The Department shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Employee or person reporting the violation. Provided, however, that with the authorization of such person, the Department may disclose his or her name and identifying information as necessary to enforce this Chapter or other Employee protection laws. Any complaints received shall be treated as confidential matters, to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code, Sections 6254 and 6255. In order to further encourage reporting by~~

Employees, if the Department notifies an Employer that the Department is investigating a complaint, the Department shall require the Employer to post or otherwise notify its Employees that the Department is conducting an investigation, using a form provided by the Department.

C. Investigation. The Department shall be responsible for investigating any possible violations of this Chapter by an Employer or other person. The Department shall have the authority to inspect workplaces, interview persons and request the City Attorney to subpoena books, papers, records, or other items relevant to the enforcement of this Chapter.

D. Informal Resolution. The Department shall make every effort to resolve complaints informally, in a timely manner, and shall have a policy that the Department shall take no more than six months to resolve any matter, before initiating an enforcement action. The failure of the Department to meet these timelines within six months shall not be grounds for closure or dismissal of the complaint.

### **Section 13.27.100 Private rights of action.**

A. An employee claiming violation of this chapter may bring an action in the municipal court or superior court of the State of California, as appropriate, against an employer and obtain the following remedies:

1. Back pay for each day during which the employer failed to pay the compensation required by this chapter.

2. Reinstatement, compensatory damages and punitive damages.

3. Reasonable attorney's fees and costs.

B. Notwithstanding any provision of this chapter or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

C. No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

D. Nothing in this chapter shall be interpreted to authorize a right of action against the City.

### **13.27.110 Relationship to other requirements.**

This Chapter provides for payment of a local Living Wage and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends other protections.

### **13.27.120 Application of Living Wage to Welfare-to-Work programs.**

The Living Wage established under this Chapter shall apply to the Welfare-to-Work programs under which persons must perform work in exchange for receipt of benefits. Participants in Welfare-to-Work Programs within the City of Berkeley shall not, during a given benefits period, be required to work more than a number of hours equal to the value of all cash benefits received during that period, divided by the Living Wage.

**13.27.130 Fees.**

Nothing herein shall preclude the City Council from imposing a cost recovery fee on all Employers to pay the cost of administering this Chapter.

**13.27.140 Severability.**

If any part or provision of this ordinance, or the application of this ordinance to any person or circumstance, is held invalid, the remainder of this ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 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.



ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.27; PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS

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

Section 1. That Berkeley Municipal Code Chapter 13.27 is amended to read as follows:  
PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS

Sections:

- 13.27.010 Title and purpose.
- 13.27.020 Definitions.
- 13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.
- 13.27.040 Waivers.
- 13.27.045 Notice, posting, and payroll records.
- 13.27.050 Compensation required to be paid to specified employees.
- 13.27.060 Required contract provision.
- 13.27.070 Exemptions.
- 13.27.080 Retaliation and discrimination prohibited.
- 13.27.090 Employee complaints to City.
- 13.27.100 Private rights of action.
- 13.27.110 Relationship to other requirements.
- 13.27.120 Application of Living Wage to Welfare-to-Work programs.
- 13.27.130 Fees.
- 13.27.140 Severability.

**Section 13.27.010 Title and purpose.**

This ordinance shall be known as the "Berkeley Living Wage Ordinance." The purpose of this ordinance is to protect the public health, safety and welfare. It does this by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors.

**Section 13.27.020 Definitions.**

The following definitions shall apply throughout this ordinance:

A. "City financial aid recipients" means all persons or entities that receive from the City direct assistance in the form of grants, loans, or loan guarantees, in-kind services, waivers of City fees, real property or other valuable consideration in an amount of more than \$100,000 in any 12-month period. This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations, ordinances, or charter provisions.

B. "Marina zone" shall mean all land held in trust by the City of Berkeley pursuant to the Public Trust Tidelands grant from the State of California to the City of Berkeley,

Stats. 1962, Ch. 55; specifically, Aquatic Park and all land, including submerged land, which is west of Marina Boulevard as it is presently constructed and as if it were extended, in both northerly and southerly directions, to the Berkeley city limits and all land north of Spinnaker Way as it is presently constructed and as if it were extended to the shoreline, to the east, and to the Berkeley city limits, to the west.

C. "Non-profit" shall mean a non-profit organization described in Section 501c(3) of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c)(3) of that code, or any non-profit educational organization qualified under Section 23701(d) of the Revenue and Taxation Code.

D. "Service Charge" means all separately-designated amounts collected by an Employer from customers that are described in such a way that customers might reasonably believe that the amounts are for Employees or services rendered by Employees, including but not limited to those charges designated on receipts under the term "service charge," "automatic gratuity charge," "delivery charge," or "portage charge."

**Section 13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.**

The persons and entities described below shall comply with the minimum compensation standards established by this chapter to the employees specified herein:

A. For-profit vendors of services, which employ six or more employees and receive contract(s) for \$25,000 or more in a 12-month period. Compliance shall be required during the term of said contract(s) as to any employees who spend 25% or more of their compensated time engaged in work directly related to the said contract(s).

B. Non-profit vendors of services, which employ six or more employees and receive contracts of \$100,000 or more in a 12-month period. Compliance shall be required during the term of said contract as to any employees who spend 50% or more of their compensated time engaged in work directly related to a City contract.

C. Lessees of public property, licensees, concessionaires, and franchisees, which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required during the lease term with regard to any employees who spend 25% or more of their compensated time on the leased property, or engaged in work directly related to the license, concession or franchise.

D. City financial aid recipients, which receive more than \$100,000 in loans, or other cash and/or non-cash assistance in any 12-month period. Compliance shall be required for a period of five years following receipt of the aid with regard to employees who spend 25% or more of their compensated time engaged in work directly related to the purpose for which the City provided the aid.

E. Entities within the boundaries of the Marina Zone which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required with regard to any employees who spend 25% or more of their compensated time in the Marina Zone.

F. Subcontractors and sublessees of any of the entities, persons, or recipients described in subparagraphs A through D. Compliance shall be required during the term of the contract between the City and the prime contractor, lessee, licensee,

concessionaire, franchisee or City financial aid recipient as to any employees who spend 25% or more of their compensated time engaged in work directly related to the City contract, lease, license, concession, franchise or agreement providing financial aid.

**Section 13.27.040 Waivers.**

The City Council may temporarily waive the requirements of this chapter upon a finding and determination that such a waiver is in the best interests of the City. Such waivers may not cover a period longer than 365 days, and may not be renewed or reissued to the same party in order to cover additional time. All waivers previously issued by the City shall expire 365 days after this Chapter becomes effective.

**13.27.045 Notice, posting, and payroll records.**

A. By May 1 of each year, the Department shall publish and make available to Employers a bulletin announcing the adjusted Living Wage rate, which shall take effect on July 1. In conjunction with this bulletin, the Department shall by May 1 of each year publish and make available to Employers, in all languages spoken by more than five percent of the work force in the City, a notice suitable for posting by Employers in the workplace informing Employees of the current Living Wage rate and of their rights under this Chapter.

B. Every Employer subject to the Living Wage Ordinance shall post in a conspicuous place at any workplace or job site in the City where any Employee works, the notice published each year by the Department informing Employees of the current Living Wage rate and of their rights under this Chapter, including healthcare and Paid Sick Leave. Every Employer shall post such notices in any language spoken by at least five percent of the Employees at the work-place or job site. Every Employer shall also provide each Employee at the time of hire with the Employer's name, address, and telephone number in writing.

C. Employers shall retain payroll records pertaining to Employees for a period of four years, and shall allow the City access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. Where an Employer does not maintain or retain adequate records documenting wages paid or does not allow the City reasonable access to such records, the Employee's account of how much he or she was paid shall be presumed to be accurate, absent clear and convincing evidence otherwise. Such records shall include the amount of hours worked, wages paid, and shall state, in unambiguous terms, the manner in which the Employer made their required healthcare expenditures for each Employee.

D. Every Employer shall post a notice in a conspicuous place at any workplace or job site in the City where any Employee works explaining how Service Charges are distributed among Employees. Employers shall report the amount of money collected as Service Charges to Employees no later than the end of the pay period when they were collected. In order to ensure that the distribution of Service Charges is lawful, Employers shall, upon request by an Employee, make available their records of sales and associated Service Charges in a given pay period.

**Section 13.27.050 Compensation required to be paid to specified employees.**

Except as provided in Section 13.27.060, an employer subject to this chapter

pursuant to Section shall provide to its covered employees the following minimum compensation terms for the duration of the covered period:

A. Wages. All employers subject to this chapter shall pay the required Living Wage rate. In addition, all subject Employers shall offer a medical benefit plan equal to or higher than the benefit rate requirement. If the employer does not offer the employees with such a medical benefit plan, the employer shall pay employees an hourly wage of not less than the Living Wage rate plus the value of the medical benefit rate. The hourly wage rate and health care expenditure rate required by this section will be adjusted automatically or modified annually pursuant to subsection D. The new rates shall be announced by May 1 of each year and shall become effective on June 30 of that year.

B. Time-off. Employees shall be entitled to at least 22 days off per year for sick leave, vacation, or personal necessity. Twelve of the required days off shall be compensated at the same rate as regular compensation for a normal working day. Ten of the required 22 days may be uncompensated days off. Employees who work part-time shall be entitled to accrue compensated days off in increments proportional to that accrued by full-time employees. Employees shall be eligible to use accrued days off after the first six months of satisfactory employment or consistent with employer policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

C. Additional compensation permissible. Nothing in this chapter shall be construed to limit an employer's discretion to provide greater wages or time-off to its employees.

D. The wage rates required in subsection A shall be adjusted annually, effective June 30, to reflect increases during the preceding year in the Consumer Price Index for all urban consumers in the San Francisco-Oakland area, as published in April of each year by the U.S. Department of Labor, Bureau of Labor Statistics.

E. Distribution of Service Charges. Service Charges shall be used by the Employer to directly benefit the Employees. No part of these charges may be paid to the Employer. This section does not apply to any tip, gratuity, money, or part of any tip, gratuity, or money that has been voluntarily paid or given to or left for an Employee by customers over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to the customer. No part of this chapter shall be construed to limit or prohibit the amount of any tip or gratuity left for an Employee. No Employer or agent thereof shall deduct any amount from wages due to an Employee on account of a Service Charge or gratuity, or require an Employee to credit the amount, or any part thereof, of a Service Charge or gratuity against and as a part of the wages due to the Employee from the Employer or reduce required benefits of an Employee. Each Employer shall define the chain of service and associated job duties entitled to a portion of the distributed service charges and notify the Employees of the distribution formula as well as provide in writing to each employee its plan of distribution of service charges to employees. This Section shall not be applied to any events for which the employer already had a contract in place at the time the revised ordinance is adopted.

### **Section 13.27.060 Required contract provision.**

Every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid with an employer described in Section 13.27.030 or amendment thereto shall contain provisions requiring it to comply with the requirements

of this chapter as they exist on the date when the employer entered its agreement with the City or when such agreement is amended. Such contract provisions shall address the employer's duty to promptly provide to the City documents and information verifying its compliance with the requirements of this chapter, and sanctions for non-compliance.

**Section 13.27.070 Exemptions.**

The requirements of this chapter shall not be applicable to the following employees:

A. An employee participating in a temporary job-training program in which a significant component of the employee's training consists of acquiring specialized job readiness knowledge, abilities or skills (e.g., the importance of proper work attire, punctuality and workplace demeanor.)

B. An employee who is under 18 years of age, employed by a non-profit entity for after school or summer employment or as a trainee for a period not longer than 120 days.

C. An employee working for the employer for a period not exceeding six months in aggregate during any 12-month period.

D. Volunteers.

E. Employees of contractors on City public works projects subject to the requirements of Division 2, Part 7, of the California Labor Code, when said code requires compensation greater than that required by this chapter.

F. An employee for whom application of the requirements of this chapter is prohibited by state or federal law.

G. An employee subject to a bona fide collective bargaining agreement where the waiver of the provisions of this chapter are set forth in clear and unambiguous terms in such an agreement.

**Section 13.27.080 Retaliation and discrimination prohibited.**

It shall be unlawful for an Employer or any other party to discriminate in any manner or take any adverse action (including action relating to any term, condition or privilege of employment) against any person in retaliation for exercising rights protected under this Chapter. Rights protected under this Chapter include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this Chapter; and the right to inform any person of his or her potential rights under this Chapter or otherwise educate any person about this Chapter or to assist him or her in asserting such rights. Protections of this Chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this Chapter. Taking adverse action against a person within ninety (90) days of the person's exercise of rights protected under this Chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

**Section 13.27.090 Employee complaints to City.**

A. Guidelines. The Department shall be authorized to coordinate implementation and enforcement of this Chapter and may promulgate appropriate guidelines or rules for such purposes. The Department shall seek out partnerships with community-based organizations and collaborate with the Labor Commission to facilitate effective implementation and enforcement of this Chapter. Any guidelines or rules promulgated

by the Department shall have the force and effect of law and may be relied on by Employers, Employees and other parties to determine their rights and responsibilities under this Chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this Chapter, including supplementary procedures for helping to inform Employees of their rights under this Chapter, for monitoring Employer compliance with this Chapter, and for providing administrative hearings to determine whether an Employer or other person has violated the requirements of this Chapter.

B. Reporting Violations. An Employee or any other person may report to the Department any suspected violation of this Chapter. The Department shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Employee or person reporting the violation. Provided, however, that with the authorization of such person, the Department may disclose his or her name and identifying information as necessary to enforce this Chapter or other Employee protection laws. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code, Sections 6254 and 6255. In order to further encourage reporting by Employees, if the Department notifies an Employer that the Department is investigating a complaint, the Department shall require the Employer to post or otherwise notify its Employees that the Department is conducting an investigation, using a form provided by the Department.

C. Investigation. The Department shall be responsible for investigating any possible violations of this Chapter by an Employer or other person. The Department shall have the authority to inspect workplaces, interview persons and request the City Attorney to subpoena books, papers, records, or other items relevant to the enforcement of this Chapter.

D. Informal Resolution. The Department shall make every effort to resolve complaints informally, in a timely manner, and shall have a policy that the Department shall take no more than six months to resolve any matter, before initiating an enforcement action. The failure of the Department to meet these timelines within six months shall not be grounds for closure or dismissal of the complaint.

### **Section 13.27.100 Private rights of action.**

A. An employee claiming violation of this chapter may bring an action in the municipal court or superior court of the State of California, as appropriate, against an employer and obtain the following remedies:

1. Back pay for each day during which the employer failed to pay the compensation required by this chapter.
2. Reinstatement, compensatory damages and punitive damages.
3. Reasonable attorney's fees and costs.

B. Notwithstanding any provision of this chapter or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

C. No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This chapter shall not be construed to limit an employee's right to bring a common law cause

of action for wrongful termination.

D. Nothing in this chapter shall be interpreted to authorize a right of action against the City.

**13.27.110 Relationship to other requirements.**

This Chapter provides for payment of a local Living Wage and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends other protections.

**13.27.120 Application of Living Wage to Welfare-to-Work programs.**

The Living Wage established under this Chapter shall apply to the Welfare-to-Work programs under which persons must perform work in exchange for receipt of benefits. Participants in Welfare-to-Work Programs within the City of Berkeley shall not, during a given benefits period, be required to work more than a number of hours equal to the value of all cash benefits received during that period, divided by the Living Wage.

**13.27.130 Fees.**

Nothing herein shall preclude the City Council from imposing a cost recovery fee on all Employers to pay the cost of administering this Chapter.

**13.27.140 Severability.**

If any part or provision of this ordinance, or the application of this ordinance to any person or circumstance, is held invalid, the remainder of this ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 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.

CONSENT CALENDAR  
September 16, 2014

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguin

Subject: Referral to Commission on Labor: Amendments to Living Wage Ordinance (Berkeley Municipal Code Chapter 13.27)

**RECOMMENDATION:**

Refer to the Commission on Labor the following suggested amendments to the Living Wage Ordinance, Berkeley Municipal Code Chapter 13.27:

1. Amend Section 13.27.050.A to allow an employee the right to opt out of an employer provided medical benefit plan and still receive the higher compensation amount (currently \$15.99 per hour) as cash in lieu if they provide proof of alternative coverage under a medical benefit plan.
2. Amend the posting requirements, retaliation, complaint process, and enforcement sections to conform to the language in the recently adopted Minimum Wage Ordinance.

**BACKGROUND:**

The Berkeley City Council adopted a Living Wage Law in 2000 to require for-profit and non-profit businesses (at a certain threshold), that are under a City contract, to pay their employees a living wage and provide health insurance and paid time off. The current Living Wage rate is **\$13.71 per hour plus a medical benefit equivalent to at least \$2.28 per hour**. If the employer does not provide the employee at least \$2.28 per hour toward an employee medical benefits plan, the employer shall pay an hourly wage of not less than **\$15.99**. If an employer pays for health coverage and an employee elects not to receive coverage, the employer is permitted to pay the lower hourly rate.

Two recent complaints filed by former and current employees of LAZ Parking, a city contractor who manages the City's public parking garages, have alleged that the employer failed to pay the full rate of compensation and denied breaks and paid days off.

The complaint made by Mr. Julio Castro alleging that LAZ Parking was required to provide Mr. Castro with the higher compensation amount because it did not provide actual medical coverage has raised issues regarding the loopholes in the current Living Wage Ordinance. Mr. Castro opted to not take the employer provided medical insurance plan, because he paid for another plan that was less costly. Nevertheless, despite the fact that the employer never directly provided health insurance coverage, they were able to pay Mr. Castro the lower wage, rather than include the differential for lack of



health coverage. Apparently, under city law all an employer has to do is offer health coverage but not directly provide it in order to pay the lower wage amount.

Nowhere in the current Living Wage Ordinance does it state that the employer would pay the whole amount of the medical insurance plan. The employee would still pay a premium which depending on the cost of the insurance may be significant, and as result decrease the amount of take home pay an employee would be entitled to. The current language of the law provides incentives for employers to offer more expensive insurance plans with higher employee premiums in order to avoid paying a higher wage.

The law was clearly written with the goal of extending benefits to employees, not taking them away. Similar to city employees, including City Councilmembers, contract employees subject to the Living Wage Ordinance, should be allowed to pay for alternative insurance and receive cash in lieu equivalent to the higher wage amount if they provide proof of insurance coverage. In addition, the City should explore changing the law to say that only if an employee is covered under an insurance plan can the employer pay the lower wage amount. These changes would close the existing loophole and ensure that contract employees are afforded the same rights as our city employees.

In addition, the recently adopted Minimum Wage Ordinance included stronger language on posting of notices, notification of rights, making complaints, retaliation and enforcement. Since the Living Wage Ordinance was adopted in 2000 before the Minimum Wage Law, and since it affectively accomplishes the same goals - fair wages for employees - the City should amend the Living Wage law to conform to the notice, complaint, retaliation and enforcement requirements of the new Minimum Wage Ordinance.

One of the issues alleged is the lack of proper notification of employees covered under the Living Wage Ordinance. The Minimum Wage Ordinance standards are stronger and require better notification and enforcement. Given that the City will be creating an enforcement position to implement both the Minimum Wage and Living Wage Ordinance, there should be consistency of the requirements for ease of enforcement.

Also the notification requirements must be strengthened. There is no requirement for annual notification, so employees may not necessarily know what the wage amount has increased due to inflation. There is also no requirement that the notice provided to workers and required to be posted, has to include information on how to file a complaint and contact information on where to make a complaint. Providing better information on the wages, benefits, complaint process, and protection against retaliation will ensure that workers know their rights and can help prevent potential violations in the future.

#### FINANCIAL IMPLICATIONS:

Staff time involved in presenting the City Council's referral to the Commission on Labor, analyzing the proposed changes, and proposing recommendations to the Commission and City Council.

**CONTACT PERSON:**

Jesse Arreguin, Councilmember, District 4      981-7140

**Attachments:**

1. Current Living Wage Ordinance (B.M.C. Chapter 13.27) with sections highlighted to be changed
2. July 9, 2014 East Bay Express Article "Berkeley Sides with Living Wage Law Violators"

## Chapter 13.27 PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS

### Sections:

- [13.27.010](#) Title and purpose.
- [13.27.020](#) Definitions.
- [13.27.030](#) Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.
- [13.27.040](#) Waivers.
- [13.27.050](#) Compensation required to be paid to specified employees.
- [13.27.060](#) Required contract provision.
- [13.27.070](#) Exemptions.
- [13.27.080](#) Retaliation and discrimination prohibited.
- [13.27.090](#) Employee complaints to City.
- [13.27.100](#) Private rights of action.

### **13.27.010 Title and purpose.**

This ordinance shall be known as the "Berkeley Living Wage Ordinance." The purpose of this ordinance is to protect the public health, safety and welfare. It does this by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors. (Ord. 6548-NS § 2, 2000)

### **13.27.020 Definitions.**

The following definitions shall apply throughout this ordinance:

- A. "City financial aid recipients" means all persons or entities that receive from the City direct assistance in the form of grants, loans, or loan guarantees, in-kind services, waivers of City fees, real property or other valuable consideration in an amount of more than \$100,000 in any 12-month period. This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations, ordinances, or charter provisions.
- B. "Marina zone" shall mean all land held in trust by the City of Berkeley pursuant to the Public Trust Tidelands grant from the State of California to the City of Berkeley, Stats. 1962, Ch. 55; specifically, Aquatic Park and all land, including submerged land, which is west of Marina

Boulevard as it is presently constructed and as if it were extended, in both northerly and southerly directions, to the Berkeley city limits and all land north of Spinnaker Way as it is presently constructed and as if it were extended to the shoreline, to the east, and to the Berkeley city limits, to the west.

C. "Non-profit" shall mean a non-profit organization described in Section 501c(3) of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c)(3) of that code, or any non-profit educational organization qualified under Section 23701(d) of the Revenue and Taxation Code. (Ord. 6583-NS § 2, 2000: Ord. 6548-NS § 2, 2000)

**13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.**

The persons and entities described below shall comply with the minimum compensation standards established by this chapter to the employees specified herein:

A. For-profit vendors of services, which employ six or more employees and receive contract(s) for \$25,000 or more in a 12-month period. Compliance shall be required during the term of said contract(s) as to any employees who spend 25% or more of their compensated time engaged in work directly related to the said contract(s).

B. Non-profit vendors of services, which employ six or more employees and receive contracts of \$100,000 or more in a 12-month period. Compliance shall be required during the term of said contract as to any employees who spend 50% or more of their compensated time engaged in work directly related to a City contract.

C. Lessees of public property, licensees, concessionaires, and franchisees, which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required during the lease term with regard to any employees who spend 25% or more of their compensated time on the leased property, or engaged in work directly related to the license, concession or franchise.

D. City financial aid recipients, which receive more than \$100,000 in loans, or other cash and/or non-cash assistance in any 12-month period. Compliance shall be required for a period of five years following receipt of the aid with regard to employees who spend 25% or more of

their compensated time engaged in work directly related to the purpose for which the City provided the aid.

E. Entities within the boundaries of the Marina Zone which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required with regard to any employees who spend 25% or more of their compensated time in the Marina Zone.

F. Subcontractors and sublessees of any of the entities, persons, or recipients described in subparagraphs A through D. Compliance shall be required during the term of the contract between the City and the prime contractor, lessee, licensee, concessionaire, franchisee or City financial aid recipient as to any employees who spend 25% or more of their compensated time engaged in work directly related to the City contract, lease, license, concession, franchise or agreement providing financial aid. (Ord. 6583-NS § 2, 2000; Ord. 6548-NS § 2, 2000)

#### **13.27.040 Waivers.**

The City Council may waive the requirements of this chapter upon a finding and determination that such a waiver is in the best interests of the City. (Ord. 6548-NS § 2, 2000)

#### **13.27.050 Compensation required to be paid to specified employees.**

Except as provided in Section [13.27.060](#), an employer subject to this chapter pursuant to Section [13.27.030](#) shall provide to its covered employees the following minimum compensation terms for the duration of the covered period:

A. **Wages.** If the employer pays at least \$1.62 per hour per employee towards an employee medical benefits plan, which allows the employees to receive employer-compensated care from a licensed physician, the employer shall pay employees an hourly wage of not less than \$9.75. If the employer does not provide the employees with such a medical benefit plan, the employer shall pay employees an hourly wage of not less than \$11.37. The hourly wage rate required by this section will be adjusted automatically or modified annually pursuant to subsection D.

B. **Time-off.** Employees shall be entitled to at least 22 days off per year for sick leave, vacation, or personal necessity. Twelve of the required days off shall be compensated at the same rate as regular compensation for a normal working day. Ten of the required 22 days may be uncompensated days off. Employees who work part-time shall be entitled to accrue compensated days off in increments proportional to that accrued by full-time employees.

Employees shall be eligible to use accrued days off after the first six months of satisfactory employment or consistent with employer policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

C. Additional compensation permissible. Nothing in this chapter shall be construed to limit an employer's discretion to provide greater wages or time-off to its employees.

D. The wage rates required in subsection A shall be adjusted annually, effective June 30, to reflect increases during the preceding year in the Consumer Price Index for all urban consumers in the San Francisco-Oakland area, as published in April of each year by the U.S. Department of Labor, Bureau of Labor Statistics.

E. Notification of rights under chapter. Employers subject to this chapter pursuant to Section [13.27.030](#), shall give written notification to each current and new employee of his or her potential rights under this chapter in a form provided by the City. Such notice shall also be posted prominently in areas where it will be seen by all employees. (Ord. 6765-NS § 1, 2003; Ord. 6583-NS § 2, 2000; Ord. 6548-NS § 2, 2000)

#### **13.27.060 Required contract provision.**

Every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid with an employer described in Section [13.27.030](#) or amendment thereto shall contain provisions requiring it to comply with the requirements of this chapter as they exist on the date when the employer entered its agreement with the City or when such agreement is amended. Such contract provisions shall address the employer's duty to promptly provide to the City documents and information verifying its compliance with the requirements of this chapter, and sanctions for non-compliance. (Ord. 6548-NS § 2, 2000)

#### **13.27.070 Exemptions.**

The requirements of this chapter shall not be applicable to the following employees:

A. An employee participating in a temporary job-training program in which a significant component of the employee's training consists of acquiring specialized job readiness knowledge, abilities or skills (e.g., the importance of proper work attire, punctuality and workplace demeanor.)

- B. An employee who is under 18 years of age, employed by a non-profit entity for after school or summer employment or as a trainee for a period not longer than 120 days.
- C. An employee working for the employer for a period not exceeding six months in aggregate during any 12-month period.
- D. Volunteers.
- E. Employees of contractors on City public works projects subject to the requirements of Division 2, Part 7, of the California Labor Code, when said code requires compensation greater than that required by this chapter.
- F. Employees who are standing by or on-call according to the criteria established by the Fair Labor Standards Act, 29 U.S.C. Section 201. This exemption shall apply only during the time when the employee is actually standing by or on-call.
- G. An employee for whom application of the requirements of this chapter is prohibited by state or federal law.
- H. An employee subject to a bona fide collective bargaining agreement where the waiver of the provisions of this chapter are set forth in clear and unambiguous terms in such an agreement. (Ord. 6548-NS § 2, 2000)

**13.27.080 Retaliation and discrimination prohibited.**

- A. No employer shall retaliate or discriminate against an employee in his or her terms and conditions of employment by reason of the person's status as an employee protected by the requirements of this chapter.
- B. No employer shall retaliate or discriminate against a person in his or her terms and conditions of employment by reason of the person reporting a violation of this chapter or for prosecuting an action for enforcement of this chapter. (Ord. 6548-NS § 2, 2000)

**13.27.090 Employee complaints to City.**

- A. An employee who alleges violation of any provision of the requirements of this chapter may report such acts to the City. The City Manager may establish a procedure for receiving and investigating such complaints and take appropriate enforcement action.

B. Any complaints received shall be treated as confidential matters, to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code, Sections 6254 and 6255. (Ord. 6548-NS § 2, 2000)

**13.27.100 Private rights of action.**

A. An employee claiming violation of this chapter may bring an action in the municipal court or superior court of the State of California, as appropriate, against an employer and obtain the following remedies:

1. Back pay for each day during which the employer failed to pay the compensation required by this chapter.
2. Reinstatement, compensatory damages and punitive damages.
3. Reasonable attorney's fees and costs.

B. Notwithstanding any provision of this chapter or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

C. No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

D. Nothing in this chapter shall be interpreted to authorize a right of action against the City. (Ord. 6548-NS § 2, 2000)



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## Berkeley Sides With Living Wage Violators

The city has brushed aside numerous labor complaints against a city contractor — and has now revised its policy in a way that benefits employers and shortchanges low-wage workers.

By Sam Levin @SamTLevin



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Since 2000, businesses that have contracts with the City of Berkeley have been subject to a living wage ordinance that establishes minimum standards of pay and employee health benefits for employees. The intent is simple: to ensure that city contractors pay their workers wages that can support a family at or above the poverty level. In 2012, for the first time since the living wage law was enacted, an employee of a city contractor filed a complaint with the city, alleging violations of the ordinance. The alleged offender was LAZ Parking, a private company that manages three city-owned garages, and the complaint, from former employee Julio Castro, only came to light earlier this year when the city council began discussions about expanding LAZ's contract.

According to Castro, the company had underpaid him and other employees in violation of the law, and despite his persistent complaints to the city, officials did little to help him. His struggle exposed Berkeley's lack of an effective living wage enforcement mechanism. When I first reported on Castro's story (see "The Failure of Berkeley's Living Wage Law," 4/23) city spokesperson Matthai Chakko declined to comment, saying a report would be sent to the city council, detailing an investigation into LAZ Parking. The city finally produced the report last month, and the document, according to a number of labor advocates, reveals just how deeply flawed the city's living wage policy and enforcement system really are. For starters, the city's report sides with LAZ Parking in Castro's dispute, despite significant evidence that the company underpaid him, and notwithstanding a state ruling last year in Castro's favor. What's more, the city has used its report as an opportunity to reinterpret a critical part of the living wage law in a manner that benefits contractors and hurts low-wage workers.

"The living wage ordinance was made to help employees," said Castro, a sixty-year-old Concord resident and former LAZ Parking cashier. "It's the city's job to make sure things are done right."

Castro's case — and the city's new interpretation of the living wage law —

center on the health care contribution requirements laid out in the ordinance. At current rates, employers must pay an hourly wage of \$13.71 *plus* a medical benefit equivalent to at least \$2.28 per hour. If an employer does not provide an employee with the medical benefit, then it must pay the additional \$2.28, meaning an hourly wage of \$15.99, according to the law.

LAZ Parking, as Castro outlined in formal allegations in 2012, paid him the lower rate, which was \$12.76 per hour when he started working for the company in July 2011. But LAZ did not pay for his health benefits. That's because the package LAZ offered, Castro said, would have been significantly more expensive for him than his insurance plan with Contra Costa County (the Contra Costa Health Plan). That meant that LAZ, according to his complaints, was obligated to pay him the higher rate — at that time, \$14.88 per hour. After discussions with his managers and multiple city officials got him nowhere, Castro filed a complaint with the state labor commissioner's office in 2012. And in 2013, the state issued a ruling in his favor, declaring that LAZ had violated Berkeley's living wage law and should have paid the higher rate, amounting to a total of \$2,245 in back wages. LAZ has since paid Castro this amount.

But in the city's recent report on LAZ, Berkeley City Manager Christine Daniel wrote that the state's decision in support of Castro was "incorrect" and contrary to the living wage ordinance. Because LAZ had *offered* Castro health care benefits, the company was allowed to pay him the lower \$12.76 rate, Daniel wrote. And to ensure that employees understand this in the future, the report continued, the city has revised its living wage website to include this statement: "If an employer pays for health coverage and an employee elects not to receive coverage, the employer is permitted to pay the lower hourly rate."

Because this is a new statement on the website — and one that is nowhere to be found in the actual ordinance — the revision has alarmed labor advocates who argue that the city is not only endorsing LAZ's decision to underpay employees, but is going a step further and establishing this practice as acceptable policy. "It essentially eviscerates the law," said Carole Vigne, director of the wage protection program of the Legal Aid Society-Employment Law Center. "This new interpretation ... feels like a tremendous loophole."

Vigne is one of several Employment Law Center attorneys who have represented Castro in the course of his multi-year fight against LAZ. The labor commissioner's office also ruled last year that the company also owed Castro \$939.24 for denying him rest breaks, a violation separate from the living wage concerns. Castro has further alleged retaliation, because LAZ terminated him in 2012 after he complained about the living wage violations; a decision in this separate retaliation case is pending, after labor hearings concluded last month.

In its 2013 ruling on Castro's living wage complaint, the California labor commissioner's office noted that when employers don't provide medical benefits, there is a "clear directive" in the Berkeley living wage ordinance that employers "shall" pay the higher rate: "There is nothing in the Ordinance that allows an employee entitled to its benefits to waive his right to those benefits," the state hearing officer wrote.

Vigne, too, argued that, regardless of the city's elaborations on its website, the enforceable language of the ordinance says employers must "provide" medical benefits or the higher wage: "Provide means to give, it doesn't just mean to offer," she said. Vigne also shared with me printouts of older versions of Berkeley's living wage web pages, pointing out that, even in the city's detailed FAQ section on the law, "there was no suggestion anywhere on their website that this is how the living wage ordinance was intended to be interpreted."

It's unclear why exactly the city is taking a position that shortchanges low-wage workers. In her report, Daniel cited a September 2000 city memo on the living wage ordinance that said employers could pay the lower hourly

rate when employees decline an offer of health coverage. But Vigne sent me a June 2000 memo from the Berkeley commission on labor that emphasized that one of the objectives of the living wage law was to help employees access "reasonable health insurance." And regardless of the debates around interpretation, living wage laws should not prevent low-wage workers from buying a health-care plan that is cheaper than the one offered by the employer, said Gina Gemello, an Employment Law Center project attorney who has also represented Castro. "If an employee can get insurance coverage for half of what the employer offers, then why would the city stand against them?" said Castro.

Berkeley City Councilmember Jesse Arreguín — who has been in contact with Castro for years and has repeatedly asked the city to address complaints against LAZ — said he also disagrees with the city's new interpretation of the law and plans to introduce legislation later this year that would revise the ordinance to make clear that contractors must provide health care or pay the higher wage. "If an employee is able to get health care at a much cheaper rate, the employer should help contribute to that," he said, adding, "I was very surprised when the city took a position trying to disprove the state. ... The law was intended to favor the worker, not management."

In response to Daniel's report, Arreguín issued a memo last week questioning why the city has been so slow to respond to complaints about LAZ and why its report ignores Castro's allegations of retaliation entirely. The living wage law explicitly prohibits retaliation and discrimination against a person who reports a violation, meaning the city's enforcement of the law and investigation into LAZ should have addressed concerns of retaliation. Arreguín's memo also questioned whether the city has followed up on a complaint from another former LAZ employee, Chauncy Taylor, who, like Castro, said she was paid the lower rate and did not receive health benefits.

Though Taylor outlined her situation in great detail to Arreguín's office — which forwarded the claims to the city manager more than a year ago — Taylor has not received any back wages and it's unclear if the city has done any investigation into her case. Taylor said in an interview that no city official other than Arreguín's office has ever contacted her about her claims. Further, Taylor said LAZ never even offered her health benefits in the first place because she was technically a part-time employee. That means that, even with the city's new interpretation of the law, she could have a strong case. And her situation is a clear illustration of the impacts of a flawed living wage law: When she worked for LAZ, she was uninsured.

"It would really help if they could come through," said Taylor, noting that her landlord just raised her rent and that she continues to struggle to make ends meet. "I am praying and hoping that they come around. At this point, I'd be okay if they just gave me half. Times are so hard."

Chakko declined to answer any questions about LAZ Parking or the living wage law, saying the city plans to issue a response to Arreguín's memo. LAZ representatives did not respond to multiple requests for comment.

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Office of the City Manager

ACTION CALENDAR  
February 19, 2019  
(Continued from January 29, 2019)

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Kelly Wallace, Interim Director, Health, Housing and Community Services

Subject: Companion Report: Council Referral-Proposed Amendments to Berkeley's Living Wage Ordinance: Berkeley Municipal Code Chapter 13.27

RECOMMENDATION

Adopt first reading of an Ordinance amending BMC Chapter 13.27, which proposes: 1) adding a definition of "Department" in Section 13.27.020, 2) limiting new waivers of the LWO to one year in Section 13.27.040, 3) clarifying language related to wages and benefits in the Section 13.27.050 and adding Section 13.27.110 related to severability.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

At its September 16, 2014 City Council meeting, the Council referred to the Commission on Labor policy changes to the city's Living Wage Ordinance. The Commission proposes changes to the LWO that are outlined in the Commission Report and attached Ordinance. Staff has concerns that the changes recommended by the Commission will apply new standards to existing contract partners subject to the LWO and may require these contracts to be renegotiated. For instance, since the LWO applies only to entities via contract with the City, adoption of remedies and procedures governing the City's minimum wage ordinance conflict with negotiated contract terms and may be unenforceable. Unlike enforcement of the minimum wage where the City is a market regulator, the City enforces the LWO as a market participant.

BACKGROUND

The City of Berkeley's LWO was enacted June 21, 2000. The purpose of the ordinance is to ensure businesses in a contractual relationship with the City pay their employees a wage that can support a family at or above the poverty level. The Living Wage Ordinance requires that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors. HHCS staff administer the LWO compliance component as part of the city's labor standards and enforcement programs.

### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report

### RATIONALE FOR RECOMMENDATION

The changes proposed by the City Manager will add important clarifying information in the Ordinance and allow existing contracts to continue uninterrupted. Labor standards such as definitions and rules related to "Service Charges" for example, are already applicable to all businesses operating in Berkeley as a standard within the MWO. Because the LWO applies to businesses that are contract partners with the City of Berkeley, compliance with the LWO is ensured by city staff as a requirement for continued operation under agreements outlined in the contracts. Other changes to the Ordinance proposed by the Commission are intended to align language in the MWO, however, staff can continue to effectively administer the LWO without the changes and without jeopardizing the existing agreements by applying new rules and standards to operators subject to the LWO. Since the LWO applies only to entities via contract with the City, adoption of remedies and procedures governing the City's minimum wage ordinance conflict with negotiated contract terms and may be unenforceable. Unlike regulation of the minimum wage where the City is a market regulator, the City enforces the LWO as a market participant.

### ALTERNATIVE ACTIONS CONSIDERED

Make no changes to the LWO or adopt part or all of the of the Commission's recommendations.

### CONTACT PERSON

Nathan Dahl, Community Development Project Coordinator, HHCS 510-981-5405  
Delfina Geiken, Employment Programs Administrator, HHCS, 510-981-7551

### Attachments:

- 1: Ordinance – Track changes
- 2: Ordinance – Without track changes
- 3: September 16, 2014 City Council Referral to Commission on Labor

ORDINANCE NO. -N.S.

PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS;  
AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.27

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

Section 1. That Berkeley Municipal Code Chapter 13.27 is amended to read as follows:

PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS

Sections:

- 13.27.010 Title and purpose.
- 13.27.020 Definitions.
- 13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.
- 13.27.040 Waivers.
- 13.27.050 Compensation required to be paid to specified employees.
- 13.27.060 Required contract provision.
- 13.27.070 Exemptions.
- 13.27.080 Retaliation and discrimination prohibited.
- 13.27.090 Employee complaints to City.
- 13.27.100 Private rights of action.
- 13.27.110 Severability.

**Section 13.27.010 Title and purpose.**

This ordinance shall be known as the "Berkeley Living Wage Ordinance." The purpose of this ordinance is to protect the public health, safety and welfare. It does this by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors.

**Section 13.27.020 Definitions.**

The following definitions shall apply throughout this ordinance:

A. "City financial aid recipients" means all persons or entities that receive from the City direct assistance in the form of grants, loans, or loan guarantees, in-kind services, waivers of City fees, real property or other valuable consideration in an amount of more than \$100,000 in any 12-month period. This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations, ordinances, or charter provisions.

A.B. "Department" shall mean the Department of Finance or other City department or agency as the City shall by resolution designate.

B.C. "Marina zone" shall mean all land held in trust by the City of Berkeley



pursuant to the Public Trust Tidelands grant from the State of California to the City of Berkeley, Stats. 1962, Ch. 55; specifically, Aquatic Park and all land, including submerged land, which is west of Marina Boulevard as it is presently constructed and as if it were extended, in both northerly and southerly directions, to the Berkeley city limits and all land north of Spinnaker Way as it is presently constructed and as if it were extended to the shoreline, to the east, and to the Berkeley city limits, to the west.

~~C.D.~~ "Non-profit" shall mean a non-profit organization described in Section 501c(3) of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c)(3) of that code, or any non-profit educational organization qualified under Section 23701(d) of the Revenue and Taxation Code.

**Section 13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.**

The persons and entities described below shall comply with the minimum compensation standards established by this chapter to the employees specified herein:

A. For-profit vendors of services, which employ six or more employees and receive contract(s) for \$25,000 or more in a 12-month period. Compliance shall be required during the term of said contract(s) as to any employees who spend 25% or more of their compensated time engaged in work directly related to the said contract(s).

B. Non-profit vendors of services, which employ six or more employees and receive contracts of \$100,000 or more in a 12-month period. Compliance shall be required during the term of said contract as to any employees who spend 50% or more of their compensated time engaged in work directly related to a City contract.

C. Lessees of public property, licensees, concessionaires, and franchisees, which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required during the lease term with regard to any employees who spend 25% or more of their compensated time on the leased property, or engaged in work directly related to the license, concession or franchise.

D. City financial aid recipients, which receive more than \$100,000 in loans, or other cash and/or non-cash assistance in any 12-month period. Compliance shall be required for a period of five years following receipt of the aid with regard to employees who spend 25% or more of their compensated time engaged in work directly related to the purpose for which the City provided the aid.

E. Entities within the boundaries of the Marina Zone which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required with regard to any employees who spend 25% or more of their compensated time in the Marina Zone.

F. Subcontractors and sublessees of any of the entities, persons, or recipients described in subparagraphs A through D. Compliance shall be required during the term of the contract between the City and the prime contractor, lessee, licensee, concessionaire, franchisee or City financial aid recipient as to any employees who spend 25% or more of their compensated time engaged in work directly related to the City contract, lease, license, concession, franchise or agreement providing financial aid.



**Section 13.27.040 Waivers.**

The City Council may waive the requirements of this chapter upon a finding and determination that such a waiver is in the best interests of the City. Such waivers may not cover a period longer than 365 days. Such waivers may be granted only once and may not cover a period longer than 365 days.

**Section 13.27.050 Compensation required to be paid to specified employees.**

Except as provided in Section 13.27.060, an employer subject to this chapter pursuant to Section shall provide to its covered employees the following minimum compensation terms for the duration of the covered period:

~~A. Wages. If the employer pays at least \$1.62 per hour per employee towards an employee medical benefits plan, which allows the employees to receive employer-compensated care from a licensed physician, the employer shall pay employees an hourly wage of not less than \$9.75. If the employer does not provide the employees with such a medical benefit plan, the employer shall pay employees an hourly wage of not less than \$11.37. The hourly wage rate required by this section will be adjusted automatically or modified annually pursuant to subsection D.~~

A. Wages. All employers subject to this chapter shall pay the required Living Wage rate. In addition, all subject Employers shall offer a medical benefit plan, which allows employees to receive employer compensated care from a licensed physician equal to or higher than the medical benefit rate requirement. If the employer does not offer the employees with such a medical benefit plan, the employer shall pay employees an hourly wage of not less than the Living Wage rate plus the value of the medical benefit rate. The hourly wage rate and medical benefit rate required by this section will be adjusted automatically or modified annually pursuant to subsection D. The new rates shall be announced by May 1 of each year and shall become effective on July 1 of that year.

B. Time-off. Employees shall be entitled to at least 22 days off per year for sick leave, vacation, or personal necessity. Twelve of the required days off shall be compensated at the same rate as regular compensation for a normal working day. Ten of the required 22 days may be uncompensated days off. Employees who work part-time shall be entitled to accrue compensated days off in increments proportional to that accrued by full-time employees. Employees shall be eligible to use accrued days off after the first six months of satisfactory employment or consistent with employer policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

C. Additional compensation permissible. Nothing in this chapter shall be construed to limit an employer's discretion to provide greater wages or time-off to its employees.

D. The wage rates required in subsection A shall be adjusted annually, effective June 30, to reflect increases during the preceding year in the Consumer Price Index for all urban consumers in the San Francisco-Oakland area, as published in April of each year by the U.S. Department of Labor, Bureau of Labor Statistics.

E. Notification of rights under chapter. Employers subject to this chapter pursuant to Section 13.27.030, shall give written notification to each current and new employee of his or her potential rights under this chapter in a form provided by the City. Such notice shall also be posted prominently in areas where it will be seen by all employees. (Ord. 6765-NS § 1, 2003; Ord. 6583-NS § 2, 2000; Ord. 6548-NS § 2, 2000)

**Section 13.27.060 Required contract provision.**

Every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid with an employer described in Section 13.27.030 or amendment thereto shall contain provisions requiring it to comply with the requirements of this chapter as they exist on the date when the employer entered its agreement with the City or when such agreement is amended. Such contract provisions shall address the employer's duty to promptly provide to the City documents and information verifying its compliance with the requirements of this chapter, and sanctions for non-compliance.

**Section 13.27.070 Exemptions.**

The requirements of this chapter shall not be applicable to the following employees:

A. An employee participating in a temporary job-training program in which a significant component of the employee's training consists of acquiring specialized job readiness knowledge, abilities or skills (e.g., the importance of proper work attire, punctuality and workplace demeanor.)

B. An employee who is under 18 years of age, employed by a non-profit entity for after school or summer employment or as a trainee for a period not longer than 120 days.

C. An employee working for the employer for a period not exceeding six months in aggregate during any 12-month period.

D. Volunteers.

E. Employees of contractors on City public works projects subject to the requirements of Division 2, Part 7, of the California Labor Code, when said code requires compensation greater than that required by this chapter.

F. Employees who are standing by or on-call according to the criteria established by the Fair Labor Standards Act, 29 U.S.C. Section 201. This exemption shall apply only during the time when the employee is actually standing by or on-call.

G. An employee for whom application of the requirements of this chapter is prohibited by state or federal law.

H. An employee subject to a bona fide collective bargaining agreement where the waiver of the provisions of this chapter are set forth in clear and unambiguous terms in such an agreement.

**Section 13.27.080 Retaliation and discrimination prohibited.**

A. No employer shall retaliate or discriminate against an employee in his or her terms and conditions of employment by reason of the person's status as an employee protected by the requirements of this chapter.

B. No employer shall retaliate or discriminate against a person in his or her terms and conditions of employment by reason of the person reporting a violation of this chapter or for prosecuting an action for enforcement of this chapter. (Ord. 6548-NS § 2, 2000)

**Section 13.27.090 Employee complaints to City.**

A. An employee who alleges violation of any provision of the requirements of this chapter may report such acts to the City. The City Manager may establish a procedure for receiving and investigating such complaints and take appropriate enforcement action.

B. Any complaints received shall be treated as confidential matters, to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code, Sections 6254 and 6255.

**Section 13.27.100 Private rights of action.**

A. An employee claiming violation of this chapter may bring an action in the municipal court or superior court of the State of California, as appropriate, against an employer and obtain the following remedies:

1. Back pay for each day during which the employer failed to pay the compensation required by this chapter.
2. Reinstatement, compensatory damages and punitive damages.
3. Reasonable attorney's fees and costs.

B. Notwithstanding any provision of this chapter or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

C. No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

D. Nothing in this chapter shall be interpreted to authorize a right of action against the City.

**13.27.110 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 proscribed 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.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 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.

ORDINANCE NO. -N.S.

PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS;  
AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.27

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

Section 1. That Berkeley Municipal Code Chapter 13.27 is amended to read as follows:

PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS

Sections:

- 13.27.010 Title and purpose.
- 13.27.020 Definitions.
- 13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.
- 13.27.040 Waivers.
- 13.27.050 Compensation required to be paid to specified employees.
- 13.27.060 Required contract provision.
- 13.27.070 Exemptions.
- 13.27.080 Retaliation and discrimination prohibited.
- 13.27.090 Employee complaints to City.
- 13.27.100 Private rights of action.
- 13.27.110 Severability.

**Section 13.27.010 Title and purpose.**

This ordinance shall be known as the "Berkeley Living Wage Ordinance." The purpose of this ordinance is to protect the public health, safety and welfare. It does this by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors.

**Section 13.27.020 Definitions.**

The following definitions shall apply throughout this ordinance:

A. "City financial aid recipients" means all persons or entities that receive from the City direct assistance in the form of grants, loans, or loan guarantees, in-kind services, waivers of City fees, real property or other valuable consideration in an amount of more than \$100,000 in any 12-month period. This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations, ordinances, or charter provisions.

B. "Department" shall mean the Department of Finance or other City department or agency as the City shall by resolution designate.

C. "Marina zone" shall mean all land held in trust by the City of Berkeley pursuant to

the Public Trust Tidelands grant from the State of California to the City of Berkeley, Stats. 1962, Ch. 55; specifically, Aquatic Park and all land, including submerged land, which is west of Marina Boulevard as it is presently constructed and as if it were extended, in both northerly and southerly directions, to the Berkeley city limits and all land north of Spinnaker Way as it is presently constructed and as if it were extended to the shoreline, to the east, and to the Berkeley city limits, to the west.

D. "Non-profit" shall mean a non-profit organization described in Section 501c(3) of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c)(3) of that code, or any non-profit educational organization qualified under Section 23701(d) of the Revenue and Taxation Code.

**Section 13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.**

The persons and entities described below shall comply with the minimum compensation standards established by this chapter to the employees specified herein:

A. For-profit vendors of services, which employ six or more employees and receive contract(s) for \$25,000 or more in a 12-month period. Compliance shall be required during the term of said contract(s) as to any employees who spend 25% or more of their compensated time engaged in work directly related to the said contract(s).

B. Non-profit vendors of services, which employ six or more employees and receive contracts of \$100,000 or more in a 12-month period. Compliance shall be required during the term of said contract as to any employees who spend 50% or more of their compensated time engaged in work directly related to a City contract.

C. Lessees of public property, licensees, concessionaires, and franchisees, which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required during the lease term with regard to any employees who spend 25% or more of their compensated time on the leased property, or engaged in work directly related to the license, concession or franchise.

D. City financial aid recipients, which receive more than \$100,000 in loans, or other cash and/or non-cash assistance in any 12-month period. Compliance shall be required for a period of five years following receipt of the aid with regard to employees who spend 25% or more of their compensated time engaged in work directly related to the purpose for which the City provided the aid.

E. Entities within the boundaries of the Marina Zone which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required with regard to any employees who spend 25% or more of their compensated time in the Marina Zone.

F. Subcontractors and sublessees of any of the entities, persons, or recipients described in subparagraphs A through D. Compliance shall be required during the term of the contract between the City and the prime contractor, lessee, licensee, concessionaire, franchisee or City financial aid recipient as to any employees who spend 25% or more of their compensated time engaged in work directly related to the City contract, lease, license, concession, franchise or agreement providing financial aid.

**Section 13.27.040 Waivers.**

Such waivers may not cover a period longer than 365 days. Such waivers may be

granted only once and may not cover a period longer than 365 days.

**Section 13.27.050 Compensation required to be paid to specified employees.**

Except as provided in Section 13.27.060, an employer subject to this chapter pursuant to Section shall provide to its covered employees the following minimum compensation terms for the duration of the covered period:

A. Wages. All employers subject to this chapter shall pay the required Living Wage rate. In addition, all subject Employers shall offer a medical benefit plan, which allows employees to receive employer compensated care from a licensed physician equal to or higher than the medical benefit rate requirement. If the employer does not offer the employees with such a medical benefit plan, the employer shall pay employees an hourly wage of not less than the Living Wage rate plus the value of the medical benefit rate. The hourly wage rate and medical benefit rate required by this section will be adjusted automatically or modified annually pursuant to subsection D. The new rates shall be announced by May 1 of each year and shall become effective on July 1 of that year.

B. Time-off. Employees shall be entitled to at least 22 days off per year for sick leave, vacation, or personal necessity. Twelve of the required days off shall be compensated at the same rate as regular compensation for a normal working day. Ten of the required 22 days may be uncompensated days off. Employees who work part-time shall be entitled to accrue compensated days off in increments proportional to that accrued by full-time employees. Employees shall be eligible to use accrued days off after the first six months of satisfactory employment or consistent with employer policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

C. Additional compensation permissible. Nothing in this chapter shall be construed to limit an employer's discretion to provide greater wages or time-off to its employees.

D. The wage rates required in subsection A shall be adjusted annually, effective June 30, to reflect increases during the preceding year in the Consumer Price Index for all urban consumers in the San Francisco-Oakland area, as published in April of each year by the U.S. Department of Labor, Bureau of Labor Statistics.

E. Notification of rights under chapter. Employers subject to this chapter pursuant to Section 13.27.030, shall give written notification to each current and new employee of his or her potential rights under this chapter in a form provided by the City. Such notice shall also be posted prominently in areas where it will be seen by all employees. (Ord. 6765-NS § 1, 2003: Ord. 6583-NS § 2, 2000: Ord. 6548-NS § 2, 2000)

**Section 13.27.060 Required contract provision.**

Every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid with an employer described in Section 13.27.030 or amendment thereto shall contain provisions requiring it to comply with the requirements of this chapter as they exist on the date when the employer entered its agreement with the City or when such agreement is amended. Such contract provisions shall address the employer's duty to promptly provide to the City documents and information verifying its compliance with the requirements of this chapter, and sanctions for non-compliance.

**Section 13.27.070 Exemptions.**

The requirements of this chapter shall not be applicable to the following employees:

A. An employee participating in a temporary job-training program in which a significant component of the employee's training consists of acquiring specialized job readiness knowledge, abilities or skills (e.g., the importance of proper work attire, punctuality and workplace demeanor.)

B. An employee who is under 18 years of age, employed by a non-profit entity for after school or summer employment or as a trainee for a period not longer than 120 days.

C. An employee working for the employer for a period not exceeding six months in aggregate during any 12-month period.

D. Volunteers.

E. Employees of contractors on City public works projects subject to the requirements of Division 2, Part 7, of the California Labor Code, when said code requires compensation greater than that required by this chapter.

F. Employees who are standing by or on-call according to the criteria established by the Fair Labor Standards Act, 29 U.S.C. Section 201. This exemption shall apply only during the time when the employee is actually standing by or on-call.

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H. An employee subject to a bona fide collective bargaining agreement where the waiver of the provisions of this chapter are set forth in clear and unambiguous terms in such an agreement.

#### **Section 13.27.080 Retaliation and discrimination prohibited.**

A. No employer shall retaliate or discriminate against an employee in his or her terms and conditions of employment by reason of the person's status as an employee protected by the requirements of this chapter.

B. No employer shall retaliate or discriminate against a person in his or her terms and conditions of employment by reason of the person reporting a violation of this chapter or for prosecuting an action for enforcement of this chapter. (Ord. 6548-NS § 2, 2000)

#### **Section 13.27.090 Employee complaints to City.**

A. An employee who alleges violation of any provision of the requirements of this chapter may report such acts to the City. The City Manager may establish a procedure for receiving and investigating such complaints and take appropriate enforcement action.

B. Any complaints received shall be treated as confidential matters, to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code, Sections 6254 and 6255.

#### **Section 13.27.100 Private rights of action.**

A. An employee claiming violation of this chapter may bring an action in the municipal court or superior court of the State of California, as appropriate, against an employer and obtain the following remedies:

1. Back pay for each day during which the employer failed to pay the compensation required by this chapter.
2. Reinstatement, compensatory damages and punitive damages.

3. Reasonable attorney's fees and costs.

B. Notwithstanding any provision of this chapter or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

C. No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

D. Nothing in this chapter shall be interpreted to authorize a right of action against the City.

**13.27.110 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 proscribed 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.

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CONSENT CALENDAR  
September 16, 2014

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguin

Subject: Referral to Commission on Labor: Amendments to Living Wage Ordinance (Berkeley Municipal Code Chapter 13.27)

**RECOMMENDATION:**

Refer to the Commission on Labor the following suggested amendments to the Living Wage Ordinance, Berkeley Municipal Code Chapter 13.27:

1. Amend Section 13.27.050.A to allow an employee the right to opt out of an employer provided medical benefit plan and still receive the higher compensation amount (currently \$15.99 per hour) as cash in lieu if they provide proof of alternative coverage under a medical benefit plan.
2. Amend the posting requirements, retaliation, complaint process, and enforcement sections to conform to the language in the recently adopted Minimum Wage Ordinance.

**BACKGROUND:**

The Berkeley City Council adopted a Living Wage Law in 2000 to require for-profit and non-profit businesses (at a certain threshold), that are under a City contract, to pay their employees a living wage and provide health insurance and paid time off. The current Living Wage rate is **\$13.71 per hour plus a medical benefit equivalent to at least \$2.28 per hour**. If the employer does not provide the employee at least \$2.28 per hour toward an employee medical benefits plan, the employer shall pay an hourly wage of not less than **\$15.99**. If an employer pays for health coverage and an employee elects not to receive coverage, the employer is permitted to pay the lower hourly rate.

Two recent complaints filed by former and current employees of LAZ Parking, a city contractor who manages the City's public parking garages, have alleged that the employer failed to pay the full rate of compensation and denied breaks and paid days off.

The complaint made by Mr. Julio Castro alleging that LAZ Parking was required to provide Mr. Castro with the higher compensation amount because it did not provide actual medical coverage has raised issues regarding the loopholes in the current Living Wage Ordinance. Mr. Castro opted to not take the employer provided medical insurance plan, because he paid for another plan that was less costly. Nevertheless, despite the fact that the employer never directly provided health insurance coverage, they were able to pay Mr. Castro the lower wage, rather than include the differential for lack of

health coverage. Apparently, under city law all an employer has to do is offer health coverage but not directly provide it in order to pay the lower wage amount.

Nowhere in the current Living Wage Ordinance does it state that the employer would pay the whole amount of the medical insurance plan. The employee would still pay a premium which depending on the cost of the insurance may be significant, and as result decrease the amount of take home pay an employee would be entitled to. The current language of the law provides incentives for employers to offer more expensive insurance plans with higher employee premiums in order to avoid paying a higher wage.

The law was clearly written with the goal of extending benefits to employees, not taking them away. Similar to city employees, including City Councilmembers, contract employees subject to the Living Wage Ordinance, should be allowed to pay for alternative insurance and receive cash in lieu equivalent to the higher wage amount if they provide proof of insurance coverage. In addition, the City should explore changing the law to say that only if an employee is covered under an insurance plan can the employer pay the lower wage amount. These changes would close the existing loophole and ensure that contract employees are afforded the same rights as our city employees.

In addition, the recently adopted Minimum Wage Ordinance included stronger language on posting of notices, notification of rights, making complaints, retaliation and enforcement. Since the Living Wage Ordinance was adopted in 2000 before the Minimum Wage Law, and since it affectively accomplishes the same goals - fair wages for employees - the City should amend the Living Wage law to conform to the notice, complaint, retaliation and enforcement requirements of the new Minimum Wage Ordinance.

One of the issues alleged is the lack of proper notification of employees covered under the Living Wage Ordinance. The Minimum Wage Ordinance standards are stronger and require better notification and enforcement. Given that the City will be creating an enforcement position to implement both the Minimum Wage and Living Wage Ordinance, there should be consistency of the requirements for ease of enforcement.

Also the notification requirements must be strengthened. There is no requirement for annual notification, so employees may not necessarily know what the wage amount has increased due to inflation. There is also no requirement that the notice provided to workers and required to be posted, has to include information on how to file a complaint and contact information on where to make a complaint. Providing better information on the wages, benefits, complaint process, and protection against retaliation will ensure that workers know their rights and can help prevent potential violations in the future.

#### FINANCIAL IMPLICATIONS:

Staff time involved in presenting the City Council's referral to the Commission on Labor, analyzing the proposed changes, and proposing recommendations to the Commission and City Council.

**CONTACT PERSON:**

Jesse Arreguin, Councilmember, District 4      981-7140

**Attachments:**

1. Current Living Wage Ordinance (B.M.C. Chapter 13.27) with sections highlighted to be changed
2. July 9, 2014 East Bay Express Article "Berkeley Sides with Living Wage Law Violators"

**Chapter 13.27**  
**PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS**

Sections:

- [13.27.010](#) Title and purpose.
- [13.27.020](#) Definitions.
- [13.27.030](#) Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.
- [13.27.040](#) Waivers.
- [13.27.050](#) Compensation required to be paid to specified employees.
- [13.27.060](#) Required contract provision.
- [13.27.070](#) Exemptions.
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- [13.27.100](#) Private rights of action.

**13.27.010 Title and purpose.**

This ordinance shall be known as the "Berkeley Living Wage Ordinance." The purpose of this ordinance is to protect the public health, safety and welfare. It does this by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors. (Ord. 6548-NS § 2, 2000)

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- A. "City financial aid recipients" means all persons or entities that receive from the City direct assistance in the form of grants, loans, or loan guarantees, in-kind services, waivers of City fees, real property or other valuable consideration in an amount of more than \$100,000 in any 12-month period. This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations, ordinances, or charter provisions.
- B. "Marina zone" shall mean all land held in trust by the City of Berkeley pursuant to the Public Trust Tidelands grant from the State of California to the City of Berkeley, Stats. 1962, Ch. 55; specifically, Aquatic Park and all land, including submerged land, which is west of Marina

Boulevard as it is presently constructed and as if it were extended, in both northerly and southerly directions, to the Berkeley city limits and all land north of Spinnaker Way as it is presently constructed and as if it were extended to the shoreline, to the east, and to the Berkeley city limits, to the west.

C. "Non-profit" shall mean a non-profit organization described in Section 501c(3) of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c)(3) of that code, or any non-profit educational organization qualified under Section 23701(d) of the Revenue and Taxation Code. (Ord. 6583-NS § 2, 2000: Ord. 6548-NS § 2, 2000)

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The persons and entities described below shall comply with the minimum compensation standards established by this chapter to the employees specified herein:

A. For-profit vendors of services, which employ six or more employees and receive contract(s) for \$25,000 or more in a 12-month period. Compliance shall be required during the term of said contract(s) as to any employees who spend 25% or more of their compensated time engaged in work directly related to the said contract(s).

B. Non-profit vendors of services, which employ six or more employees and receive contracts of \$100,000 or more in a 12-month period. Compliance shall be required during the term of said contract as to any employees who spend 50% or more of their compensated time engaged in work directly related to a City contract.

C. Lessees of public property, licensees, concessionaires, and franchisees, which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required during the lease term with regard to any employees who spend 25% or more of their compensated time on the leased property, or engaged in work directly related to the license, concession or franchise.

D. City financial aid recipients, which receive more than \$100,000 in loans, or other cash and/or non-cash assistance in any 12-month period. Compliance shall be required for a period of five years following receipt of the aid with regard to employees who spend 25% or more of

their compensated time engaged in work directly related to the purpose for which the City provided the aid.

E. Entities within the boundaries of the Marina Zone which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required with regard to any employees who spend 25% or more of their compensated time in the Marina Zone.

F. Subcontractors and sublessees of any of the entities, persons, or recipients described in subparagraphs A through D. Compliance shall be required during the term of the contract between the City and the prime contractor, lessee, licensee, concessionaire, franchisee or City financial aid recipient as to any employees who spend 25% or more of their compensated time engaged in work directly related to the City contract, lease, license, concession, franchise or agreement providing financial aid. (Ord. 6583-NS § 2, 2000; Ord. 6548-NS § 2, 2000)

#### **13.27.040 Waivers.**

The City Council may waive the requirements of this chapter upon a finding and determination that such a waiver is in the best interests of the City. (Ord. 6548-NS § 2, 2000)

#### **13.27.050 Compensation required to be paid to specified employees.**

Except as provided in Section [13.27.060](#), an employer subject to this chapter pursuant to Section [13.27.030](#) shall provide to its covered employees the following minimum compensation terms for the duration of the covered period:

A. **Wages.** If the employer pays at least \$1.62 per hour per employee towards an employee medical benefits plan, which allows the employees to receive employer-compensated care from a licensed physician, the employer shall pay employees an hourly wage of not less than \$9.75. If the employer does not provide the employees with such a medical benefit plan, the employer shall pay employees an hourly wage of not less than \$11.37. The hourly wage rate required by this section will be adjusted automatically or modified annually pursuant to subsection D.

B. **Time-off.** Employees shall be entitled to at least 22 days off per year for sick leave, vacation, or personal necessity. Twelve of the required days off shall be compensated at the same rate as regular compensation for a normal working day. Ten of the required 22 days may be uncompensated days off. Employees who work part-time shall be entitled to accrue compensated days off in increments proportional to that accrued by full-time employees.

Employees shall be eligible to use accrued days off after the first six months of satisfactory employment or consistent with employer policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

C. Additional compensation permissible. Nothing in this chapter shall be construed to limit an employer's discretion to provide greater wages or time-off to its employees.

D. The wage rates required in subsection A shall be adjusted annually, effective June 30, to reflect increases during the preceding year in the Consumer Price Index for all urban consumers in the San Francisco-Oakland area, as published in April of each year by the U.S. Department of Labor, Bureau of Labor Statistics.

E. Notification of rights under chapter. Employers subject to this chapter pursuant to Section [13.27.030](#), shall give written notification to each current and new employee of his or her potential rights under this chapter in a form provided by the City. Such notice shall also be posted prominently in areas where it will be seen by all employees. (Ord. 6765-NS § 1, 2003; Ord. 6583-NS § 2, 2000; Ord. 6548-NS § 2, 2000)

#### **13.27.060 Required contract provision.**

Every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid with an employer described in Section [13.27.030](#) or amendment thereto shall contain provisions requiring it to comply with the requirements of this chapter as they exist on the date when the employer entered its agreement with the City or when such agreement is amended. Such contract provisions shall address the employer's duty to promptly provide to the City documents and information verifying its compliance with the requirements of this chapter, and sanctions for non-compliance. (Ord. 6548-NS § 2, 2000)

#### **13.27.070 Exemptions.**

The requirements of this chapter shall not be applicable to the following employees:

A. An employee participating in a temporary job-training program in which a significant component of the employee's training consists of acquiring specialized job readiness knowledge, abilities or skills (e.g., the importance of proper work attire, punctuality and workplace demeanor.)

- B. An employee who is under 18 years of age, employed by a non-profit entity for after school or summer employment or as a trainee for a period not longer than 120 days.
- C. An employee working for the employer for a period not exceeding six months in aggregate during any 12-month period.
- D. Volunteers.
- E. Employees of contractors on City public works projects subject to the requirements of Division 2, Part 7, of the California Labor Code, when said code requires compensation greater than that required by this chapter.
- F. Employees who are standing by or on-call according to the criteria established by the Fair Labor Standards Act, 29 U.S.C. Section 201. This exemption shall apply only during the time when the employee is actually standing by or on-call.
- G. An employee for whom application of the requirements of this chapter is prohibited by state or federal law.
- H. An employee subject to a bona fide collective bargaining agreement where the waiver of the provisions of this chapter are set forth in clear and unambiguous terms in such an agreement. (Ord. 6548-NS § 2, 2000)

**13.27.080 Retaliation and discrimination prohibited.**

A. No employer shall retaliate or discriminate against an employee in his or her terms and conditions of employment by reason of the person's status as an employee protected by the requirements of this chapter.

B. No employer shall retaliate or discriminate against a person in his or her terms and conditions of employment by reason of the person reporting a violation of this chapter or for prosecuting an action for enforcement of this chapter. (Ord. 6548-NS § 2, 2000)

**13.27.090 Employee complaints to City.**

A. An employee who alleges violation of any provision of the requirements of this chapter may report such acts to the City. The City Manager may establish a procedure for receiving and investigating such complaints and take appropriate enforcement action.



B. Any complaints received shall be treated as confidential matters, to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code, Sections 6254 and 6255. (Ord. 6548-NS § 2, 2000)

**13.27.100 Private rights of action.**

A. An employee claiming violation of this chapter may bring an action in the municipal court or superior court of the State of California, as appropriate, against an employer and obtain the following remedies:

1. Back pay for each day during which the employer failed to pay the compensation required by this chapter.
2. Reinstatement, compensatory damages and punitive damages.
3. Reasonable attorney's fees and costs.

B. Notwithstanding any provision of this chapter or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

C. No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

D. Nothing in this chapter shall be interpreted to authorize a right of action against the City. (Ord. 6548-NS § 2, 2000)

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## Berkeley Sides With Living Wage Violators

The city has brushed aside numerous labor complaints against a city contractor — and has now revised its policy in a way that benefits employers and shortchanges low-wage workers.

By Sam Levin @SamTLevin

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Since 2000, businesses that have contracts with the City of Berkeley have been subject to a living wage ordinance that establishes minimum standards of pay and employee health benefits for employees. The intent is simple: to ensure that city contractors pay their workers wages that can support a family at or above the poverty level. In 2012, for the first time since the living wage law was enacted, an employee of a city contractor filed a complaint with the city, alleging violations of the ordinance. The alleged offender was LAZ Parking, a private company that manages three city-owned garages, and the complaint, from former employee Julio Castro, only came to light earlier this year when the city council began discussions about expanding LAZ's contract.

According to Castro, the company had underpaid him and other employees in violation of the law, and despite his persistent complaints to the city, officials did little to help him. His struggle exposed Berkeley's lack of an effective living wage enforcement mechanism. When I first reported on Castro's story (see "The Failure of Berkeley's Living Wage Law," 4/23) city spokesperson Matthai Chakko declined to comment, saying a report would be sent to the city council, detailing an investigation into LAZ Parking. The city finally produced the report last month, and the document, according to a number of labor advocates, reveals just how deeply flawed the city's living wage policy and enforcement system really are. For starters, the city's report sides with LAZ Parking in Castro's dispute, despite significant evidence that the company underpaid him, and notwithstanding a state ruling last year in Castro's favor. What's more, the city has used its report as an opportunity to reinterpret a critical part of the living wage law in a manner that benefits contractors and hurts low-wage workers.

"The living wage ordinance was made to help employees," said Castro, a sixty-year-old Concord resident and former LAZ Parking cashier. "It's the city's job to make sure things are done right."

Castro's case — and the city's new interpretation of the living wage law —

center on the health care contribution requirements laid out in the ordinance. At current rates, employers must pay an hourly wage of \$13.71 *plus* a medical benefit equivalent to at least \$2.28 per hour. If an employer does not provide an employee with the medical benefit, then it must pay the additional \$2.28, meaning an hourly wage of \$15.99, according to the law.

LAZ Parking, as Castro outlined in formal allegations in 2012, paid him the lower rate, which was \$12.76 per hour when he started working for the company in July 2011. But LAZ did not pay for his health benefits. That's because the package LAZ offered, Castro said, would have been significantly more expensive for him than his insurance plan with Contra Costa County (the Contra Costa Health Plan). That meant that LAZ, according to his complaints, was obligated to pay him the higher rate — at that time, \$14.88 per hour. After discussions with his managers and multiple city officials got him nowhere, Castro filed a complaint with the state labor commissioner's office in 2012. And in 2013, the state issued a ruling in his favor, declaring that LAZ had violated Berkeley's living wage law and should have paid the higher rate, amounting to a total of \$2,245 in back wages. LAZ has since paid Castro this amount.

But in the city's recent report on LAZ, Berkeley City Manager Christine Daniel wrote that the state's decision in support of Castro was "incorrect" and contrary to the living wage ordinance. Because LAZ had *offered* Castro health care benefits, the company was allowed to pay him the lower \$12.76 rate, Daniel wrote. And to ensure that employees understand this in the future, the report continued, the city has revised its living wage website to include this statement: "If an employer pays for health coverage and an employee elects not to receive coverage, the employer is permitted to pay the lower hourly rate."

Because this is a new statement on the website — and one that is nowhere to be found in the actual ordinance — the revision has alarmed labor advocates who argue that the city is not only endorsing LAZ's decision to underpay employees, but is going a step further and establishing this practice as acceptable policy. "It essentially eviscerates the law," said Carole Vigne, director of the wage protection program of the Legal Aid Society-Employment Law Center. "This new interpretation ... feels like a tremendous loophole."

Vigne is one of several Employment Law Center attorneys who have represented Castro in the course of his multi-year fight against LAZ. The labor commissioner's office also ruled last year that the company also owed Castro \$939.24 for denying him rest breaks, a violation separate from the living wage concerns. Castro has further alleged retaliation, because LAZ terminated him in 2012 after he complained about the living wage violations; a decision in this separate retaliation case is pending, after labor hearings concluded last month.

In its 2013 ruling on Castro's living wage complaint, the California labor commissioner's office noted that when employers don't provide medical benefits, there is a "clear directive" in the Berkeley living wage ordinance that employers "shall" pay the higher rate: "There is nothing in the Ordinance that allows an employee entitled to its benefits to waive his right to those benefits," the state hearing officer wrote.

Vigne, too, argued that, regardless of the city's elaborations on its website, the enforceable language of the ordinance says employers must "provide" medical benefits or the higher wage: "Provide means to give, it doesn't just mean to offer," she said. Vigne also shared with me printouts of older versions of Berkeley's living wage web pages, pointing out that, even in the city's detailed FAQ section on the law, "there was no suggestion anywhere on their website that this is how the living wage ordinance was intended to be interpreted."

It's unclear why exactly the city is taking a position that shortchanges low-wage workers. In her report, Daniel cited a September 2000 city memo on the living wage ordinance that said employers could pay the lower hourly

rate when employees decline an offer of health coverage. But Vigne sent me a June 2000 memo from the Berkeley commission on labor that emphasized that one of the objectives of the living wage law was to help employees access "reasonable health insurance." And regardless of the debates around interpretation, living wage laws should not prevent low-wage workers from buying a health-care plan that is cheaper than the one offered by the employer, said Gina Gemello, an Employment Law Center project attorney who has also represented Castro. "If an employee can get insurance coverage for half of what the employer offers, then why would the city stand against them?" said Castro.

Berkeley City Councilmember Jesse Arreguín — who has been in contact with Castro for years and has repeatedly asked the city to address complaints against LAZ — said he also disagrees with the city's new interpretation of the law and plans to introduce legislation later this year that would revise the ordinance to make clear that contractors must provide health care or pay the higher wage. "If an employee is able to get health care at a much cheaper rate, the employer should help contribute to that," he said, adding, "I was very surprised when the city took a position trying to disprove the state. ... The law was intended to favor the worker, not management."

In response to Daniel's report, Arreguín issued a memo last week questioning why the city has been so slow to respond to complaints about LAZ and why its report ignores Castro's allegations of retaliation entirely. The living wage law explicitly prohibits retaliation and discrimination against a person who reports a violation, meaning the city's enforcement of the law and investigation into LAZ should have addressed concerns of retaliation. Arreguín's memo also questioned whether the city has followed up on a complaint from another former LAZ employee, Chauncy Taylor, who, like Castro, said she was paid the lower rate and did not receive health benefits.

Though Taylor outlined her situation in great detail to Arreguín's office — which forwarded the claims to the city manager more than a year ago — Taylor has not received any back wages and it's unclear if the city has done any investigation into her case. Taylor said in an interview that no city official other than Arreguín's office has ever contacted her about her claims. Further, Taylor said LAZ never even offered her health benefits in the first place because she was technically a part-time employee. That means that, even with the city's new interpretation of the law, she could have a strong case. And her situation is a clear illustration of the impacts of a flawed living wage law: When she worked for LAZ, she was uninsured.

"It would really help if they could come through," said Taylor, noting that her landlord just raised her rent and that she continues to struggle to make ends meet. "I am praying and hoping that they come around. At this point, I'd be okay if they just gave me half. Times are so hard."

Chakko declined to answer any questions about LAZ Parking or the living wage law, saying the city plans to issue a response to Arreguín's memo. LAZ representatives did not respond to multiple requests for comment.

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Office of the City Manager

ACTION CALENDAR  
February 19, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk  
Farimah Brown, City Attorney

Subject: Referral Response: Updated Policy for Emergency Standby Officers for the Mayor and Councilmembers

RECOMMENDATION

Adopt a Resolution updating the selection process and criteria for the appointment of Standby Officers for the Mayor and each Councilmember to serve in the event the elected official is unavailable during an emergency, and rescinding Resolution No. 57,906-N.S.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

This report responds to a short term referral that originally appeared on the agenda of the September 13, 2018 Council meeting and was sponsored by Councilmember Wengraf, Mayor Arreguin, and Councilmember Hahn.

The referral requested that the City Manager consider the following suggestions for eligibility requirements and qualifications for Emergency Standby Officers and return to Council within 90 days with recommendations.

- Trainings in roles and responsibilities to serve as a standby officer possibly including: ethics and workplace harassment.
- City government experience
- Council District residency
- Require standby officers to meet the same qualifications, including restrictions on conflict of interest, as required in the City Charter for City Councilmembers.
- In addition, consider requiring Councilmembers to nominate three people in a single action.

The proposed policy in the attached resolution incorporates all of these suggestions except for the requirement for Council District residency. The requirement for district residency was not included as it would conflict with the state codes governing standby

officers. The code allows for standby officers to be residents of another political subdivision. The reason for this is that a severe local emergency event that results in the unavailability of a Councilmember will have a higher likelihood of impacting the availability of a standby officer if that standby officer is from the same immediate area.

**California Government Code Section 8639**

*The qualifications of each standby officer should be carefully investigated, and the governing body may request the Director of Emergency Services to aid in the investigation of any prospective appointee. No examination or investigation shall be made without the consent of the prospective appointee.*

*Consideration shall be given to places of residence and work, so that for each office for which standby officers are appointed there shall be the greatest probability of survivorship. Standby officers may be residents or officers of a political subdivision other than that to which they are appointed as standby officers.*

The policy includes trainings in the same areas as trainings that Councilmembers receive: AB1234 (Ethics), Harassment prevention, Brown Act, Conflict of Interest, and roles and responsibilities in an emergency.

The policy also now requires that the standby officer be 18 years of age or older and a registered voter.

If the updated policy is adopted by the Council, the City Clerk Department, City Attorney's Office, and the Human Resources Department will coordinate to ensure that the eligibility criteria are met and that the background checks and trainings are completed.

Previously approved standby officers will be required to meet all training requirements of the updated policy.

**BACKGROUND**

On March 14, 1995, the Council adopted Resolution No. 57,906-N.S., designating a procedure for the selection of Standby Officers for City Councilmembers in the event of an emergency. This procedure is part of the City's emergency preparedness planning and ensures that in the case of a disaster or other catastrophic emergency causing the unavailability of one or more members of the Council (or Standby Officers where a Councilmember is unavailable), government can continue to function. Under state law, a Councilmember or Standby Officer is "unavailable" when he or she is "either killed, missing, or so seriously injured as to be unable to attend meetings and otherwise perform his [or her] duties." (Govt Code § 8636.)

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

This recommendation is in response to a referral from the City Council. Standby Officers are an essential part of any fully developed emergency plan in order maintain the continuity of government in an emergency.

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900  
Farimah Brown, City Attorney, 981-6998

Attachments:

1: Resolution

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

DESIGNATING PROCEDURE FOR SELECTION OF STANDBY OFFICERS FOR CITY COUNCILMEMBERS IN THE EVENT OF A DISASTER AND RESCINDING RESOLUTION NO. 57,906-N.S.

WHEREAS, the California Emergency Services Act, Government Code sections 8550, et seq., which sets out basic state procedures for declaration of emergency, includes a section "Preservation of Local Government," which provides various methods of insuring that in the case of a catastrophic emergency, in which it is possible that members of a governing body become unavailable, government can be reconstituted and continue until regular elections can be held; and

WHEREAS, the Act envisions reconstitution of the governing body through the predesignation of three standby officers for each Councilmember which may be appointed by the City Council, and who may substitute for the elected official if he or she were unavailable; and

WHEREAS, the Act provides some procedures but does not spell out the method of selection and ratification in all respects; and

WHEREAS, the Act further provides that the qualifications of each standby officer should be carefully investigated but does not mandate what the qualifications should be.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that the following procedure for appointment of Standby officers is adopted:

1. No person who has been convicted of the crimes of bribery, malfeasance in office, violation of Government Code Section 1090 or the Political Reform Act shall be eligible to be a Standby Officer.

2. Each Councilmember shall identify three potential standby officers for that Councilmember, shall obtain written consent for each person being named, shall designate each proposed officer as No. 1, 2 or 3, and shall submit the name of each person to the City Manager by April 30, 2019.

3. The initial nomination of all three standby officers must be done in a single action.

4. The City Manager shall investigate the qualification of each proposed standby officer, and shall submit the names of those proposed standby officers as to whom the investigation verified their qualifications to the City Council.

5. The names of the proposed, investigated and approved standby officers shall be submitted to the City Council as a whole for final approval.



6. In addition, the standby officer must possess city government experience, be 18 years of age or older and a registered voter, and complete the following trainings within six months of his or her approval by the City Council:
  - a. Training in roles and responsibilities to serve as a standby officer.
  - b. Training in Ethics as mandated by AB 1234
  - c. Training in Conflict of Interest restrictions and disclosures
  - d. Training in the requirements of the Brown Act
  - e. Training in Workplace Harassment Prevention.

BE IT FURTHER RESOLVED that Resolution No. 57,906-N.S. is hereby rescinded.





Human Welfare and  
Community Action Commission

ACTION CALENDAR  
February 19, 2019

To: Honorable Mayor and Members of the City Council  
 From: Human Welfare and Community Action Commission (HWCAC)  
 Submitted by: Samuel Kohn, Temporary Chairperson, HWCAC  
 Subject: Assessment of Vacant Properties

RECOMMENDATION

Direct the City Manager to develop a plan to locate the 3,754 “vacant housing units” noted in the “Employment, Economy, Housing “ data in the “City of Berkeley Fiscal years 2018 & 2019 ADOPTED BIENNIAL BUDGET” and to assess what would be required to bring as many of the properties to market as possible.

FISCAL IMPACTS OF RECOMMENDATION

Staff time required to locate and assess the condition of the properties. Alternatively, there would be costs associated with outsourcing the project to a third-party.

CURRENT SITUATION AND ITS EFFECTS

At the 11/28/19 HWCAC meeting, the commissioners discussed the submission of an item to City Council recommending that the City Manager work with Council to locate vacant housing units. The commission took action to submit this item to City Council [M/S/C (Sood/Omodele) (Vote: Ayes – Sood, Omodele, Dunner, Kohn; Noes – None; Abstain – None; Absent – Vrankovecki (Excused), Holman, Whitson)].

The City of Berkeley is currently experiencing a severe housing shortage. There are a variety of strategies being discussed to create new housing, which will be beneficial in the future, but, could take several years to come to market. There may be an opportunity to bring a number of units to market in the short term by working with landlords of currently vacant units to make them market ready. This could help increase the housing stock while longer term projects continue to develop. In addition, the information gathered on these units could be used to help manage vacancies on a regular basis.

BACKGROUND

According to the “City of Berkeley Fiscal years 2018 & 2019 ADOPTED BIENNIAL BUDGET” (page 31), there were 3,754 vacant housing units in the City of Berkeley out of a total number of 49,671 housing units. Information on the location and condition of these properties has been difficult to find, neither the Rent Stabilization Board nor the

City Manager's office could provide additional details. Potentially bringing these properties to market will require an initial investment in gathering data to help determine requirements.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental impacts or opportunities associated with the subject of this report.

#### RATIONALE FOR RECOMMENDATION

Bringing vacant units to market could provide a short term boost to the housing stock while longer term projects continue to develop, but more information is needed to assess if it would be possible to make these properties available.

#### ALTERNATIVE ACTIONS CONSIDERED

Several alternative strategies for increasing housing have been discussed. The HWCAC felt the recommendation presented here provides a unique short term opportunity for the city.

#### CITY MANAGER

See companion report.

#### CONTACT PERSON

Mary-Claire Katz, Commission Secretary, HHCS (510) 981-5414

#### Attachments:

1: "Employment, Economy, Housing", City of Berkeley Fiscal Year 2018 & 2019 Adopted Biennial Budget.

## Attachment 1: "Employment, Economy, Housing", City of Berkeley Fiscal Year 2018 &amp; 2019 Adopted Biennial Budget.

## Employment, Economy, Housing (ACS)

### Employment

Median Household income:	\$66,237
Residents 16 and older:	104,594
In labor force	61.3%
Employed:	56.2%
Unemployed:	5.0%
Armed Forces	0.1%
Not in labor force: (e.g. students not looking for work)	38.7%

### Occupation (ACS)

Management, business, science, and arts:	66%
Service:	11%
Sales & Office:	17%
Natural Resources, construction, and maintenance:	3%
Production:	4%

### Largest Employers\*

Alta Bates Medical Center	Lifelong Medical Care
Ansys, Inc.	Meyer Sound
Bayer Healthcare, LLC	MSCI Inc.
Berkeley Bowl Produce	Pacific Steel Casting Company, LLC
Berkeley Cement Inc.	Recreational Equipment Inc.
Berkeley City College	Siemens Corporation
Berkeley Marina Doubletree	Siteworks Landscape, Inc.
Berkeley Repertory Theatre	University of California, Berkeley
Berkeley Unified School District	US Postal Service
City of Berkeley	Weatherford Motors Inc.
Dynavax Technologies Corporation	Whole Foods Market California Inc.
Kaiser Permanete	YMCA of the Central Bay Area
Lawrence Berkeley Laboratory	

\* Source: EDD, QCEW Data Q1 2016

### Housing (ACS)

Average sale price of new & existing single-family homes:	\$1,181,285
Average sale price of new & existing condos:	\$710,871
Total housing units:	49,671
Vacant housing units:	3,754
Occupied housing units:	45,917
Owner-occupied:	19,583 (43%)
Renter-occupied:	26,334 (57%)
Median Rental Market Rates:*	
Studio	\$1,600
1 Bedroom	\$1,995
2 Bedroom	\$2,750
3 Bedroom	\$3,595

\* 2016 data provided by the Berkeley Rent Stabilization Board





Office of the City Manager

ACTION CALENDAR

February 19, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Kelly Wallace, Interim Director, Health, Housing & Community Services

Subject: Companion Report: Assessment of Vacant Properties

RECOMMENDATION

Refer the issue of vacant housing units to Council's process for setting priorities for Measure O funds.

FISCAL IMPACTS OF RECOMMENDATION

Fiscal impacts will depend on what action Council chooses. It is also likely that some property owners would require financial support from the City in order to bring their vacant units onto the market.

CURRENT SITUATION AND ITS EFFECTS

The Human Welfare and Community Action Commission (HWCAC) recommended that the Council direct the City Manager develop a plan to locate 3,754 vacant housing units identified in the City's Fiscal Years 2018 & 2019 Adopted Biennial Budget. The HWCAC proposed this as a short-term strategy to bring properties onto the market and boost the supply of available rental properties in Berkeley. Maximizing the use of Berkeley's existing housing stock is in concept an efficient way to make more housing available, and the specific task proposed by the HWCAC is complex.

The identification and assessment of all of Berkeley's vacant apartments, an inventory which changes daily, would be time-intensive, and is beyond the scope and capacity of the current housing staff. Staff would need to dedicate a significant amount of time to undertake a survey of Berkeley multifamily properties to determine how many units are currently vacant, and to assess what each unit or property owner needs in order for those units to come onto the market. Staff would need to interview property owners regarding vacancies, assess property conditions, undertake title research, and generally spend a significant amount of time assessing barriers to occupancy. In addition to housing staff, the City Attorney's Office would likely need to evaluate the tools available to City staff for encouraging full occupancy. Since these housing units are privately owned, those tools would be limited to acquiring properties or supporting another organization to acquire them from willing owners, or making loans to willing owners. Because this would likely require the addition of new staff, this proposed strategy should be considered by Council as they establish Measure O priorities.

In the past six months, the City has taken action to encourage occupancy of vacant units. On July 24, 2018, Council adopted the second reading of Ordinance No. 7,622-N.S. that amended the Berkeley Municipal code to specify that residential buildings that are vacant for more than 120 consecutive days could be declared an unlawful nuisance if they also meet one of five other conditions of blight. The intent of the ordinance is to both reduce blight and encourage property owners to bring their vacant buildings back onto the market.

In addition, on October 16, 2018, Council adopted Resolution No. 68,624-N.S. to approve a \$50,000 grant to support Bay Area Community Land Trust's (BACLT) capacity building efforts in relation to the City's new Small Sites Program. BACLT will use the funds to support increased staffing, and to identify prospective properties for the Small Sites Program, which could include small, multifamily rental properties that are vacant.

### BACKGROUND

Some level of vacancy is always present in a housing market. The 2015 American Community Survey (ACS) estimate listed in the City's budget report represents a point in time count of vacant housing units in Berkeley. The 2017 ACS estimated 3,622 vacant housing units in Berkeley, or about 7.4% of the total housing stock. This number represents individual vacant units, not vacant buildings. Some vacancy is normal in the housing market, and based on ACS data Berkeley's rate is on par with statewide (7.9%) and inner Bay Area trends (8.1% in San Francisco and 5.8% in Oakland).

The reasons properties are vacant at any given point are varied and complicated. ACS reported that about half (1,761) of Berkeley's housing units were vacant for one of the following typical market reasons:

- The property was actively listed for rent;
- The property was rented, but not currently occupied;
- The property was for sale;
- The property was sold, but not currently occupied; and
- The property was vacant, and only occupied seasonally or recreationally.

The remaining 1,861 housing units were vacant for other reasons not listed, but could be attributed to various factors. Owners may be preparing for sale or working on renovations between tenants. Sometimes properties are acquired by groups of heirs who are unable to organize to operate a property.

Approximately 84% of Berkeley's housing units are in buildings with fewer than 20 units. In a 10 unit building, one vacant unit under renovation between tenants translates to 10% vacancy. In addition, small, family property owners may take longer than property management companies to renovate units at tenant turnover, because of their capacity for managing contractors, ability to pay, or other reasons.



ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

Berkeley's current vacancy rate is similar to most housing markets. The vacant housing units are owned by private owners and are scattered in buildings across the City. In most cases, the City's remedies for vacant units are limited to supporting sale or rehabilitation by a willing owner and identifying those units will require a commitment of staff time. For this reason, the City should consider the HWCAC's recommendation in the context of Measure O priorities.

ALTERNATIVE ACTIONS CONSIDERED

The issue of vacant housing units could be incorporated into to Council's referral prioritization process or the Housing Action Plan.

CONTACT PERSON

Jenny Wyant, Community Development Project Coordinator, HHCS, (510) 981-5228





Peace and Justice  
Commission

ACTION CALENDAR  
FEBRUARY 19, 2019

To: Honorable Mayor and Members of the City Council  
 From: Peace and Justice Commission  
 Submitted by: George Lippman, Chairperson, Peace and Justice Commission  
 Subject: Resolution declaring City of Berkeley will not invest City funds in any entity involved in the production or upgrading of weapons

RECOMMENDATION

Adopt Resolution submitted by the Peace and Justice Commission declaring the City of Berkeley will not invest City funds in any entity involved in the production or upgrading of weapons.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

At its regular meeting September 17, 2018, the Peace and Justice Commission unanimously adopted the following recommendation: declaring that City of Berkeley will not invest City funds in or contract with any entity involved in the production or upgrading of weapons.

M/S/C: Bohn/Kenin  
 Ayes: Maran, Watson, Lippman, Bohn, Hariri, Kenin, Chen  
 Noes: None  
 Abstain: None  
 Absent: Pancoast

At its regular meeting January 7, 2019, the Peace and Justice Commission unanimously adopted a revised version of the resolution it adopted in September 2018. The revised recommendation removed the ban on contracting with entities involved in the production or upgrading of weapons, confining its scope to the investment of City funds in such entities.

Reso declaring City of Berkeley will not invest city funds  
In any entity involved in the production or upgrading of  
Weapons

ACTION CALENDAR  
FEBRUARY 19, 2019

M/S/C:       Bohn/Meola

Ayes:         al-Bazian, Bohn, Hariri, Han, Lippman, Maran, Meola, Morizawa,  
Pancoast, Rodriguez

Noes:         None

Abstain:      None

Absent:       Chen

Subsequent to the Commission's September 2018 action, City staff communicated feedback to the Commission secretary that the ban on contracting with weapons manufacturers could pose problems in procurement, notably BPD purchase of police weapons and munitions, and potentially other non-weapon supplies manufactured by companies that also produce weapons. The Commission considered these concerns in its January meeting and agreed to amend the item to exclude the ban on such contracting. The Commission determined that the original language of the item, which is circulating nationally among cities similar to Berkeley, focuses entirely on investment, and decided that reverting back to the language that other cities are adopting would provide benefits of alignment as well as addressing staff concerns.

Social responsibility concerns as they apply to contracting and procurement will be better addressed by a separate initiative.

### BACKGROUND

The City of Berkeley investment policy currently bans investment in guns.

This resolution is endorsed by over 50 organizations that favor divestment from weapons manufacturers. The organizations include CODEPINK, American Friends Service Committee, Peace Action USA, United for Peace and Justice, and the Women's International League for Peace and Freedom.

This campaign has been spurred by the Trump Administration's belligerent posture that has brought the country to the brink of war, as well as the passionate national campaign, especially among young people, against gun violence domestically.

### ENVIRONMENTAL SUSTAINABILITY

Reversing militarism is one of the key levers of promoting sustainability. Point 2 of the Environmentalists against War declaration in 2003 stated, "War destroys human settlements and native habitats. War destroys wildlife and contaminates the land, air and water. The damage can last for generations."<sup>1</sup>

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<sup>1</sup> <http://www.envirosagainstar.org/sayno/tenreasons.html>

Reso declaring City of Berkeley will not invest city funds  
In any entity involved in the production or upgrading of  
Weapons

ACTION CALENDAR  
FEBRUARY 19, 2019

RATIONALE FOR RECOMMENDATION

In passing this resolution the City of Berkeley joins with cities nationwide that oppose militarism and violence, and encourages other cities to follow Berkeley's lead.

ALTERNATIVE ACTIONS CONSIDERED

The Commission considered restrictions on contracting with any entities involved with the production or upgrading of weapons, with exemption for police purchases. The decision was taken to limit this action to investment only and to consider procurement in separate actions. This option will keep the current action in line with the national initiative.

CITY MANAGER

See companion report.

CONTACT PERSON

George Lippman, Chairperson, Peace and Justice Commission

Shallon Allen, Commission Secretary, (510) 981-7071

Attachments:

1. Resolution

Reso declaring City of Berkeley will not invest city funds  
In any entity involved in the production or upgrading of  
Weapons

ACTION CALENDAR  
FEBRUARY 19, 2019

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

Resolution declaring the City of Berkeley will not invest City funds in any entity involved  
in the production or upgrading of weapons.

WHEREAS, since 2001, the United States has spent over \$5.6 trillion on wars resulting  
in over 1.17 million deaths and displacing more than 10.1 million people;<sup>i</sup> and

WHEREAS, the cost of U.S. domestic and foreign militarism, including veterans' affairs,  
homeland security, and law enforcement, and incarceration, topped \$818 billion in  
2017,<sup>ii</sup>; and accounted for 64% of federal discretionary spending in 2016, at a time when  
federal funds are desperately needed in order to build affordable housing, improve  
public transit, and develop sustainable energy sources;<sup>iii</sup>and

WHEREAS, the United States remains the most militarized nation in the world, with a  
military budget greater than the next eight countries combined, an estimated 800  
military bases and stations in over 70 countries around the world, and arms producers  
that dominated 57.9% of the share of major global arms sales in 2016<sup>iv</sup>; and

WHEREAS, nearly 15,000 nuclear weapons, most of an order of magnitude more  
powerful than the U.S. atomic bombs that destroyed Hiroshima and Nagasaki, over 90%  
held by the United States and Russia, continue to pose an intolerable threat to  
humanity;<sup>v</sup> and detonation of even a small fraction of these weapons would disrupt the  
global climate and agricultural production so severely that the resulting famine could put  
the lives of more than two billion people at risk;<sup>vi</sup> and

WHEREAS, the United States is poised to spend \$1.7 trillion dollars over the next three  
decades to maintain and modernize its nuclear bombs and warheads; the submarines,  
missiles and bombers to deliver them; and the infrastructure to sustain the nuclear  
enterprise indefinitely, which many experts believe actually increases the risk of nuclear  
proliferation, nuclear terrorism, and nuclear war by accident, miscalculation or intent, at  
a time when nuclear-armed countries are already on the brink of military confrontation;<sup>vii</sup>  
and

WHEREAS, investing in companies producing the nuclear and conventional weapons at  
the roots of U.S. militarism implicitly supports this misdirection of our tax dollars; and

WHEREAS, many major arms producers depend on the federal government as their  
primary consumer and are thus dependent upon perpetual warfare, political instability,  
and the prioritization of militarism over diplomacy; and

Reso declaring City of Berkeley will not invest city funds  
In any entity involved in the production or upgrading of  
Weapons

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FEBRUARY 19, 2019

WHEREAS, U.S. weapons manufacturers continue to supply repressive regimes around the world, and U.S.-produced weapons are being used in attacks that the international community deems unlawful for their disproportionate and excessive harm to civilians; and

WHEREAS, billions of dollars worth of military-grade equipment has been transferred to local police departments in our communities, resulting in the disproportionate targeting of communities of color and perpetuating a culture of violence, hostility, and fear;<sup>viii</sup> and

WHEREAS, the rate of mass shootings in America is the highest anywhere in the developed world, as civilian gun manufacturers continue to reap enormous profits from unnecessary bloodshed in our streets and homes;<sup>ix</sup> and

WHEREAS, the average American taxpayer works 27 days a year to pay Pentagon contractors and pays 23.4 cents of each of their federal income tax dollars toward military spending, at a time when 43 million Americans live in poverty or qualify as low-income;<sup>x</sup> and

WHEREAS, the U.S. Conference of Mayors unanimously “calls on the President and Congress to reverse federal spending priorities and to redirect funds currently allocated to nuclear weapons and unwarranted military spending to restore full funding for Community Development Block Grants and the Environmental Protection Agency, to create jobs by rebuilding our nation’s crumbling infrastructure, and to ensure basic human services for all, including education, environmental protection, food assistance, housing and health care;<sup>xi</sup> and

WHEREAS, the City's investment practices must accord with the City's commitment to equality, peace, and justice;

NOW, THEREFORE, BE IT RESOLVED, that the City Council formally declares its opposition to investing City funds in any entities that are involved in the production or upgrading of weapons and weapons systems, whether conventional or nuclear, and including the manufacture of civilian arms, and decides that it shall be City policy to divest from such entities; and

BE IT FURTHER RESOLVED, that the City Council directs any and all persons acting on behalf of City investment activity to enforce the provisions of this Resolution; and

BE IT FURTHER RESOLVED that this Resolution shall be binding City policy and shall be in full force and effect after adoption by the City Council.

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- i “Costs of War, Brown University, Watson Institute of International and Public Affairs,” <https://watson.brown.edu/costsofwar/>
- ii “US Military Budget: Components, Challenges, Growth,” *The Balance*, <https://www.thebalance.com/u-s-military-budget-components-challenges-growth-3306320>
- iii “The Militarized Federal Budget,” National Priorities, <https://www.nationalpriorities.org/analysis/2017/militarized-budget-2017/>
- iv “Top 100 Arms-Producing and Military Service Companies, 2016,” Stockholm International Peace Research Institute, <https://www.sipri.org/publications/2017/sipri-fact-sheets/sipri-top-100-arms-producing-and-military-services-companies-2016>
- v “Nuclear Weapons: Who Has What at a Glance,” Arms Control Association, <https://www.armscontrol.org/factsheets/Nuclearweaponswhohaswhat>
- vi “Nuclear Famine: Two Billion People at Risk?” International Physicians for the Prevention of Nuclear War, <https://www.psr.org/wp-content/uploads/2018/04/two-billion-at-risk.pdf>
- vii “U.S. Nuclear Modernization Program,” Arms Control Association, <https://www.armscontrol.org/factsheets/USNuclearModernization>
- viii “War Comes Home,” ACLU, <https://www.aclu.org/issues/criminal-law-reform/reforming-police-practices/war-comes-home>
- ix “How US Gun culture compares with the world in 5 charts,” CNN, <https://www.cnn.com/2017/10/03/americas/us-gun-statistics/index.html>
- x “Tax Dollar Receipt,” National Priorities Project, <https://www.nationalpriorities.org/interactive-data/taxday/>
- xi “Calling on the Administration and Congress to Step Back From the Brink and Exercise Global Leadership in Preventing Nuclear War,” U.S. Conference of Mayors, June 11, 2018, <http://www.mayorsforpeace.org/english/ecbn/resolution/20180612.html>





Office of the City Manager

ACTION CALENDAR

February 19, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Paul Buddenhagen, Deputy City Manager

Subject: Companion Report: Resolution Declaring City of Berkeley Will Not Invest City Funds in Any Entity Involved in the Production or Upgrading of Weapons

RECOMMENDATION

Continue to support the City of Berkeley's existing investment policy which prohibits investments in gun manufacturers.

FISCAL IMPACTS OF RECOMMENDATION

The City anticipates no additional staff time in continuing the existing policy.

CURRENT SITUATION AND ITS EFFECTS

At its September 17, 2018 meeting, the Peace and Justice Commission unanimously adopted the following recommendation: declaring that the City of Berkeley will not invest City funds in or contract with any entity involved in the production or upgrading of weapons.

M/S/C: Bohn/Kenin  
 Ayes: Maran, Watson, Lippman, Bohn, Kenin, Chen  
 Noes: None  
 Abstain: None  
 Absent: Pancoast

At its regular meeting January 7, 2019, the Peace and Justice Commission unanimously adopted a revised version of the resolution it adopted in September 2018. The revised recommendation removed the ban on contracting with entities involved in the production or upgrading of weapons, confining its scope to the investment of City funds in such entities.

M/S/C: Bohn/Meola  
 Ayes: al-Bazian, Bohn, Hariri, Han, Lippman, Maran, Meola, Morizawa, Pancoast, Rodriguez  
 Noes: None  
 Abstain: None  
 Absent: Chen

The Commission recommends that the City Council formally declare its opposition to investing City funds in any entities that are involved in the production or upgrading of weapons and weapons systems, whether conventional or nuclear.

The City Manager supports the sentiment behind the commission's recommendation, and appreciates that the Peace & Justice commission removed a prohibition on contracting with entities that are involved in the production or upgrading of weapons, including the manufacture of civilian arms. The contracting prohibition would have had dire impacts on the City's ability to have a functioning police department. City staff are still concerned, however, that the Peace and Justice Commission resolution does not sufficiently define weapons and could inhibit the City's ability to invest in treasury funds if a broad definition of banning investments in entities involved in the production or upgrading of weapons was applied. This ambiguity would make the proposed resolution difficult for City staff to interpret and implement. The City's current investment policy aligns with the intent of the proposed resolution, and therefore City staff do not recommend further amending the current investment policy.

#### BACKGROUND

The City of Berkeley has a long and commendable history of responsible investing. The City's investment policies, which were updated in 2018, include the requirement to comply with ordinances, resolutions and directives listed below:

- Nuclear-Free Berkeley Act
- Resolution No. 59,853-N.S.-Oppressive States Contract prohibition
- Divestment from Gun Manufacturers and Tobacco Companies
- Divestment from Publicly Traded Fossil Fuel Companies and Banks that Finance Pipelines and Fossil Fuel Infrastructure
- Divestment from Prisons Resolution No. 67,640-N.S. and Immigration Detention Companies
- Divest from Any Companies Designing, Building or Financing the U.S. – Mexico Border Wall Resolution No. 67,865-N.S.

Regarding gun manufacturers, the City's investment policy states, *"Staff responsible for managing the City's investment portfolio are directed to divest all City funds held in gun manufactures...and are prohibited from making any new investments in such companies."*

Staff appreciates and supports the Peace and Justice Commission's intent to reduce financial support for companies that produce or upgrade weapons, and believes that the City's current investment policies are designed to accomplish that goal.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The current investment policy aligns with the intent of the proposed resolution, while allowing City staff to continue to invest in Treasury Funds.

ALTERNATIVE ACTIONS CONSIDERED

Council could consider referring the topic to the Budget and Finance or Public Safety Policy Committee.

CONTACT PERSON

Shallon Allen, Commission Secretary, (510) 981-7071  
Paul Buddenhagen, Deputy City Manager, (510) 981-7014





Kate Harrison  
Councilmember District 4

ACTION CALENDAR  
February 19<sup>th</sup>, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Kate Harrison, Rigel Robinson, and Sophie Hahn

Subject: Refer to the Planning Commission an amendment to BMC Chapter 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) and the Affordable Housing Mitigation Fee Resolution to Close a Loophole for Avoiding the Mitigation Fee through Property Line Manipulation

RECOMMENDATION

Refer to the Planning Commission an amendment to BMC Section 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) to close a loophole allowing prospective project applicants to avoid inclusionary affordable housing requirements for owner occupied projects by modifying property lines so that no lot is large enough to construct five or more units. Adopt an updated resolution pursuant to BMC 22.20.065 (Affordable Housing Mitigation Fee) addressing the same issue for rental projects.

BACKGROUND

A key strategy in Berkeley's effort to develop affordable housing requires that new housing construction include a portion of below market rate units. This requirement can be found in BMC Chapter 23C.12 (Inclusionary Housing Requirements) and BMC Section 22.20.065 (the Affordable Housing Mitigation Fee, or AHMF, Ordinance). The Inclusionary Housing Requirements section covers owner-occupied housing, while the AHMF Ordinance covers rented housing. The AHMF Ordinance for rental housing also provides for the Council to enact an enabling resolution to set the level of the fee and "additional limitations" on the application of the fee.

The Inclusionary Housing Requirements section mandates inclusionary affordable housing in owner-occupied projects if they either 1) result in the construction of five or more new dwelling units, 2) result in the construction of fewer than five new units if they are added to an existing one- to four-unit property developed after August 14, 1986, and increase the total number of units to more than five, or 3) are built on lots whose size and zoning designation would allow construction of five or more dwelling units. Developers have exploited the ability to modify lot lines on contiguous properties they own so that no lot is big enough to include five or more units, thus avoiding any affordability requirement under condition 3.

The AHMF Enabling Resolution, meanwhile, covers only those projects that result in the construction of 5 or more new units of rental housing, regardless of whether the lot could fit more units or if the project is adding units to an existing building.

This item:

- Amends the Inclusionary Housing Requirements section to cover owner-occupied projects built on any part of a contiguous property under common ownership and control whose size and zoning designation is such to allow construction of five or more Dwelling Units, regardless of how the property is divided.
- Amends the AHMF Enabling Resolution for rental housing to mirror the provisions of the Inclusionary Housing Requirements section regarding projects that add units to existing projects or are on property that could accommodate more than five units, including the amended language discussed above.

#### FISCAL IMPACTS OF RECOMMENDATION

May increase revenues to the Housing Trust Fund.

#### ENVIRONMENTAL SUSTAINABILITY

Increasing the supply of affordable housing in Berkeley may limit commute times and thus greenhouse gas emissions, in line with Berkeley's environmental goals.

#### CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

Attachments:

- 1: Ordinance
- 2: Resolution
- 3: Track Changes from Resolution No. 68,074-N.S

ORDINANCE NO. -N.S.

CLOSING MODIFIED PROPERTY LINE LOOPHOLE IN INCLUSIONARY HOUSING REQUIREMENTS

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

Section 1. That Berkeley Municipal Code Section 23C.12.020 is amended to read as follows:

**23C.12.020 Applicability of Regulations**

A. The following types of projects must comply with the inclusionary housing requirements of this chapter:

1. Residential housing projects for the construction of five or more Dwelling Units;
2. Residential housing projects for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All Units in such a property are subject to the requirements of this chapter;
3. Residential housing projects proposed on any part of a single property or two or more contiguous properties under common ownership and control whose size and zoning designation is such to allow construction of five or more Dwelling Units.

B. This chapter does not apply to Dormitories, Fraternity and Sorority Houses, Boarding Houses, Residential Hotels or Live/Work Units, which are not considered Dwelling Units. Live/Work Units are subject to low income inclusionary provisions set forth in Section 23E.20.080.

C. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any inconsistent requirements set forth elsewhere in this chapter.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 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.

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

CHANGING THE AFFORDABLE HOUSING MITIGATION FEE PURSUANT TO BERKELEY MUNICIPAL CODE SECTION 22.20.065; AND RESCINDING RESOLUTION NO. 68,074-N.S.

WHEREAS, on June 28, 2011, the City adopted the Affordable Housing Mitigation Fee Ordinance No. 7,192-N.S., adopting Berkeley Municipal Code Section 22.20.065, which would require developers of market rate housing to pay an mitigation fee to address the resulting need for below market rate housing, and offered the alternative to provide units in lieu of the fee; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 did not establish the fee, but authorized the City Council to adopt such fee by resolution; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 authorizes the City Council to specify by resolution additional limitations not inconsistent-with section 22.20.065; and

WHEREAS, on June 27, 2017 the City adopted Resolution NO. 68,074, establishing the fee at \$37,000 per new unit of rental housing; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 and the Affordable Housing Mitigation fee both aim to address the need for below market rate housing and therefore should have parity in applicability;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

1. The Affordable Housing Mitigation Fee authorized and provided for by Section 22.20.065 shall be \$37,000 per new unit of rental housing, payable at the issuance of Certificate of Occupancy, but shall be subject to a \$3,000 discount if paid in its entirety no later than issuance of the building permit for the project on which the fee is due. The Affordable Housing Mitigation Fee shall only apply to market rate units.
2. The Affordable Housing Mitigation Fee will be automatically adjusted by the annual percentage shown in the California Construction Cost Index published by the California Department of General Services, every other year beginning in 2018, on July 1. The automatic adjustment tied to the California Construction Cost Index shall not cause the fee to exceed the maximum fee established by the most recent Nexus study, and shall apply to all projects that have not received final approval by the City of Berkeley prior to the date of the automatic adjustment.
3. For purposes of this resolution, "new rental housing" includes group living accommodations, except for those categories that are currently exempt pursuant to BMC Section 23C.12.020.B, at an equivalency rate of one new rental unit per two bedrooms in a group living accommodation, such that one-half the fee adopted by this resolution shall be imposed on each bedroom.
4. For purposes of this resolution, "new rental housing" shall not include developments of four units or fewer units unless they meet any of the following criteria:
  - a) Residential housing projects for the construction of one to four new units, when such units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All units in such a property are subject to the requirements of this resolution;



- b) Residential housing projects proposed on any part of a contiguous property under common ownership and control whose size and zoning designation is such to allow construction of five or more units, regardless of how said property may be divided.
5. For the purposes of this resolution, "new rental housing" shall not include cooperative student housing developed by the Berkeley Student Cooperative.
6. The definition of "new rental housing" excludes units which are offered at no cost to support nonprofit public benefit activities.
7. No fee shall be assessed under the following circumstances.
  - a) No fee shall be assessed when new rental housing is built to replace rental units that have been destroyed through no fault of the owner of those units, as long as the applicant files a complete permit application within two years after destruction of the pre-existing units. Staff shall determine on a case by case basis both whether rental units have been "destroyed" and whether such destruction was through the fault of the owner. The issuance of a permit to demolish all or part of a building containing rental units shall not be determinative. However fees shall be assessed on rental units in a replacement project in excess of the number destroyed.
  - b) No fee shall be assessed on rental units that have been expanded, renovated, or rehabilitated unless the units were vacant for more than two years before the applicant filed a complete permit application for such expansion, renovation or rehabilitation.
8. Notwithstanding anything to the contrary, staff may waive all or part of the fee adopted by this resolution pursuant to Sections 22.20.070 and 22.20.080.
9. Except as set forth in section 2, this and future increases in the Affordable Housing Mitigation Fee shall apply only to projects whose applications for the required discretionary entitlements have not received final approval as of the effective date of the fee.

BE IT FURTHER RESOLVED that Resolution No. 68,074-N.S. is hereby rescinded.

### Track Changes from Resolution No. 68,074-N.S

1. The Affordable Housing Mitigation Fee authorized and provided for by Section 22.20.065 shall be \$37,000 per new unit of rental housing, payable at the issuance of Certificate of Occupancy, but shall be subject to a \$3,000 discount if paid in its entirety no later than issuance of the building permit for the project on which the fee is due. The Affordable Housing Mitigation Fee shall only apply to market rate units.
2. The Affordable Housing Mitigation Fee will be automatically adjusted by the annual percentage shown in the California Construction Cost Index published by the California Department of General Services, every other year beginning in 2018, on July 1. The automatic adjustment tied to the California Construction Cost Index shall not cause the fee to exceed the maximum fee established by the most recent Nexus study, and shall apply to all projects that have not received final approval by the City of Berkeley prior to the date of the automatic adjustment.
3. For purposes of this resolution, "new rental housing" includes group living accommodations, except for those categories that are currently exempt pursuant to BMC Section 23C.12.020.B, at an equivalency rate of one new rental unit per two bedrooms in a group living accommodation, such that one-half the fee adopted by this resolution shall be imposed on each bedroom.
4. For purposes of this resolution, "new rental housing" shall not include developments of four units or fewer units unless they meet any of the following criteria:
  - a) Residential housing projects for the construction of one to four new units, when such units are added to an existing one to four unit property or any part of two or more contiguous properties, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All units on such a property are subject to the requirements of this resolution;
  - b) Residential housing projects proposed on any part of a property or two or more contiguous properties under common ownership and control whose size and zoning designation would cumulatively allow construction of five or more units.
- 4.5. For the purposes of this resolution, "new rental housing" shall not include cooperative student housing developed by the Berkeley Student Cooperative.
- 5.6. The definition of "new rental housing" excludes units which are offered at no cost to support nonprofit public benefit activities.
- 6.7. No fee shall be assessed under the following circumstances.
  - a) No fee shall be assessed when new rental housing is built to replace rental units that have been destroyed through no fault of the owner of those units, as long as the applicant files a complete permit application within two years after destruction of the pre-existing units. Staff shall determine on a case by case basis both whether rental units have been "destroyed" and whether such destruction was through the fault of the owner. The issuance of a permit to demolish all or part of a building containing rental units shall not be determinative. However fees shall be assessed on rental units in a replacement project in excess of the number destroyed.
  - b) No fee shall be assessed on rental units that have been expanded, renovated, or rehabilitated unless the units were vacant for more than two years before the applicant filed a complete permit application for such expansion, renovation or rehabilitation.
- 7.8. Notwithstanding anything to the contrary, staff may waive all or part of the fee adopted by this resolution pursuant to Sections 22.20.070 and 22.20.080.
- 8.9. Except as set forth in section 2, this and future increases in the Affordable Housing Mitigation Fee shall apply only to projects whose applications for the required discretionary entitlements have not received final approval as of the effective date of the fee.



Office of the City Manager

INFORMATION CALENDAR

February 19, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Economic Development Manager

Subject: Referral Response: Supporting Worker Cooperatives

INTRODUCTION

This report responds to a referral adopted by City Council on February 9, 2016 to develop policies and programs to support worker cooperatives.<sup>1</sup> The Office of Economic Development, in coordination with community partners and other City departments, has developed new programs and analyzed potential policies that support worker cooperatives, and this report presents progress to date.

CURRENT SITUATION AND ITS EFFECTS

Worker cooperatives are valuable assets for local economies and communities. Owned and run by employees, these businesses typically provide higher wages, benefits, professional development, job security, and upward mobility for low to moderate income people. Also, these small businesses provide a diversity of locally owned services. A number of worker cooperatives located in Berkeley have become an integral part of the community's fabric, including The Cheese Board Collective, Biofuel Oasis, and Missing Link Bicycle Cooperative. When businesses are owned by workers, they create higher quality jobs, increase local reinvestment, and have demonstrable positive impact on business retention.<sup>2</sup>

Due to the general lack of familiarity with the cooperative business model, worker cooperatives can face a unique set of challenges, e.g., when obtaining a business license or permits, engaging with regulators, or pursuing financing. Worker cooperatives are at a disadvantage to conventional hierarchical business ownership models when it comes to accessing startup capital. Equity investors and banks tend to be unfamiliar with, and are often unwilling to invest in, cooperatives with multiple owners and unique governance models. According to United for a Fair Economy, "one of the main barriers to business ownership for people of color is access to start-up capital" and worker cooperatives make business ownership more accessible.<sup>3</sup>

<sup>1</sup> [Supporting Worker Cooperatives and Referral to City Manager to Develop a Worker Cooperative Ordinance](#), Item 27, Berkeley City Council Meeting, February 9, 2016.

<sup>2</sup> <https://auspace.athabasca.ca/handle/2149/3133>

<sup>3</sup> <https://institute.coop/news/creating-better-jobs-and-fairer-economy-worker-cooperatives>

The Office of Economic Development (OED) provides technical assistance and support to all types of businesses and organizations, including worker owned cooperatives. OED has also provided financial support to one of Berkeley's cooperatives; Biofuel Oasis was awarded, and recently completed repayment of, a loan from the City's Revolving Loan Fund.

Beginning in January 2019, OED is engaging Project Equity, a nonprofit organization that is dedicated to advancing worker cooperatives, to provide technical aid to businesses looking to transition to a worker-ownership model. OED is also working to increase staff capacity and knowledge of issues that specifically impact worker owned cooperatives to provide more targeted assistance going forward.

Project Equity will take a multi-phase approach to support Berkeley businesses interested in the worker cooperative ownership model. First, they'll conduct a business retention data study, which will provide a better understanding of which of the City's businesses are at risk of closure and may be candidates for conversion to worker ownership. Second, they'll perform broad outreach and direct engagement to educate business owners about the worker cooperative model. OED will then subsidize the cost of working with up to four businesses to transition to worker ownership, including a feasibility study and transition plan.

In addition, Project Equity will prepare a communications plan, outreach and intake materials, educational materials for economic development professionals and regulators, and training for City staff on the worker cooperative model. See attachment 1 for a sample of the outreach and education materials Project Equity is deploying in Berkeley. In February 2019, OED and Project Equity will host a free training for staff from the City of Berkeley, neighboring municipalities, and other partners on providing support for worker cooperatives and how traditional businesses can convert to coops. Particular attention will be paid to succession planning for business owners who are wishing to retire and may want to sell their business to their employees. The communications and outreach for the program has already benefited from local media coverage in the San Francisco Chronicle.<sup>4</sup>

#### *Worker Cooperatives & the Revolving Loan Fund*

Sustainable Economies Law Center (SELC), an Oakland-based organization that advocates for policies that promote community reliance and economic justice, has recommended a number of amendments to the Berkeley Revolving Loan Fund Administrative Plan that would benefit worker cooperatives. These include:

1. Enable the use of loan capitol for conversion to worker ownership
2. Clarify and limit the personal guarantee requirement.
3. Establish a lending target for cooperatives.

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<sup>4</sup> Otis Taylor Jr., [Nonprofit helps employees take hold of reins as business owners retire](#), San Francisco Chronicle, November 29, 2018.

4. Include worker-owned jobs as a selection criteria.
5. Reduce private dollars threshold for cooperatives.

SELC presented these recommendations at the November 29, 2018 Loan Administration Board (LAB) meeting. The LAB discussed the possible creation of a loan fund specifically for worker cooperatives. Worker cooperatives typically need training and technical assistance as a first step before accessing capital. It is not uncommon for loan funds earmarked for cooperatives to be underutilized, because the cooperatives were not “loan ready.” The funding also require that applicants participate in business skills training through partnerships with existing cooperatives and other organizations. Applicants could additionally have a plan for reaching historically marginalized populations like people of color, immigrants, and low-income workers. The LAB will engage in additional discussions to determine the best approach for supporting worker cooperatives, and relay recommendations to the City Council.

#### BACKGROUND

The February 9, 2016 referral suggested policies and programs to support worker cooperatives, including the following:

1. Worker Cooperative Preference in Procurement and Contracting
2. Revise Business Permit Application to recognize Worker Cooperatives
3. Business Tax and Land Use Incentives
4. Developing Educational Materials

In January 2019, the Finance Department updated its business license application and renewal forms to better accommodate worker-owned cooperatives. Both forms have been modified to allow the principal(s) of a worker-owned cooperative to properly identify themselves and be recorded as such in the City of Berkeley business license system. In addition, OED is implementing new programs, as noted above, to provide focused assistance to worker cooperatives, educate business owners about the model, and increase capacity of economic development professionals and other staff to effectively serve cooperatives. There are other opportunities to support worker cooperatives by implementing some of the proposed measures and policies and modifying existing business practices.

During the past year, staff has consulted with and analyzed proposals from staff from Sustainable Economies Law Center (SELC) on how the City of Berkeley can adopt programs and policies to better serve and promote worker cooperatives. Most recently, SELC attended the November 29, 2018 Loan Administration Board (LAB) meeting to discuss proposed changes to the Berkeley Business Loan program to support worker owned cooperatives. LAB members reviewed SELC’s policy considerations and added an agenda item to a future LAB meeting to discuss amendments to the loan fund’s Administrative Plan and application process.

The City's current Local Business Preference provides a five percent (5%) bidding preference on bid opportunities from \$100-\$25,000 to vendors operating businesses with a Berkeley street address. This preference is available to all Berkeley vendors, including worker-owned cooperatives that submit bids to provide goods, equipment, and non-professional services.

In March 2018, request for proposals (RFP) #18-11193-C was released to identify a firm to examine the City's procurement activities and identify disparities in the awarding of contracts affecting local, small, emerging, minority, and women business enterprises that could include worker-owned cooperatives. Price proposals received from six (6) respondents ranged from \$245,575 to well over \$400,000. Appropriated funding for the study exists in the amount of \$100,000. A full staff report on this project will be submitted to Council by March 31, 2019.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identified environmental costs or opportunities associated with the subject of this report.

#### POSSIBLE FUTURE ACTION

City Council could consider expanding the Revolving Loan Fund to establish a separate capital base that is dedicated to funding worker cooperatives. Council may also consider modifications to the City's procurement process to increase the preference worker cooperatives.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

The establishment of a separate capital base dedicated to funding worker cooperatives would require a one-time investment that would likely fall within the range of \$100,000 to \$250,000. Additional staff analysis is required in order to determine the potential fiscal impacts of other possible future actions.

#### CONTACT PERSON

Jordan Klein, Economic Development Manager, 510-981-7534  
Kieron Slaughter, Community Development Project Coordinator, 510-981-2490

#### Attachments:

1: Project Equity Outreach & Education Materials

# EXIT STRATEGY

## FOR YOUR BERKELEY BUSINESS

### Why should I consider converting my business?

You are able to create a flexible exit strategy and realize a fair sales price with tax advantages while taking care of your employees who helped build the business. Broad-based employee ownership sustains quality jobs, creates stronger businesses, and preserves your company's legacy.

### How are employee-owned businesses structured?

It is important to choose the form of employee ownership that is the best fit for you and your business. ESOPs and worker cooperatives have been around for decades. Worker coops are 100% employee-owned and have democratic practices such as majority board representation built into the structure. ESOPs can be fully or partially employee-owned, and Democratic ESOPs integrate employee voting and board representation.

### How does employee ownership work as an exit strategy?

An owner sells the business or its assets to a new employee owned business of which the employees are members. Or, in the case of an ESOP, sells the company shares to a trust that acts on behalf of the employees. This sale is typically financed by debt (non-voting equity is possible in a worker coop transition). Then, the newly employee-owned company pays down the financing out of future profits.



**ONLY 15%**  
of businesses  
succeed to  
the next  
generation.

Realize market value with tax advantages.

Preserve your company's culture and its legacy in the community.

**A GREAT SOLUTION FOR BUSINESSES OF ALL SIZES!**



Let us guide you through the process.

**PROJECT-EQUITY.ORG**

### BUSINESSES



- Higher productivity & growth
- Lower employee turnover
- Improved lifespan
- Owner receives market value

### COMMUNITIES



- Retain good businesses & jobs
- Experience greater civic engagement
- Circulate more money locally

### EMPLOYEES



- Enjoy better pay & benefits
- Build assets & equity
- Have a voice in key decisions
- Grow leadership skills



# UNDERSTANDING YOUR Page 6 of 6 SUCCESSION OPTIONS

OPTIONS	 PRESERVE LEGACY	 MARKET VALUE	 TAX BENEFITS	 EMPLOYEES RETAINED
Sell to Family	✓	?	?	?
Acquisition	?	?	✗	?
Employee Ownership	✓	✓	✓	✓
Close Down	✗	✗	✗	✗

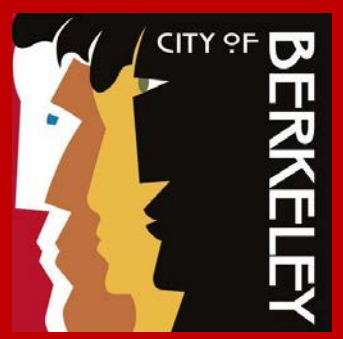
**OVER 80%** of businesses listed with a leading broker never sell

## EMPLOYEE OWNERSHIP MYTHS

- Myth #1 – My employees can't run my company!**  
With employee ownership, the employees would not be running the company alone. Management would be in place and the transition process ensures time to train and/or hire leadership replacement.
- Myth #2 – My employees don't want to buy the company.**  
There would be many employee owners, versus just one or a handful. Responsibility and rewards are spread among all. No individual would buy the company alone.
- Myth #3 – My employees don't have enough money to buy the company.**  
In an employee ownership transition, there's not an expectation that the employees would bring the total amount of cash to the table to buy the business.
- Myth #4: I won't get a fair price if I sell to my employees.**  
Sellers who transition their companies to employee ownership will receive fair market value plus potential tax advantages, and we recommend getting a formal valuation as a first step.

**Myth #5– It sounds hard!**  
Any business succession path takes effort. Project Equity helps with every step of the process.

**The City of Berkeley** has selected Project Equity for the important work of helping us retain local businesses based on their innovative model for sustaining small businesses in communities both locally and across the country.



Let us guide you through the process. **PROJECT-EQUITY.ORG**





Office of the City Manager

## INFORMATION CALENDAR

February 19, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Kelly Wallace, Interim Director, Health, Housing and Community Services

Subject: Referral Response: City Maintained Below Market Rate Units (BMR) Online Resource

### INTRODUCTION

In response to Council direction at the January 31, 2017 meeting, this report provides information on the development of a City webpage for affordable housing resources.

### CURRENT SITUATION AND ITS EFFECTS

This report responds to referral # 2016-40 that originally appeared on the agenda of the January 31, 2017 Council meeting and was sponsored by Mayor Jesse Arreguin and Councilmembers Linda Maio and Sophie Hahn. On January 31, 2017, the City Council adopted a recommendation to “establish a City maintained online resource that would provide a brief overview of the history and purpose of Below Market Rate (BMR) units, a current list of all buildings that contain BMR units and the characteristics of the units, the % of median income qualification levels for the units, the HUD published income guidelines for % of median and family size, the property owner, rental agent, and/or management company contact information, and other relevant information that would be helpful to potential renters of BMR units. The City shall update the information as more units become available, and quarterly, to ensure that information is current.” This is also designated as a “High Priority” on the Affordable Housing Action Plan adopted on November 27, 2017.

In their report, the City Council noted it would be useful for the City to have a comprehensive listing of properties that have been approved with BMR units that could be consulted by our service providers and residents in need of housing. Staff created a webpage tailored specifically to community members seeking housing to provide more information on affordable housing options as well as steps and resources to find affordable housing. Staff created a webpage that features information on both BMR units and non-profit affordable housing developments within the city. The webpage also links to Alameda County’s 211 service, which provides the ability to search for affordable housing options across the county (phone and online options are available), and One Home Bay Area, which provides ability to search for affordable housing options across the region.

The website also features:

- Background information on different types of affordable housing options, and instructions on how to apply;
- A Frequently Asked Questions (FAQ) to address residents' questions and concerns regarding the BMR program;
- Contact and property information for all City-monitored BMR properties (including total units and AMI restrictions);
- An interactive map with the location and contact information for BMR and non-profit affordable developments within the city; and
- A printable brochure with featuring information and resources from the website.

Staff created a unique URL to facilitate easier access and distribution throughout the community: <https://www.cityofberkeley.info/affordable/>.

#### BACKGROUND

Leasing and waitlists are managed independently by the owner or their representative for each property. Each property has specific requirements for rent and income, and, depending on the property, target populations (seniors, transitional/supportive, etc). This website is designed to assist community members with a general understanding of affordable housing options locally and regionally, and provide a coordinated resource page for the decentralized application process.

#### ENVIRONMENTAL SUSTAINABILITY

There are no sustainability effects associated with the information of this report.

#### POSSIBLE FUTURE ACTION

Staff will make continued updates to the contact information profiles as they change, and include new developments and resources as they come online.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There is staff time associated with monitoring and updating the website and resource brochure.

#### CONTACT PERSON

Mike Uberti, Community Development Project Coordinator, HHCS, (510) 981-5114

Attachments:

- 1: Affordable Housing Resources Brochure
- 2: Original Referral Report from January 31, 2017

# Affordable Housing Options in Berkeley



## Non-Profit Operated Apartments

1450 units

46 properties

## BMR Projects

410 units

35 properties

## Berkeley Housing Authority Section 8 Vouchers

1939 vouchers

The City does **not** operate any housing, accept applications, track vacancies, or maintain waiting lists. Anyone interested in affordable housing in Berkeley must contact the property owners/managers directly.

Contact information is available at [www.cityofberkeley.info/affordable/](http://www.cityofberkeley.info/affordable/)

Many of these units are largely occupied due to high demand. Use the Resources panel for ways to find units available now.

## Resources



### Emergency Housing, Health and Social Services Hotline – Dial 211

- Free, accessible, 3-digit telephone number for all Alameda County residents
- Emergency housing, food, financial aid, healthcare, legal assistance & more
- Available 24 Hours per day seven days a week.
- Use (888) 886-9660 for non-local calls

### Affordable Housing Choices for Alameda County

To explore housing options and other services on the internet, visit 211's website:

[www.achousingchoices.org](http://www.achousingchoices.org)

### Affordable Housing Choices across the Bay Area

For up-to-date affordable housing listings across the Bay Area, visit the One Home website: [www.onehomebayarea.org](http://www.onehomebayarea.org)

### Berkeley-based Non-Profit Housing Providers

Resources for Community Development <https://rcdhousing.org/finding-housing/>  
Satellite Affordable Housing Associates <http://www.sahahomes.org/apply>

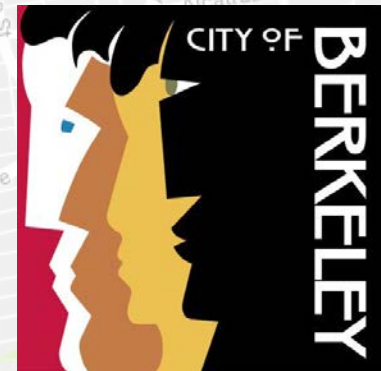
### Berkeley Below Market Rate Units

FAQ and contact information: [www.cityofberkeley.info/affordable/](http://www.cityofberkeley.info/affordable/)



Attachment 1

# Looking for Affordable Rental Housing in Berkeley?



City of Berkeley  
Department of Health, Housing & Community Services

[www.cityofberkeley.info/affordable/](http://www.cityofberkeley.info/affordable/)



**Affordable Housing**

Any housing that has rent or sales price restrictions is often called “affordable housing.” Berkeley offers several options to access affordable housing including non-profit/income subsidized units, BMR units, and Section 8 vouchers.

**Area Median Income (AMI)**

The area median income is the household income for the median — or middle — household in a region.

Area = A particular geographical area, e.g., Alameda County

Median = Middle point: half of the households earn less than the median while the other half earn more

Income = Total income of the entire household (everyone 18+)

**Below Market Rate (BMR)**

The City’s affordable housing program that provides designated affordable units in market rate apartment buildings. Rents are set at fixed “below market” rates based on unit size to ensure affordability.

**Step 1: Identify Your Housing Needs & Preferences**

Berkeley provides a variety of affordable housing options, but because the need for affordable housing is much greater than the supply throughout the Bay Area, use 211 phone/web services to identify options across Alameda County. Non-profit affordable housing is often targeted to certain populations:

- **Senior:** Minimum age requirements are either 55 or 62, depending on the development. Children are usually not allowed, but live-in aides may be.
- **Special Needs:** You must have a documented mental, physical or developmental disability.
- **Family:** You may be a single parent with children, a two-parent family with or without children, or two or more individuals.
- **Transitional or Supportive:** Housing for people emerging from homelessness or in need of special services.

**Step 2: Check to See if Your Income Qualifies**

Percentages of AMI are frequently used to determine eligibility for affordable projects. Typically, to be eligible, your income must be less than 30%-120% AMI, depending on the property. Each project’s affordability requirements are based on unique, complex criteria - only a property manager can determine your eligibility. If you think your income is close to qualifying, submit an application to find out for sure.

Consider connecting with community resources to help you a credit check, security deposit , and budgeting to prepare for applying. These are some resources to start:

**Money Management International:** <https://www.moneymanagement.org/>

**Spark Point:** <https://uwba.org/sparkpoint/>

**Step 3: Contact Properties and/or Managers and Apply**

Contact as many organizations and agencies to increase your chances of finding an affordable home.

- Visit websites and call properties to inquire about vacancies or joining a waitlist
- Use 211 Services to explore options across Alameda County
- Once you’ve submitted your applications or joined a waitlist, let each property know if you move or change your phone number. Ask about the best way to keep in contact.
- Be prepared to provide financial and family information and your housing history.

**Apply to as many affordable housing properties as you can, even if there is a long waiting list. You will probably need to spend time waiting on waiting list. Be persistent & don’t get discouraged!**



CITY COUNCIL  
**Linda Maio**

CONSENT CALENDAR  
January 31, 2017

TO: Honorable Mayor and Members of the City Council

FROM: Councilmembers Linda Maio and Sophie Hahn, and Mayor Jesse Arreguin

SUBJECT: City Maintained Below Market Rate Units (BMR) Online Resource

RECOMMENDATION:

Establish a City maintained online resource that would provide a brief overview of the history and purpose of Below Market Rate (BMR) units, a current list of all buildings that contain BMR units and the characteristics of the units, the % of median income qualification levels for the units, the HUD published income guidelines for % of median and family size, the property owner, rental agent, and/or management company contact information, and other relevant information that would be helpful to potential renters of BMR units. The City shall update the information as more units become available, and quarterly, to ensure that information is current.

BACKGROUND:

The City of Berkeley has required BMR units in a variety of buildings and it would be useful to have a comprehensive listing of properties that have been approved with BMR units that could be consulted by our service providers and residents in need of housing. While we are thinking of how best we can use these units to address issues such as displacement of Berkeley residents and homelessness, one step would be to set up an online resource that offers a comprehensive profile of the BMR units the City has approved, with the relevant information associated with each unit.

ENVIRONMENTAL SUSTAINABILITY:

No environmental sustainability impact.

FINANCIAL IMPLICATIONS:

None.

CONTACT:

Councilmember Linda Maio, District 1, 510-981-7110  
Councilmember Sophie Hahn, District 5, 510-981-7130





Mental Health Commission

## INFORMATION CALENDAR

February 19, 2019

To: Honorable Mayor and Members of the City Council  
 From: Mental Health Commission  
 Submitted by: boona cheema, Chairperson, Mental Health Commission  
 Subject: Mental Health Commission 2018/2019 Work Plan

### INTRODUCTION

The Mental Health Commission is submitting the 2018/2019 Work Plan which was adopted by the Commission on April 26th 2018.

### CURRENT SITUATION AND ITS EFFECTS

In 2016 the City Council created a requirement for the submission of annual work plans. The commission created its first work plan which was adopted on April 26th, 2018.

M/S/C (Fine, Ortiz) Adopt the 2018 Work Plan: Ayes: Castro, cheema, Kealoha-Blake, Ludke, Marasovic, Ortiz, Posey: Noes: None Absent: Davila, Heda.

Berkeley Mental Health is well funded and when fully staffed has the ability to serve its mandated consumers. The partnership with the commission will assure that the services provided continue to improve and reach more underserved populations in the city.

### BACKGROUND

This is the first time that this commission has developed a work plan, the process itself brought out the best in the commission's talents and skills. We then created the following working committees: Accountability, Diversity, Site Visit, and By-Laws.

The committees are meeting on a monthly basis and moving forward with making recommendations to BMH on a regular basis. If and when needed we will submit recommendations to the City Council for action. All the committees are working hard towards accomplishing the goals set forth in the plan.

### ENVIRONMENTAL SUSTAINABILITY

We do not expect any action related to this section.

### POSSIBLE FUTURE ACTION

When appropriate we will send recommendations to the City Council for action. We will also submit our annual report in early 2019 which will include the progress on we are making in meeting our goals.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

We do not expect that there will be a financial impact upon the city to accomplish our goals, however we might recommend changes within the existing allocations in the budget of the Berkeley Mental Health Division.

CONTACT PERSON

Karen Klatt, Commission Secretary, HHCS, (510) 981-7644

Attachments:

1: Mental Health Commission 2018/2019 Work Plan



**Attachment 1: Mental Health Commission for the Cities of Berkeley and Albany**

**WORK PLAN 2018—May 1, 2018 to May 31 2019**

**MISSION and VISION:**

1. We aim to address the mental health crisis in our community where a large number of unsheltered people are unserved, underserved and/or inappropriately served by public government systems.
2. We aim to ensure that a diversity of people—including people of color, children, families, youth, the LGBTQ community, and seniors—receive mental health interventions and services that are respectful and tailored to their mental health needs.
3. Through our work, we aim to strengthen the core values/guiding principles of 1) wellness, recovery and resilience-oriented models; 2) community collaboration; 3) systems development and integration among BMH, CBOs and other entities; 4) cultural competency; and 5) consumer and family-driven services.

Action Steps	Timeline	Expected Outcome	Person Responsible	Progress Notes
<p>Memorialize</p> <ul style="list-style-type: none"> <li>• A great deal of knowledge exists in the system, amongst stakeholders, providers, consumers, volunteers, and the larger community about the public mental health system for the Cities of Berkeley and Albany.</li> </ul> <p>Data Collection</p> <ul style="list-style-type: none"> <li>• The Mental Health Commission will approach BMH, CBOs, stakeholders, consumers, including unsheltered people in encampments and other</li> </ul>		<p>Make recommendations to Berkeley Mental Health and the Berkeley City Council regarding the public mental health system for the Cities of Berkeley and Albany regarding the status of unsheltered people with mental illness and recommendations regarding the resources needed to improve the quality of their lives.</p>	<p>boona cheema Shirley Posey Carole Marasovic Paul Kealoha-Blake</p>	

<p>locations who live with mental illness to gather information.</p> <ul style="list-style-type: none"> <li>• Through conversations, meetings and written materials, the Mental Health Commission will collect and review this information. The Mental Health Commission will also request additional information to make recommendations to BMH and the BCC.</li> <li>• The Mental Health Commission will create reports memorializing conversations with people with mental illness and others to contribute their information to meet this goal.</li> </ul>				
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<p><b>GOAL TWO:</b></p> <ul style="list-style-type: none"> <li>• <b>Ensure a diversity of people, including people of color, youth, LGBTQ and seniors, have access to culturally competent (respectful and tailored) mental health interventions and services from the public mental health care system for the Cities of Berkeley and Albany.</b></li> <li>• <b>Ensure BMH and CBOS bring awareness and visibility about mental health to a diversity of groups and the larger community to reduce stigma and discrimination.</b></li> </ul>				
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Action Steps	Timeline	Expected Outcome	Persons responsible	Progress
<p><b>General Diversity Assessment</b></p> <ul style="list-style-type: none"> <li>• Request documentation, reports and any evaluations which show that this goal is being met.</li> </ul>		<p>Increased knowledge of BMH and CBO capacity and identify gaps.</p>	<p>Erlida Castro Margaret Fine Ben Ludsky</p>	

<ul style="list-style-type: none"> <li>• Meet with the current Diversity and Multicultural Program staff and participate on the BMH Committee related to it.</li> <li>• Review materials being used in trainings and workshops.</li> <li>• Assess the efforts BMH and contracted CBO's efforts in reducing discrimination and stigma.</li> </ul>		<p>To write a written report with recommendations.</p>		
<p><b>Diversity Strategy</b></p> <ul style="list-style-type: none"> <li>• Work with BMH and CBOs to strengthen and deepen serving a diversity of people according to best practices for the delivery of mental health interventions and services (process oriented strategies by CalMHSA)</li> <li>• Ask CalMHSA about effectively, empathetically using materials in client context.</li> <li>• Ensure that materials are available in medical and mental health waiting rooms and in visible locations at CBOs and other important entities serving a diversity of people and the larger community.</li> </ul> <p><b>CalMHSA – Technology INN:</b></p> <ul style="list-style-type: none"> <li>• Participate in developing the BMH INN plan for \$400,000 expenditures in joint</li> </ul>		<p>To ensure that a diversity of groups feel welcome and have a sense of belonging when interacting with BMH and CBOs both within and outside the organizations.</p>		

<p>agreement with CalMHSA to provide effective, empathetic technology innovations to BMH. Ensure these innovations are culturally competent (respectful and tailored) to meet the needs of a diversity of groups using them.</p> <ul style="list-style-type: none"> <li>• Seek technology to provide a range of mental health resources available on an app for a diversity of persons to have expedient access to information about resources.</li> </ul>				
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**GOAL THREE: Build a Strong Partnership with BMH, the CBOs, the Community and Consumers, local government, and other stakeholders.**

<ul style="list-style-type: none"> <li>• Appoint an individual Commissioner to each of the internal BMH Committees</li> <li>• Each Commissioner attends regular meetings and makes status reports to the MHC.</li> <li>• Invite BMH staff to Commission meetings</li> <li>• Invite CBO's to present to commission</li> </ul>		<p>Ensuring a diversity of groups are represented on internal BMH committees and report to MHC about the status of the committees.</p> <p>Build deeper understanding of current programs, quality and depth of service so we make recommendations which are fully informed.</p>	<p>Vylma Ortiz boona cheema</p>	
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**GOAL FOUR: Assess financial accountability of Berkeley Mental Health and related CBOs.**

Action Steps	Timeline	Expected Outcome	Persons responsible	Progress
<ul style="list-style-type: none"> <li>• Identify all existing BMH documents pertaining to financial accountability.</li> <li>• Request these documents from BMH.</li> <li>• Review and analyze the documentation.</li> <li>• <b>Gather relevant research regarding financial evaluation, particularly regarding MHSA and related programs</b></li> </ul>		<p>To provide analysis/oversight to the Berkeley City Council about the use of government and other funding for the public mental health system for the Cities of Berkeley and Albany.</p>	<p>Margaret Fine Cheryl Davilla boona cheema</p>	

**GOAL FIVE: Review and assess program needs, services, facilities, including challenges and any problems and make recommendations.**

Action Steps	Timeline	Expected Outcome	Persons responsible	Progress
<ul style="list-style-type: none"> <li>• <b>Obtain documentation needed from BMH and CBOs to review and assess programs</b></li> </ul>		<p>To provide analysis/oversight to the Berkeley City Council about the use of government program resources for the public mental health system for the Cities of Berkeley and Albany. Synthesize information and write report re: information collected for Berkeley City Council.</p> <p>Make recommendations that include identified strategies &amp; resources needed to improve the</p>	<p>Same as above</p>	

		public mental health system for the Cities of Berkeley and Albany.		
<ul style="list-style-type: none"> <li>• <b>Further obtain outcomes data to assess programs.</b></li> </ul>		See above.		
<ul style="list-style-type: none"> <li>• <b>Confirm BMH and CBOs have implemented performance evaluation to measure program effectiveness.</b></li> <li>• <b>Gather relevant research regarding program evaluation, particularly regarding MHSA and related programs</b></li> </ul>		See above.		
<ul style="list-style-type: none"> <li>• <b>Write MHC Report with Recommendations for Berkeley City Council.</b></li> </ul>				

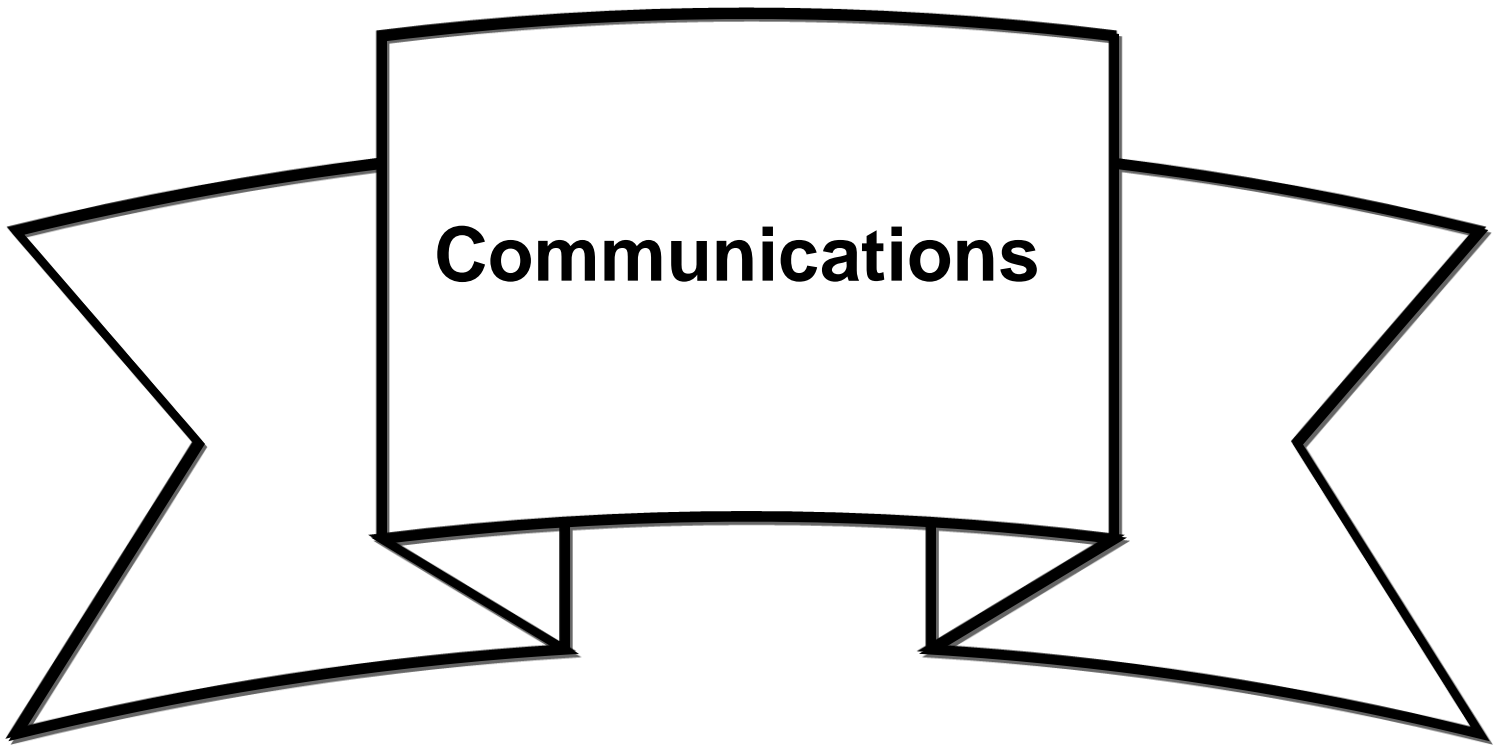
**GOAL Six: Make site visits to Berkeley Mental Health programs, as well as to CBO programs which provide mental health services in Berkeley and Albany with, to become more informed and familiar with the continuum of interventions and services. Meet with staff and consumers of these services**

Action Steps	Timeline	Expected Outcome	Persons responsible	Progress
<ul style="list-style-type: none"> <li>• <b>Create clear purpose and develop protocols for site visits.</b></li> </ul>		An integrated approach to service delivery. Streamline the provision of a continuum of services.	Erlinda Paul Carole Shirly	
<ul style="list-style-type: none"> <li>• <b>Identify documentation needed and review that before the site visits, including contracts.</b></li> </ul>				

<ul style="list-style-type: none"> <li>Undertake site visits.</li> </ul>					
<b>GOAL SEVEN: Submit Annual Report 2018 to the Berkeley City Council.</b>					
Key Action Steps	Timeline	Expected Outcome		Person Responsible	Comments
<ul style="list-style-type: none"> <li>Write Annual Report 2018</li> <li>Submit Annual Report to Mental Health Commission</li> <li>Obtain Approval by Mental Health Commission to Submit to the Berkeley City Council</li> <li>Submit to the Berkeley City Council</li> </ul>		To inform the BCC on the continuous work of the BAMHC			
<b>GOAL EIGHT: Stay current and disseminate information on evidence-based best practices used and related developments regarding public mental health systems for inventions and services.</b>					
Key Action Steps	Timeline	Expected Outcome		Person Responsible	Comments
<ul style="list-style-type: none"> <li>Research WHO and related mental health organizations that set domestic and/or universal evidence-based best practices for the delivery of public mental health systems.</li> </ul>		Learn from and apply appropriate strategies.			
<b>GOAL NINE: Increase Public Education on Mental Health and Wellness, particularly to reduce stigma and discrimination.</b>					
Key Action Steps	Timeline	Expected Outcome		Person Responsible	Comments
<ul style="list-style-type: none"> <li>Hold Signature Event</li> </ul>	May 2019 in May is Mental Health Month	Public Education		Full Commission and all Stakeholders	







All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

**City Clerk Department**

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

**Records Online**

<http://www.cityofberkeley.info/recordsonline>

To search for communications associated with a particular City Council meeting using Records Online:

1. Select Search Type = “Public – Communication Query (Keywords)”
2. From Date: Enter the date of the Council meeting
3. To Date: Enter the date of the Council meeting (this may match the From Date field)
4. Click the “Search” button
5. Communication packets matching the entered criteria will be returned
6. Click the desired file in the Results column to view the document as a PDF