

AGENDA



BERKELEY CITY COUNCIL MEETING

**Tuesday, April 2, 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. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on April 2, 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 Fund - \$7,265,675
Contact: Henry Oyekanmi, Finance, 981-7300
- 2. Contract No. 9863 Amendment: Arup North America, Ltd. for Construction Support Services for the Shattuck Reconfiguration and Pedestrian Safety Project**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 9863 with Arup North America, Ltd. for Construction Support Services for the for the Shattuck Reconfiguration and Pedestrian Safety Project, increasing the contract by \$50,000, for a total amount not to exceed \$763,800, and extending the term of the contract from June 30, 2019 to June 30, 2021.
Financial Implications: Capital Improvement Fund - \$50,000
Contact: Phillip Harrington, Public Works, 981-6300

Council Consent Items

- 3. Budget Referral: Opening the West Campus Pool Year-Round**
From: Mayor Arreguin and Councilmembers Davila and Hahn
Recommendation: Refer to the FY2020 Budget Process at least \$213,000 and up to \$481,745 to reinstate the year-round opening of the West Campus Pool.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, 981-7100
- 4. Co-Sponsorship and Budget Referral for the 2019 Bay Area Book Festival**
From: Mayor Arreguin, and Councilmembers Wengraf, Harrison, and Davila
Recommendation:
1. Adopt a Resolution approving official City of Berkeley co-sponsorship of the non-profit Bay Area Book Festival to be held from May 4-5, 2019 in Downtown Berkeley; and
2. Refer an allocation of \$50,000 for the Bay Area Book Festival to the FY 2020/2021 Budget Process.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, 981-7100
- 5. Opposition to Eliminating Settlement Conferences for Unlawful Detainer Cases**
From: Mayor Arreguin, and Councilmembers Bartlett, Harrison, and Robinson
Recommendation: Adopt a Resolution urging the Alameda County Superior Court to rescind its proposal to eliminate settlement conferences for half of all unlawful detainer cases. Send a copy of the Resolution to the Presiding Judge of the Alameda County Superior Court.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, 981-7100
- 6. Women's Daytime Drop-In Center: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**
From: Councilmembers Davila, Hahn, Harrison, and Wengraf
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$150 from Councilmember Cheryl Davila, to the Women's Daytime Drop-In Center, for their 31st Annual Chance for Change on May 4, 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 - \$150
Contact: Cheryl Davila, Councilmember, District 2, 981-7120

Council Consent Items

- 7. Referral to the Energy Commission to Hold a Series of Public Outreach and Educational Meetings Regarding Electrification**
From: Councilmembers Harrison, Davila, Robinson, and Hahn
Recommendation: Refer to Berkeley's Energy Commission to hold four separate special public outreach and educational meetings regarding electrification in new buildings:

 1. A meeting with community members;
 2. A meeting with building professionals and labor (buildings trades, contractors, architects, engineers etc.);
 3. A meeting with affordable housing developers;
 4. A meeting with market-rate developers.

Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, 981-7140

- 8. Proclamation in Honor of Holocaust Remembrance Day**
From: Councilmembers Wengraf, Robinson, and Hahn, and Mayor Arreguin
Recommendation: Adopt the Holocaust Remembrance Day Proclamation for the 17th annual Holocaust Remembrance Day program.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, 981-7160

- 9. Berkeley World Music Festival: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Fund**
From: Councilmembers Robinson and Davila
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$250 from Councilmember Robinson, to the Berkeley World Music Festival to assist with payment to artist fees, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Robinson and any other Councilmembers who would like to contribute.
Financial Implications: Councilmember's Discretionary Funds - \$250
Contact: Rigel Robinson, Councilmember, District 7, 981-7170

- 10. Support for AB-969 (Collective Bargaining: Legislature)**
From: Councilmembers Robinson, Harrison, and Davila
Recommendation: Send a letter to Senator Skinner and Assemblymembers Wicks and Gonzalez supporting AB-969, which would provide employees of the state legislature the right to participate in employee organizations for the purpose of collective bargaining and other aspects of employer-employee relations.
Financial Implications: None
Contact: Rigel Robinson, Councilmember, District 7, 981-7170

Council Consent Items

11. Support for SCA-1: Public Housing Projects

From: Councilmember Robinson, Mayor Arreguin, and Councilmembers Harrison and Droste

Recommendation: Adopt a resolution supporting SCA-1, which repeals Article 34 of the state constitution, requiring a citywide vote for construction of publicly funded low income housing projects. Copies of the resolution will be sent to Senator Nancy Skinner, Assemblymember Buffy Wicks, Senator Bill Allen, and Senator Scott Weiner.

Financial Implications: None

Contact: Rigel Robinson, Councilmember, District 7, 981-7170

12. Adopt a Spot Initiative

From: Councilmembers Droste and Kesarwani

Recommendation: Refer to the Public Works Commission and Parks and Waterfront Commission to develop an Adopt A Spot initiative; specifically outlining potential environmental benefits, program costs, staffing. Rationale: -Adopt a Spot programs enable a network of volunteer residents to assist in city maintenance and clean up efforts which have great impact using minimal City staff/funding. -Vision 2050 will include stormwater and watershed management goals, both of which this program would support.

Financial Implications: Staff time

Contact: Lori Droste, Councilmember, District 8, 981-7180

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.

13. Implementation of Resolution 68,132 (Council Funding for Additional Services Amending Contracts with Eviction Defense Center (“EDC”) and East Bay Community Law Center (“EBCLC”) For The Period Ending June 30, 2018

From: Rent Stabilization Board

Contact: Jay Kelekian, Rent Stabilization Board, 981-7368

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.

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. **New Marina Fee – South Cove Parking Lots**

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution approving a new Marina Fee Schedule to include a new parking fee in the South Cove Parking lot, and rescinding Resolution No. 68,415-N.S. and all amendatory resolutions.

Financial Implications: See report

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

Action Calendar

15. **Draft Supplemental Environmental Impact Report for Upper Hearst Development and Amendment to 2020 Long Range Development Plan**

From: Mayor Arreguin and Councilmember Wengraf

Recommendation: Discuss the draft Supplemental Environmental Impact Report (SEIR) for the Upper Hearst Development and Minor Amendment to the 2020 Long Range Development Plan. Provide direction to the City Manager on formal comments to the Upper Hearst SEIR. Comments to be submitted to UC Berkeley by the April 8, 2019 deadline.

Financial Implications: See report

Contact: Jesse Arreguin, Mayor, 981-7100

Action Calendar – Public Hearings

16. Cannabis Ordinance Revisions; Amending the Berkeley Municipal Code

(Continued from March 12, 2019)

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, provide direction regarding proposed ordinance language alternatives and adopt the first reading of five ordinances amending the Berkeley Municipal Code (BMC) which would:

1. Clarify cannabis business operational standards and development standards, such as quotas and buffers, for all cannabis business types;
2. Revise ordinance language to reflect State regulations;
3. Create a path to allow a new business type (Retail Nursery Microbusinesses);
4. Protect youth by restricting cannabis advertising within the city; and
5. Allow temporary cannabis events at Cesar Chavez Park.

The ordinances would adopt BMC Chapters 12.21 and 20.40, amend Chapters 12.22, and 23C.25, Sub-Titles 23E and 23F, and repeal Chapters 12.23, 12.25 and 12.27.

Financial Implications: See report.

Contact: Timothy Burroughs, Planning and Development, 981-7400

Action Calendar

17. Short-term referral to City Manager and budget referral for creation of a “vehicle dweller program” in Berkeley

From: Councilmembers Davila and Harrison

Recommendation: Create a comprehensive program to support those living in their vehicles, including but not limited to RVs, to stay in Berkeley without fear of being criminalized, harassed, displaced, fined or having their vehicles confiscated, and with the support needed to have minimal impact on the neighborhoods in which they reside. The program could include: -Issuing 3-6 month permits for vehicles in running order with an option to renew if no validated complaints have been filed. -Creating a registration process that identifies any additional support needed. -Specifying a consistent, clear and transparent process for investigating complaints to determine validity and issuing warnings. -Distributing permits equally across all parking permit districts and identifying any restrictions on parking (i.e. near schools given bus access, etc.). -Creating an affordable sliding scale permit structure based on size of vehicle, weight, number of wheels, etc. -Providing pump-out services, waste disposal and social services as needed. -Creating a pump-out station for use by RVs within the City of Berkeley. -Creating a program for up to \$3,000 per a vehicle for mechanical and sanitation repairs as well as registration and offering a grace period to get vehicles into compliance for a permit. -Piloting a Safe Parking program modeled after Oakland’s pilot: 4-8 sites with 6-10 vehicles parked at business, school, community or faith-based site parking lots, including support and sanitation services.

Vehicles with permits are exempt from Berkeley Municipal Code (BMC) Chapter 12.76 and BMC Section 14.40.120.

Financial Implications: See report

Contact: Cheryl Davila, Councilmember, District 2, 981-7120

Action Calendar

18a. Effective Enforcement of Safe Lead-Paint Practices

From: Community Environmental Advisory Commission

Recommendation: Direct the City Manager to prepare two ordinances as described below and return them for vote of the City Council within two months, so that when passed the city staff can effectively intervene when painters ignore safe practices they have agreed to uphold in removing lead paint from structures built before 1978:

1. An ordinance adding safe lead-paint practices (already mandated by the state and federal governments) to the City Code so that such practices can be regularly enforced as part of code enforcement; [this ordinance could follow the wording of an ordinance proposed in the City of Emeryville in 2017.

2. An ordinance in accord with California law that allows the city to be reimbursed for costs (staff time) for enforcement efforts (thus making it cost-effective for the City staff to engage in enforcement) and to automatically add fines up to \$1,000 for each day of failing to comply with orders to cease unlawful practices. This ordinance could apply generally to all municipal code violations, in addition to lead paint cleanup, to fund and reimburse stronger enforcement efforts by the City.

Financial Implications: See report

Contact: Viviana Garcia, Commission Secretary, 981-7460

18b. Companion Report: Effective Enforcement of Safe Lead-Paint Practices

From: City Manager

Recommendation: Based on the intent of the recommendation from the Community Environmental Advisory Commission (CEAC) for the City to expand enforcement of unsafe lead paint practices, refer to the City Manager to:

- Coordinate with the Alameda County Healthy Homes Program to clearly identify roles and responsibilities for expanding enforcement of unsafe lead practices, and to explore options for sharing resources that can support expanded local enforcement;
- Identify what resources, staff capacity, and program structure would be required to expand City enforcement of unsafe lead practices;
- Continue current work to educate building permit applicants and contractors about safe lead paint practices; train and certify all City of Berkeley Building and Housing Inspectors in lead paint safety; respond to, investigate, and enforce safe lead paint practices as needed; and administer the Public Health Division's Childhood Lead Poisoning Prevention Program; and
- Provide an update to City Council within one-year that identifies progress and next steps for expanding enforcement of unsafe lead practices.

Financial Implications: See report

Contact: Timothy Burroughs, Planning and Development, 981-7400; Kelly Wallace, Housing and Community Services, 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

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 March 21, 2019.*



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 #16: Cannabis Ordinance Revisions; Amending the Berkeley Municipal Code**

1. Liz Williams (2)
2. Carol Denney

### **Fair Chance Ordinance**

3. Paola Laverde, Chair, Rent Stabilization Board

### **Blanket Upzoning**

4. Zelda Bronstein

### **Rosa Parks 5<sup>th</sup> Grade Mock Trial**

5. Ty Alper

### **Abe's Military Base Plan for Okinawa**

6. Breanne Slimick, on behalf of the Peace and Justice Commission

### **Investing in the City of Berkeley**

7. Dmitri Kaminski

### **North Berkeley BART**

8. Barbara Angle

### **Eastbay Community Energy Default Option**

9. Alan Gould

### **5G**

10. Vivian Warkentin (2)

**Climate Change**

- 11. Thomas Lord
- 12. Olga Bolotina

**SB 50 Bonus Densities**

- 13. Avram Gury Arye (3)

**Fiscal Responsibility**

- 14. Bob Flasher

**2701 Shattuck**

- 15. Daniel Jurnover

**Berkeley Recycling**

- 16. Barbara Gilbert

**Berkeley City Council Broadcasts**

- 17. Barbara Gilbert

**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.





Office of the City Manager

CONSENT CALENDAR  
April 2, 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 April 2, 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 \$7,265,675.

| <u>PROJECT</u>                                                            | <u>Fund</u> | <u>Source</u>            | <u>Amount</u>      |
|---------------------------------------------------------------------------|-------------|--------------------------|--------------------|
| Central Library Improvements Project                                      | 101         | Library Tax              | \$2,800,000        |
| FUND\$ Replacement: Project Management and Technical Writer               | 503         | FUND\$ Replacement       | \$400,000          |
| Citywide Security Guard Services                                          | Various     | Various                  | \$2,365,675        |
| On-Call Civil Engineering Design Services for the Sewer Program – Phase 2 | 611         | Sanitary Sewer Operation | \$1,700,000        |
| <b>Total:</b>                                                             |             |                          | <b>\$7,265,675</b> |

Formal Bid Solicitations and Request for Proposals  
Scheduled for Possible Issuance After Council  
Approval on April 2, 2019

CONSENT CALENDAR  
April 2, 2019

**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 April 2, 2019
  - a) Central Library Improvements Project
  - b) FUNDS\$ Replacement Project Management and Technical Writer
  - c) Citywide Security Guard Services
  - d) On-Call Civil Engineering Design Services for the Sewer Program – Phase 2

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



DATE SUBMITTED: April 2, 2019

| SPECIFICATION NO.  | DESCRIPTION OF GOODS / SERVICES BEING                                     | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                                   | ESTIMATED COST                                                                                               | BUDGET CODE TO BE CHARGED                                                                                                                                                                                                                | DEPT. / DIVISION | CONTACT NAME & PHONE                                    |
|--------------------|---------------------------------------------------------------------------|----------------------|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|---------------------------------------------------------|
| 19-11317-C         | On-Call Vicil Engineering Design Services for the Sewer Program - Phase 2 | 4/3/2019             | 4/30/2019                | To select civil engineering firms to provide on-call civil engineering design services for the sanitary sewer rehabilitation projects needed to comply with the Consent Decree | FY 2020:<br>\$100,000<br><br>FY 2021:<br>\$800,000<br><br>FY 2022:<br>\$800,000<br><br>Total:<br>\$1,700,000 | 611-54-623-676-0000-000-473-665130-PWENSR20<br>(830-5213-432.30-35-20SR)<br><br>611-54-623-676-0000-000-473-665130-PWENSR21<br>(830-5213-432.30-35-21SR)<br><br>611-54-623-676-0000-000-473-665130-PWENSR22<br>(830-5213-432.30-35-22SR) | PW/Engineering   | Nisha Patel<br>981-6406<br><br>Tiffany Pham<br>981-6427 |
| <b>DEPT. TOTAL</b> |                                                                           |                      |                          |                                                                                                                                                                                | <b>\$4,065,675</b>                                                                                           |                                                                                                                                                                                                                                          |                  |                                                         |
| <b>GRAND TOTAL</b> |                                                                           |                      |                          |                                                                                                                                                                                | <b>\$7,265,675</b>                                                                                           |                                                                                                                                                                                                                                          |                  |                                                         |





Office of the City Manager

CONSENT CALENDAR  
April 2, 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 No. 9863 Amendment: Arup North America, Ltd. for Construction Support Services for the Shattuck Reconfiguration and Pedestrian Safety Project

RECOMMENDATION

Adopt a Resolution for the City Manager to amend Contract No. 9863 with Arup North America, Ltd. for Construction Support Services for the for the Shattuck Reconfiguration and Pedestrian Safety Project, increasing the contract by \$50,000, for a total amount not to exceed \$763,800, and extending the term of the contract from June 30, 2019 to June 30, 2021.

FISCAL IMPACTS OF RECOMMENDATION

Funds for the additional scope of work in the amount of \$50,000 for this amendment is available in the FY 2019 budget from the Capital Improvement Fund 501-54-622-668-0000-000-431-612310.

|                                    |           |
|------------------------------------|-----------|
| Current contract amount            | \$713,800 |
| Contract amendment                 | \$ 50,000 |
| Total revised not-to-exceed amount | \$763,800 |

The Contract Management System number for the contract amendment is CMS No. DWLRF.

CURRENT SITUATION AND ITS EFFECTS

The contract amendment will expand the scope of services with Arup North America, Ltd. (Arup) to include construction support services during the construction phase of the Shattuck Reconfiguration and Pedestrian Safety Project (Project). Anticipated services include providing background information and design-related input and clarification as needed to the City’s construction management team. Arup, as the design consultant and engineer of record, has the requisite knowledge and background to provide these services, which are necessary in order for the City to efficiently manage the construction and reduce the effects of construction on pedestrians, bicyclists, motorists, local businesses, and residents. The provided services support the Strategic Plan goal of

creating a resilient, safe, connected, and prepared city. The contract amendment will also extend the duration of this contract, as construction of the Project is anticipated to be complete in late 2020.

### BACKGROUND

Shattuck Avenue between University Avenue and Center Street is currently divided into two one-way segments, with northbound traffic on the east segment and southbound traffic on the west segment. This configuration has contributed to high auto/pedestrian collision rates at the University/Shattuck intersection, which the 2010 Pedestrian Master Plan identified as the second-highest priority location for safety improvements.

This Project will reconfigure this section of Shattuck Avenue so that the west side operates as a two-way through street, with prohibited left turn movements at University Avenue, and the east side functions as the primary way to turn onto University Avenue. In particular, making the west side of Shattuck Avenue a through street for northbound traffic eliminates the current “dogleg” movement for through traffic on Shattuck and reduces the turning movements from westbound University to northbound Shattuck. This is a major component of the project design which is intended to reduce auto/pedestrian conflicts at this intersection.

On June 24, 2014, the Council authorized the City Manager to execute a contract with Arup for project management, environmental clearance, and design development for the Project for an amount not to exceed \$450,000.

On December 15, 2015, the Council authorized the City Manager to execute an amendment to Contract No. 9863 with Arup for project management, environmental clearance, and design development for the Project for an amount not to exceed \$263,800, thereby revising the total not-to-exceed contract amount to \$713,800 and extending the term of the contract from June 30, 2016 to June 30, 2019. The original contract amount was developed prior to detailed design work, traffic analysis, or public outreach. The amendment covered additional work to evaluate project impacts, consider alternatives suggested by stakeholders, and address design issues not anticipated prior to commencing detailed design work.

### ENVIRONMENTAL SUSTAINABILITY

The execution of this contract amendment will help ensure successful completion of the Project.

As described in the December 15, 2015 report to the Council, the Project improvements are intended to make Shattuck Avenue in downtown Berkeley more accessible for walking, bicycling, and riding transit, thereby reducing emissions from trips made via single occupancy vehicles. The Project improvements are also expected to reduce risk of collisions between motor vehicles, pedestrians, and bicyclists.

RATIONALE FOR RECOMMENDATION

The Project is a high priority and was approved in concept by the Council as part of the Downtown Area Plan and the Streets and Open Space Improvement Plan. Successful completion of the Project requires contracted construction support services, as the City does not possess the necessary background information or specific technical expertise.

ALTERNATIVE ACTIONS CONSIDERED

None. Staff does not have adequate in-house knowledge or expertise to perform the contracted work.

CONTACT PERSON

Farid Javandel, Transportation Manager, Public Works Department, (510) 981-7061  
Kenneth Jung, Associate Civil Engineer, Public Works Department, (510) 981-7028

Attachments:

1: Resolution

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

CONTRACT NO. 9863 AMENDMENT: ARUP NORTH AMERICA, LTD. FOR CONSTRUCTION SUPPORT SERVICES FOR THE SHATTUCK RECONFIGURATION AND PEDESTRIAN SAFETY PROJECT

WHEREAS, Council authorized the City Manager to enter into a contract with Arup North America, Ltd. for Project Management, Environmental Clearance, and Design Development for the Shattuck Reconfiguration and Pedestrian Safety Project in the amount of \$450,000 on June 24, 2014 (Resolution No. 66,690-N.S.); and

WHEREAS, Council authorized the City Manager to amend Contract No. 9863 with Arup North America, Ltd. for Project Management, Environmental Clearance, and Design Development for the Shattuck Reconfiguration and Pedestrian Safety Project by increasing the contract by \$263,800, for a total amount not to exceed \$713,800 on December 15, 2015 (Resolution No. 67,311-N.S.); and

WHEREAS, Arup North America, Ltd., as the design consultant and engineer of record, has the requisite knowledge and background to provide construction support services, which are necessary in order for the City to efficiently manage the construction of the Project; and

WHEREAS, funding of \$50,000 is available in the FY 2019 budget from the Capital Improvement Fund (Fund 501); and

WHEREAS, the Contract Management System number for this contract amendment is CMS No. DWLRF; and

WHEREAS, the construction of the Shattuck Reconfiguration and Pedestrian Safety Project is anticipated to be complete in late 2020.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 9863 with Arup North America, Ltd. for Construction Support Services for the for the Shattuck Reconfiguration and Pedestrian Safety Project, increasing the contract by \$50,000, for a total amount not to exceed \$763,800, and extending the term of the contract from June 30, 2019 to June 30, 2021.



Office of the Mayor

CONSENT CALENDAR

April 2, 2019

To: Honorable Mayor and Members of the City Council

From: Mayor Jesse Arreguín and Councilmembers Cheryl Davila and Sophie Hahn

Subject: Budget Referral: Opening the West Campus Pool Year-Round

RECOMMENDATION

Refer to the FY2020 Budget Process at least \$213,000 and up to \$481,745 to reinstate the year-round opening of the West Campus Pool.

BACKGROUND

The City currently operates two public pools: King Pool, which is open year-round, and West Campus Pool, which is open from May-September. Both pools are owned by the Berkeley Unified School District and use agreements have been signed since the 1960s, with the latest agreement set to expire in December 2020. West Campus is the only pool that serves South Berkeley after Willard Pool was closed in 2010. West Campus was open year round until budget reductions in the FY 2004-2005 reduced its opening times to the current five months.

In January 2018, Councilmember Davila, introduced a Council item cosponsored by Councilmembers Bartlett, Harrison and Hahn referring to the City Manager to look into the feasibility of keeping the pool open year-round<sup>1</sup>. This comes as an increasing number of constituents who do not have the means to travel to King have requested to expand hours at West Campus.

Currently, \$853,000 is spent annually on combined operation costs for King and West Campus. In the Staff response to the January 2018 referral (Attachment 1), various options are provided for costs associated with expanded hours, including two for year-round operations. Option 1 would provide limited hours during non-summer months at an additional cost of \$213,000, and Option 2 would duplicate the current hours at King at an additional cost of \$481,745.

RATIONALE FOR RECOMMENDATION

Reopening the West Campus Pool year round is in line with Berkeley's commitment of creating an equitable community. With the King Pool in North Berkeley open year round, South and West Berkeley residents should also have an opportunity to have their local

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<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/01\\_Jan/Documents/2018-01-23\\_Item\\_27\\_Open\\_West\\_Campus\\_Pool.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/01_Jan/Documents/2018-01-23_Item_27_Open_West_Campus_Pool.aspx)

pool be open year round. Increased access to the pool also provides health benefits to those who use it.

FINANCIAL IMPLICATIONS

Depending on what option is chosen, costs will range between \$213,000 – \$481,745 annually. See Attachment 1 for details. However, costs could be recovered through revenue generated as a result of the pool's year-round availability.

ENVIRONMENTAL SUSTAINABILITY

Not applicable

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

1: Partial Referral Response to Feasibility of Keeping West Campus Open Year Round



Office of the City Manager

October 16, 2018

To: Honorable Mayor and Members of the City Council

From:  Dee Williams-Ridley, City Manager

Subject: Partial Response to the January 23, 2018 Council Referral - Assess the feasibility of keeping the West Campus Pool open all year round and starting a shower program at the West Campus Pool

### Introduction

This report describes the history of City-operated pools and the costs associated with keeping West Campus Pool open year-round. On June 12, 2018, a partial response to this referral, detailing the costs of establishing a year round shower program at West Campus, was submitted as an Off-Agenda item (see following link).

[https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_General/Shower%20Referral%20Response%20061218.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Shower%20Referral%20Response%20061218.pdf)

### Current Situation

The City currently operates two public pools: King Pool is open year-round and West Campus Pool is open five (5) months per year (May - September). While Willard Pool is currently closed, the building serves as a hub for the City's Recreation Division, the site of the City's public shower program, and the site of a community garden operated by Willard Middle School. The warm water pool, which was previously located at Berkeley High School, was closed in 2011. All three existing pool sites are owned by Berkeley Unified School District (BUSD) and operated by the City of Berkeley (City). BUSD currently uses King Pool during the school year to teach King Middle School students to swim. The City's current Aquatics budget is \$853,000 to operate King Pool and West Campus Pool. The City currently covers all capital, maintenance, and operational expenses at all three sites.

### Background

*Berkeley Unified School District Agreement, Bond Measures and other Issues*

Pool use agreements between the Berkeley Unified School District (BUSD) and the City of Berkeley have been in place since the construction of Willard (1963), West Campus (1964) and King (1965). An agreement for the use of the pools at Berkeley High School (BHS) was added in 1982. In 1991, the pool agreements were consolidated into a larger MOU between BUSD and the City (Attachment 3). This agreement expires on December 31, 2020. The City and BUSD have started discussions about a new agreement, but these discussions are on hold because BUSD is starting a facility masterplan which will include the pools properties.

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October 16, 2018

Re: Partial Response to the January 23, 2018 Council Referral - Assess the feasibility of keeping the West Campus Pool open all year round and starting a shower program at the West Campus Pool

BUSD has suggested we do a short term (2-3 year) agreement that continues the terms contained in the 1991 MOU.

In November of 2000, BUSD passed a General Obligation (GO) Bond to renovate the BHS Old Gym building, while the City passed a GO Bond (Measure R \$3.25 M) to renovate the Warm Water pool. After several years of building evaluations and master planning activities, BUSD decided to build classrooms at the existing space and recommended that the new Warm Water Pool be located across the street. However, this left the City bond funds from Measure R unusable because they were tied to the original site. In 2007, the City studied the new Milvia Street location for the Warm Water Pool. This study was completed in October of 2007. BUSD decided against use of this site for the Warm Water Pool (see following link).

[https://www.cityofberkeley.info/Public\\_Works/Facilities\\_Management/Warm\\_Water\\_Pool\\_Study.aspx](https://www.cityofberkeley.info/Public_Works/Facilities_Management/Warm_Water_Pool_Study.aspx)

In early 2008 the City and BUSD approved a joint resolution on the future development of public pools in Berkeley. This resolution established an 11-member task force representing the City, BUSD, and numerous pool advocates and users to develop a comprehensive plan for all the pools on BUSD property. The City funded the costs of the planning process. In November 2009, the City adopted the Citywide Pools Masterplan (see the following link):

[https://www.cityofberkeley.info/Parks\\_Rec\\_Waterfront/Recreation/Citywide\\_Pools\\_Master\\_Plan.aspx](https://www.cityofberkeley.info/Parks_Rec_Waterfront/Recreation/Citywide_Pools_Master_Plan.aspx)

The preferred plan would have relocated the Warm Water Pool to the West Campus site (adding a second pool to West Campus) and renovated King, West Campus and Willard pool sites to include a competitive pool and play pool, giving the City and BUSD 4 pools on three sites. In November of 2010, the City placed a measure on the ballot as a Mello-Roos Bond that included approximately \$22.5M for capital and operations. The measure needed 2/3 vote to pass, It failed with an approximately 62.5% approval rate. A similar measure was put on the ballot in 2012 with a similar result.

In 2010, the City closed Willard Pool and filled it with soil for safety purposes. The facility was in poor shape – many of the pool systems and infrastructure had failed because they had been poorly maintained for many years. In June of 2011, BUSD started construction of its South Bancroft Project and the Warm Water Pool was removed, leaving the City with two functioning public pools, King and West Campus.

### **Capital/Major Maintenance**

The two existing pools are 50+ years old. In large part, ongoing maintenance has been minimal and capital funds have not been set aside or budgeted for the pools by either BUSD or the City. Maintenance has been performed by the City when emergencies have surfaced.



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October 16, 2018

Re: Partial Response to the January 23, 2018 Council Referral - Assess the feasibility of keeping the West Campus Pool open all year round and starting a shower program at the West Campus Pool

The City has performed over \$1.3 M of major maintenance since 2009:

- 2009: Replacement of King Pool plaster/shell, coping stones, tile and compliance with the federal Virginia Graeme Baker Pool and Spa Safety Act of 2007 (the VGB Act).
- 2010: Replacement of West Campus pool plaster/shell, coping stones, tile and VGB Compliance.
- 2013: King Pool Pumps and Filters replaced/ 1 West Campus filter replaced with used filter from Willard.
- 2017: King Pool Boiler Replaced.
- 2018: West Campus Pool Boiler Replaced.

While this maintenance has kept King and West Campus open, the following maintenance work totaling \$750,000 needs to be performed in the next two years in order keep both facilities operable:

- King Pool plaster/shell and tile replacement - \$325,000.
- King Pool roof - \$250,000.
- West Campus Pool filters - \$175,000.

In addition, the following maintenance/capital work totaling \$5.95 M needs to be performed in the next 5 years:

- King Pool decking and piping replacement - \$517,500
- King and West Campus Pool locker room and office renovations - \$4.6M (\$2.3M each)
- West Campus Pool decking and piping replacement - \$450,000.
- West Campus Pool plaster/shell and tile replacement - \$373,750.

None of the \$6.7 M for maintenance needed in the next five years has an identified funding source nor has been budgeted. If this work is not performed, safety issues could force the closure of one or both pools.

Attachment 1 shows a 30-year timeline of the needed capital/maintenance improvements to King and West Campus Pools. Pools are not currently eligible for T1 funding (the City's \$100 million bond funds for improvements to the City's existing infrastructure and facilities) because the City does not have a long-term agreement in place for the facilities. To be eligible for T1 funding, the City must have the right to use the pools for municipal purposes for the term of the Measure T1 bonds that finance the improvements.

### **Past Operation and Reductions**

At one point in the 1990s, the City operated five (5) pools: the old north pool and south warm water pool at Berkeley High School, and the King, West Campus, and Willard pools. From the budget record, it appears that King, West Campus, and Willard were open year round in the late 1990's, but all at different levels of operation. King and Willard were open more hours

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Re: Partial Response to the January 23, 2018 Council Referral - Assess the feasibility of keeping the West Campus Pool open all year round and starting a shower program at the West Campus Pool

than West Campus because they were located next to middle schools. This model continued until General Fund reductions in the FY 2004-2005 budget cycle led to the reduction of Willard and West Campus pool operations to five (5) months per year (May-September). In 2010, the Aquatics program incurred further General Fund budget reductions that eliminated the funding for Willard Pool operation, with the exception of the shower program. Since that time, the City has operated King Pool year-round and West Campus for five (5) months a year. During these General Fund reductions, full-time staff that supervised pool operations and part-time staff positions that provided administrative support, maintenance, and supervision to all the pools were dramatically decreased. In addition, the Parks Tax had reductions in the same budget cycle that eliminated a Building Maintenance Mechanic who maintained the pools.

### **Current Operations**

During the summer season (mid-June to August), City pools are open much more extensively than during the school year (September- early June). During the summer, King Pool is open from 6 AM to 8:30 PM on weekdays and from 7 AM - 5:30 PM on the weekends. It hosts morning and afternoon lessons, Berkeley Aquatic Masters (BAM), public swim, and independent exercise. During the school year it is generally open from 6 AM to 1 PM and from 4 PM to 8:30 PM. King Middle school runs swim lessons for two months during the school year (from 9 AM – 4 PM). Additionally, during the school year senior exercise and the Barracudas youth swim team is at King Pool. The pool is closed for up to two weeks during December and January.

The summer hours at West Campus Pool are from 9 AM – 6 PM. West Campus hosts morning lessons, an expanded public swim, senior exercise, large group lessons, and the Barracudas. During May and September the pool is the site of senior exercise, BAM and other programs. The pool is closed from October through April. A complete schedule of summer and school year programs and hours at both pools can be found in the following Recreation Activity Guides:

#### **Fall/Holiday 2018 Activity Guide**

[https://www.cityofberkeley.info/uploadedFiles/Parks\\_Rec\\_Waterfront/Level\\_3\\_-\\_Recreation/2018-Fall-Activity%20Guide-REV%203-9.21.18.pdf](https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_Recreation/2018-Fall-Activity%20Guide-REV%203-9.21.18.pdf)

#### **Summer 2018 Activity Guide**

[https://www.cityofberkeley.info/uploadedFiles/Parks\\_Rec\\_Waterfront/Level\\_3\\_-\\_Recreation/Berk\\_Summer18\\_RecGuide\\_finaldraft.pdf](https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_Recreation/Berk_Summer18_RecGuide_finaldraft.pdf)

### **Costs Options for Keeping West Campus Open Year-Round**

The current model of operation, including King and West Campus pools, has an annual cost of approximately \$853,000. This model does not include the operation of the Willard facility or the shower program. Any discussion of expanding pool hours or pools needs to be coupled with a discussion of re-instituting full time staff for supervision, administration support and

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Re: Partial Response to the January 23, 2018 Council Referral - Assess the feasibility of keeping the West Campus Pool open all year round and starting a shower program at the West Campus Pool

maintenance. The City's operation of pools comes with significant liability and, if supervision, support and maintenance are not fully funded, the City would be exposed to costly problems that have surfaced in other local municipalities.

Five options for expanding pool hours are outlined in Attachment 2 below. Following are two options for keeping West Campus pool open year-round:

Option 1 includes keeping West Campus pool open year round with non-summer hours (Monday, Wednesday, Friday 9:00 AM -1:00 PM and Tuesday and Thursday 10:00 AM – 1:00 PM). It is not currently open on the weekends. This would require an additional 0.5 FTE for supervision, 0.25 FTE for administration and 0.25 FTE for maintenance, along with increased part-time labor and non-personnel expenditures, for an additional annual cost of \$213,000.

Option 2 includes duplicating King Pool's yearly schedule at West Campus. West Campus pool would be open 7 days a week between 10 and 15 hours per day. Option 2 would require an additional 1.0 FTE for supervision, 0.5 FTE for administration and a 0.5 FTE for maintenance, along with the part-time labor and non-personnel expenditures, for an additional cost of \$481,745. The full details for these projections and options that include the use of three pools projections are included in Attachment 2.

cc: Paul Buddenhagen, Interim Deputy City Manager  
Ann-Marie Hogan, City Auditor  
Mark Numainville, City Clerk  
Scott Ferris, Director, Parks, Recreation & Waterfront  
Matthai Chakko, Assistant to the City Manager / Public Information Officer

Attachments:

- 1 – Capital Maintenance Estimate for King and West Campus Pools
- 2 – Aquatics Expense and Revenue Projections
- 3 – Agreement between City of Berkeley and Berkeley Unified School District (Reso. No. 58,377-N.S.)

## Attachment 1

10/9/2018

| <b>Capital Maintenance Estimate for West Campus and King Pools</b> |                       |                |                   |                                                                                |                   |                    |                    |                    |                      |
|--------------------------------------------------------------------|-----------------------|----------------|-------------------|--------------------------------------------------------------------------------|-------------------|--------------------|--------------------|--------------------|----------------------|
| 30-year replacement schedule                                       |                       |                |                   |                                                                                |                   |                    |                    |                    |                      |
|                                                                    | Replacement Schedule* |                |                   |                                                                                |                   |                    |                    |                    | Estimated            |
| Expense                                                            | Current Rate          | Immediate Need | 5 yrs. (15% incr) | 10 yrs. (30% incr)                                                             | 15yrs. (45% incr) | 20 yrs. (60% incr) | 25 yrs. (75% incr) | 30 yrs. (90% incr) | Costs                |
| <b>Boilers</b> - King                                              | \$ 140,000            |                |                   |                                                                                |                   |                    | \$ 245,000         |                    | \$ 245,000           |
| - West Campus                                                      |                       |                |                   |                                                                                |                   |                    |                    |                    | \$ -                 |
| <b>Pool Filters</b> - King                                         | \$ 175,000            |                |                   |                                                                                | \$ 253,750        |                    |                    |                    | \$ 253,750           |
| - West Campus                                                      |                       | \$ 175,000     |                   |                                                                                |                   | \$ 280,000         |                    |                    | \$ 455,000           |
| <b>Deck/Piping Repl</b> - King                                     | \$ 450,000            |                | \$ 517,500        |                                                                                |                   |                    |                    |                    | \$ 517,500           |
| - West Campus                                                      |                       | \$ 450,000     |                   |                                                                                |                   |                    |                    | \$ 855,000         | \$ 1,305,000         |
| <b>Rest/Locker Rm**</b> - King                                     | \$ 2,000,000          |                |                   |                                                                                |                   |                    |                    |                    | \$ -                 |
| - West Campus                                                      |                       |                | \$ 4,600,000      |                                                                                |                   |                    |                    |                    | \$ 4,600,000         |
| <b>Roof</b> - King                                                 | \$ 250,000            | \$ 250,000     |                   |                                                                                |                   |                    |                    | \$ 475,000         | \$ 725,000           |
| - West Campus                                                      |                       |                |                   | \$ 325,000                                                                     |                   |                    |                    |                    | \$ 325,000           |
| <b>Tile/Plaster</b> - King                                         | \$ 325,000            | \$ 325,000     |                   | \$ 422,500                                                                     |                   | \$ 520,000         |                    | \$ 617,500         | \$ 1,885,000         |
| - West Campus                                                      |                       |                | \$ 373,750        |                                                                                | \$ 422,500        |                    | \$ 568,750         |                    | \$ 1,365,000         |
|                                                                    |                       | \$ 1,200,000   | \$ 5,491,250      | <b>Estimated Maintenance Cost over 30 Years for West Campus and King pools</b> |                   |                    |                    |                    | <b>\$ 11,676,250</b> |
| * Replacement costs are escalated by 3% each year                  |                       |                |                   |                                                                                |                   |                    |                    |                    |                      |
| **Includes Office and Locker Rooms                                 |                       |                |                   |                                                                                |                   |                    |                    |                    |                      |

## Attachment 2

**Aquatics Expense and Revenue Projections**

includes Pool Model Options (excludes the Willard Shower Program costs)

| Pool Model Options                                              | Personnel Projections           |                                           |                               |                              |                            | Personnel Expenses | Non-Personnel Expenses | Total Projected Expenses (b) | Increased Operational Cost as compared to current model |
|-----------------------------------------------------------------|---------------------------------|-------------------------------------------|-------------------------------|------------------------------|----------------------------|--------------------|------------------------|------------------------------|---------------------------------------------------------|
|                                                                 | Aquatics Coordinator (FTE/Cost) | Aquatics Facilities Supervisor (FTE/Cost) | Admin Staff / OSII (FTE/Cost) | Maintenance Staff (FTE/Cost) | Part-Time Labor (FTE/Cost) |                    |                        |                              |                                                         |
| <b>Current Model (King Year Round, West Campus 5mo)*</b>        | 1.00                            | 1.00                                      | Absorbed in Budget            | 0.25                         | 7.33                       | 657,820            | 195,693                | 853,513                      | NA                                                      |
|                                                                 | \$121,500                       | \$98,982                                  |                               | \$31,838                     | \$405,500                  |                    |                        |                              |                                                         |
| <b>Option 1 - Two Pools Year Round (limited hrs at pool #2)</b> | 1.00                            | 1.50                                      | 0.25                          | 0.50                         | 8.56                       | 831,799            | 234,832                | 1,066,631                    | 213,118                                                 |
|                                                                 | \$121,500                       | \$148,473                                 | \$25,110                      | \$63,676                     | \$473,040                  |                    |                        |                              |                                                         |
| <b>Option 2 - Two Pools Year Round</b>                          | 1.00                            | 2.00                                      | 0.50                          | 0.75                         | 10.18                      | 1,085,692          | 249,566                | 1,335,258                    | 481,745                                                 |
|                                                                 | \$121,500                       | \$197,964                                 | \$50,220                      | \$95,514                     | \$620,494                  |                    |                        |                              |                                                         |
| <b>Option 3 - Two Pools Year Round, One Pool 5 Months</b>       | 1.00                            | 2.50                                      | 1.00                          | 1.00                         | 12.42                      | 1,311,705          | 320,476                | 1,632,181                    | 778,668                                                 |
|                                                                 | \$121,500                       | \$247,455                                 | \$100,440                     | \$127,352                    | \$714,958                  |                    |                        |                              |                                                         |
| <b>Option 4 - Two Pools Year Round, One Pool 9 Months</b>       | 1.00                            | 2.75                                      | 1.25                          | 1.00                         | 11.73                      | 1,345,922          | 343,153                | 1,689,075                    | 835,562                                                 |
|                                                                 | \$121,500                       | \$272,201                                 | \$125,550                     | \$127,352                    | \$699,319                  |                    |                        |                              |                                                         |
| <b>Option 5 - All Three Pools Year Round</b>                    | 1.00                            | 3.00                                      | 1.50                          | 1.50                         | 15.27                      | 1,691,758          | 374,359                | 2,066,117                    | 1,212,604                                               |
|                                                                 | \$121,500                       | \$296,946                                 | \$150,660                     | \$191,028                    | \$931,624                  |                    |                        |                              |                                                         |

**\*Assumption for current model**

- Maintenance: This position is currently underfunded and should be a 0.5 FTE
- Aquatic Facility Supervisor: This position is currently underfunded by 0.25 FTE
- Calculated in FY2019 dollars
- All personnel costs include benefit rates based on Worker's Comp Code rates
- Assumes comparable programming scope, style, and staffing needs at each swim center
- Assumes 5-month programming May-September
- Assumes 9-month programming during school year (September 1-June 10)

Agreement between  
City of Berkeley  
and  
Berkeley Unified School District  
Effective July 1, 1990  
(Resolution No. 55,918)

Reso No: 53, 118-11  
June 4, 1991

A G R E E M E N T

THIS AGREEMENT, made and entered into this 14th day of May 1991, by and between the CITY OF BERKELEY, a municipal corporation, hereinafter called CITY, and the BERKELEY UNIFIED SCHOOL DISTRICT, hereinafter called DISTRICT,

WITNESSETH:

WHEREAS, for a number of years the City and District have mutually provided services, site development and facility use through mutual understanding and various agreements; and

WHEREAS, in the spirit of cooperation, the City and District have entered into negotiations to clarify and continue the mutual facility use, site development and services; and

WHEREAS, the effective date for the agreement shall commence on July 1, 1990;

WHEREAS, this agreement only governs the specific items described herein and shall not be construed to waive any rights or debts otherwise due either party.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

Section 1. Berkeley High School Donahue Gym

As of January 7, 1991, the City will relocate its activities from Berkeley High School Donahue Gymnasium complex to King Junior High School's Gym.

Section 2. Use of District Properties

The District encourages the use of its facilities by the City.

Priority on use of District properties will be as follows:

- a. District
- b. City
- c. Others

It is agreed that the City and District will charge each other for the use of their facilities based on direct cost, defined as follows:

Direct costs are actual and necessary costs which create a financial liability to the lessor by the lessee. These costs shall include, but are not limited to, personnel overtime, utilities, equipment, and supplies required by the use. Also included are the costs to repair damage caused during such use.

It is agreed that both parties will inform each other on or before January 1 of each year what facilities they would like to schedule for their use for the subsequent fiscal year, starting July 1 through June 30.

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City and District will agree annually on direct cost rates on or before January 1 for the subsequent fiscal year starting July 1.

**Section 3. King Junior High School Outdoor Recreational Facilities Development**

The City and District agree to jointly study the further development of the outdoor recreational facilities at King Junior High School.

**Section 4. King Junior High School Tennis Courts**

If the City obtains funds for the rehabilitation of the five (5) tennis courts at King Junior High School, the District will lease these courts to the City at no cost for a term ending December 31, 2020 or twenty-five (25) years, whichever is longer.

The District shall close the King Junior High School tennis courts at such time as the City and District determine that they are unsafe.

**Section 5. Measure Y Parks**

The City and District have five (5) agreements on Measure Y Parks. The maintenance of the Measure Y Parks shall be as follows:

- a. The City will fully maintain King Junior High and Thousand Oaks Measure Y Parks.
- b. The District will fully maintain Le Conte, Malcolm X and Columbus Measure Y Parks.
- c. Under this agreement, there will be no need for billing between the City and District in regard to maintenance of Measure Y Parks.
- d. There is no existing agreement between the City and District in regard to the Measure Y Parks at John Muir and Washington School. Therefore, the District will continue to maintain John Muir and Washington School Measure Y Parks.
- e. This agreement will require that the four (4) existing agreements on Measure Y Parks be canceled (King Junior High School, Le Conte, Thousand Oaks, and Malcolm X). Further, the Columbus agreement shall be amended to provide only for City interest to promote eligibility of East Bay Regional Park District's County AA Bond moneys.
- f. The District will then enter into new twenty-five (25) year lease agreements with the City for King Junior High School and Thousand Oaks park lands or for a period ending December 31, 2020.
- g. The District has basic requirements for the use of all District properties, including its fields. These requirements include:



- i. Permit for use of facilities.
- ii. Minimum insurance.
- h. The District extends these same requirements to Measure Y Parks, except Thousand Oaks and King Junior High School which the City will manage.
- i. The District and City will separate the utility services for the Measure Y Parks at Thousand Oaks and King Junior High School, where feasible.
- j. The District will continue to allow public access to Measure Y Parks between the hours of 8:30 A.M. to sunset, except during school hours.
- k. The City will use \$40,000 of County AA money to rehabilitate the Columbus School, Measure Y Park.
- l. The District will maintain the Columbus School Measure Y Park in accordance with generally accepted field maintenance standards, as mutually agreed to by the City and District.

Section 6. Mental Health Center Rental (1925 Derby Street)

The District will waive rental fees for the period July 1, 1989 through June 30, 1993. Thereafter, the rental rate will be based on the District's direct costs.

Section 7. Old City Hall Custodial Overtime Facility Meetings

The City will be charged one (1) hour of custodial overtime for the set-up and clean-up for each meeting. In addition, the City will be charged for custodial overtime when a meeting extends past 11:00 P.M. in 15-minute increments.

Section 8. Pools

Effective July 1, 1990, the City will operate and maintain all pools except for the locker rooms and showers at Berkeley High School. It is further agreed that the costs of use for Willard Junior High School, King Junior High School, Berkeley High School, and West Campus pool will include maintenance, operating and capital improvement costs. It is agreed that capital improvement costs will be amortized over the useful life or within the remaining lease term of the capital improvements and will be charged back to the District based on hours of use with a minimum District share of twenty percent (20%) of capital improvement costs. All capital improvements must be mutually agreed to by the City and District prior to construction. The maintenance and operations costs will be charged back to the District based on actual hours of use.

The District will inform the City on or before June 1 of each year what facilities it would like to schedule for its use for the subsequent fiscal year beginning July 1 through June 30.

The District will have first priority on the use of all pools

between the hours of 8:00 A.M. and 5:00 P.M. on school days. The District is open to negotiations with the City on joint use of pools during school hours.

The existing lease agreements on pool are as follows:

| <u>SCHOOL</u> | <u>LEASE BEGIN</u> | <u>LEASE END</u> |
|---------------|--------------------|------------------|
| Willard       | 1/01/63            | 12/31/03         |
| King          | 11/23/65           | 11/22/05         |
| West Campus   | 7/15/64            | 7/14/04          |
| Berkeley High | 12/07/82           | 12/06/07         |

The Alameda County AA Bond funding requires a minimum of twenty-five (25) years lease in order to obtain this money. Therefore, it is in the best interest of the City and District to extend all pool leases so that there would be a minimum remaining lease period of twenty-five (25) years. Further, it is desirable that all pool leases expire simultaneously.

Therefore, all four existing pool leases shall be extended to December 31, 2020. Upon completion of the leases for the pool at King, Willard and West Campus the buildings, equipment and apparatus will revert to City's ownership.

Further, the District may wish to develop any or all of the properties on which existing pools are located. The District has the option of relocating any and all of its existing pools on the existing site or to another site, said location to be done at the cost of the District to a site mutually agreed to between the City and District.

Section 9. Quarterly Meetings: City and District

The City and District staff will hold quarterly meetings to communicate with each other on the implementation of the various sections of the agreement between the City and the District.

Section 10. Open Space

The City and the District agree it is desirable to maintain open space. If school sites are withdrawn from school use, the District will make every effort to maintain adequate open space consistent with the District's development objectives and in accordance with Measure N.

Section 11. Building Permits

The City will exempt the District from the City requirement of obtaining building permits only for building construction fees that relate to educational projects.

Section 12. Election Costs

The District will be paid the current flat rate for polling places as established by Alameda County and the City at school sites used as polling places.

Section 13. District/City Sub-Lease of Mutual Property

The City and District will not sub-lease any property rented from one another, except to the extent provided in any existing lease between City and District not specifically incorporated herein.

Section 14. Summary of Account Outstanding

The parties owe each other sums of money as set forth in Attachment 2 for the provision of services specified in the attachment. Nothing in this section shall modify, abrogate or otherwise govern any obligation not specifically described in such attachment. After accounting for offsetting charges for the period July 1, 1986 through June 30, 1990, the District shall pay the City the amount of \$359,801 over a three year period without interest as follows:

|                                                      |           |            |
|------------------------------------------------------|-----------|------------|
| a. First payment upon ratification of this agreement |           | \$ 85,000  |
| b. Second payment                                    | July 1991 | 75,000     |
| c. Third payment                                     | July 1992 | 125,000    |
| d. Fourth payment                                    | July 1993 | 74,801     |
|                                                      | TOTAL     | \$ 359,801 |

IN WITNESS WHEREOF, first party has hereunto set its corporate name and seal by its officers thereunto duly authorized and second party has hereunto set its name by its officers thereunto duly authorized, the day and year first above written.

CITY OF BERKELEY

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
City Manager

By \_\_\_\_\_  
City Clerk  
Approved as to form:

Registered by:  
By \_\_\_\_\_  
City Auditor

\_\_\_\_\_  
City Attorney

BERKELEY UNIFIED SCHOOL DISTRICT

By \_\_\_\_\_  
President of its Board of  
Education

By \_\_\_\_\_  
Secretary of its Board of  
Education

Approved as to form:

\_\_\_\_\_  
District Attorney

CITY OF BERKELEY AND BERKELEY UNIFIED SCHOOL DISTRICTSSUMMARY OF ACCOUNTS OUTSTANDING

| DESCRIPTION                                                              | CHARGES TO<br>CITY | CHARGES TO<br>DISTRICT |
|--------------------------------------------------------------------------|--------------------|------------------------|
| 1. City billing for swim<br>centers at King, West<br>Campus, and Willard |                    |                        |
| 1987                                                                     |                    | \$ 58,145              |
| 1988                                                                     |                    | 49,325                 |
| 1989                                                                     |                    | 40,020                 |
| 1990                                                                     |                    | 30,435                 |
| 2. District bill for swim<br>pool at Berkeley High                       |                    |                        |
| 1987                                                                     | \$ 16,218          |                        |
| 1988                                                                     | 15,160             |                        |
| 1989                                                                     | 16,940             |                        |
| 1990                                                                     | 18,998             |                        |
| 3. City billing for<br>Berkeley High swim<br>pool maintenance            |                    |                        |
| 1987                                                                     |                    | 13,000                 |
| 1988                                                                     |                    | 14,449                 |
| 1989                                                                     |                    | 15,458                 |
| 1990                                                                     |                    | 21,562                 |
| 4. City billing for<br>Measure Y Parks                                   |                    |                        |
| 1989                                                                     |                    | 85,000                 |
| 1990                                                                     |                    | 85,000                 |
| 5. City billing for<br>playground equip-<br>ment replacement             |                    |                        |
| 1989                                                                     |                    | 19,000                 |
| 1990                                                                     |                    | 19,000                 |
| 6. District billing<br>for Columbus<br>Measure Y Park<br>maintenance     |                    |                        |
| 1989                                                                     | 10,000             |                        |
| 1990                                                                     | 2,000              |                        |
| 7. District billing<br>Donahue Gym                                       |                    |                        |
| 1988                                                                     | 7,000              |                        |
| 1989                                                                     | 7,000              |                        |
| 1990                                                                     | 7,000              |                        |

SUMMARY OF OUTSTANDING ACCOUNTS  
 May 7, 1991  
 Page 2

| DESCRIPTION                                                                    | CHARGES TO<br>CITY | CHARGES TO<br>DISTRICT |
|--------------------------------------------------------------------------------|--------------------|------------------------|
| 8. District billing<br>for West Campus<br>Gym                                  |                    |                        |
| 1988                                                                           | 0                  |                        |
| 1989                                                                           | 0                  |                        |
| 1990                                                                           | \$ 5,000           |                        |
| 9. District billing<br>for summer play-<br>ground 5 sites                      |                    |                        |
| 1989                                                                           | 0                  |                        |
| 1990                                                                           | 401                |                        |
| 10. District billing<br>for rental of<br>East Campus bld.<br>for Mental Health |                    |                        |
| 1989                                                                           | waived             |                        |
| 1990                                                                           | waived             |                        |
| 11. District rent not<br>paid to District                                      |                    |                        |
| 1990                                                                           | 10,683             |                        |
| 12. Double payment<br>District owe City                                        |                    |                        |
| 1986                                                                           |                    | \$ 25,807              |
| GRAND TOTAL                                                                    | \$ 116,400         | \$ 476,201             |

D.(a)13

CITY OF BERKELEY  
CONSENT CALENDAR INFORMATION

Deadline for Council Action \_\_\_\_\_

From: CITY MANAGER HEALTH AND HUMAN SERVICES THROUGH  Council Meeting Date: June 4, 1991

IT IS RECOMMENDED THAT THE CITY COUNCIL: AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE BERKELEY UNIFIED SCHOOL DISTRICT FOR MUTUAL FACILITY USE, SERVICES AND PAYMENT-SCHEDULE

1. COMMENTS, CITY ATTORNEY:

Council approval is required.

2. BACKGROUND AND NEED FOR COUNCIL ACTION:

Since 1949, the City of Berkeley (City) and the Berkeley Unified School District (District) have entered into a number of contracts for the mutual use of City and District facilities, site development, services and fees associated with the usage and services. Many of the agreements were written, while some agreements have been oral agreements between City and District staff. For the past ten years there have been a number of disagreements and disputes between the City and District in regard to the application and interpretation of use fees associated with the various written and oral agreements. As a result of the disagreements, no payments have been made between the City and District since July 1986.

In a spirit of cooperation, the City and District began discussions in December of 1988 to identify and compile the various written and oral agreements into a document that would provide the framework for shared facility use, site development and services. The City and District staff entered into negotiations on October 12, 1989. They were suspended subsequent to the earthquake and only concluded on December 20, 1990. The recommendations were forwarded to the School Board for approval and were ratified on February 6, 1991.

The delay in submission to the City Council was caused by the District's request for a sewer fee waiver. The City Attorney has rendered an opinion that the City, as a recipient of federal Clean Water Act funds, cannot waive the fees for sewer operation and maintenance incurred by the District. As a result, staff is in the process of calculating the fees to be assessed the School District.

It is recommended that the City Council authorize the City Manager to enter into an agreement with the Berkeley Unified School District for facility usage, site development, services, fees and the schedule for payment of fees without interest. The agreement shall become effective July 1, 1990 (Attachment 1).

AUTHORIZE AGREEMENT WITH  
BERKELEY UNIFIED SCHOOL DISTRICT

CONSENT CALENDAR  
June 4, 1991

3. FINANCIAL IMPLICATIONS (include any dollar amount, in-kind services, multi-year commitment) AND SOURCE OF FUNDS (for both cash and in-kind services; indicated if amount is currently budgeted and requirement for budget code), IF SUBMITTAL, AUTHORIZATION OR EXECUTION OF GRANTS IS INVOLVED (includes new grants or modification form) AN FNO06 (budget modification form) SHOULD BE SUBMITTED WITH ITEM. ITEM WILL NOT BE PROCESSED UNLESS FNO06 IS INCLUDED.

The agreement will set forth the fee structure for the use of various facilities, site development and services rendered by the City and District. After accounting for offsetting charges (Attachment 2) for the period July 1, 1986 through June 30, 1990, the District shall pay the City the amount of \$ 359,801 over a three year period without interest as follows:

Facility & Services

|    |                                              |           |            |
|----|----------------------------------------------|-----------|------------|
| 1. | First payment upon ratification of agreement |           | \$ 85,000  |
| 2. | Second payment                               | July 1991 | 75,000     |
| 3. | Third payment                                | July 1992 | 125,000    |
| 4. | Fourth payment                               | July 1993 | 74,801     |
|    | TOTAL                                        |           | \$ 359,801 |

4. COUNCIL POLICY AND LEGISLATIVE HISTORY, IF ANY;

Council has entered into various agreements with the Berkeley Unified School District for facility use, site development, services and fees.

5. COMMUNITY GROUPS AFFECTED

The entire population of the City of Berkeley

6. NAME, TITLE AND TELEPHONE NUMBER OF PERSON(S), DEPARTMENT(S) BOARD(S), COMMISSION(S), COMMITTEE(S) TO CONTACT FOR ADDITIONAL INFORMATION:

Anton Jungherr, Associate Superintendent of Schools, Berkeley Unified School District .....644-6674  
Emmett E. Jones, Assistant City Manager, Health & Human Services..644-6459

RESOLUTION NO.            -N.S.

AUTHORIZING AN AGREEMENT WITH THE BERKELEY UNIFIED SCHOOL DISTRICT FOR MUTUAL FACILITY USE, SITE DEVELOPMENT, SERVICES, FEES AND PAYMENT SCHEDULE.

BE IT RESOLVED by Council of the City of Berkeley follows:

That the City Manager is hereby authorized to enter into an agreement with the Berkeley Unified School District for mutual facility use, site development, services, fees and a payment schedule for Berkeley Unified School District's outstanding account, without interest as follows:

|                                                 |           |            |
|-------------------------------------------------|-----------|------------|
| 1. First Payment upon ratification of agreement |           | \$ 85,000  |
| 2. Second Payment                               | July 1991 | 75,000     |
| 3. Third Payment                                | July 1992 | 125,000    |
| 4. Fourth Payment                               | July 1993 | 74,801     |
|                                                 | TOTAL     | \$ 359,801 |

FURTHER RESOLVED, that the agreement shall be effective July 1, 1990; a record signature copy of said agreement is to be on file in the Office of the City Clerk.



COPY

polling places.

Section 13. District/City Sub-Lease of Mutual Property

The City and District will not sub-lease any property rented from one another, except to the extent provided in any existing lease between City and District not specifically incorporated herein.

Section 14. Summary of Account Outstanding

The parties owe each other sums of money as set forth in Attachment 2 for the provision of services specified in the attachment. Nothing in this section shall modify, abrogate or otherwise govern any obligation not specifically described in such attachment. After accounting for offsetting charges for the period July 1, 1986 through June 30, 1990, the District shall pay the City the amount of \$359,801 over a three year period without interest as follows:

|                                                      |           |            |
|------------------------------------------------------|-----------|------------|
| a. First payment upon ratification of this agreement |           | \$ 85,000  |
| b. Second payment                                    | July 1991 | 75,000     |
| c. Third payment                                     | July 1992 | 125,000    |
| d. Fourth payment                                    | July 1993 | 74,801     |
|                                                      | TOTAL     | \$ 359,801 |

IN WITNESS WHEREOF, first party has hereunto set its corporate name and seal by its officers thereunto duly authorized and second party has hereunto set its name by its officers thereunto duly authorized, the day and year first above written.

CITY OF BERKELEY

By Carla Woodworth  
Mayor

By [Signature]  
City Manager

By \_\_\_\_\_  
City Clerk

Registered by:  
By Anna Pakkin  
City Auditor

Approved as to form:  
Katherine G. Lee  
Deputy City Attorney

BERKELEY UNIFIED SCHOOL DISTRICT

By Jeanne R. Hegarty  
President of its Board of Education

By [Signature]  
Acting Superintendent of Schools

RESOLUTION NO. 58,377-N.S.

AUTHORIZING THE CITY MANAGER TO EXECUTE AN ADDENDUM TO THE JUNE 3, 1991 AGREEMENT BETWEEN THE CITY OF BERKELEY AND THE BERKELEY UNIFIED SCHOOL DISTRICT ESTABLISHING THE USE OF THE THOUSAND OAKS SCHOOL PARK.

WHEREAS, the City of Berkeley (City) and the Berkeley Unified School District (BUSD) have an agreement dated June 3, 1991, to which they wish to provide an addendum establishing use of Thousand Oaks School Park.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute an addendum to the June 3, 1991 agreement between the City and the Berkeley Unified School District to establish the use of the Thousand Oaks School Park as follows:

- 1) from September to June, the normal school year, the entire school yard and park will be available on school days for education, physical education, noon recreation, and after school use by the Thousand Oaks school children under faculty supervision; and
- 2) the school day shall be eight hours, 8 AM to 4 PM; and
- 3) limited use of the school yard and park during regular school hours, 8 AM to 4 PM, may be permitted at the discretion of the school principal; and
- 4) preschool children, when accompanied by adults, may use designated areas of school grounds during school hours when those areas are not in use by the school; and
- 5) after school hours, or when school is not in session, the entire park shall be open to the public for park related use.

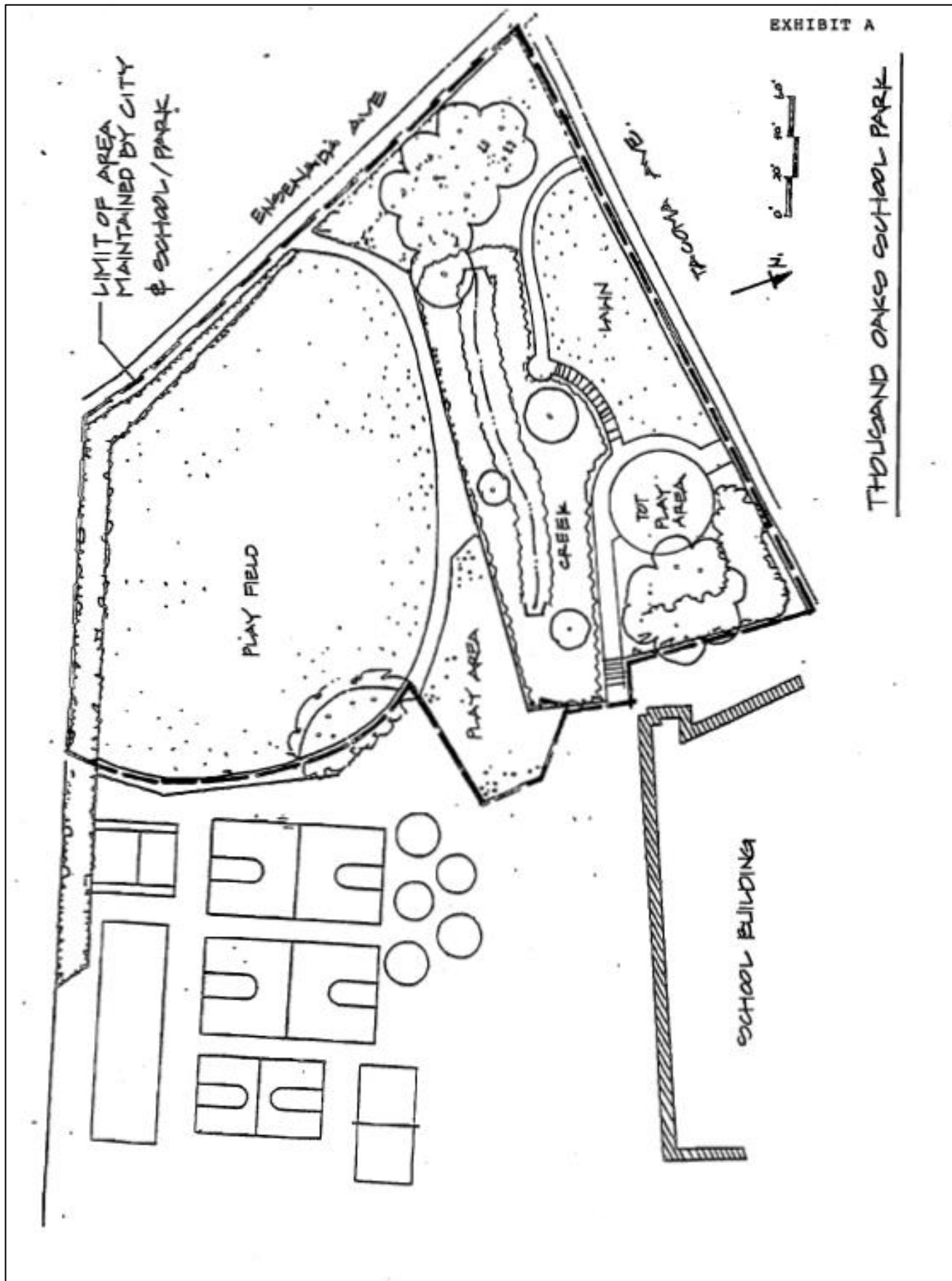
BE IT FURTHER RESOLVED, that a map of the Thousand Oaks School Park is attached hereto as Exhibit A and is to be added to the agreement.

The foregoing Resolution was adopted by the Berkeley City Council on March 5, 1996 by the following vote:

- Ayes: Councilmembers Armstrong, Maio, Olds, Shirek, Wainwright, Woolley-Bauer, Woodworth and President Dean.
- Noes: None.
- Abstain: None.
- Absent: Councilmember Spring.

SHIRLEY DEAN  
Mayor and President of the Council

Attest: SHERRY M. KELLY  
City Clerk and Clerk of the Council







Office of the Mayor

CONSENT CALENDAR

April 2, 2019

To: Honorable Mayor and Members of the City Council

From: Mayor Jesse Arreguín, Vice-Mayor Susan Wengraf, and Councilmembers Kate Harrison and Cheryl Davila

Subject: Co-Sponsorship and Budget Referral for the 2019 Bay Area Book Festival

RECOMMENDATION

- 1) Adopt a Resolution approving official City of Berkeley co-sponsorship of the non-profit Bay Area Book Festival to be held from May 4-5, 2019 in Downtown Berkeley; and
- 2) Refer an allocation of \$50,000 for the Bay Area Book Festival to the FY 2020/2021 Budget Process

BACKGROUND

The fifth annual Bay Area Book Festival will take place on Saturday, May 4 through Sunday, May 5 in downtown Berkeley. This annual literary event, free to the public, combines a street fair with diverse author panels and conversations on stages in downtown auditoriums. The festival will present over 200 top local, national, and international authors of all genres. Approximately 50,000 residents and visitors over the weekend are expected to attend, including low-income people who typically do not attend premium literary events.

To be held in the quadrant between Oxford and MLK (keeping Shattuck open) and between Addison and Kittredge, the festival will draw significant traffic to local restaurants, hotels, retail businesses, and arts/culture venues downtown and beyond. Over seventy exhibitors will include independent bookstores, publishers, literary nonprofits and other literary/arts endeavors.

As with last year, this year's festival continues to build partnerships with UC Berkeley by having the festival take place during the school year. Previous years have contributed towards town-gown collaboration with UC Berkeley faculty involved and has selected campus venues used for additional author panels.

This annual, world-class, legacy event can enrich the lives of residents, draw visitors, raise revenues, and enhance the city's reputation regionally and worldwide. Summary of benefits:

- Diverse cultural and literary riches brought to our residents

- Increased tax revenues from restaurant, retail stores, and exhibitor sales from 50,000 visitors during festival hours all day Saturday, Saturday night and Sunday, plus from large Authors/VIP party Friday night
- Increased hotel tax revenues
- Increased parking revenue
- Increased theatre/music venue attendance through co-promoted festival specials
- Focus on Berkeley by the entire Bay Area, thanks to promotions by the SF Chronicle, KQED and other radio coverage, TV coverage, Twitter and more
- International attention to the City of Berkeley; a third of festival authors to come from other countries
- Closer connection between town and gown
- Very low cost for the city relative to the benefits because the vast majority of costs are borne by the nonprofit festival organization

Recently, the City has changed the way festivals are funded. In 2016, then-Mayor Tom Bates introduced an item to refer to the budget process \$50,000 for the Bay Area Book Festival, and to request that it be a regular line item in the budget<sup>1</sup>. This allocation has been in the City budget and approved for the past three years. Consistent with this commitment to ongoing City funding, this item refers to the FY 2020/2021 Budget process an allocation of \$50,000 for the Bay Area Book Festival.

#### RATIONALE FOR RECOMMENDATION

The Bay Area Book Festival has quickly become one of Berkeley's premier annual festivals. The financial benefits to the City far outweigh the \$50,000 contribution and cost of fee waivers. The City will receive funding for various sources, including hotel taxes, parking revenue, and sales tax from increased sales at local businesses. Providing a contribution also shows Berkeley's commitment to the Book Festival, ensuring that they continue to host the festival here for years to come.

#### FINANCIAL IMPLICATIONS

Continuation of providing \$50,000 from the General Fund to the event.  
Various fees associated with the event will be waived.

#### ENVIRONMENTAL SUSTAINABILITY

No environmental effects.

#### CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1: Resolution

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<sup>1</sup> [http://records.cityofberkeley.info/Agenda/Documents/DownloadFile/5\\_31\\_2016%3b%20CLK%20-%20Report%20\(Public\)%3b%20MAYOR%3b%20%3b%20REGULAR%3b%20BUDGET%20REFERRAL%20B.pdf?documentType=1&meetingId=186&itemId=2294&publishId=7575&isSection=False&isAttachment=True](http://records.cityofberkeley.info/Agenda/Documents/DownloadFile/5_31_2016%3b%20CLK%20-%20Report%20(Public)%3b%20MAYOR%3b%20%3b%20REGULAR%3b%20BUDGET%20REFERRAL%20B.pdf?documentType=1&meetingId=186&itemId=2294&publishId=7575&isSection=False&isAttachment=True)

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

CITY CO-SPONSORSHIP OF THE FIFTH ANNUAL BAY AREA BOOK FESTIVAL

WHEREAS, the Bay Area Book Festival will be held this year from May 4-5, 2019 in downtown Berkeley; and

WHEREAS, this annual, nonprofit literary event, free to the public, will combine a street fair with diverse author panels and conversations on stages in downtown auditoriums; and

WHEREAS, the festival will present over 200 top authors of all genres and expects to attract at least 50,000 residents and visitors over the weekend, including low-income people who typically unable to such literary events; and

WHEREAS, Bay Area Book Festival is a legacy event that can enrich the lives of residents, draw visitors, raise revenues, and enhance the city's reputation regionally and worldwide.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley hereby co-sponsors the Bay Area Book Festival and that it 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 policy endorsement of the event.

BE IT FURTHER RESOLVED that this co-sponsorship does not: (1) constitute the acceptance of any liability, management, or control on the part of the City for or over the Bay Area Book Festival; or (2) constitute regulatory approval of the Bay Area Book Festival.







Office of the Mayor

CONSENT CALENDAR

April 2, 2019

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín, Councilmembers Ben Bartlett, Kate Harrison, and Rigel Robinson

Subject: Opposition to Eliminating Settlement Conferences for Unlawful Detainer Cases

RECOMMENDATION

Adopt a Resolution urging the Alameda County Superior Court to rescind its proposal to eliminate settlement conferences for half of all unlawful detainer cases. Send a copy of the Resolution to the Presiding Judge of the Alameda County Superior Court.

BACKGROUND

In late February, the Alameda County Superior Court announced that it will be eliminating settlement conferences for half of unlawful detainer cases for four months beginning on April 8 (the date was originally March 4 but has since been postponed). The purpose of this is for Harvard University Law School to conduct a study to evaluate the efficacy of the settlement conferences. This decision was made without consultation from the community or stakeholders.

Currently, all unlawful detainer cases brought forward at the Court require mandatory settlement conferences prior to the case going to trial. For many low-income tenants, this is their only opportunity to consult with an attorney and resolve their case before trial. This is because non-profit legal service providers use these conferences as an opportunity to work with tenants who would otherwise not have the ability to obtain legal representation. Access to this can make the difference between resolving the case and having a tenant remain in their home or being evicted and possibly ending up homeless.

Multiple service providers, including Bay Area Legal Aid, Centro Legal de la Raza, East Bay Community Law Center, Eviction Defense Center, and Legal Assistance for Seniors, have unanimously come out in strong opposition to this proposal. A lack of community engagement and the risk this places on low-income tenants were cited as reasons for opposition.

While studying the effects of settlement conferences is a noble cause that could help improve the ability of tenants to keep their homes, doing so in a way that impacts low-income tenants in being able to get legal representation is not appropriate. Instead of using vulnerable residents as guinea pigs for this experiment, researchers and academics should instead find ways that do not impede upon a person's ability to

receive legal representation (i.e. do a comparative study of courts that mandate settlement conferences with those that do not).

The City of Oakland recently adopted a similar resolution urging the Court to reconsider its decision.

RATIONALE FOR RECOMMENDATION

Between 2014-2016, there was on average 5,467 unlawful detainer filings in Alameda County. If this four month study was to go ahead, that would mean over 900 unlawful detainer litigants, including many Berkeley residents, would be denied a settlement conference. In the current housing and homeless crisis, settlement conferences can be the only lifeline between remaining in one's home and ending up on the streets.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

CONTACT PERSON

|                              |              |
|------------------------------|--------------|
| Mayor Jesse Arreguín         | 510-981-7100 |
| Councilmember Ben Bartlett   | 510-981-7130 |
| Councilmember Kate Harrison  | 510-981-7140 |
| Councilmember Rigel Robinson | 510-981-7170 |

Attachments:

- 1: Resolution

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

URGING THE ALAMEDA COUNTY SUPERIOR COURT TO RESCIND ITS DECISION  
TO ELIMINATE SETTLEMENT CONFERENCES FOR HALF OF ALL UNLAWFUL  
DETAINDER CASES

WHEREAS, currently, settlement conferences are mandated by the Alameda County Superior Court (the Court) for all unlawful detainer cases; and

WHEREAS, between 2014-2016, Alameda County on average had 5,467 unlawful detainer filings; and

WHEREAS, the City of Berkeley provides funding to non-profit legal services to help provide legal representation to low-income residents who otherwise would not have the ability to receive representation; and

WHEREAS, settlement conferences are often the only place a low-income tenant has the ability to talk to an attorney about their case and potentially resolve it without going through the stresses of a trial; and

WHEREAS, the Court has recently announced it plans on conducting a study for the Harvard University School of Law by eliminating settlement conferences for half of unlawful detainer cases over a four month period, beginning on April 8, 2019; and

WHEREAS, the purpose of this would be to compare the outcomes of the 50% of litigants who receive settlement conferences compared to the other half that do not; and

WHEREAS, this experiment places a grave risk to those whose only means of legal representation is through settlement conferences, and would disproportionately impact low income residents; and

WHEREAS, this proposal was announced with no community input, to the dismay of non-profit service providers and other stakeholders; and

WHEREAS, while studying the effects of settlement conferences is a noble cause that could help improve the ability of tenants to keep their homes, doing so in a way that impacts low-income tenants in being able to get legal representation is not appropriate; and

WHEREAS, in the current housing and homeless crisis, priority must be placed in preserving housing for low-income tenants and protect tenants against actions that could place them at risk of homelessness.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby opposes the proposal to eliminate settlement conferences for half of unlawful detainer cases.

BE IT FURTHER RESOLVED that the City Council strongly urges and requests that the Court engage in a dialogue with community stakeholders to ensure that studying the efficacy of settlement conferences does not deny the benefits of settlement conferences to low-income tenants.

BE IT FURTHER RESOLVED that a copy of this Resolution be sent to the Presiding Judge of the Alameda County Superior Court.



Councilmember  
Cheryl Davila  
District 2

CONSENT CALENDAR  
April 2, 2019

**To:** Honorable Mayor and Members of the City Council

**From:** Councilmembers Cheryl Davila, Sophie Hahn, Kate Harrison, and Susan Wengraf

**Subject:** Women’s Daytime Drop-In Center: 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 \$150 from Councilmember Cheryl Davila, to the Women’s Daytime Drop-In Center, for their 31<sup>st</sup> Annual Chance for Change on May 4, 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; \$150 is available from Councilmember Cheryl Davila’s Council Office Budget discretionary account.

ENVIRONMENTAL SUSTAINABILITY

None.

BACKGROUND

We are proposing that the City Council make a minimum grant of \$100 to the Women’s Daytime Drop-In Center, for their 31<sup>st</sup> Annual Chance for Change on May 4, 2019. The Women’s Daytime Drop-In Center proudly celebrates 30-years of empowering women and children to move from the streets to a home by providing ongoing and intensive counseling, case management services, daily support groups, a comprehensive children’s program, a variety of referral services, and a transitional housing program for four single parent families. The WDDC serves an average of 150 women and children each month, available at no fee to any homeless woman or child.

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 surplus funds in her office expenditure account (budget code 010-0224-410); and

WHEREAS, a California non-profit tax-exempt corporation Women's Daytime Drop-In Center seeks funds in the amount of \$150 for their 31<sup>st</sup> Annual Chance for Change on May 4, 2019, toward raising funds to provide services to homeless women and children; and

WHEREAS, WDDC proudly celebrates 31-years of service to the community, providing services, free-of-charge, to over 1300 homeless women and children, 10,000 hot home-cooked meals, 200 free counseling sessions, weekly workshops on intimate partner violence, a parenting program and other supportive services; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose: serving the immediate and on-going support needs of homeless women and their children; and

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 Women's Daytime Drop-In Center to fund the above services for their 31<sup>st</sup> Annual Chance for Change.



Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
April 2, 2019

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Harrison, Davila, Robinson, and Hahn  
 Subject: Referral to the Energy Commission to Hold a Series of Public Outreach and Educational Meetings Regarding Electrification

RECOMMENDATION

Refer to Berkeley's Energy Commission to hold four separate special public outreach and educational meetings regarding electrification in new buildings:

1. A meeting with community members;
2. A meeting with building professionals and labor (buildings trades, contractors, architects, engineers etc.);
3. A meeting with affordable housing developers;
4. A meeting with market-rate developers.

BACKGROUND

On February 19, 2019, Councilmember Harrison and cosponsors Councilmembers Davila, Bartlett and Hahn submitted to the Agenda Committee an *Ordinance adding a new Chapter 19.84 to the Berkeley Municipal Code Prohibiting Natural Gas Infrastructure in New Buildings*. The Agenda Committee referred the item to the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee (FITES) on February 25, 2019.

Subsequently, at the first meeting of the FITES on March 7, 2019, the Committee members voted to submit an item to the Council referring to the Energy Commission to "conduct community outreach and education events regarding the proposed ordinance" and electrification more broadly. This referral fulfills the Committee's directive.

The proposed ordinance is intended to only apply to new buildings and therefore will not affect already existing homes and businesses. This ordinance would change the way buildings are designed and built; if passed, builders will be encouraged to pursue all-electric designs. It is in the public interest to conduct outreach and education to key

stakeholders who are impacted by electrification and may be impacted by the proposed ordinance.

The Energy Commission, which specializes in climate and energy issues is well equipped to conduct the outreach and education meetings. On January 23, 2019, the Energy Commission voted to “approve recommendation to the City Council to refer to the City Manager the implementation of the recommendations to aggressively reduce greenhouse gas emissions in the revised Fossil Free Berkeley Report,” including the recommendation to phase out natural gas in new buildings.

#### FISCAL IMPACTS

The only added cost of the referral is potential staffing of four community meetings to obtain stakeholder and other public input.

#### ENVIRONMENTAL SUSTAINABILITY

Electrification will prevent the release of significant additional natural gas-related greenhouse gasses from new buildings.

#### CONTACT PERSON

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

#### Attachments:

1. Proposed Ordinance (as updated on March 7, 2019)
2. FITES Annotated Agenda, Thursday, January 23, 2019





Kate Harrison  
Councilmember District 4

ACTION CALENDAR  
[ ], 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Harrison, Davila, Bartlett and Hahn  
Subject: Adopt an Ordinance adding a new Chapter 19.84 to the Berkeley Municipal Code Prohibiting Natural Gas Infrastructure in New Buildings

RECOMMENDATION

Adopt an ordinance adding a new Chapter 19.84 to the Berkeley Municipal Code (BMC) prohibiting natural gas infrastructure in new buildings with an effective date of [ ].

POLICY COMMITTEE TRACK

Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee

BACKGROUND

The Community Environmental Advisory Commission (CEAC) unanimously recommended in 2016 that the Council consider phasing out new natural gas infrastructure in buildings.<sup>1</sup> That year, Council endorsed the recommendation and directed the CEAC and the Energy Commission to “develop and evaluate a proposal for requiring installations of new cooking, water heating, and/or building heating systems to use technologies which do not burn natural gas.”<sup>2</sup>

The Berkeley Energy Commission subsequently investigated adopting a ‘reach’ building ordinance mandating use of more efficient electric heat-pump water heaters in new construction, which would have the effect of phasing out natural gas for that purpose, but concluded that California Energy Commission (CEC) policies at the time precluded doing so because of the difficulty of proving that the proposed new requirement will be both cost-effective and at least as efficient as the existing state and federal standards.<sup>3</sup>

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<sup>1</sup> Phasing Out Natural Gas for Heating and Cooking, Community Environmental Advisory Commission, November 1, 2016,

[https://www.cityofberkeley.info/Clerk/City\\_Council/2016/11\\_Nov/Documents/2016-11-01\\_Item\\_10\\_Phasing\\_Out\\_Natural\\_Gas.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2016/11_Nov/Documents/2016-11-01_Item_10_Phasing_Out_Natural_Gas.aspx).

<sup>2</sup> Annotated Agenda Berkeley City Council Meeting, City Clerk’s Office, November 1, 2016, [http://www.cityofberkeley.info/Clerk/City\\_Council/2016/11\\_Nov/Documents/11-01\\_Annotated.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2016/11_Nov/Documents/11-01_Annotated.aspx).

<sup>3</sup> Response to Referral to Community Environmental Advisory Committee (CEAC) and the Berkeley Energy Commission to Evaluate Phasing-out Natural Gas, Berkeley Energy Commission, December 19, 2017, [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/12\\_Dec/Documents/2017-12-19\\_Item\\_17\\_Response\\_to\\_Referral\\_to\\_CEAC\\_and\\_BEC.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/12_Dec/Documents/2017-12-19_Item_17_Response_to_Referral_to_CEAC_and_BEC.aspx); See also, Local Ordinances Exceeding the 2016 Building Energy Efficiency Standards, California Energy Commission, <https://www.energy.ca.gov/title24/2016standards/ordinances/>; See also, CA Public Resources Code

Berkeley's Energy Commission found that a reach heat pump code did not pass the meet restrictive state requirements. Consequently, at the time it was determined infeasible to adopt such a reach code under Title 24 Part 6 of the 2016 state Energy Code. Since then, Berkeley's Office of Energy and Sustainable Development (OESD) has been actively working to present energy code amendments to state authorities that facilitate electric designs, and signed on in support of comments before the California Public Utilities Commission (CPUC) regarding utility incentives for fuel-switching in existing buildings.<sup>4</sup>

This ordinance differs in its approach by acting within the City's authority to prohibit installation of harmful gas infrastructure when issuing building permits for new buildings, and as a result avoids CEC regulations associated with asking to amend efficiency standards. With respect to the CPUC's jurisdiction, although the legislature empowered the Commission to "require each gas corporation to provide bundled basic gas service to all core customers in its service territory," it did not require customers to install fuel gas piping in or in connection with a building, structure or within the property lines of premises behind the gas meter.<sup>5</sup>

This new approach also has the endorsement of the present Berkeley Energy Commission. In December 2018, the Energy Commission presented a draft response to the Council's June 2018 Fossil Free Resolution. As part of a broader strategy to eschew fossil fuels from Berkeley, it recommended that the Council "[p]rohibit gas cooktops and dryers in new residences or a moratorium on new gas hook ups if possible."<sup>6</sup> Adoption of this ordinance would fulfil this recommendation.

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Section 25402.1(h)2,

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PRC&sectionNum=25402.1](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PRC&sectionNum=25402.1;); CA Building Energy Efficiency Standards Section 10-106

<https://www.energy.ca.gov/2015publications/CEC-400-2015-037/CEC-400-2015-037-CMF.pdf>

<sup>4</sup> "Berkeley Support to Phase Out Fossil Fuels with Clean Electrification," OESD, CEC Docket 18-IEPR-09, June 28, 2018,

[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Commission\\_for\\_Energy/EC2018-07-25\\_Item%207c-Combined\\_Comments%20to%20CEC%20and%20CPUC.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Energy/EC2018-07-25_Item%207c-Combined_Comments%20to%20CEC%20and%20CPUC.pdf). See also, "Comments of The Natural Resources Defense Council (NRDC) and Sierra Club On The Administrative Law Judge's Ruling Seeking Comments On The Three-Prong Test,"

<sup>5</sup> California Code, Public Utilities Code - PUC § 963,

[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=PUC&division=1.&title=&part=1.&chapter=4.5.&article=2](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PUC&division=1.&title=&part=1.&chapter=4.5.&article=2).

<sup>6</sup> Fossil Free Berkeley Subcommittee Draft Report for 12/5/2018 Commission Meeting, Berkeley Energy Commission, December, 5, 2018,

[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Commission\\_for\\_Energy/FFB%20Draft%20report%20for%20Dec%205%202018%20Commission%20Meeting%20Final.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Energy/FFB%20Draft%20report%20for%20Dec%205%202018%20Commission%20Meeting%20Final.pdf)

In June 2018 the Berkeley City Council declared a city-wide Climate Emergency (Resolution No. 68,486-N.S.), aimed at reviewing the City's greenhouse gas emission reduction strategies, commitments and progress in light of recent political, scientific and climatic developments.<sup>7</sup> A 2018 U.N. Intergovernmental Panel on Climate Change (IPCC) report suggested that in order to keep warming under 1.5 degrees Celsius, governments must initiate a dramatic 45% cut in global carbon emissions from 2010 levels by 2030 and reach global 'net zero' around 2050. The time for incremental emissions reduction strategies is over—policymakers must begin implementing “far-reaching and unprecedented changes in all aspects of society.”<sup>8</sup>

Berkeley became a climate leader when voters overwhelmingly passed Measure G (Resolution No. 63,518-N.S.) in 2006, calling for the City to reduce greenhouse gas emissions by 33% below 2000 levels by 2020, and 80% by 2050.<sup>9</sup> Measure G resulted in the City Council adopting the 2009 Berkeley Climate Action Plan (Resolution No. 64,480-N.S.), which was written through a community-wide process.<sup>10</sup> The plan identified buildings as major contributors to greenhouse gas emissions, representing 26% of community-wide emissions, and recommended the implementation of aggressive building codes favoring low carbon space and water heating appliances/infrastructure in new buildings.<sup>11</sup> A 2018 Climate Action Plan progress update presented by Berkeley's OESD reported that “[c]ombustion of natural gas within Berkeley buildings accounted for 27% of total GHG emissions in 2016 and 73% of building sector GHG emissions.”<sup>12</sup>

According to OESD, the latest and best available data suggest that Berkeley's 2016 community-wide GHG emissions, including emissions from transportation, building

<sup>7</sup> Resolution Endorsing a Climate Emergency, Berkeley City Council, June 12, 2018, [https://www.cityofberkeley.info/uploadedFiles/Council\\_2/Level\\_3\\_-\\_General/Climate%20Emergency%20Declaration%20-%20Adopted%2012%20June%202018%20-%20BCC.pdf](https://www.cityofberkeley.info/uploadedFiles/Council_2/Level_3_-_General/Climate%20Emergency%20Declaration%20-%20Adopted%2012%20June%202018%20-%20BCC.pdf)

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

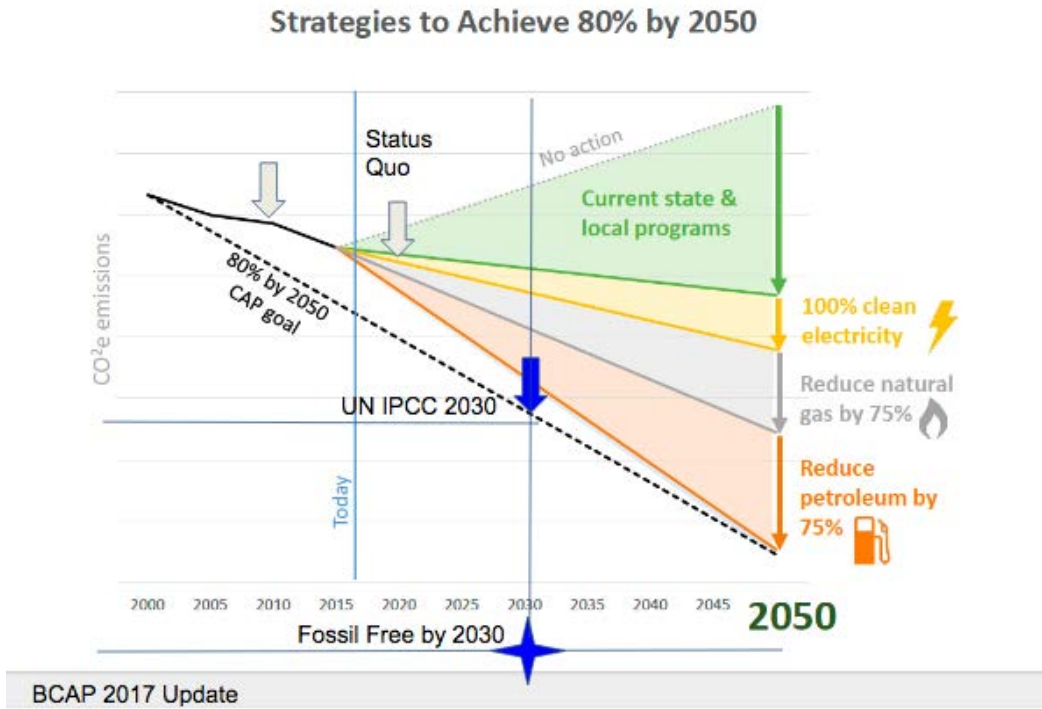
<sup>9</sup> Resolution Submitting Measure G, Berkeley City Council, July 18, 2006, <https://www.cityofberkeley.info/citycouncil/resos/2006/63396.pdf>; Ballotpedia, Berkeley Greenhouse Gas Emissions, Measure G (November 2006), November 7, 2006, [https://ballotpedia.org/Berkeley\\_Greenhouse\\_Gas\\_Emissions,\\_Measure\\_G\\_\(November\\_2006\)#cite\\_note-quotedisclaimer-1](https://ballotpedia.org/Berkeley_Greenhouse_Gas_Emissions,_Measure_G_(November_2006)#cite_note-quotedisclaimer-1)

<sup>10</sup> Office of Energy & Sustainable Development, Berkeley Climate Action Plan Information Page, <https://www.cityofberkeley.info/climate/>.

<sup>11</sup> City of Berkeley, Berkeley Climate Action Plan, June 2009, [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/Berkeley%20Climate%20Action%20Plan.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Berkeley%20Climate%20Action%20Plan.pdf), p. 59.

<sup>12</sup> 2018 Berkeley Climate Action Plan Update, Office of Energy and Sustainable Development, December 6, 2018, [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/12\\_Dec/Documents/2018-12-06\\_WS\\_Item\\_01\\_Climate\\_Action\\_Plan\\_Update\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/12_Dec/Documents/2018-12-06_WS_Item_01_Climate_Action_Plan_Update_pdf.aspx), p. 10.

energy use, and solid waste disposal, are approximately 15% below 2000 baseline levels, despite a population increase of approximately 18% in that same time period. Therefore, according to 2016 data, the City is approximately 18% behind its 2020 goal.<sup>13</sup>



Specifically, progress towards lowering emissions in new buildings has been encouraging but incremental. To date, the federal, state and local approach to energy use in new buildings has largely been to mandate greater building efficiency and energy conservation, which indirectly results in lower emissions, but does not directly phase out fossil fuel consumption in new buildings. With regard to energy efficiency, Berkeley is in the process of adopting the ambitious, but voluntary, Green Building Standards. In short, while this initiative facilitates the electrification and energy efficiency in new buildings, it does not explicitly and directly prohibit builders from constructing buildings with natural gas infrastructure, a potent and persistent source of greenhouse gas pollution.<sup>14</sup>

According to the November 2017 Planning Department Bi-Annual Housing Pipeline Report, the City approved building permits for 525 residential units between January 1, 2014 and November 2017. An additional 952 units received their certificate of

<sup>13</sup> *Id.*, p. 2.

<sup>14</sup> The forthcoming 2019 California Energy Code allows for significant natural gas usage.

occupancy during the same period.<sup>15</sup> Presumably, the vast majority of these units feature natural gas infrastructure. This gas-related emissions problem has been compounded by regional population and job growth coinciding with a considerable 18% rise in Berkeley's population since 2000 as well as the multi-decade useful life of natural gas appliances.<sup>16</sup> As a result, the city has 'locked in' decades of additional carbon pollution, and stands to continue doing so with each new building permit application. The persistence of fossil fuel industry marketing, the regional housing affordability crisis and the associated effort to expand the housing stock will continue to drive local and regional increases in natural gas infrastructure and consumption unless we act now.

This ordinance recognizes that all-electric heating technologies are cost-competitive substitutes to their natural gas counterparts (especially when installed during new construction) and seeks to halt the expansion of natural gas into new buildings in order to stave off the risk of locking in significant additional greenhouse emissions. In the interim between adoption and the effective date, City staff can continue to design and seek approval of all-electric codes to help guide home builders in constructing new buildings with emissions and efficiency best practices.<sup>17</sup>

This approach is borne out by recent economic analysis. For example, the Rocky Mountain Institute's 2018 report entitled *The Economics of Electrifying Buildings: How Electric Space and Water Heating Supports Decarbonization of Residential Buildings* considered the carbon emissions reduction opportunities and cost-effectiveness associated with all-electric space and water heating in new single-family construction in Oakland.<sup>18</sup> As a direct neighbor, the Oakland study is a useful reference point as Berkeley shares many of its characteristics, including its climate, architecture, the electric and natural gas utility, the Pacific Gas and Electric Company, and membership in East Bay Community Energy.

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<sup>15</sup> Referral Response: Bi-Annual Housing Pipeline Report, Planning Department, November 11, 2017, [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/11\\_Nov/Documents/2017-11-28\\_Item\\_21\\_Referral\\_Response\\_Bi-Annual.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/11_Nov/Documents/2017-11-28_Item_21_Referral_Response_Bi-Annual.aspx)

<sup>16</sup> 2018 Berkeley Climate Action Plan Update, p. 1.

<sup>17</sup> OESD reported in December 2018 that "Berkeley has worked with other local governments to create a joint cost-effectiveness study request for the California Codes and Standards Program, seeking the maximum cost-effective efficiency for mixed-fuel and all-electric new construction over a representative sample of building sizes and uses...The findings from this cost-effectiveness study request are expected in early 2019 and will be shared with the Energy Commission and other stakeholders, to evaluate options and opportunities for local amendments to promote deep energy savings and electrification." See, 2018 Berkeley Climate Action Plan Update, p. 12.

<sup>18</sup> Sherri Billimoria, Mike Hennen, Leia Guccione, and Leah Louis-Prescott, "The Economics of Electrifying Buildings: How Electric Space and Water Heating Supports Decarbonization of Residential Buildings," Rocky Mountain Institute, June 14, 2018, [https://rmi.org/wp-content/uploads/2018/06/RMI\\_Economics\\_of\\_Electrifying\\_Buildings\\_2018.pdf](https://rmi.org/wp-content/uploads/2018/06/RMI_Economics_of_Electrifying_Buildings_2018.pdf)

The report found that “[i]n Oakland, [electric] heat pumps produce universally less carbon emissions compared to natural gas systems.”<sup>19</sup> Heat pumps are functionally air conditioners that operate in reverse; they capture ambient heat from the air and transfer it inside the building where it can be used to heat water and space. They generate renewable solar energy from the air, and they are so efficient that the Rocky Mountain Institute argues that heat pumps are superior to natural gas appliances on all electric grids except those with the highest coal power content.<sup>20</sup> Fortunately, the California grid does not run on coal and features relatively low greenhouse gas emissions.<sup>21</sup> Therefore, heat pumps offer exponential emissions reduction potential in both new and existing buildings, and they are poised to result in additional benefits overtime as tomorrow’s electricity becomes substantially less carbon intensive due to market forces, implementation of California State Senate Bill 100 and wider adoption of Community Choice Aggregator renewable electricity services.

The report also found that for new single-family buildings in Oakland, “[electric] heat pumps are universally more cost-effective” than natural gas space and water heaters due to their superior energy efficiency, cost-competitiveness, built-in air conditioning capability, and the avoided cost of connecting to the Pacific Gas & Electric Company’s procurement and natural gas distribution system.<sup>22</sup> Specifically, the report found that new single-family developments avoiding gas could “save \$1,000 to more than \$24,000 per single-family home, with a median value of \$8,800.”<sup>23</sup> Similarly, in 2017 Stone Energy Associates and Redwood Energy submitted letters to the CEC advising the commission of the significant net cost savings per unit in multi-family projects due to avoiding costly trenching and gas infrastructure.<sup>24</sup> In addition, a 2018 Natural Resources Defense Council-commissioned report found that all-electric new multi-family construction “sees upfront capital savings, partly [as] a result of not piping for gas.”<sup>25</sup>

Berkeley’s Office of Energy and Sustainable Development (OESD) appears to share the Rocky Mountain Institute’s general outlook on heat pump technology, having

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<sup>19</sup> *Id.*, p. 29.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*, p. 9.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*, p. 47.

<sup>24</sup> CEC Docket No. 17-BSTD-01, Letter from Sean Armstrong, Redwood Energy, to CEC Re: 2019 Building Energy Efficiency Standards Pre-Rulemaking, October 11, 2017, <https://efiling.energy.ca.gov/GetDocument.aspx?tn=221464&DocumentContentId=27248>; CEC Docket No. 16-BSTD-06, Letter from Nehemiah Stone, Stone Energy Associates, to CEC Re: 2019 Building Energy Efficiency Standards Development, April 4, 2017.

<sup>25</sup> Asa S. Hopkins, PhD, Kenji Takahashi, Devi Glick, Melissa Whited, “Decarbonization of Heating Energy Use in California Buildings: Technology, Markets, Impacts, and Policy Solutions,” Synapse Energy Economics, Inc., October 16, 2018, <http://www.synapse-energy.com/sites/default/files/Decarbonization-Heating-CA-Buildings-17-092-1.pdf>.

recommended it as a critical means of meeting the goals of envisioned by city's climate action plan.<sup>26</sup>

The Environmental Protection Agency, Rocky Mountain Institute, and Berkeley's OESD staff also emphasize the carbon emissions associated with natural gas stemming from methane leaks. For example, methane gas is released into the atmosphere through hydraulic fracking and other drilling methods.<sup>27</sup> Transporting and distributing natural gas through pipelines also can lead to additional leaks, explosions and fires.<sup>28</sup> According to the EPA, "[p]ound for pound, the comparative impact of CH<sub>4</sub> [methane] is more than 25 times greater than CO<sub>2</sub> over a 100-year period."<sup>29</sup> In addition, according to the Environmental Defense Fund (EDF), "[i]n the first two decades after its release, methane is 84 times more potent than carbon dioxide." Methane's enhanced potency, particularly in the short term, results in more immediate warming and thus warrants greater urgency. EDF estimates that "[a]bout 25% of the manmade global warming we're experiencing is caused by methane emissions."<sup>30</sup> Consequently, the Rocky Mountain Institute report called upon cities to immediately "[s]top supporting the expansion of the natural gas distribution system, including for new homes." Furthermore, the report cautioned that natural gas "infrastructure will be obsolete in a highly electrified future, and gas ratepayers face significant stranded asset [financial] risk" by staying on natural gas.<sup>31</sup>

The proposed ordinance prohibits builders from applying for building permits that include establishing new or connecting to existing gas utility service for heat water, space, food etc. This legislation will have the effect of ushering in all-electric new buildings in the City of Berkeley, avoiding significant new greenhouse emissions and diverting City attention and resources to other critical sources of emissions.

<sup>26</sup> 2017 Berkeley Climate Action Plan Update, Office of Energy and Sustainable Development, December 7, 2017, [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/12\\_Dec/Documents/2017-12-07\\_WS\\_Item\\_01\\_Climate\\_Action\\_Plan\\_Update.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/12_Dec/Documents/2017-12-07_WS_Item_01_Climate_Action_Plan_Update.aspx); See also, Residential Heat Pump Water Heaters: Replacing a Gas Water Heater, OESD, <https://www.cityofberkeley.info/HPWH/>. According to OESD, heat pumps "use electricity instead of gas and therefore have the potential to use renewable energy...[and] work like a refrigerator in reverse — they use electricity and a refrigerant to take heat from the air and transfer" it to the hot water tank or heating ducts.

<sup>27</sup> The Economics of Electrifying Buildings, p. 26.

<sup>28</sup> See e.g., Rebecca Bowe, Lisa Pickoff-White, Five Years After Deadly San Bruno Explosion: Are We Safer?, KQED, September 8, 2015, <https://www.kqed.org/news/10667274/five-years-after-deadly-san-bruno-explosion-are-we-safer>; See also, David Siders, Jerry Brown declares emergency around Southern California gas leak, January 6, 2016, <https://www.sacbee.com/news/politics-government/capitol-alert/article53353615.html>.

<sup>29</sup> "Overview of Greenhouse Gases," U.S. Environmental Protection Agency, <https://www.epa.gov/ghgemissions/overview-greenhouse-gases#methane>

<sup>30</sup> "Methane: The other important greenhouse gas," Environmental Defense Fund, <https://www.edf.org/climate/methane-other-important-greenhouse-gas>.

<sup>31</sup> The Economics of Electrifying Buildings, p. 10.

The ordinance will help prevent deadly home fires that start from an open flame and are fueled by gas lines. For example, the City of Santa Rosa is actively reconsidering the role of natural gas in new buildings because of the destructive 2017 Tubbs firestorm.<sup>32</sup> In 2017 the U.S. Geological Survey conducted the *HayWired Scenario* simulating “a 7.0 quake on the Hayward fault line with the epicenter in Oakland.” The agency’s report predicted that “about 450 large fires could result in a loss of residential and commercial building floor area equivalent to more than 52,000 single-family homes and cause property (building and content) losses approaching \$30 billion.”<sup>33</sup> The report identified ruptured gas lines as a key fire risk factor. This finding mirrors the gas fires resulting from the Loma Prieta (1989) and Northridge (1994) earthquakes.

The ordinance will also improve indoor and outdoor air quality by eliminating toxic byproducts of natural gas. A 2013 Lawrence Berkeley National Laboratory study found that “60 percent of homes in the state that cook at least once a week with a gas stove” produce toxic levels of nitrogen dioxide, formaldehyde and carbon monoxide exceeding federal standards for outdoor air quality. Although electric stoves generate toxic particulate matter resulting from the cooking process and dust volatilization, researchers found that gas stoves are more detrimental to indoor air quality because they produce significant toxic fossil fuel combustion byproducts not associated with electric stoves.<sup>34</sup> This issue is compounded by state efficiency standards, which are designed to trap air indoors.

Rapid improvements in electric cooktop technology suggest that the City of Berkeley can simultaneously maintain its rich culinary culture while taking action to reduce fossil fuel emissions in new buildings.<sup>35</sup>

<sup>32</sup> Will Schmitt, Santa Rosa council considers requirement for new homes to be independent of natural gas, Press Democrat, November 10, 2018, <https://www.pressdemocrat.com/news/8899687-181/santa-rosa-council-considers-requirement>.

<sup>33</sup> “The HayWired earthquake scenario—Engineering implications,” U.S. Geological Survey, April 18, 2018, <https://pubs.er.usgs.gov/publication/sir20175013v2>.

<sup>34</sup> “Pollution in the Home: Kitchens Can Produce Hazardous Levels of Indoor Pollutants,” Julie Chao, Lawrence Berkeley National Laboratory, July 23, 2013, <https://newscenter.lbl.gov/2013/07/23/kitchens-can-produce-hazardous-levels-of-indoor-pollutants/>.

<sup>35</sup> While natural gas ranges are often regarded by home cooks as superior to electric ranges, modern induction range technology offers a cooking experience that arguably provides faster heat response, easier clean up and more temperature precision than gas. See e.g., Cooktop Showdown – Gas vs. Electric vs. Induction, A Finer Touch Construction, <https://aftconstruction.com/cooktop-showdown-electric-vs-gas-vs-induction/>. Appliance manufacturer Samsung introduced a new induction cooktop featuring a “virtual” LED flame that mimics the visual response of a gas flame. See also, 36" Induction Cooktop with Virtual Flame™, Samsung US, <https://www.samsung.com/us/home-appliances/cooktops-and-hoods/induction-cooktops/36--built-in-induction-cooktop-with-flex-cookzone-nz36k7880ug-aa/>.



Emergency action and leadership is needed to prevent the locking in of additional natural gas greenhouse gasses from new buildings. By adopting this ordinance, the City of Berkeley has an opportunity to make further progress towards delivering upon its responsibilities under Measure G, the 2009 Climate Action Plan, Fossil Fuel Berkeley Resolution (as referred), and the Climate Emergency Declaration.

#### FINANCIAL IMPLICATIONS

Staff time will be necessary to implement the new building permit regulations.

#### ENVIRONMENTAL SUSTAINABILITY

Prohibiting natural gas infrastructure in new buildings will prevent the release of significant additional natural gas-related greenhouse gasses from new buildings.

#### CONTACT PERSON

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

#### Attachments:

1. Proposed Ordinance Adding BMC Chapter 19.84

ORDINANCE NO. –N.S.

ADDING A NEW CHAPTER 19.84 TO THE BERKELEY MUNICIPAL CODE  
PROHIBITING NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS EFFECTIVE



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

Section 1. That Chapter 19.84 of the Berkeley Municipal Code is added to read as follows:

**Chapter 19.84**

**PROHIBITION OF NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS**

**Sections:**

**19.84.010 Findings and Purpose.**

**19.84.020 Applicability.**

**19.84.030 Definitions.**

**19.84.040 Prohibited Natural Gas Infrastructure in New Buildings**

**19.81.050 Exception.**

**19.81.060 Severability.**

**19.81.070 Effective Date.**

### **19.84.010 Findings and Purpose.**

The Council finds and expressly declares as follows:

- A. Available scientific evidence suggests that natural gas combustion, procurement and transportation produce significant greenhouse gas emissions that contribute to global warming and climate change.
- B. The following addition to the Berkeley Municipal Code is reasonably necessary because of local climatic, geologic and health and safety conditions as listed below:
  - (1) As a coastal city located on the San Francisco Bay, Berkeley is vulnerable to sea level rise, and human activities releasing greenhouse gases into the atmosphere cause increases in worldwide average temperature, which contribute to melting of glaciers and thermal expansion of ocean water – resulting in rising sea levels.
  - (2) Berkeley is already experiencing the repercussions of excessive greenhouse gas emissions as rising sea levels threaten the City’s shoreline and infrastructure, have caused significant erosion, have increased impacts to infrastructure during extreme tides, and have caused the City to expend funds to modify the sewer system.
  - (3) Berkeley is situated along a wildland-urban interface and is extremely vulnerable to wildfires and firestorms, and human activities releasing greenhouse gases into the atmosphere cause increases in worldwide average temperature, drought conditions, vegetative fuel, and length of fire seasons—all of which contribute to the likelihood and consequences of fire.
  - (4) Berkeley’s natural gas building infrastructure, a potentially significant source of fire during earthquakes and other fire events, is precariously situated along or near the Hayward fault, which is likely to produce a large earthquake in the Bay Area.
  - (5) Some subpopulations of Berkeley residents are especially vulnerable to heat events.
  - (6) Berkeley residents suffer from asthma and other health conditions associated with poor indoor and outdoor air quality exacerbated by the combustion of natural gas.
- C. The people of Berkeley, as codified through Measure G (Resolution No. 63,518-N.S.), the City of Berkeley Climate Action Plan (Resolution No. 64,480-N.S.), and Berkeley Climate Emergency Declaration (Resolution No. 68,486-N.S.) all recognize that rapid, far-reaching and unprecedented changes in all aspects of society are required to limit global warming and the resulting environmental threat posed by climate change, including the prompt phasing out of natural gas as a fuel for heating and cooling infrastructure in new buildings.
- D. Substitute electric heating and cooling infrastructure in new buildings fueled by less greenhouse gas intensive electricity is linked to significantly lower greenhouse gas emissions and is cost competitive because of the cost savings associated with all-electric designs that avoid new gas infrastructure.
- E. All-electric building design benefits the health, welfare, and resiliency of Berkeley and its residents.
- F. The most cost-effective time to integrate electrical infrastructure is during building construction because workers are already on-site, utility service upgrade costs are

lower, permitting and administrative costs are lower, natural gas piping costs are avoided, and it is more cost-effective to include such systems in construction financing.

- G. It is the intent of the council to eliminate obsolete natural gas infrastructure and associated greenhouse gas emissions in new buildings where all-electric infrastructure can be most practicably integrated, thereby reducing the environmental and health hazards produced by the consumption and transportation of natural gas.

**19.84.020 Applicability.**

- A. The requirements of this Chapter shall apply to all building permit applications for New Buildings proposed to be located in whole or in part within the City. However, it shall not apply to agencies that are not subject to City authority.
- B. The requirements of this Chapter shall not apply to the use of portable propane appliances for outdoor cooking and heating.

**19.84.030 Definitions.**

- A. "Accessory Dwelling Unit" shall have the same meaning as specified in Section 65852.2 of the Government Code.
- B. "Greenhouse Gas Emissions" mean gases that trap heat in the atmosphere.
- C. "Natural Gas" shall have the same meaning as "Fuel Gas" as defined in section 208.0 of the 2016 California Plumbing Code.
- D. "Natural Gas Infrastructure" shall be defined as fuel gas piping, other than service pipe, in or in connection with a building, structure or within the property lines of premises, extending from the point of delivery at the gas meter as specified in sections 1301.0 and 1302.1 of the 2016 California Mechanical Code..
- E. "New Building" shall be defined as new buildings or accessory buildings associated with a valid building permit application on or after the effective date of this chapter.

**19.84.040 Prohibited Natural Gas- Infrastructure in New Buildings**

No building permit shall be issued for the construction of a New Building featuring the installation of Natural Gas Infrastructure.

**19.84.050 Exception.**

- A. The requirements of this Chapter shall not apply to Accessory Dwelling Units.
- B. Notwithstanding the requirements of this chapter and the Greenhouse Gas Emissions associated with Natural Gas Infrastructure, the City Manager or their authorized representative may issue a building permit provided that a majority of the Mayor and Council finds that the permit serves the public interest.

**19.84.060 Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and

effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Chapter, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.

**19.84.070 Effective date.**

The provisions of this chapter shall become effective on [ ] .



Berkeley Energy Commission

## Approved ENERGY COMMISSION MINUTES Wednesday, January 23, 2019

1. Call to Order and Roll Call  
The meeting was called to order by Chair Bell at 6:40 p.m.  
Commissioners Present: Bell, Leger, Weems, Stromberg, Patel, Paulos  
Commissioner Leave of Absence: Luce  
Commissioner Absent: Schlachter  
Staff Present: Billi Romain
  
2. Public Comments and Announcements:  
7 members of the Public  
1 Comment
  
3. Approval of Minutes from Previous Meeting (December 05, 2018)  
Motion/second to approve minutes (Stromberg, Leger). The motion carried 4-0-2-2; Ayes: Bell, Leger, Weems, Stromberg. Noes: None. Abstain: Patel, Paulos None. Absent: Schlachte, Luce.
  
4. Electrification Expo Update (Commissioner Leger)  
Commissioner Leger gave an update on the Electrification Expo, February 7, 2019 from 3 to 8 pm at the Ed Roberts Campus, 3075 Adeline St.
  
5. Discussion and consideration of recommendation of the Fossil Fuel Free Subcommittee  
Commission discussed revisions to the report.  
Public Comment: 3  
Motion/second approve recommendation to the City Council to refer to the City Manager the implementation of the recommendations to aggressively reduce greenhouse gas emissions in the revised Fossil Free Berkeley Report. (Weems, Patel). The motion carried 6-0-0-2; Ayes: Bell, Leger, Weems, Paulos, Patel, Stromberg. Noes: None. Abstain: None. Absent: Schlachter, Luce.
  
6. Presentation and discussion of 2019 Local Hazard Mitigation Plan (LHMP) Update  
Staff provided overview of 2019 LHMP Update. Commissioner Paulos to draft comments including consideration of mitigating hazards caused by de-energization for review and consideration at next meeting.  
Public Comment: 1
  
7. Discussion and consideration of T1 recommendations  
Motion/second to send a report to council highlighting need to integration GHG reduction goals in to the T1 funding priorities, as stated in the recommendation in the Fossil Free Berkeley Report. (Paulos, Bell) The motion carried 6-0-0-2; Ayes: Bell, Leger, Weems, Paulos, Patel Stromberg. Noes: None. Abstain: None. Absent: Schlachter, Luce.

8. Nomination for Commission Chair and Vice Chair

Motion/second to nominate Commission Leger as Chair and Commissioner Stromberg as Vice Chair. (Bell, Stromberg) The motion carried 6-0-0-2; Ayes: Bell, Leger, Weems, Paulos, Patel Stromberg. Noes: None. Abstain: None. Absent: Schlachter, Luce.

9. Items for future meetings

- Consideration of Hazard Mitigation Plan comments
- 2019 Work Plan
- Deep Green Reach Code Update
- EV Roadmap Update
- BESO Evaluation and Pathway to Clean Energy Update

Adjournment

Motion/second to adjourn meeting at 9:15 pm (Weems, Patel). The motion carried 6-0-0-2; Ayes: Bell, Leger, Weems, Paulos, Patel Stromberg. Noes: None. Abstain: None. Absent: Schlachter, Luce.

Approved: \_\_\_\_\_

Billi Romain  
Berkeley Energy Commission Secretary

February 27, 2019: Motion/second to approve minutes with amendment of removing former Commission Bernhardt's name (Bell, Stromberg). The motion carried 6-0-0-2; Ayes: Bell, Leger, Luce, Paulos, Patel Stromberg. Noes: None. Abstain: None. Absent: Schlachter, Weems.







Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
April 2, 2019

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Susan Wengraf, Rigel Robinson, Sophie Hahn, and Mayor Jesse Arreguin  
 Subject: Proclamation in Honor of Holocaust Remembrance Day

RECOMMENDATION

Adopt the Holocaust Remembrance Day Proclamation for the 17<sup>th</sup> annual Holocaust Remembrance Day program.

FINANCIAL IMPLICATIONS

None

BACKGROUND

On April 28, 2019 at the Magnes Collection of Jewish Art and Life, the City of Berkeley sponsored Holocaust Remembrance Day event will be honoring Ralph Samuel, holocaust survivor. This year, one of the many speakers will include UC Professor Emeritus Russ Ellis. The program will also feature candle lighting, music and refreshments.

ENVIRONMENTAL SUSTAINABILITY

N/A

CONTACT PERSON

|                       |                    |              |
|-----------------------|--------------------|--------------|
| Councilmember Wengraf | Council District 6 | 510-981-7160 |
|-----------------------|--------------------|--------------|

Attachments:  
1: Proclamation

*HOLOCAUST REMEMBRANCE DAY*

*Whereas*, the Holocaust was the state-sponsored, systematic persecution and annihilation of European Jews by Nazi Germany and its collaborators between 1933 and 1945, and

Whereas six million Jews were murdered and also Roma Gypsies, people with mental illness and physical disabilities, and Poles were also targeted for destruction for racial, ethnic, or national reasons; and millions more, including homosexuals, Jehovah's Witnesses, Soviet prisoners of war, and political dissidents also suffered grievous oppression and death under Nazi tyranny; and

*Whereas*, The history of the Holocaust offers an opportunity to reflect on the moral responsibilities of individuals, societies, and governments; and

*Whereas*, We the people of the City of Berkeley should always remember the terrible events of the Holocaust and remain vigilant against hatred, persecution, prejudice and tyranny; and

*Whereas*, We the people of the City of Berkeley should actively rededicate ourselves to the principles of individual freedom in a just society; and

Whereas, We remember this is the 76<sup>th</sup> anniversary of the Warsaw Ghetto uprising when the human spirit resisted and fought back, against great odds, and by memorializing the past we help to steel ourselves for the challenges of tomorrow, and

*Whereas*, the Holocaust Remembrance Day has been set aside for the people of the City of Berkeley to join together as a community to remember the victims of the Holocaust, as well as to reflect on the need for respect of all peoples.

*Now Therefore*, I, Jesse Arreguin, Mayor of the City of Berkeley, do hereby proclaim Sunday, April 28, 2019 as Holocaust Remembrance Day in the City of Berkeley, in memory of the victims of the Holocaust and in honor of the survivors as well as the rescuers and liberators.

*Now Therefore I Further Proclaim* that we, as citizens of the City of Berkeley, will work to promote human dignity and confront hate whenever and wherever it occurs.

Mayor Arreguin

Councilmember Wengraf

Councilmember Droste

Councilmember Hahn

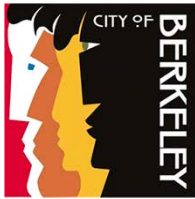
Councilmember Bartlett

Councilmember Davila

Councilmember Harrison

Councilmember Kesarwani

Councilmember Robinson



CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
DISTRICT 7

CONSENT CALENDAR  
April 2, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Rigel Robinson and Cheryl Davila  
Subject: Berkeley World Music Festival: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Fund

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$250 from Councilmember Robinson, to the Berkeley World Music Festival to assist with payment to artist fees, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Robinson and any other Councilmembers who would like to contribute.

BACKGROUND

The Berkeley World Music Festival is a significant cultural event offering extraordinary world music performances by some of the Bay Area's finest artists to the public free of charge. This Berkeley tradition, now celebrating its 16th year in the City, also encourages an appreciation of global music and recognizes the Bay Area as a regional center for world music.

The Berkeley World Music Festival is requesting funds to assist with payment of artist fees. These payments enable the Berkeley World Music Festival to continue hosting a diverse range of the musical acts and musicians who call the Bay Area home, such as Baraka Moon (Sufi Trance & World Groves) with Sukhawat Ali Khan (vocals) and Stephen Kent (Didgeridoo).

FINANCIAL IMPLICATIONS

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

ENVIRONMENTAL SUSTAINABILITY

No Impact

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Attachments:

- 1: Resolution for Council Expenditures

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

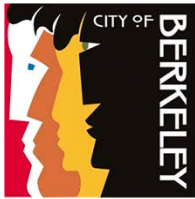
AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

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

WHEREAS, a California non-profit tax exempt corporation, Berkeley World Music Festival, seeks funds in the amount of \$250 to assist with payment of artist fees; and

WHEREAS, the provision of such services would fulfill the municipal public purpose of offering extraordinary world music performances by some of the Bay Area's finest artists to the public free of charge, and encouraging appreciation of global music.

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 World Music Festival to support the cultivation of world music.



CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 April 2, 2019

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Rigel Robinson, Kate Harrison, and Cheryl Davila  
 Subject: Support for AB-969 (Collective Bargaining: Legislature)

RECOMMENDATION

Send a letter to Senator Skinner and Assemblymembers Wicks and Gonzalez supporting AB-969, which would provide employees of the state legislature the right to participate in employee organizations for the purpose of collective bargaining and other aspects of employer-employee relations.

BACKGROUND

In California, The Dills Act governs collective bargaining by state employees and contractors. As written, the Dills Act does not apply to managerial or supervisory employees of the state, nor the majority of state legislature employees, meaning they cannot join an employees union. This bars them from collectively negotiating wages, hours, and the redress of employer-employee grievances.

Given that the State already recognized the right of its public employees to form, participate in, and collectively bargain through employment organizations, this bill would extend that recognition to those employees with whom the legislature works directly.

According to a 2018 study by Princeton University, membership in an employee organization, and the ability to collectively bargain contributes significantly to reduction of inequality among workers.

The passage of AB 969 would allow legislative workers to exercise critical rights to ensure worker equity and justice in the workplace, especially for groups marginalized both in the workplace and the negotiating process including women and minority groups.

Allowing State legislative aides to unionize is an important tool to address harassment and assault in the workplace. After the wave of credible harassment allegations led to 3 Sacramento legislators resigning, and 150 California women decrying male-dominance at the capitol in an open letter<sup>1</sup>, this is particularly pertinent to a safe and equitable workplace for California legislative employees.

<sup>1</sup> <https://www.sacbee.com/news/politics-government/article226211955.html>

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

No impact.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170  
Rachel Alper, Intern

Attachments:

- 1: Letter of support to Senator Skinner
- 2: Letter of support to Assemblymember Wicks
- 3: Letter of support to Assemblymember Gonzalez
- 4: Bill Text - AB 177

([https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB969](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB969))

The Honorable Nancy Skinner  
Member of the Senate  
State Capitol, Room 2059  
Sacramento, CA 95814

Re: AB-969 (Gonzalez) - Collective Bargaining: Legislature

Dear Senator Skinner,

The Berkeley City Council would like to convey its full support for AB-969. AB-969 seeks to provide employees of the legislature and some supervisory and managerial employees the right to participate in collective bargaining organizations.

In California, The Dills Act governs collective bargaining by state employees and contractors. As written, the Dills Act does not apply to managerial or supervisory employees of the state, nor the majority of state legislature employees, meaning they cannot join an employees union. This bars them from collectively negotiating wages, hours, and the redress of employer-employee grievances.

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Allowing State legislative aides to unionize is an important tool to address harassment and assault in the workplace. After the wave of credible harassment allegations led to 3 Sacramento legislators resigning, and 150 California women decrying male-dominance at the capitol in an open letter (Sacbee.com, 2018), this is particularly pertinent to a safe and equitable workplace for California legislative employees.

Berkeley City Council requests that you support this critical piece of legislation to provide workers with pivotal negotiating rights.

Respectfully,

The Berkeley City Council

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

Re: AB-969 (Gonzalez) - Collective Bargaining: Legislature

Dear Assemblymember Wicks,

The Berkeley City Council would like to convey its full support for AB-969. AB-969 seeks to provide employees of the legislature and some supervisory and managerial employees the right to participate in collective bargaining organizations.

In California, The Dills Act governs collective bargaining by state employees and contractors. As written, the Dills Act does not apply to managerial or supervisory employees of the state, nor the majority of state legislature employees, meaning they cannot join an employees union. This bars them from collectively negotiating wages, hours, and the redress of employer-employee grievances.

Given that the State already recognized the right of its public employees to form, participate in, and collectively bargain through employment organizations, this bill would extend that recognition to those employees with whom the legislature works directly.

According to a 2018 study by Princeton University, membership in an employee organization, and the ability to collectively bargain contributes significantly to reduction of inequality among workers.

The passage of AB 969 would allow legislative workers to exercise critical rights to ensure worker equity and justice in the workplace, especially for groups marginalized both in the workplace and the negotiating process including women and minority groups.

Allowing State legislative aides to unionize is an important tool to address harassment and assault in the workplace. After the wave of credible harassment allegations led to 3 Sacramento legislators resigning, and 150 California women decrying male-dominance at the capitol in an open letter (Sacbee.com, 2018), this is particularly pertinent to a safe and equitable workplace for California legislative employees.

Berkeley City Council requests that you support this critical piece of legislation to provide workers with pivotal negotiating rights.

Respectfully,

The Berkeley City Council



The Honorable Lorena Gonzalez  
Member of the Assembly  
State Capitol, Room 2114  
Sacramento, CA 95814

Re: AB-969 (Gonzalez) - Collective Bargaining: Legislature

Dear Assemblymember Gonzalez,

The Berkeley City Council would like to convey its full support for AB-969.

In California, The Dills Act governs collective bargaining by state employees and contractors. As written, the Dills Act does not apply to managerial or supervisory employees of the state, nor the majority of state legislature employees, meaning they cannot join an employees union. This bars them from collectively negotiating wages, hours, and the redress of employer-employee grievances.

Given that the State already recognized the right of its public employees to form, participate in, and collectively bargain through employment organizations, this bill would extend that recognition to those employees with whom the legislature works directly. According to a 2018 study by Princeton University, membership in an employee organization, and the ability to collectively bargain contributes significantly to reduction of inequality among workers.

The passage of AB 969 would allow legislative workers to exercise critical rights to ensure worker equity and justice in the workplace, especially for groups marginalized both in the workplace and the negotiating process including women and minority groups.

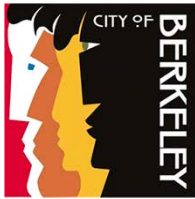
Allowing State legislative aides to unionize is an important tool to address harassment and assault in the workplace. After the wave of credible harassment allegations led to 3 Sacramento legislators resigning, and 150 California women decrying male-dominance at the capitol in an open letter (Sacbee.com, 2018), this is particularly pertinent to a safe and equitable workplace for California legislative employees.

Thank you for authoring this important piece of legislation.

Respectfully,

The Berkeley City Council





CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 April 2, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson, Mayor Jesse Arreguin, and  
 Councilmembers Kate Harrison and Lori Droste

Subject: Support for SCA-1: Public Housing Projects

RECOMMENDATION

Adopt a resolution supporting SCA-1, which repeals Article 34 of the state constitution, requiring a citywide vote for construction of publicly funded low income housing projects. Copies of the resolution will be sent to Senator Nancy Skinner, Assemblymember Buffy Wicks, Senator Bill Allen, and Senator Scott Weiner.

BACKGROUND

On December 3, 2018, Senators Ben Allen and Scott Weiner introduced a bill to the state legislature repealing Article 34. Repealing this section would enable city and local governments to expedite the process of funding low-income housing projects, without the delays of electorate approval. Given the current shortage of affordable housing in California, SCA 1 would be a catalyst to much-needed development.

Article 34 defines “‘low rent housing project’ as any development composed of urban or rural dwellings, apartments or other living accommodations for persons of low income. ‘Person of low income’ shall mean persons or families who lack the amount of income which is necessary (as determined by the state public body developing, constructing, or acquiring the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.”

Initially added to the Constitution in 1950 through a ballot initiative, Article 34 is a legislative relic of a racially discriminatory era, and institutes a disruptive obstacle to construction of new affordable public housing.

The attached resolution states the City of Berkeley’s endorsement of the proposed constitutional amendment. Copies of the resolution will be sent to Senator Nancy Skinner, Assemblymember Buffy Wicks, and the bill’s authors, Senators Ben Allen and Scott Weiner.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Consistent with the City’s climate and environmental goals.

[Title of Report]

CONSENT CALENDAR  
April 2, 2019

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Ronit Sholkoff and Mars Svec-Burdick, Interns to Councilmember Rigel Robinson

Attachments:

1: Resolution in Support of SCA-1

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

ENDORSEMENT OF SCA-1 (2019)

WHEREAS, housing is a human right, and;

WHEREAS, development of publicly funded affordable housing enables cities to further the public good by expanding access to this basic right, and;

WHEREAS, under current law, the cumbersome requirement of electoral approval impedes the capacity of municipalities to develop adequate numbers of affordable housing units, and;

WHEREAS, restrictions on affordable housing reinforce intergenerational income inequality and perpetuate systems of economic disenfranchisement which disproportionately impact minority communities, and;

WHEREAS, construction of new affordable housing empowers cities to both correct historic inequalities and address contemporary shortages when they arise, and;

WHEREAS, SCA-1 (Allen and Weiner), also known as the Public Housing Projects Amendment, will repeal Article 34 of the California Constitution, thereby removing an antiquated procedural obstacle to progress.

NOW THEREFORE, BE IT RESOLVED that the City of Berkeley hereby endorses SCA-1 and the constitutional amendments which will result from its passage; and

BE IT FURTHER RESOLVED that the City of Berkeley may be listed as a supporter of said constitutional amendments by the official proponents of the measure; and

BE IT FURTHER RESOLVED that copies of this resolution will be sent to Senator Nancy Skinner, Assemblymember Buffy Wicks, Senator Bill Allen, and Senator Scott Weiner.





Lori Droste  
Councilmember, District 8

**Consent Calendar**

April 2, 2019

To: Honorable Mayor and Members of City Council

From: Councilmember Lori Droste and Councilmember Rashi Kesarwani

Subject: Adopt a Spot Initiative

**Recommendation**

Refer to the Public Works Commission and Parks and Waterfront Commission to develop an Adopt A Spot initiative; specifically outlining potential environmental benefits, program costs, staffing.

*Rationale:*

- *Adopt a Spot programs enable a network of volunteer residents to assist in city maintenance and clean up efforts which have great impact using minimal City staff/funding.*
- *Vision 2050 will include stormwater and watershed management goals, both of which this program would support.*

**Background**

The City of Berkeley currently maintains an Adopt A Drain program. An Adopt A Spot program would utilize volunteers to assist with activities including, but not limited to, storm drain maintenance, street beautification, trash cleanup, gardening initiatives, etc.

*The City of Oakland Adopt a Spot Program*

The City of Oakland coordinates hundreds of volunteers to clean, green, maintain, and beautify public spaces (such as parks, libraries, creeks) and infrastructure (such as signs, storm drains, litter containers, utility boxes and poles, street tree wells, and

trees). Managed by the Environmental Stewardship Team within the Oakland Public Works Department, this volunteer program has been active throughout the city for over thirty years. The volunteer program supports community cleanups throughout the year, annual city-wide cleanups for Earth Day, Creek to Bay Day, MLK Day of Service, and “Adopt a Spot,” an ongoing volunteer stewardship program that includes a growing list of over 2,000 Oakland “spots.”

Volunteers contribute over 100,000 hours each year, contributing to a wide range of environmental sustainability impacts such as pollution cleanup and prevention; wildlife habitat protection, enhancement, and restoration; and stormwater management. Volunteerism also strengthens communities by connecting people to each other, to their neighborhoods, and to their environment. These benefits enhance Oakland’s economy, safety, and livability,

The City of Oakland Public Works’ *Adopt a Drain* program supports volunteer efforts to keep storm drain inlets clean and clear of trash and debris. Clear and clean inlets keep water flowing and ensure “only rain down the drain,” which is especially helpful during storm events when blocked storm drains can back up and cause flooding. Year-round storm drain maintenance helps intercept trash before it enters the storm drains and connecting creeks and water bodies.

The City of Oakland provides support for Adopt a Drain volunteers through instruction, tools and supplies, assistance with debris pickups, and notification of impending storm events.

Over 1,000 of Oakland’s approximately 12,000 storm drains have been adopted. The more than 800 Adopt a Drain volunteers greatly supplement the capacity of the twenty City staff servicing the storm drain system, with its more than 1,200 storm drains, 370 miles of drain pipe, seven pump stations and 40 miles of creeks. Volunteers can quickly and preemptively provide basic maintenance on drains and can have a far more extensive and immediate reach across the city than staff during storm and flooding emergencies.

Oakland uses a map interface at [www.AdoptaDrainOakland.com](http://www.AdoptaDrainOakland.com) for depicting the City’s storm drain inlets to the public for possible adoption. This easy to use interface has helped spur new volunteer registrations. Social media, word-of-mouth, and timely news coverage prior to and during storm events has also contributed to volunteer registrations. More information is available at [www.oaklandadoptaspot.org](http://www.oaklandadoptaspot.org).

## **Environmental Sustainability**



Helps Berkeley fulfill Watershed and Stormwater Management Plan goals.

**Financial Implications**

Staff time to coordinate volunteers and provide technical assistance.

**Contact**

Councilmember Lori Droste 510-981-7180





Rent Stabilization Board

## ACTION CALENDAR

April 2, 2019

To: Honorable Mayor and Members of City Council

From: Jay Kelekian, Rent Board Executive Director

Subject: Implementation of Resolution 68,132 (Council Funding for Additional Services Amending Contracts with Eviction Defense Center (“EDC”) and East Bay Community Law Center (“EBCLC”) For The Period Ending June 30, 2018)

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### BACKGROUND

On July 25, 2017 Council passed Resolution 68,132 providing a transfer of \$300,000 per year to the Rent Board for fiscal years 2018 and 2019 to amend the Rent Board’s long-standing contracts with the Eviction Defense Center (“EDC”) and the East Bay Community Law Center (“EBCLC”). The additional funding was authorized for the purpose of assisting Berkeley tenants via advocacy and counseling so as to prevent displacement. The funding was earmarked for assistance to tenants categorized with extremely low, very low, low and moderate income.

Council also requested that the Rent Board administer the contract and provide updates on how the additional funding was being utilized and what additional services were being provided to Berkeley residents. This report quantitatively and qualitatively describes the changes in services provided during FY 2018.

### HISTORY

With the passage of the Costa-Hawkins Rental Housing Act in 1995, rents began to rise dramatically in Berkeley and neighboring communities as landlords were now given the right to set new tenancies at full market rate. Due to these substantial rent increases,

and the allure of market-rate rents, Council members received numerous reports from constituents that many rent-controlled tenants in Berkeley found themselves being coerced and harassed out of their long-term homes, often through technical and/or “pretextual” evictions.

Starting in 1996 with the East Bay Community Law Center and 2001 for the Eviction Defense Center, the Berkeley Rent Board has been contracting with these two non-profits for the dual purpose of preserving the integrity of the Rent Control Ordinance and preventing unlawful evictions of Berkeley’s most vulnerable low-income tenants. These tenants otherwise would generally not have access to legal services.

In FY 2018, the Rent Board awarded \$142,500 for the EBCLC and \$140,000 for the EDC. The scope of services for the providers as it relates to their contracts with the Rent Board is to provide assistance to low-income tenants in the following manner; eviction defense legal representation, representation at Rent Board proceedings, in-depth legal counseling on local law, and clinics informing tenants of their rights under the rent ordinance.

With the passage of Measure U1, City Council has been able to prioritize measures seeking to preserve affordable housing, prevent homelessness and tackle the displacement of long-term, low and moderate income tenants throughout the city. Resolution 68,132 was passed in furtherance of these goals.

### CHANGES IN SERVICES

Prior to the passage of the resolution, Rent Board and city staff met with the contract providers to identify issues and areas of concern that tenants were experiencing when in conflict with their landlords. It was determined that, under the contract with the Rent Board, while the EBCLC and EDC were providing core services in the way of counseling and legal assistance, there was a need for more in-depth, targeted assistance. Outreach to non-English speaking tenants was also identified as a need as was the expansion of the level of full-scale representation for tenants that were either subject to eviction or subject to harassment and/or coercion by their landlord. After extensive consultation with the providers it was determined that while there was benefit in increasing the number of residents served, there was also benefit in greatly expanding the scope and depth of the services provided. It is the offering of this greater depth of assistance that explains why the total of low and moderate income has increased but not doubled.

With the increase in funding, the EDC and EBCLC have now expanded both the breadth of services and the volume of assistance provided to Berkeley tenants. The added funding has also allowed the providers to serve the additional clientele of moderate income tenants and tenants who live in units that are partially exempt from

the Rent Ordinance (i.e. Section Eight, Shelter Plus). As shown below, each provider has not only increased the number of tenants served, but has substantially expanded the level of services provided.

Under the City-funded components of the contract, the EBCLC is now representing tenants in Berkeley Housing Authority and Shelter Plus administrative proceedings, providing assistance to and direct representation of tenants with issues pertaining to the buyout provisions of the Tenant Protection Ordinance (B.M.C. §13.79 et seq.) and assistance and representation for tenants impacted by the Short-term Rental Ordinance (B.M.C. §23C.22.050). As a result of the additional City funding, the EBCLC has increased its staffing for Berkeley tenants by adding one Full-Time Equivalent (1 FTE) staff attorney and roughly .25 FTE for additional administrative and clerical support.

The additional City funding has enabled the EDC to hire one new full-time attorney as well as establish a Berkeley satellite office that now provides instant mobile access and a Berkeley hotline phone number. They have also increased their already robust bi-lingual assistance. The two charts below reflect the services to be provided under the original contract (Rent Board funding) and the revised/expanded contract (City funding).

The numbers in the charts below reflect both the original and revised minimum deliverables for each agency. For ease of comparison, we have revised the categories of services so that the same terms are used when describing each agency's deliverables (actual contract language varies slightly). It should be noted that the charts on the following page have services listed by least labor (*pre-litigation services*) intensive to more/most labor intensive (*L'td scope assistance and full direct representation*). Service providers have reported that cases often flow from a less labor intensive category to a higher category as the case progresses. When this occurs, cases are not double counted and the service agency gets credit in only one reporting category (the most labor-intensive level). The two organizations collaborate very well together and sometimes refer clients to each other in an effort to serve as many meritorious clients as possible. During our monthly review and site visits, we look for overlap of service. If a client is reflected in the same level of service for both agency (generally for *pre-litigation services*), we only count that individual once. If however, a client is reflected in different level of service categories (*pre-litigation services* for Agency A and *L'td scope assistance* for Agency B), we will count it once for each agency because it generally reflects a referral or transfer between agencies.

| <b><u>EBCLC</u></b>           | <b><u>Original Services With Rent Board Funding</u></b> | <b><u>Expanded Services With City Funding (supplemental services/added)</u></b> |
|-------------------------------|---------------------------------------------------------|---------------------------------------------------------------------------------|
|                               |                                                         | limited to low-income tenants covered by Rent Control Ordinance                 |
| Funding                       | \$142,500                                               | \$292,500                                                                       |
| Pre-litigation services       | 300 clients per year                                    | 320 clients per year                                                            |
| Lt'd Scope/Pro-per Assistance | 36 cases                                                | 156 cases                                                                       |
| Direct Representation         | 18 cases                                                | 58 cases                                                                        |

| <b><u>EDC</u></b>                                    | <b><u>Original Services With Rent Board Funding</u></b> | <b><u>Expanded Services With City Funding (supplemental services/added)</u></b>                  |
|------------------------------------------------------|---------------------------------------------------------|--------------------------------------------------------------------------------------------------|
|                                                      |                                                         | limited to low-income tenants covered by Rent Control Ordinance                                  |
| Funding                                              | \$140,000                                               | \$290,000                                                                                        |
| Pre-litigation services                              | 50 clients per year                                     | 50 clients per year                                                                              |
| Lt'd Scope/Pro-per Assistance                        | 250 cases                                               | 430 cases                                                                                        |
| Direct Representation                                | 60 cases                                                | 60 cases                                                                                         |
| In depth/Resource intensive/ Short of representation |                                                         | 15 (ongoing) cases<br>In-depth services/resource intensive                                       |
|                                                      |                                                         | **Berkeley satellite office/ Hot-line/increased outreach to non-<br>**English speaking community |

TRACKING AND AUDITING OF PROVIDERS

Prior to the additional City funding provided to the EDC and EBCLC, the Rent Board had been monitoring these contracts since their inception. During the course of FY 2018, Rent Board staff monitored the contracts to ensure that the providers were meeting their newly targeted and contracted service levels. The EDC provides monthly reports and the EBCLC provides quarterly reports, both of which provide detailed activity of actual services provided. Prior to payment, the Rent Board reviews these reports for accuracy and to ensure that contract goals are being met. In addition, the Board reviews the invoices and detailed reports to ensure that there is no duplication of services between the providers. Rent Board staff conducts site visits to review case files to ensure contract compliance and validate the accuracy of the reported services. Both the EBCLC and the EDC met their service deliverable goals for FY 2018 and are continuing their reporting into FY 2019.

DEMOGRAPHICS FOR FY 2017/18

Below are demographics showing the diversity of the population that has been served under the contracts during FY 2017/18.

|                    | <b>EDC</b> | <b>EBCLC</b> |
|--------------------|------------|--------------|
| African-American   | 42%        | 39%          |
| Latino             | 16%        | 8%           |
| Asian              | 9%         | 4%           |
| Elderly            | 25%        | 29%          |
| Disabled           | 38%        | 15%          |
| Minor in Household | 27%        | not reported |
| Long-term Tenant   | 54%        | not reported |

Several councilmembers have asked for examples of the types of services provided under the contracts. The following is a small sample of some of the cases where the EDC and EBCLC reported having provided representation/assistance.

**EDC #1: Mr. B. (81) and Ms. W (75)**

In one case, the Eviction Defense Center [EDC] received an urgent phone call from a Berkeley public health care provider. The woman was alarmed after seeing a very disabled 75 year old woman with an 81 year old partner in her clinic. She believed that the very elderly and frail couple was being evicted from their home of 16 years for hoarding, and the Berkeley Fire Department was inspecting the premises in three days.

The EDC immediately dispatched an attorney and caseworker to meet with the clients. After gaining the trust of the clients they were able to see the apartment, which was in an extremely dangerous and unhealthy condition. All pathways, windows, doors, and heaters were blocked. Neighboring tenants expressed their concern about the extreme fire hazard and their sympathy for the elderly and disabled tenants. They also explained that the landlord had tried everything to get the premises under control, but was at his wits' end.

After intense counseling sessions, the EDC was able to get the clients' permission to do a full clean-up operation starting the next morning and within 48 hours, three dumpsters were filled and carted off the premises. The neighboring tenants and the landlord were extremely relieved when the premises passed the Fire Department Inspection the next day.

The EDC conducted regular home visits and mini-clean ups at the premises to ensure the health and safety of all tenants in the building. Most importantly, the efforts of the EDC have helped keep two very elderly and disabled long term tenants in their home.

#### EDC #2: **Ms. G.**

Ms. G came to the EDC with an eviction notice for nuisance. After over an hour meeting with an EDC attorney, it became apparent that she was suffering from PTSD. The attorney was able to gain her trust and confidence enough to discover that she was a rape and domestic violence survivor. The nuisance behavior appeared to be related to her PTSD symptoms.

The EDC immediately reached out to the attorney representing the landlord and made a written reasonable accommodation request. The landlord's attorney admitted that they did not want to evict Ms. G because they could tell she was suffering from mental illness, but her behavior was leaving them no choice.

Because of an excellent working relationship with this particular landlord and their attorney, the EDC was able to obtain additional time to resolve this case. During this time, the EDC was able to foster a strong client relationship, by having consultations with Ms. G a minimum of three times each week regarding legal issues pertaining to her housing.

Within a week, the attorney for the landlord reached out and said "I don't know what you are doing...but keep doing it! Since your agency got involved, she has not been bothering anyone! We are rescinding the eviction notice."

For the next several months, EDC staff worked with Ms. G with routine check-ins. As a result, her housing is no longer in jeopardy. The staffing needed to provide this type of



ongoing support to one of the most vulnerable members of the Berkeley community, is made possible by the City Council grant.

**EDC #3: Mr. R.**

Mr. R was a long-term tenant paying \$760.00 per month and who was being evicted for non-payment of rent. His management company was well known in Berkeley for engaging in predatory practices, especially directed towards vulnerable and long-term tenants.

Mr. R., who was in his late 70's, had just finished treatments for cancer and during this time, fell behind in rent. The treatments had left him weak and easily confused.

The EDC immediately reached out to EBCLC for a rent grant and reached out to the attorney for the other side and offered to pay all of the rent. The attorney for the landlord responded that the only settlement option would be if Mr. R vacated.

After extensive litigation which lasted several months, EBCLC had the rent grant approved, but the landlord refused to accept it and kept insisting that Mr. R leave his home. After the 3<sup>rd</sup> court appearance and on the eve of jury trial and after almost 100 attorney hours, the landlord finally agreed to let Mr. R. stay in his home. A stipulation was drafted, rent was paid, and the case was dismissed. The EDC still keeps in touch with Mr. R on a regular basis to make sure that he is doing well.

The following is a sample of some of the cases where the EBCLC has assisted and represented tenants:

**EBCLC #1: Ms. A.**

Ms. A is a 75-year-old disabled woman who has been living in her apartment for 18 years. Her only source of income is social security and she would be homeless if she lost her affordable housing. In September 2017 she was removed from the property by the police and involuntarily hospitalized due to erratic behavior that was disturbing the neighbors. While she was in the hospital, the landlord filed an eviction lawsuit against her and took a default judgment, obtaining a writ of eviction to be executed by the sheriff. After being notified of the case, EBCLC was able to locate Ms. A at a hospital in Hayward. EBCLC filed an application to stay (delay) the eviction to give them time to investigate. After considerable collaboration with the tenant's medical providers, EBCLC discovered that the tenant's disturbing conduct was related to a change in her medications. EBCLC successfully moved the court to set aside the default judgment and then negotiated a settlement allowing Ms. A to return to her home and continue her tenancy after she was stabilized and released from the hospital.

**EBCLC #2: Ms. D.**

Ms. D is an 81-year-old African American woman who has lived in her apartment for more than 30 years. Her landlord served her with a notice of lease violation and threatened her with eviction due to excessive clutter in her rental unit allegedly causing a fire hazard. EBCLC staff visited the property and found that the tenant's personal property, accumulated over the course of 30 years, had filled the small apartment nearly to the ceiling in every room. EBCLC attorneys negotiated with the landlord for an extension of time to remedy the situation and assigned a social worker to work with the tenant. The social worker and EBCLC staff have been helping Ms. D. over the course of several weeks to sort her possessions and bring the apartment into compliance with applicable codes. They are also working with her to secure continuing appropriate services to allow this senior to remain in her home and continue to live independently. The eviction lawsuit has been averted and the tenancy has been preserved.

**EBCLC #3: Mr. H.**

Mr. H is a 69 year old disabled veteran living in a single room occupancy hotel. His only source of income is veterans' benefits and he is at high risk of homelessness if he were evicted from his home. His landlord filed an eviction lawsuit against him claiming he was making too much noise but never served him with the summons and complaint. Because he was never served with the lawsuit, he did not legally respond and the landlord obtained a default judgment and writ of eviction.

The first notice that he received of the eviction was the notice posted on his door by the Alameda County Sheriff's office, stating that they would be removing him from the premises in eleven days. EBCLC helped him file a motion to delay the sheriff's lockout by 40 days. This allowed the EBCLC to file another motion to overturn the default judgment. After prevailing on that motion, EBCLC filed an answer on the tenant's behalf. Finally, EBCLC filed a motion which resulted in the landlord dismissing the case, thus preserving his tenancy.

**CONCLUSION**

With the passage of Resolution 68,132, the City has not only made necessary legal

services more available to tenants but has expanded the breadth and scope of those services so as to enable those who are most at risk of losing their relatively affordable housing maintain their homes.

The funding provided by the City covers fiscal years 2017/18 and 2018/19. While this report only covers the period through June 30, 2018, both agencies have met their targeted service goals for last fiscal year. The Rent Board's Eviction Committee met with the service providers last spring to discuss how the changes to the contract worked in FY 2018 and if any modifications were desired for the current fiscal year. The committee, staff and both of the service providers agreed to continue with no modifications in FY 2019. The Rent Board will continue to monitor the contract and services and provide additional updates as appropriate.





Office of the City Manager

PUBLIC HEARING  
April 2, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Ferris, Director, Parks Recreation and Waterfront  
 Subject: New Marina Fee – South Cove Parking Lots

### RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt a Resolution approving a new Marina Fee Schedule to include a new \$10 parking fee in the South Cove Parking lot, and rescinding Resolution No. 68,415-N.S. and all amendatory resolutions.

### FISCAL IMPACTS OF RECOMMENDATION

The cumulative impact of the new South Cove Parking Fee is estimated to add \$26,000 in annual revenue to the Marina Fund (Fund 608). This revenue will offset the City's cost to collect the fee and maintain the parking lot. This fee is not expected to make a significant impact on the Marina Fund's \$1M structural deficit and projected insolvency within the next two years.

### CURRENT SITUATION AND ITS EFFECTS

The Marina Fee Schedule was last updated in May, 2018, when Council adopted Resolution No. 68,415-N.S. Since then, parking congestion on the South side of the Waterfront has become an increasing problem. Ferry and charter boat customers arrive early and park all day in the highest demand spots, which has had the effect of squeezing out recreational users.

The recommendation from the City's independent parking consultant, Nelson Nygaard, is to implement a weekday-only fee of \$10/vehicle in order to act as a disincentive for all-day parking in the South Cove Parking lots. This will be charged only Monday through Friday between 5am and 9am. People who need free all-day parking can use the northern side of the 199 Seawall parking lot nearby. The diagram in Attachment 1 illustrates how the parking fee at South Cove will work with the additional parking rule changes that will take effect in April, 2019 at the Waterfront.

**Table 1 - Proposed Fee for South Cove Parking**

| Fee                    | Current             | Proposed                                 |
|------------------------|---------------------|------------------------------------------|
| South Cove Parking Fee | n/a – no fee exists | \$10 per vehicle, weekdays only, 5am-9am |

**RATIONALE FOR RECOMMENDATION**

The \$10 parking fee is comparable to parking fees already in existence at the Berkeley Waterfront, and nearby recreational marinas. Fees for launch ramp access and parking at the Waterfront are currently \$15 per day. The Doubletree Hotel at the Waterfront charges \$28.60 per day for self-parking and \$9 for the first three hours. The Emeryville Marina charges \$20 for 24 hour parking. At Fisherman's Wharf in San Francisco, customers pay a \$13 parking fee for validated parking at a nearby garage.

**Table 2: Parking Fee Comparisons**

| Parking Location                                          | Rate per day | Notes                                                                                                   |
|-----------------------------------------------------------|--------------|---------------------------------------------------------------------------------------------------------|
| Berkeley Marina South Cove                                | \$10.00      | Charged only during the hours of 5am-9am on weekdays                                                    |
| Berkley Marina Launch Ramp                                | \$15.00      | Charged for launch ramp access and all day parking; subject to availability                             |
| Berkley Marina Doubletree hotel                           | \$28.60      | \$26 for self-parking, plus a 10% parking tax. Hourly rates: 0-3 hrs: \$14; 3-6 hrs: \$20; 6+ hrs: \$26 |
| San Francisco Fisherman's Wharf - Anchorage Square Garage | \$13.00      | Charged for 5am-9am arrival and departure prior to 6pm, with validation.                                |
| Emeryville Marina                                         | \$20.00      | Charged for 24 hours, paid via parking kiosk                                                            |

**BACKGROUND**

In October and November of 2018, staff conducted a public process regarding parking changes at the Waterfront. Public comments were taken at two stakeholder meetings (October 9 and October 23, 2018) (see comments here<sup>1</sup>) and three Parks and Waterfront Commission Meetings (September 12, October 10, and November 14, 2018). Attendance ranged from 15 to 100 people, and over 80 verbal comments were made. In addition, staff received approximately 100 written comments, and conducted several more meetings and phone calls with individual stakeholders. This process helped staff to better understand the needs of each group and develop optimal solutions. The feedback we received was constructive, and informed staff's recommendation.

**ENVIRONMENTAL SUSTAINABILITY**

The proposed new parking fee at the South Cove parking lots will increase the availability of parking stalls to general recreational users at the Berkeley Waterfront, continuing the City's goal of fostering environmental stewardship of the San Francisco Bay.

<sup>1</sup> [https://www.cityofberkeley.info/Parks\\_Rec\\_Waterfront/Marina/Waterfront\\_Parking\\_Study\\_Review.aspx](https://www.cityofberkeley.info/Parks_Rec_Waterfront/Marina/Waterfront_Parking_Study_Review.aspx)

ALTERNATIVE ACTIONS

Staff considered closing the South Cove Parking Lots between 5am and 9am, but this would restrict access for charter and ferry participants who would be willing to pay for closer access.

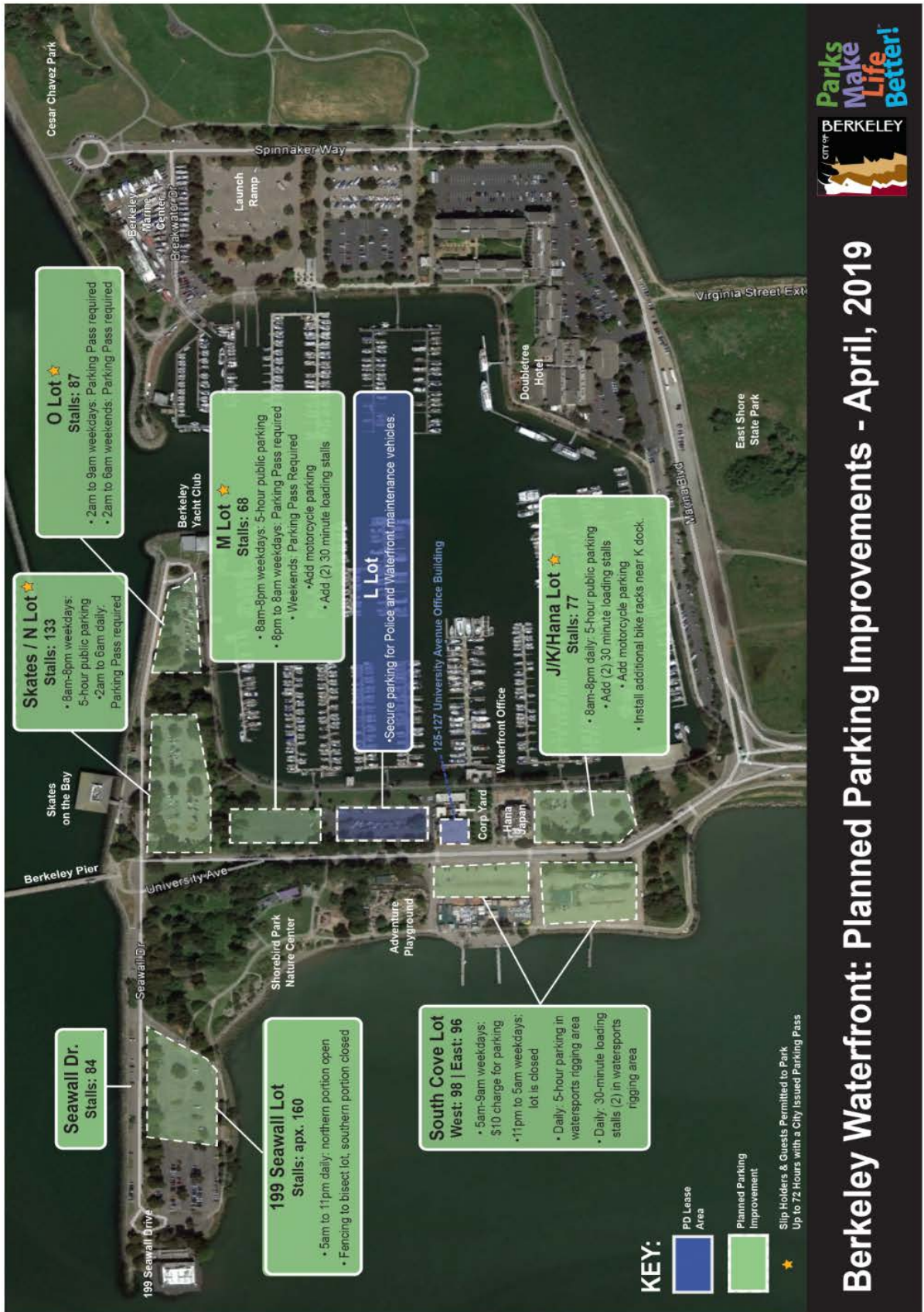
CONTACT PERSON

Christina Erickson, Deputy Director, 510-981-6703

Alexandra Endress, Waterfront Manager, 510-981-6737

Attachments:

1. Parking Changes Overview Map
2. Resolution  
Exhibit A: Fee Schedule
3. Notice of Public Hearing



**Berkeley Waterfront: Planned Parking Improvements - April, 2019**



## ATTACHMENT 2

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

#### ESTABLISHING FEES FOR GOODS AND SERVICES PROVIDED AT THE BERKELEY MARINA AND RESCINDING RESOLUTION NO. 68,415-N.S

WHEREAS, on May 15, 2018, Council adopted the new Marina Fee Schedule (Resolution No. 68,415-N.S.); and

WHEREAS, parking congestion at the southern waterfront is an increasing problem; and

WHEREAS, a \$10 charge for parking on weekdays between 5am and 9am in the South Parking Lots will dis-incentivize all-day parking in prime recreational areas to open up space for recreational users and waterfront visitors.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the attached rate structure (Exhibit A) is hereby established for use by the general public for facilities and services at the Berkeley Marina, effective April 2, 2019.

BE IT FURTHER RESOLVED that Resolution No. 68,415-N.S-N.S. and all amendatory resolutions are hereby rescinded effective April 2, 2019.

Exhibit A: Fee Schedule

## Exhibit A: Fee Schedule

### Marina Rate Schedule

(effective April 2, 2019)

| Berth Fee per size of boat (in feet) | Berths \$/ft | Power \$/ft |
|--------------------------------------|--------------|-------------|
| 20' – 21'                            | 8.20         | 0           |
| 22' – 24'                            | 8.67         | 0.20        |
| 25' – 29'                            | 9.76         | 0.40        |
| 30' – 39'                            | 10.34        | 0.60        |
| 40' – 49'                            | 10.95        | 0.80        |
| 50' – 59'                            | 11.61        | 1.00        |
| 60' – 69'                            | 12.33        | 1.20        |
| 70' – 79'                            | 13.04        | 1.40        |
| 80' – 89'                            | 13.81        | 1.60        |

| Surcharges                         | Base Rate Per Foot         |
|------------------------------------|----------------------------|
| Upwind Berth*                      | 15% added to the base rate |
| Single Berth (Double Finger Berth) | 15% added to the base rate |
| Upwind & Single Berth              | 30% added to the base rate |
| Catamaran / Trimaran Fees          | 40% added to the base rate |

| Discounts                                | Base Rate Per Foot                 |
|------------------------------------------|------------------------------------|
| Multiple Berth Discount > 20             | -30% off Base Berth Rent           |
| Multiple Berth Discount 11-20            | -20% off Base Berth Rent           |
| Multiple Berth Discount 5-10             | -10% off Base Berth Rent           |
| Referral Discount for New Slip Holders** | -\$50 on first month of berth fees |

| Other Fees                                       | Amount                   |
|--------------------------------------------------|--------------------------|
| Chaining Fee (per occurrence)                    | \$120/occurrence         |
| Charter Boat Fee (public dock)                   | \$35/event + \$1/person  |
| Dry Storage (27' length or less)                 | \$125/month              |
| Dry Storage (28' length or more)                 | \$150/month              |
| Electronic key pass (initial 1-2 keys)           | \$15/key                 |
| Electronic key pass (additional keys)            | \$75/key                 |
| Electronic key pass (Visitors: initial 1-2 keys) | \$10/key                 |
| Group key fee (Organizations)                    | \$15/key                 |
| Floating Home Sewer Charge – monthly             | \$25/month               |
| Food Booth Fee                                   | \$500/event              |
| Impound Fee                                      | \$55/day                 |
| Insurance – Outdated / Inadequate                | \$75/month               |
| Labor Fees                                       | \$75/hour                |
| Launch Ramp – Monthly                            | \$90/month               |
| Launch Ramp – Seasonal                           | \$300 per 6-month period |
| Launch Ramp – Daily                              | \$15/day                 |
| Lien Fee                                         | \$100/occurrence         |
| Limited Access Berth                             | Vessel Length x Rate     |
| Liveaboard Fee – boat (monthly) ++               | \$200/month              |

| Other Fees                                  | Amount                                                                                   |
|---------------------------------------------|------------------------------------------------------------------------------------------|
| Liveaboard Fee – floating home (monthly) ++ | \$200/month                                                                              |
| Locker Fee                                  | \$30/month                                                                               |
| Merchandise Booth Fee                       | \$100/event                                                                              |
| Skiff <20' length                           | \$125/month                                                                              |
| Slip Transfer Fee                           | \$30/occurrence                                                                          |
| Small Scale Ferry Service Fee               | See table below                                                                          |
| <b>South Cove Parking Lots Fee***</b>       | <b>\$10</b>                                                                              |
| Special Event Parking Fee                   | \$20/vehicle less than 17'; \$50/vehicles /ft for vehicles and trailers in excess of 17' |
| Visitor Berth Fees (11 – 30 nights)         | 20% of Base Berth Rent                                                                   |
| Visitor Berth Fees (10 nights or less)      | \$0.50/foot/night                                                                        |

\*Houseboats excepted

\*\*Fee credit offered on first month of slip fees to both a new slip holder (that has not previously held a slip at the Berkeley Marina) and an existing customer who made the referral.

\*\*\*Charged weekdays only, from 5am to 9am

++ Boaters may apply for a refund of any Liveaboard fee increase that takes effect from FY 2016 onward through the City's Very Low Income Refund policy.

**Small-Scale Ferry Service Fee**

| Landings Per Day | Daily Landing Fee |  | Landings per Day | Daily Landing Fee |
|------------------|-------------------|--|------------------|-------------------|
| 1                | \$14.34           |  | 11               | \$68.83           |
| 2                | \$25.80           |  | 12               | \$70.27           |
| 3                | \$35.84           |  | 13               | \$71.70           |
| 4                | \$44.44           |  | 14               | \$73.15           |
| 5                | \$51.61           |  | 15               | \$74.58           |
| 6                | \$57.35           |  | 16               | \$76.02           |
| 7                | \$61.65           |  | 17               | \$77.46           |
| 8                | \$64.52           |  | 18               | \$78.89           |
| 9                | \$65.96           |  | 19               | \$80.33           |
| 10               | \$67.40           |  | 20               | \$81.77           |

*For each additional SSFS landing in excess of 20 landings, the daily landing fee would increase by \$2.88.*

ATTACHMENT 3

**NOTICE OF PUBLIC HEARING**

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**New Marina Fee – South Cove Parking Lots**

Notice is hereby given by the City Council of the City of Berkeley that a public hearing will be conducted by said city council of the City of Berkeley at which time and place all persons may attend and be heard upon the following:

The Department of Parks, Recreation & Waterfront is proposing to increase selected Marina fees, as contained in the attached Marina Fee Schedule and summarized below:

**Table 1 - Current vs. Proposed Fees**

| Fee                            | Current | Proposed | Notes:                             |
|--------------------------------|---------|----------|------------------------------------|
| 1. South Cove Parking Lots Fee | None    | \$10     | Charged weekdays, between 5am-9am. |

The hearing will be held on April 2, 2019, at 6:00 p.m. in the BUSD Board Room, 1231 Addison Street, Berkeley.

For further information, please contact **Alexandra Endress at 510-981-6737**.

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 **March 21, 2019**.

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.

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written

correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 12 days prior to the public hearing.

**Published:** March 22 & 29, 2019 – The Berkeley Voice  
Published pursuant to Government Code 6062a

~~~~~  
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 the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on March 21, 2019.

Mark Numainville, City Clerk



Office of the Mayor

ACTION CALENDAR

April 2, 2019

To: Members of the City Council

From: Mayor Jesse Arreguín and Councilmember Susan Wengraf

Subject: Draft Supplemental Environmental Impact Report for Upper Hearst Development and Amendment to 2020 Long Range Development Plan

RECOMMENDATION

Discuss the draft Supplemental Environmental Impact Report (SEIR) for the Upper Hearst Development and Minor Amendment to the 2020 Long Range Development Plan.

Provide direction to the City Manager on formal comments to the Upper Hearst SEIR. Comments to be submitted to UC Berkeley by the April 8, 2019 deadline.

FINANCIAL IMPLICATIONS

Staff time involved in preparing comments on the Upper Hearst Development SEIR.

BACKGROUND

The University of California, Berkeley has recently released a Draft Supplemental Environmental Impact Report (SEIR) on the proposed Upper Hearst Development for the Goldman School of Public Policy and a Minor Amendment to the 2020 Long Range Development Plan.

Project Description:

The project site is an approximately 44,900-square-foot (just over one acre) portion of a University owned property on the northwest corner of La Loma Avenue and Hearst Avenue, immediately west of 2607 Hearst Avenue across from the northeastern region of the UC Berkeley Campus Park. The project site is located within the area of campus designated in the 2020 LRDP as the “City Environs,” and within the City Environs’ Adjacent Blocks North subarea.

The project comprises two separate buildings – an academic building and a residential building on top of a rebuilt parking structure – that would be built concurrently by the project developer. The residential building would be up to six-stories constructed on top of a three-story partially subterranean parking structure where the Upper Hearst parking structure and adjacent at-grade Ridge parking lot are now located on La Loma Avenue between Hearst Avenue and Ridge Road. The residential component would consist of up to 150 residential units in a mixture of studio and one- and two-bedroom apartments

for campus. The project would reduce the total number of parking spaces on-site from 346 to approximately 175. The building, including the residential units and parking, would be approximately 220,000 gross square feet.

A separate academic building would be constructed immediately east of the existing GSPP building located at 2607 Hearst Avenue. The approximately 37,000 gross square feet of office, classroom, and event space in the academic building would serve several GSPP programs. The academic building would be four stories in height over one subterranean level. The fourth level would provide access to a rooftop terrace and include an event space with a seating capacity of 300 that could accommodate up to 450 people at maximum capacity.

The SEIR also studies the potential impacts of a 33.7% increase in student enrollment beyond the baseline population studies in the 2005 Long Range Development Plan. The SEIR points out that student enrollment has increased by 11,285 beyond the baseline in the 2020 LRDP.

The deadline to submit comments on the Upper Hearst SEIR is April 8, 2019. The Landmarks Preservation Commission will be discussing and approving comments at their March 7, 2019 meeting. City staff are preparing formal comments with the goal of presenting them to the Council on April 2, 2019 for discussion and adoption.

You can read the Upper Hearst SEIR here:

<https://capitalstrategies.berkeley.edu/sites/default/files/draft-supplemental-eir-2020lrpd.pdf>

CONTACT PERSON

Mayor Jesse Arreguin 510-981-7100

Attachments:

1: Notice of Availability of the UC Upper Hearst Development SEIR

UNIVERSITY OF CALIFORNIA, BERKELEY

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PHYSICAL & ENVIRONMENTAL PLANNING
A & E BUILDING, # 1382

BERKELEY, CALIFORNIA 94720-1382

**NOTICE OF AVAILABILITY OF A
DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT**

Project Title:	Upper Hearst Development for the Goldman School of Public Policy and Minor Amendment to the 2020 Long Range Development Plan
Lead Agency:	The Regents of the University of California
Project Sponsor:	University of California, Berkeley
Project Location:	University of California, Berkeley: adjacent to 2607 Hearst Avenue at La Loma Avenue, Berkeley, California 94720; Assessor's Parcel Number 58-2201-9-1
County:	Alameda County, California
Program EIR:	UC Berkeley 2020 Long Range Development Plan EIR, certified by The Regents January 2005, State Clearinghouse No. 2003082131; as updated by Amendment #1 to the 2020 LRDP to address Climate Change and accompanying Addendum #5 to the 2020 LRDP EIR.

In accordance with the California Environmental Quality Act (CEQA), the University of California has completed a Draft Supplemental Environmental Impact Report (Draft SEIR) addressing the potential environmental impacts associated with the proposed development of two buildings located on the UC Berkeley campus. This notice is to inform interested agencies and the public of the availability of the Draft SEIR and the start and end dates of the review period, within which comments on the Draft SEIR can be submitted to UC Berkeley.

Project Location and Description: The project site is an approximately 44,900-square-foot (just over one acre) portion of a University owned property on the northwest corner of La Loma Avenue and Hearst Avenue, immediately west of 2607 Hearst Avenue across from the northeastern region of the UC Berkeley Campus Park. The site is bordered on the north by Ridge Road and the Cloyne Court Student Cooperative; on the east by La Loma Avenue; on the south by Hearst Avenue; and on the west by the Goldman School of Public Policy and the Cloyne Court Student Cooperative. The project site is located within the area of campus designated in the 2020 LRDP as the "City Environs," and within the City Environs' Adjacent Blocks North subarea.

The project comprises two separate buildings – an academic building and a residential building on top of a rebuilt parking structure – that would be built concurrently by the project developer. The residential building would be up to six-stories constructed on top of a three-story partially subterranean parking structure where the Upper Hearst parking structure and adjacent at-grade Ridge parking lot are now located on La Loma Avenue between Hearst Avenue and Ridge Road. The residential component would consist of up to 150 residential units in a mixture of studio and one- and two-bedroom apartments for campus. The project would reduce the total number of parking spaces on-site from 346 to approximately 175. The building, including the residential units and parking, would be approximately 220,000 gross square feet.

A separate academic building would be constructed immediately east of the existing GSPP building located at 2607 Hearst Avenue. The approximately 37,000 gross square feet of office, classroom, and event space in the academic building would serve several GSPP programs. The academic building would be four stories in height over one subterranean level. The fourth level would provide access to a rooftop terrace and include an event space with a seating capacity of 300 that could accommodate up to 450 people at maximum capacity.

Environmental Review and Impacts of the Project: UC Berkeley has prepared a Draft SEIR, tiered from its 2020 LRDP EIR to evaluate the environmental effects of the proposed project. UC Berkeley has been approving development projects based upon environmental documents that tier off the 2020 LRDP EIR approved in 2005. The campus population has now increased beyond 2020 LRDP projections that were analyzed in the 2020 LRDP EIR. The Draft SEIR analyzes the impacts of the Upper Hearst Development project and any change in environmental impacts from increased enrollment that has led to a new baseline for the overall campus population to those identified in the 2020 LRDP EIR. The Draft SEIR provides a project-level analysis of the Upper Hearst Development, including an LRDP text amendment for change in land use, and a program-level environmental analysis of development anticipated to accommodate current and projected enrollment at the UC Berkeley campus.

The preliminary conclusions of the Draft SEIR indicate that the proposed project would result in new significant and unavoidable impacts that were not identified in the 2020 LRDP EIR in aesthetics and land use compatibility.

Public Review and Document Availability: The Draft SEIR will be circulated for a 45-day review and comment period by agencies and the public. The comment period begins on February 20, 2019 and ends on April 8, 2019.

Written responses to the Draft SEIR must be received by 5:00 PM on Monday, April 8, 2019. A public hearing to receive oral comments will be held on the UC Berkeley campus the evening of Tuesday March 12, 2019. The public meeting will be held from 6:30 PM to 8:00 PM at the Alumni House.

UC Berkeley will prepare a Final SEIR that responds to comments received during the comment period. The Final SEIR, along with a mitigation monitoring and reporting program, will then be submitted to The Regents of the University of California for consideration and approval, anticipated in May 2019.

Links to electronic versions of this [Notice of Availability](#) and [Draft SEIR](#) are available on-line on the UC Berkeley Capital Strategies website at: <https://capitalstrategies.berkeley.edu/resources-notices/public-notices>

Draft SEIR hard copies are also available for review in the following locations:

Berkeley Main Library
Reference Desk
2090 Kittredge Street
Berkeley, CA 94704

DOE Main Library
Reference Desk
South Hall Road
Berkeley, CA 94704

A&E Building
Physical & Environmental Planning
Berkeley, CA 94720
Call 510-643-7384 to arrange a visit

Opportunities for Commenting: UC Berkeley invites comments on Draft SEIR. Please send written comments on the Draft SEIR by April 8, 2019, to be considered in the Final SEIR. Comments should be addressed to:

Raphael Breines, Senior Planner
Physical & Environmental Planning
University of California, Berkeley
300 A&E Building, Berkeley, CA 94720-1382

You may also send written comments via email to: planning@berkeley.edu. Please include a subject line indicating Public Comments: Upper Hearst Development Project.

In addition, comments may be presented orally at the public hearing to be held on Tuesday, March 12, 2019, beginning at 6:30 PM at the following address:

Alumni House
Spieker Plaza
Berkeley, CA 94720

UC Berkeley appreciates your interest in this project and looks forward to your involvement with the environmental review process.



Office of the City Manager

PUBLIC HEARING

April 2, 2019

(Continued from March 12, 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: Cannabis Ordinance Revisions; Amending the Berkeley Municipal Code

RECOMMENDATION

Conduct a public hearing and upon conclusion, provide direction regarding proposed ordinance language alternatives and adopt the first reading of five ordinances amending the Berkeley Municipal Code (BMC) which would:

1. Clarify cannabis business operational standards and development standards, such as quotas and buffers, for all cannabis business types;
2. Revise ordinance language to reflect State regulations;
3. Create a path to allow a new business type (Retail Nursery Microbusinesses);
4. Protect youth by restricting cannabis advertising within the city; and
5. Allow temporary cannabis events at Cesar Chavez Park.

The ordinances would adopt BMC Chapters 12.21 and 20.40, amend Chapters 12.22, and 23C.25, Sub-Titles 23E and 23F, and repeal Chapters 12.23, 12.25 and 12.27.

SUMMARY

The five proposed cannabis ordinances would revise definitions and establish operating standards for all cannabis businesses in Berkeley, and include new regulations based on commission recommendations, Council direction, and Resolution 68,326-N.S. which established Berkeley as a sanctuary city for recreational cannabis use. The new ordinances would replace three existing Berkeley Municipal Code (BMC) chapters (12.23, 12.25 and 12.27), which were developed to regulate medicinal cannabis businesses only and do not fully incorporate new State regulations. The new ordinances would fully address both medicinal and adult use cannabis businesses, adopt new buffers for Retailers, establish a use type that could both grow and sell clones and seeds (Retail Nursery Microbusinesses (RNM), establish advertising regulations for cannabis businesses and products, and respond to a recent referral by creating an avenue to allow temporary cannabis events involving on-site sales and consumption of cannabis products.

The proposed BMC ordinances have been reviewed by the Cannabis Commission (CC) and the Community Health Commission (CHC). The Planning Commission (PC) reviewed only those changes related to the Zoning Ordinance (Title 23). The minutes which contain the recommendations from these commissions, as well as a letter from the CHC detailing its recommendations, are included as attachments to this report. Where commission recommendations do not conform to staff recommendations, alternative language is provided, and in each of these instances Council is asked to specify which alternative it is adopting.

These ordinances do not include regulations concerning delivery-only businesses, equity, lounges, levels of discretion, expansion of cultivation beyond the Manufacturing (M) district, and recommendations from the CHC related to cautionary signage and product labelling and packaging. These issues need further research and discussion. Regulations pertaining to these issues are expected in mid-2019.

FISCAL IMPACTS OF RECOMMENDATION

The new regulations would have fiscal impacts related to the staff time necessary to monitor new cannabis businesses and activities, as well as the revenue impacts of having additional cannabis businesses paying taxes to the City.

Costs

The ordinances would require all cannabis businesses to obtain a City operating permit. City staff would be responsible for reviewing and issuing permits, conducting at least two inspections per year to determine compliance with local regulations, and responding to community complaints. These costs, as well as those for temporary cannabis events, will be covered by permit fees. The City currently has an operating permit fee for Retailers; operating permit fees for other cannabis businesses will be developed in the next year.

The department primarily involved in reviewing and issuing operating permits and inspecting businesses would be Health, Housing and Community Services (Environmental Health Division). Special event permits for temporary cannabis events would be reviewed by multiple agencies, including the Environmental Health Division, Police and Fire Departments, Department of Public Works, and the City Manager's Office.

Revenue

Since 2012, medical cannabis businesses paid taxes equaling \$25 per \$1,000 of gross receipts. In 2017, this generated \$1,645,012 in revenue for the City. With the legalization of adult use cannabis in 2018, the majority of sales is expected to be focused on the adult use market. Since the taxes for adult use cannabis (\$50 per \$1,000 of gross receipts) are greater than that for medicinal cannabis, revenue from cannabis businesses is expected to increase in 2018.

CURRENT SITUATION AND ITS EFFECTS

The proposed ordinances would clarify and update Berkeley's current cannabis ordinance language, ensure that all cannabis businesses are subject to the same basic requirements, address additional uses which are not in the current ordinance, including general Microbusinesses, RNMs, and temporary cannabis events, and modify current regulations. The adoption of Chapter 12.21 would increase clarity by placing all of the definitions and general regulations related to cannabis in one chapter, and will replace Chapter 12.23. Amendments to Chapter 12.22 would place all specific regulations for cannabis business types and activities in one chapter, and would replace Chapters 12.25 and 12.27. Changes to the Zoning Ordinance will adopt development standards for all six cannabis business types (Retailers, Cultivators, Manufacturers, Distributors, Testing Laboratories, and Microbusinesses), and modify retailer quotas and buffers, per Council input.

The following are brief synopses of each proposed change to Berkeley's cannabis ordinances. The ordinance language reflects staff recommendations. In cases where a commission's recommendation does not match that of staff, alternatives are provided. The staff recommendation is labelled as Alternative A and the commission recommendations are labelled Alternative B or C as necessary.

The Council should note that some land use changes, particularly buffers from schools, could impact businesses that have been approved by the Council but which are not yet established. Staff would treat these businesses in the same way as businesses that have received entitlements through a discretionary permit process; these businesses are considered "grandfathered" and are not subject to land use changes which occur after their initial approval.

A. Ordinance amending Title 12 (Health & Safety) of the Berkeley Municipal Code to establish general regulations and specific operating standards for cannabis businesses and activities

The proposed ordinance would:

- Add Chapter 12.21 (Cannabis Businesses: General Regulations) to the BMC. This would provide updated definitions, general regulations and eligibility requirements for all cannabis businesses in one chapter of the BMC and would provide updated language to match State regulations.
- Modify the existing BMC Chapter 12.22 (Cannabis Business Operating Standards) to provide specific regulations for all cannabis business types and add enforcement language. It would also:
 - Create delivery requirements for storefront Retailers, including qualifications for delivery drivers, prohibition of advertising on vehicles, and limits on the amount of cash and cannabis which a driver can transport at any time;

- Require all cannabis businesses to obtain annual operating permits, which will involve bi-annual inspections and which can be revoked if the City's regulations are not met;
- Establish operating standards for Microbusinesses, including RNM, consistent with those for related cannabis uses;
- Permit temporary cannabis events at Cesar Chavez Park. These events would allow on-site sales and consumption of cannabis, and would be required to apply for a special event permit from the City as well as a permit from the State of California. This would be limited to up to three events per year, and Council will revisit the provisions of the ordinance following the first year of implementation; and
- Remove the sections related to residential Collectives, as these will not be legal per State law after January 9, 2019.
- Remove BMC Chapter 12.23 (Cannabis General Regulations). These regulations were incorporated into BMC Chapter 12.21 to increase clarity.
- Remove BMC Chapter 12.25 (Cannabis Cultivation). These regulations were incorporated into BMC Chapter 12.22 to increase clarity.
- Remove BMC Chapter 12.27 (Medical Cannabis Dispensaries and Collectives). These regulations were incorporated into BMC Chapter 12.22 to increase clarity.

The direction on temporary cannabis events is in response to a referral approved by Council on February 19, 2019. The draft ordinance language reviewed by the Cannabis and Community Health Commissions in early 2018 would have prohibited temporary cannabis events in Berkeley; this reflected State law in place at the time. In September 2018, the State changed the law, allowing temporary cannabis events at any location subject to state and local approval. Staff planned to bring the issue of temporary cannabis events back to the commissions in early 2019 along with other issues needing further research and discussion.

Additional changes to the City's Smoking Ordinance (Health and Safety Code, Chapter 12.70) will be necessary to allow smoking or vaping in City parks. This would be similar to the language in BMC section 13.36.070 which allows sales and consumption of alcohol in City parks at City-sanctioned special events. No temporary cannabis events could be approved until changes to the smoking ordinance are adopted.

Main issues discussed by City Commissions

The CC and the CHC reviewed the proposed ordinance summarized above.

Important issues identified by the CC included the following:

- As is described in more detail below, the CC recommends removing the requirement for guards at cultivators and distributors, and, once they are permitted, at delivery-only Retailers. They also discussed allowing deliveries to occur at locations other than residences.

- The CC also expressed concern about the State prohibition of residential collectives, which will not permitted to operate as of January 9, 2019.
- The Commission supported the staff definitions and operating standards for RNMs.

Important issues identified by the CHC included the following:

- As is described in more detail below, the CHC focused its comments and recommendations on limiting access and exposure of youth to cannabis products. It recommends greater restrictions on cannabis consumption at businesses and cannabis deliveries.
- The Commission supported the staff definitions and operating standards for RNMs.

The following subsections include options for alternative ordinance language based on recommendations by one or more of the Commissions:

- 12.21.040.H.2- Security.
 - *Description:* Requires all Retailers, Distributors and Cultivators to have security guards in addition to security cameras, alarms and lighting.
 - *Staff Rationale (Alternative A):* Staff believes that these businesses could be targets of crime based on the product and cash on-hand, and that greater security measures would adequately address this issue. The City does not currently have any Distributors and Cultivators, and is exhibiting caution by requiring guards for these uses. Once these businesses start locating in the City, staff will develop a better understanding of their security needs, and can recommend removal of security requirements as appropriate.
 - *Alternate recommendation and reasoning (Alternative B):* The Cannabis Commission recommends removing the security guard requirement from Distributors and Cultivators, reasoning that since these businesses are not open to the public, they will not require the same level of security as a Retailer.
- 12.21.040.I.1- Neighborhood Compatibility.
 - *Description:* Requires all Retailers, Distributors and Cultivators to either secure exterior windows and doors with bars or metal gates, or have a security guard on site during non-business hours.
 - *Staff Rationale (Alternative A):* Staff believes that these businesses could be targets of crime based on the product and cash on-hand and that additional security measures would adequately address this issue. The City does not currently have any Distributors and Cultivators, and is exhibiting caution by requiring guards for these uses. Once these businesses start locating in the City, staff will develop a better understanding of their security needs, and can recommend removal of security requirements as appropriate.
 - *Alternate recommendation and reasoning (Alternative B):* The Cannabis Commission recommends removing the security guard requirement from

Distributors, Cultivators, reasoning that since these businesses are not open to the public, they will not require the same level of security as a Retailer.

- 12.22.040.G.2 – Consumption of Cannabis
 - *Description*: Allows consumption of cannabis and cannabis products at Retailers that allow customer visits, with the exception of smoking.
 - *Staff Rationale (Alternative A)*: Cannabis consumption is prohibited in public, in most businesses, and in many apartments. Providing a place to consume cannabis legally is important for patients who have no other options. Impaired driving resulting from on-site consumption will be addressed in the same way as impaired driving from bars and restaurants.
 - *Alternate recommendation and reasoning (Alternative B)*: The CHC recommends that adult use cannabis consumption should not be permitted in any businesses as this will contribute to exposure of others to cannabis vapor and contribute to impaired driving.

- 12.22.040.H.1 – Delivery Requirements
 - *Description*: Establishes requirements for Retailers that deliver medicinal and adult-use cannabis to customer residences. For the moment this would only apply to store-front Retailers, as Delivery-only Retailers are currently not permitted in Berkeley.
 - *Staff Rationale (Alternative A)*: The state allows retailers to deliver cannabis and cannabis products to physical addresses in California, as long as those addresses are not on publicly-owned land or in a building leased by a public agency. The State does not make a distinction between medicinal and adult-use cannabis deliveries, and neither do neighboring jurisdictions which allow delivery services. Prohibiting delivery of adult-use cannabis would be difficult for City staff to enforce. In general, the State does not distinguish between medicinal and adult-use cannabis; items are determined to be medicinal when they are sold to a person with a State-issued patient card.
 - *Alternate recommendation and reasoning (Alternative B)*: The CHC believes that cannabis deliveries should be limited to medicinal cannabis to reduce youth access to cannabis.

B. Ordinance amending Chapter 20.40 of the BMC to establish cannabis business signs and cannabis product advertising regulations

The ordinance would add a new chapter to the BMC to provide advertising and signage regulations for cannabis businesses. The language related to advertising is based on Chapter 20.66 (Tobacco Product Advertising); it will prohibit advertising in any publicly visible location in the City. Signage regulations would limit signage allowed for storefront Retailers to half the area allowed for other retailers, limit delivery-only Retailers to business complex sign standards, and limit non-retail businesses to 12 square feet of signage. Logos depicting cannabis or cannabis products on signs would be prohibited.

There were no differences between the staff and commission recommendations regarding advertising and signage.

C. Ordinance amending Chapter 23C.25 of the BMC to modify the Cannabis Uses Ordinance

The ordinance would modify Chapter 23C.25 by modifying the two existing sections and adding two new sections:

- Section .010 would provide development standards for cannabis Retailers. These include buffers from schools and other cannabis Retailers, ownership changes, level of discretion and permitted locations. A detailed description of these changes is included below.
- Section .040 would provide development standards for Microbusinesses. It includes specific quotas, buffer and location standards for Retail Nursery Microbusinesses, which are cannabis Retailers that cultivate and sell cannabis seeds and immature plants (clones). More detail on these regulations is included below.
- Sections .020 (Cannabis Cultivation) and .030 (Cannabis Manufacturing, Testing Labs and Distribution) would be modified to correct references to other BMC Chapters.

The following subsections include options for alternative ordinance language based on recommendations by one or more of the Commissions:

- 23C.25.010.B – Retail buffers
 - *Description:* Requires buffers between Retailers and the following uses:
Public or private elementary schools (K-5) = 600 feet
Public or private middle or high schools = 1,000 feet
City-operated community centers and skate parks = 600 feet
Other Retailers = 600 feet
 - *Staff Rationale (Alternative A):* This language incorporates input received from the City Council at the October 2018 Work Session. Larger buffers were developed for middle schools and high schools because those students are more likely to experiment with cannabis. A buffer was added for the five City-operated community centers and the skate park because children are often at these facilities without adult supervision. This recommendation provides protection for youth while providing opportunities for cannabis businesses to locate within the city.
 - *Alternate Recommendation and reasoning (Alternative B):* The CHC recommends a 1,000-foot buffer from all schools, including junior colleges, colleges and universities, as well as buffers around additional uses such as parks and libraries. These additional restrictions are designed to limit cannabis in places that children, youth and young adults might frequent.

- *Alternate recommendation and reasoning (Alternative C):* The CC and PC only reviewed the original staff recommendation, which did not consider the expanded buffers for middle and high schools or buffers from community centers and the skate park. The commissions agreed with this initial recommendation. There was no discussion of the current staff recommendation, which was revised to incorporate Council direction from the October work session.

See Attachment 7 for maps of the three alternatives.

- 23C.25.010.F.1 – Cannabis Retailers
 - *Description:* Maintains the existing storefront Retailer quota of six, and will not allow additional storefront Retailers unless the ordinance is amended in the future. Note that at its February 19, 2019 meeting, Council provided direction to staff to create one new dispensary license for equity applicants, which would increase the storefront Retailer quota to seven. Staff will provide Council with ordinance revisions in mid-2019 that reflect this direction, along with potential options for an equity program.
 - *Staff Rationale (Alternative A):* This language incorporates Council deliberation at the October 2018 Work Session. Currently, only four of the six approved Retailers are open. The Council expressed a desire to potentially hold off on any expansion plans until all six are operational, and to make a decision regarding any potential further expansion at a later date.
 - *Alternate Recommendation and reasoning (Alternative B):* The CC recommended expanding the quota to 32 storefront Retailers, with quotas distributed throughout the City by zoning district. The Commission believes that the cannabis industry should be treated like other businesses. They also believe that additional limits on the numbers of businesses which can operate in the City will hinder the growth of the cannabis industry in Berkeley and limit customers' access to product.
 - *Alternate Recommendation and reasoning (Alternative C):* The PC recommended expanding the quota to 18 storefront Retailers. The main focus was to allow the opportunity for additional Retailers; there was no strong reasoning behind the numeric limit selected.
- 23C.25.040.B.2.b - Retail Nursery Microbusinesses
 - *Description:* Allows two existing conventional nurseries to convert to a cannabis business (Retail Nursery Microbusiness) with a Zoning Certificate. Nurseries which are either completely or partially in a Residential District would require a Use Permit in order to modify a non-conforming use.
 - *Staff Rationale (Alternate A):* A cannabis nursery is expected to be similar to a conventional nursery. The business would be subject to State and local regulations, and an annual operational permit from the City, which could be revoked if operating standards are not met. Buffers from schools will address concerns regarding youth exposure to cannabis products.

- *Alternate Recommendation and reasoning (Alternative B):* The PC and CHC recommended requiring a Use Permit in addition to an annual operating permit for any conversion of a conventional nursery into a Retail Nursery Microbusiness, regardless of location. This would allow the public to discuss concerns and provide comment on the proposed location at a public meeting. Council could also consider requiring an Administrative Use Permit, which does not require a public hearing but does require noticing to adjacent properties and can be appealed.

D. Amending BMC Sub-Title 23E (Provisions Applicable in All Non-Residential Districts)

Description of ordinance

The ordinance would add references to cannabis uses to the use tables of commercial and manufacturing chapters, clarifying how cannabis businesses relate to other businesses in the Zoning Ordinance. For example, cannabis Retailers would be included in the Retail Sales sections of the use tables for commercial districts. This information reflects the language given in Chapter 23C.25 regarding location of business and the level of discretion required. Section 23E.16.070 (Cannabis Dispensaries) was incorporated in Chapter 23C.25.

E. Amending BMC Sub-Title 23F (Definitions)

Description of ordinance

The ordinance would add or modify definitions for cannabis uses in the Definitions chapter to clarify how these businesses relate to other businesses in the Zoning Ordinance.

BACKGROUND

In 2018, the State established the Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), a regulatory framework for the medicinal and adult use cannabis industry. Six different cannabis business types are allowed to operate:

- Cultivators (produce seeds, immature plants (clones) and mature plants which are harvested)
- Manufacturers (take raw product and create other products, including edibles)
- Testing Laboratories (test product for potency, pesticides and impurities)
- Retailers (selling product to the public)
- Distributors (transport product between businesses and collect State taxes)
- Microbusinesses (combination of at least three of the other businesses except testing labs)

Through a combination of ballot measures and ordinances, all six types of cannabis businesses can operate in Berkeley. However, many of the current regulations are outdated, either addressing only medical cannabis or addressing Retailers and Cultivators in much greater detail than other uses.

Work on comprehensive cannabis regulations started in the fall of 2017. Draft regulations were developed with the participation of numerous City departments, including the Planning, Finance, Police, and Fire Departments, the Department of Health, Housing & Community Services, the City Attorney's Office, and the Code Enforcement Division in the City Manager's Office. The draft ordinances presented here were also discussed by the Cannabis, Planning, and Community Health Commissions in early 2018. Based on direction from the October 9, 2018 Council Work Session, language related to retail nurseries was drafted by staff and reviewed by the three commissions in November and December 2018. No commissions have reviewed the language permitting temporary cannabis events at Cesar Chavez Park.

ENVIRONMENTAL SUSTAINABILITY

The proposed amendments will continue to allow a complete supply chain for the cannabis industry in Berkeley, allowing the public to purchase products produced locally. The amendments will maintain the energy efficiency features and carbon-offsetting requirements already adopted by the Council for Cultivators. Other cannabis businesses are comparable to non-cannabis businesses in terms of energy consumption, and will be subject to the same standards for building efficiency. Temporary cannabis events will have the same requirements as non-cannabis special events. The impact of cannabis delivery by existing Berkeley-based storefronts or cannabis businesses established in other jurisdictions has not been analyzed.

RATIONALE FOR RECOMMENDATION

The adoption of these proposed ordinance amendments would ensure that Berkeley's cannabis regulations are consistent with the State's regulations. It would also ensure that all license types are subject to the same general operating standards, and clarifies specific standards for each license type. These regulations will be consistent with the voter direction given with the passage of Measures JJ (2008) and T (2010) and Proposition 64 (2016), and will increase the likelihood of these businesses operating harmoniously within Berkeley neighborhoods.

ALTERNATIVE ACTIONS CONSIDERED

Alternative recommendations are described in this report and provided as alternative language in the relevant ordinances.

CONTACT PERSON

Timothy Burroughs, Director, Planning and Development Department, 510-981-7437
Elizabeth Greene, Senior Planner, Planning and Development Department, 510-981-7484

Attachments:

1. Ordinance Amending the Berkeley Municipal Code Title 12 (Health and Safety)
2. Ordinance Adding Chapter 20.40 (Cannabis Business Signs and Cannabis Product Advertising) to the Berkeley Municipal Code
3. Ordinance Amending the Berkeley Municipal Code Chapter 23C.25 (Cannabis Uses)
4. Ordinance Amending the Berkeley Municipal Code Sub-Title 23.E (Provisions Applicable in All Non-Residential Districts)
5. Ordinance Amending the Berkeley Municipal Code Sub-Title 23.F (Definitions)
6. Minutes from Cannabis, Community Health and Planning Commissions
7. 9-13-18 CHC recommendation letter to Council
8. Maps of Retail Buffer Alternatives
9. Public Hearing Notice

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE TITLE 12 TO ESTABLISH GENERAL REGULATIONS AND SPECIFIC OPERATING STANDARDS FOR CANNABIS BUSINESSES; ADDING CHAPTER 12.21, AMENDING CHAPTER 12.22, AND REPEALING CHAPTERS 12.23, 12.25, AND 12.27

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

Section 1. That Berkeley Municipal Code Chapter 12.21 is added to read as follows:

**Chapter 12.21
CANNABIS BUSINESSES: GENERAL REGULATIONS**

Sections:

- 12.21.010 Purpose and Applicability**
- 12.21.020 Definitions**
- 12.21.030 Information Requirements**
- 12.21.040 Operating Standards**
- 12.21.050 Records**
- 12.21.060 Operating Procedure and Criteria**
- 12.21.070 Confidentiality of Information**
- 12.21.080 Authority of City Manager**
- 12.21.090 Abatement of Violations**
- 12.21.100 Fees**
- 12.21.110 Severability**

12.21.010 Purpose and Applicability

The purpose of this Chapter is to collect in one location in this Code all of the definitions and general operating standards applicable to Cannabis Businesses and to implement the provisions contained in the Medicinal and Adult-Use of Cannabis Regulation and Safety Act, codified in Division 10 of the Business and Professions Code, Section 1602 and 1617 of the Fish and Game Code, Sections 37104, 54036, and 81010 of the Food and Agriculture Code, Division 10 of the Health and Safety Code, Division 2 of the Revenue and Taxation Code, Sections 23222 and 2429.7 of the Vehicle Code, and Sections 1831, 1847, and 13276 of the Water Code ("MAUCRSA"), as amended from time to time.

12.21.020 Definitions

A. "Active Ingredients" means, in the case of dried cannabis flowers, extractions or infusions, delta-9- tetrahydrocannabinolic acid, delta-9-tetrahydrocannabinol,

cannabidiolic acid, cannabidiol, and any cannabinoid or propyl cannabinoid derivative when present in amounts greater than .5% by dry weight, and any mono- or sesquiterpenoid present in an amount exceeding .3% of a product's dry weight.

B. "Adult Use Cannabis" means Cannabis and Cannabis Products intended for consumption by adults 21 and over, and that is not Medicinal Cannabis.

C. "Adulterant" means any poisonous or deleterious substance that may render Cannabis or Cannabis Products impure or injurious to health, as determined by the City's Environmental Health or Public Health Divisions.

D. "Adulterated" means any Cannabis or Cannabis Product with Contaminates exceeding any testing thresholds and/or containing any Adulterant.

E. "Batch" shall have the same meaning as set forth in MAUCRSA, as amended from time to time,

F. "Cannabis" shall have the same meaning as set forth in Section 26001 of the Business and Professions Code, as amended from time to time, and includes both adult-use and medicinal cannabis.

G. "Cannabis Business" is a business possessing a State license as specified in Section 26050 of the Business and Professions Code, as amended from time to time, and includes Cannabis Businesses with an "A" designation ("ACB") and Cannabis Businesses with an "M" designation ("MCB").

H. "Cannabis By-Products" means delta-8-THC and cannabinol when present in amounts greater than 0.2% of a product's dry weight.

I. "Cannabis Compound(s)" means any or all of the following chemicals, as the context requires:

1. "THC" or " Δ^9 -THC" means Δ^9 -tetrahydrocannabinol, (Δ)-(6aR,10aR)-6,6,9-trimethyl-3-pentyl-6a,7,8,10a-tetrahydro-6H-benzo[c]chromen-1-ol.
2. "THCA" or " Δ^9 -THCA" means the acid form of THC.
3. "CBD" or "Cannabidiol" means 2-[(1R,6R)-6-isopropenyl-3-methylcyclohex-2-en-1-yl]-5-pentylbenzene-1,3-diol.
4. "CBDA" or "Cannabidiolic acid" means the acid form of CBD.

5. "CBN" or "Cannabinol" means 6,6,9-trimethyl-3-pentyl-benzo[c]chromen-1-ol.

J. "Cannabis Cultivation Facility" or "Facility" shall have the same meaning as "cultivation site" as set forth in Section 26001 of the Businesses and Professions Code. It includes "Major Cannabis Cultivation Facility", defined as follows:

"Major Cannabis Cultivation Facility" means a Facility that is between 10,000 sf and 22,000 sf in total canopy area.

K. "Cannabis Products" shall have the same meaning as set forth in Section 26001 of the Business and Professions Code, as amended from time to time, and includes both medicinal and adult-use Concentrates and Cannabis Products.

L. "Cannabis Waste" means contaminated Cannabis or Cannabis Products that cannot be rendered safe and any Cannabis or Cannabis Products that have been designated as a waste by a Cannabis Business, or regulatory authority. Cannabis Waste does not include materials from the cultivation and manufacturing processes not known to be contaminated with pesticide or heavy metal residues and which may be composted by an approved process.

M. "Concentrate" shall have the same meaning as set forth in Section 26001 of the Business and Professions Code, as amended from time to time.

N. "Contaminant" means any pesticide, residual solvent or microbiological organism or product thereof, heavy metal, or any other Adulterant as determined by the Environmental Health Division.

O. "Cosmetic Cannabis Product" means any article, or its components, intended to be rubbed, poured, sprinkled, or sprayed on, introduced to, or otherwise applied to, the human body, or any part of the human body, that is not an Edible Cannabis product and includes tinctures.

P. "Cultivate" and "Cultivation" mean any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis.

Q. "Cultivator" means an individual or entity required to be licensed to cultivate cannabis pursuant to MAUCRSA, as amended from time to time.

R. "Deliver" and "Delivery" shall mean any transit of Cannabis or Cannabis Product from a Retailer to a Customer at a residence.

S. "Distributor" means an individual or entity required to be licensed as a distributor

pursuant to MAUCRSA, as amended from time to time.

T. "Edible Cannabis Product" (or "Edible") means a cannabis product that is intended to be used, in whole or in part, for human consumption, including but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

U. "Manufacturer" means an individual or entity required to be licensed as a manufacturer pursuant to MAUCRSA, as amended from time to time.

V. "Medicinal Cannabis" means Cannabis and Cannabis Products intended as medicine for those with a valid physician's recommendation in compliance with California law.

W. "Microbusiness" shall have the same meaning set forth in MAUCRSA, as amended from time to time, and includes "Retail Nursery Microbusiness", defined as follows:

1. "Retail Nursery Microbusiness" is restricted to either a Class 1 or Class 2 Nursery that sells plants and seeds on a retail basis, either at a location to which Customers may come to acquire cannabis plants or seeds, or by delivering plants or seeds. No other cannabis products may be sold at this type of use. Distribution is limited to those products directly related to this business. No cannabis consumption is permitted on site.

X. "Nursery" means an individual or entity required to be licensed as a Type 4 Cultivator pursuant to MAUCRSA, as amended from time to time, and includes "Class 1 Nursery" and "Class 2 Nursery," defined as follows:

1. "Class 1 Nursery" means a nursery that only produces immature plants, such as cuttings or clones.
2. "Class 2 Nursery" means a nursery that produces mature plants with flowers for the purpose of producing seeds, whether for distribution to a Retailer or for research purposes. A Class 2 Nursery may also produce cuttings or clones.

Y. "Primary Caregiver" shall have the same meaning as set forth in Section 26001 of the Business and Professions Code, as amended from time to time.

Z. "Principal" means any person that has direct or non-delegated indirect authority over the management or policies of a Cannabis Business.

AA. "Protected Health Information" means documentation of a an MCB's Qualified Patient's medical history or condition other than a physician's recommendation, an identification card issued pursuant to Health and Safety Code Section 11362.7 et seq., or the written designation of a Primary Caregiver by a Qualified Patient or identification card holder. Protected Health Information shall not include information conveyed by a Qualified Patient to a Retailer regarding such Qualified Patient's medical condition, information conveyed by a Qualified Patient to a Retailer regarding efforts to ameliorate or otherwise address symptoms associated with such Qualified Patient's medical condition, or information regarding Cannabis or Medicinal Cannabis Products provided to a Qualified Patient.

BB. "Qualified Patient" shall have the same meaning as provided in California Health and Safety Code Section 11362.7.

CC. Retailer

1. "Retailer" means both Retailers with a location to which Customers, Qualified Patients, or Primary Caregivers may come to acquire Cannabis or any other good or service, and Delivery-Only Retailers.

2. "Retailer" shall mean an ACB ("A-Retailer") or MCB ("M-Retailer") that is authorized under Chapter 12.22, Title 23, and California law to dispense Cannabis at a non-residential location. A Retailer may deliver to its Qualified Patients, Primary Caregivers, or adult consumers and provide other incidental services to its Qualified Patients, Primary Caregivers, or adult consumers to the extent permitted by California law.

3. "Delivery-Only Retailer" is a Retailer that is limited to acquiring Cannabis and delivering it to its Qualified Patients, Primary Caregivers, and adult consumers, and does not have a location to which Qualified Patients, Primary Caregivers, and adult consumers may come to acquire Cannabis or any other good or service.

DD. "Solvent" means any substance in which another substance is dissolved, forming a solution.

EE. "Tincture" means an extract of Cannabis or solution of such, typically made with food-grade alcohol or glycerin.

FF. "Temporary Cannabis Event" shall mean an activity required to be licensed as a temporary cannabis event pursuant to MAUCRSA, as amended from time to time. Such events may involve onsite sale and consumption of cannabis goods and must be operated by a state-licensed event organizer.

12.21.030 Information Requirements

Every Cannabis Business shall provide the following information to the City's Environmental Health Division, and shall be updated whenever there is any material change.

- A. A description of the Cannabis Business and its location, which shall include such information as the City may require that demonstrates compliance with applicable provisions of this Chapter.
- B. The name, address and 24-hour contact information for each Principal, including a photocopy of at least one primary form of photo identification, such as a California Driver's License or US Passport. This information shall also include any aliases, maiden or married names or other former legal names.
- C. Proof of the nature of the Cannabis Business's organizational status, such as articles of incorporation, by-laws, partnership agreements, and other documentation as may be appropriate or required by the City.

12.21.040 Operating Standards

- A. All Cannabis Businesses shall comply with the operating standards set forth in this Section.
- B. Cannabis Businesses shall comply with Health and Safety Code Sections 11362.7 et seq. and any other California laws that may be adopted concerning Adult-Use and Medicinal Cannabis, including but not limited to the Medicinal and Adult-use of Cannabis Regulation and Safety Act, and Chapters 12.22 or 12.26 and Title 23 of the Berkeley Municipal Code, and any other applicable City laws or regulations, and shall pay all applicable state or local taxes and fees. To the extent the requirements of this Chapter and Chapters 12.22 and 12.26 are more restrictive than California law, they shall apply. To the extent the requirements of this Chapter and Chapters 12.22 and 12.26 are less restrictive than California law, the requirements of California law shall apply except in instances where the state has expressly allowed localities to be less strict.
- C. MCBs may retain memberships.
- D. Cannabis Businesses shall only obtain Cannabis from licensed cultivators as authorized by California law.
- E. All employees and volunteers of a Cannabis Business must be at least 21 years of age.

F. The Environmental Health Division may require any Cannabis Business to submit an odor control plan to be approved by the Division.

G. Non-diversion. ACBs shall take all practicable steps necessary to prevent and deter diversion of Cannabis and Cannabis Products to persons under 21 years of age, including by using the state-mandated Track-and-Trace system. MCBs shall take all practicable steps necessary to prevent and deter diversion Medicinal Cannabis and Medicinal Cannabis Products to persons other than Qualified Patients or their Primary Caregivers, or non-MCBs, including by using the state-mandated Track-and-Trace system.

H. Security.

1. Cannabis Businesses shall provide adequate security and lighting on-site to ensure the safety of persons and protect the premises from theft at all times. Lighting shall be of sufficient intensity to illuminate all areas of the premises.

2. ALTERNATIVE A: STAFF RECOMMENDATION - Retailers, Distributors and Cultivators must maintain security guards and camera coverage of their entire grounds to an extent sufficient to ensure the safety of persons and deter crime. Cameras must be maintained in good condition, and use a format approved by the City Manager, which is of adequate quality, color rendition and resolution to allow the ready identification of any individual committing a crime. The cameras shall be in use 24 hours per day, seven (7) days per week. The areas to be covered by the security cameras include, but are not limited to, dispensing areas, storage areas, cultivation areas, all doors, parking lots, and any other area determined by the City Manager. Surveillance footage must be retained for a period of 90 days and made available to the Berkeley Police Department for purposes of investigation of alleged crimes, promptly upon request without the necessity of a warrant or subpoena. Retention and maintenance of security camera recordings shall comply with Section 12.21.070.

2. ALTERNATIVE B: CC RECOMMENDATION - Retailers, Distributors and Cultivators must maintain camera coverage of their entire grounds to an extent sufficient to ensure the safety of persons and deter crime. Cameras must be maintained in good condition, and use a format approved by the City Manager, which is of adequate quality, color rendition and resolution to allow the ready identification of any individual committing a crime. The cameras shall be in use 24 hours per day, seven (7) days per week. The areas to be covered by the security cameras include, but are not limited to, dispensing areas, storage areas, cultivation areas, all doors, parking lots, and any other area determined by the

City Manager. Surveillance footage must be retained for a period of 90 days and made available to the Berkeley Police Department for purposes of investigation of alleged crimes, promptly upon request without the necessity of a warrant or subpoena. Retention and maintenance of security camera recordings shall comply with Section 12.21.070. Retailers must also maintain security guards.

3. Cannabis Businesses must be equipped with an alarm system that is operated and monitored by a security company licensed by and in good standing with the California Department of Consumer Affairs. Alarms shall be maintained and in good working condition at all times.
4. In order to prevent unauthorized entry during non-business hours, Retailers, Distributors and Cultivators shall either secure all exterior windows and roof hatches from the inside with bars, retractable, folding or sliding metal gates, or metal rollup or accordion doors, or provide at least one security guard during those hours.
5. Any security guards employed by Cannabis Businesses shall be licensed and possess a valid Department of Consumer Affairs "Security Guard Card" at all times. Security personnel may not be armed.
6. All Cannabis Businesses must securely store all Cannabis at all times, except for limited amounts used for display purposes, samples or immediate sale, and the entrance to all storage areas shall be locked and under the control of staff at all times.
7. Cannabis Businesses shall make transactions with payment methods other than cash whenever feasible. All cash received, except that needed for retail customer transactions shall be kept in a secure receptacle such as a drop safe or other type of safe.
8. If any of the requirements in this section conflict with state law, the stricter requirement will apply.

I. Neighborhood compatibility

1. ALTERNATIVE A: STAFF RECOMMENDATION - Cannabis Businesses shall be operated to ensure neighborhood compatibility, and shall take all steps necessary to ensure that Customers do not create neighborhood disturbances. Such measures shall include, but not be limited to, providing a security guard to patrol the area surrounding any Retailer, Distributor or Cultivator during all hours of operation.

1. ALTERNATIVE B: CC RECOMMENDATION - Cannabis Businesses shall be operated to ensure neighborhood compatibility, and shall take all steps necessary to ensure that Customers do not create neighborhood disturbances. Such measures shall include, but not be limited to, providing a security guard to patrol the area surrounding any Retailer during all hours of operation.
2. Retailers shall provide the Police Department and all residents and property owners within 100 feet with the current name, phone number, secondary phone number and e-mail address of an on-site community relations staff person to whom notice of any operating problems associated with the establishment may be reported. This information shall be updated as necessary to keep it current. Retailers shall encourage neighbors to call this person to try to solve any operating problems.
3. All Cannabis Businesses shall have an on-site manager responsible for overall operation at all times they are open, and shall provide the Police Department with contact information for all such persons, including telephone number and e-mail address. Cannabis Businesses shall also provide the Police Department with the current name and phone numbers of at least one 24-hour-on-call manager. This information shall be updated as necessary to keep it current.
4. Cannabis Businesses shall take all reasonable steps to discourage and correct objectionable conditions that constitute a public or private nuisance in parking areas, sidewalks, alleys and areas surrounding the premises and adjacent properties. Such conditions include, but are not limited to: smoking; creating a noise disturbance; loitering; littering; and graffiti.
5. Cannabis Businesses shall ensure all graffiti is removed from property and parking lots under their control within 72 hours of its appearance.

J. Sale and Consumption of Cannabis, Tobacco and Alcohol

1. Sale or consumption of tobacco is prohibited at Cannabis Businesses.
2. Sale and/or service of alcoholic beverages at Cannabis Businesses is prohibited.

K. Holding requirements. Any juice or beverage produced in accordance with Section 40270 of the California Code of Regulations Title 17, Division 1, Chapter 13, Subchapter 3, Article 4 that requires refrigeration to prevent the rapid growth of undesirable organisms or the formation of alcohol through fermentation shall be held below 41 Fahrenheit to prevent the cannabis product from becoming adulterated during the manufacturing, processing, packing, holding, and transporting. Transporting includes both by a

Distributor among licensees and by Retailers conducting delivery to Customers, Qualified Patients, and Qualified Caregivers. Fixed facilities shall hold such cannabis products in equipment certified to ASTM commercial food safety equipment standards by an organization such as but not limited to NSF, UL, or ETL.

12.21.050 Records

A. General. All Cannabis Businesses shall maintain contemporaneous financial and operational records sufficient to show compliance with this Chapter, Chapter 12.26, and applicable California law, as well as satisfaction of commitments made in the Cannabis Business's application and during the ranking and allocation process. Such records shall be maintained in a secure location under the control of the Cannabis Business within the City of Berkeley, and shall be subject to inspection by the City upon reasonable notice during regular operational hours or by appointment.

B. Finances.

1. Cannabis Businesses shall make their financial records available to the City on an annual basis. Such audited records shall be limited to information necessary for the City to determine fair payment of taxes and for M-Retailers very low income 2% distribution verification.

C. Operations. Cannabis Businesses shall maintain the following information and make it available to the City within 30 days of the end of each calendar year.

1. The total number of very low-income members and the amount distributed;
2. The total and net amount of revenue collected during the year;
3. The consideration paid for each Batch;
4. Monetary and non-monetary contributions;
5. Total monetary and non-monetary distributions to suppliers;
6. Salaries and overhead; and
7. A complete list of the types of Cannabis, Cannabis Products and Edibles available, and the prices thereof.

12.21.060 Operating Procedure and Criteria

No Cannabis Business may operate in the City of Berkeley without all applicable City of Berkeley licenses. The Council may by resolution establish procedures and criteria for accepting applications to operate Cannabis Businesses and determining which, if any, to approve.

12.21.070 Confidentiality of Information

A. The City's review of information submitted or maintained pursuant to this Chapter shall preserve the confidentiality of all information about Principals and members to the maximum extent consistent with state and local law. The City shall incur no liability for the inadvertent or negligent disclosure of such information. Disclosure of any Principal or Member information to the City for purposes of this Chapter shall not be deemed a waiver of confidentiality. Financial information provided to the City pursuant to Section 12.21.050 shall be deemed to be "financial information" covered by Chapter 7.26.

B. The information required by Section 12.21.040 and recordings from security cameras, shall be confidential and shall not be subject to public inspection or disclosure except to City and State employees for purposes of law enforcement.

12.21.080 Authority of City Manager

A. The City Manager or his or her designee shall have authority to determine the nature of any Cannabis Business or purported Cannabis Business and whether that entity complies with any of the requirements of this Chapter, Chapters 12.22 and 12.26, and Title 23, and to conduct inspections as provided in Chapter 1.16.

B. The City Manager or his or her designee may promulgate regulations for the administration and implementation of this Chapter, including, but not limited to, regulations relating to non-diversion, record-keeping, and tracking and tracing Cannabis.

C. The City Manager or his or her designee may require any Cannabis Business to obtain operating permits from the City of Berkeley Fire Department, Toxics Management Division, Environmental Health Division, and any other department or division.

D. The City Manager or his or her designee shall have authority to enter onto private property and perform such inspections as may be necessary or convenient to implement and enforce this Chapter, Chapters 12.22 and 12.26, and Title 23, and to adopt regulations to implement this Chapter, Chapters 12.22 and 12.26, and Title 23.

12.21.090 Abatement of Violations

A. Violations of this Chapter or Chapters 12.22 or 12.26 shall constitute a public nuisance under Chapter 1.26. The City may enforce this Chapter through proceedings

under Chapter 1.24, Chapter 1.28, Chapter 23B.64 and any other law or ordinances it deems appropriate.

B. Notwithstanding anything to the contrary, violations of this Chapter or Chapters 12.22 or 12.26 shall not be punishable as public offenses to the extent that doing so would conflict with California law.

12.21.100 Fees

The City Council may establish by resolution the fees that shall be charged to Cannabis Businesses for administration and implementation of this Chapter. The adoption of such fees shall not prevent the City from recovering enforcement costs from Cannabis Businesses not specified in such resolution.

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

Section 2. That Berkeley Municipal Code Chapter 12.22 is amended to read as follows:

**Chapter 12.22
CANNABIS BUSINESS OPERATING STANDARDS**

Sections:

Article I General

- 12.22.010** ~~Reserved~~Applicability and Purpose
- 12.22.020** ~~Reserved~~Selection Process

Article II Cannabis Businesses

- 12.22.030** ~~Reserved~~Eligibility Requirements
- 12.22.040** ~~Reserved~~Retailers
- 12.22.050** ~~Reserved~~Distributors
- 12.22.060** ~~Reserved~~Manufacturers
- 12.22.070** ~~Reserved~~Cultivators

- 12.22.080 **ReservedTesting Laboratories**
- 12.22.090 **ReservedMicrobusinesses**
- 12.22.100 **ReservedTemporary Cannabis Events**
- 12.22.110 **ReservedCollectives Prohibited**

Article III Collectives Enforcement

- 12.22.120 **ReservedFees**
- 12.22.130 **ReservedAuthority of City Manager**
- 12.22.140 **ReservedSeverability**

Article IV Enforcement

- 12.22.150 **Reserved**
- 12.22.160 **Reserved**
- 12.22.170 **Reserved**
- 12.22.180 **Reserved**

12.22.010 ReservedApplicability and Purpose

A. This Chapter applies to all Cannabis Businesses as defined in Chapter 12.21. The purpose of the Chapter is to provide specific operating standards applicable to these businesses and to implement the provisions contained in the Medicinal and Adult-Use of Cannabis Regulation and Safety Act, codified in Division 10 of the Business and Professions Code, Section 1602 and 1617 of the Fish and Game Code, Sections 37104, 54036, and 81010 of the Food and Agriculture Code, Division 10 of the Health and Safety Code, Division 2 of the Revenue and Taxation Code, Sections 23222 and 2429.7 of the Vehicle Code, and Sections 1831, 1847, and 13276 of the Water Code (“MAUCRSA”), as amended from time to time.

12.22.020 ReservedSelection Process

The Council may by resolution establish procedures and criteria for accepting applications to operate Retailers or Major Cannabis Cultivators and determining which, if any, to approve.

12.22.030 ReservedEligibility requirements

A. No Principal of any business of a certain license type may be a Principal for any other business of a different license type in the City of Berkeley, except that a State “M” licensee may also be a State “A” licensee of the same license type.

12.22.040 ReservedRetailers

Retailers shall comply with the operating standards set forth in this Section.

A. Retailers must obtain operating permits from and allow inspections by the City of Berkeley Environmental Health Division.

B. Retailers shall only allow Customer visits between the hours of 9:00 a.m. and 9:00 p.m.

C. A Retailer may deliver cannabis only to the extent allowed by its State license.

D. Retailers may not distribute free samples.

E. Accessibility. Retailers shall comply with all physical accessibility requirements that would be applicable to a newly-constructed building, except that pre-existing Retailers permitted under Ordinance No. 6826-N.S. shall not be required to comply with such requirements as long as they remain in the same location as when this Chapter became effective, except as may be required by other laws.

F. Signage.

1. All Retailers must either provide to each Customer or prominently display at all points of sale a notice containing the language set forth in this Section.

a. If provided to each Customer, the notice shall be printed on paper that is no less than 5 inches by 8 inches in size, and shall be printed in no smaller than 18-point font.

b. If prominently displayed at all points of sale, the notice shall be printed on a poster no less than 8-1/2 by 11 inches in size, and shall be printed in no smaller than a 28-point font.

2. All Retailers must prominently display a notice as set forth in subsection 12.22.040.F that contains the following language:

“The use of cannabis may impair a person’s ability to drive a motor vehicle or operate heavy machinery.”

All Retailers that provide delivery services, including Delivery-only Retailers, must provide this notice to each delivery Customer as set forth in subsection 12.22.040.F.

3. All Retailers must prominently display a notice as set forth in subsection 12.22.040.F that contains the following language:

“WARNING: Cannabis is not tested by local, state or federal governmental agencies for health, safety, or efficacy. There may be health risks associated with the consumption of cannabis or cannabis products.”

All Retailers that provide delivery services, including Delivery-only Retailers, must provide this notice to each Customer as set forth in subsection 12.22.040.F.

4. Any M-Retailer that allows Customer visits must prominently display a notice as set forth in subsection 12.22.040.F that contains the following language::

“This M-Retailer provides medicinal cannabis only to Qualified Patients and their Primary Caregivers, who must have a valid California Medical Marijuana Identification Card or a verifiable, written recommendation from a physician for medicinal cannabis.”

All M-Retailers that provide delivery services, including Delivery-only M-Retailers, must provide this notice to each delivery Customer as set forth in subsection 12.22.040.F.

5. All M-Retailers must prominently display a notice as set forth in subsection 12.22.040.F that contains the following language:

“This Medicinal Cannabis Retailer is licensed in accordance with the laws of the City of Berkeley and the State of California. The sale or diversion of medicinal cannabis for non-medical purposes is a violation of State and local laws.”

All M-Retailers that provide delivery services, including Delivery-only M-Retailers, must provide this notice to each delivery Customer as set forth in subsection 12.22.040.F.

6. Any A-Retailer that allows Customer visits must prominently display a notice as set forth in subsection 12.22.040.F that contains the following language:

“This Adult-Use Cannabis Retailer is licensed in accordance with the laws of the City of Berkeley and the State of California. The sale or diversion of adult- use cannabis to persons under the age of 21 is a violation of State and local laws.”

All A-Retailers that provide delivery services, including Delivery-only A-Retailers, must provide this notice to each delivery Customer as set forth in subsection 12.22.040.F.

G. Consumption of Cannabis

1. The consumption of Cannabis or Cannabis Products in public places is prohibited.

2. ALTERNATIVE A: STAFF RECOMMENDATION - Notwithstanding subsection 12.22.040.G.1, the consumption of Cannabis and Cannabis Products is permitted at Retailers that allow Customer visits, with the exception of smoking. Smoking of Cannabis is prohibited at Retailers. For purposes of this subdivision, the term "smoking" does not include the use of an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of Cannabis, including but not limited to any device manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. This is a limited exception to BMC Section 12.70.040.

2. ALTERNATIVE B: CHC RECOMMENDATION - Notwithstanding subsection 12.22.040.G.1, the consumption of Cannabis and Cannabis Products is permitted at Retailers that allow Customer visits, with the exception of smoking. Smoking of Cannabis is prohibited at Retailers. For purposes of this subdivision, the term "smoking" does not include the use of an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of Cannabis, including but not limited to any device manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. This is a limited exception to BMC Section 12.70.040.

H. Delivery Requirements

1. ALTERNATIVE A: STAFF RECOMMENDATION - Medicinal and Adult Use cannabis may be delivered by a Retailer, as long as the deliveries comply with the appropriate State license.

1. ALTERNATIVE B: CHC RECOMMENDATION - Only Medicinal cannabis may be delivered by a Retailer, as long as the deliveries comply with the appropriate State license.

2. All Retailers that provide delivery services must comply with the following requirements and all applicable requirements of State law. In the event of a conflict, State law shall prevail.

a. All vehicles used for delivery shall be maintained and operated in a manner and in a condition required by law and applicable regulations.

b. The following persons may not drive delivery vehicles:

- i. a person who does not possess a valid driver's license;
 - ii. a person who has been at fault within the immediately preceding two years in any motor vehicle accident causing death or personal injury;
 - iii. a person who has been at fault in three or more motor vehicle accidents within the previous 12 months;
 - iv. a person who has been under suspension, revocation or probation within the last five years by the Department of Motor Vehicles for a cause involving the safe operation of a motor vehicle;
 - v. a person who has been convicted of any of the following misdemeanor offenses within the past five years: driving under the influence or reckless driving involving alcohol or reckless driving involving bodily injury;
 - vi. a person who has been convicted of any of the following offenses: a second or subsequent conviction for driving under the influence, or any felony conviction for driving under the influence (with or without injury), or vehicular manslaughter, or habitual traffic offender.
- c. The following persons may not be involved in making deliveries:
- i. any person who is required to register as a sex offender under Section 290 of the California Penal Code;
 - ii. any person who has within the past ten years been convicted of any felony offense involving moral turpitude.
- d. Persons involved in making deliveries must have in their possession a copy of the document memorializing the City's approval of the delivery service.
- e. Persons involved in making deliveries may not be armed.
- f. Delivery vehicles may not advertise any activity related to Cannabis, carry symbols or emblems related to Cannabis, or advertise the name of the Retailer.

g. Delivery of Cannabis shall be directly to the residence of the Customer unless said residence is in a park, school or hospital. Deliveries to parks, schools, hospitals, and all non-residential locations are prohibited.

h. Deliveries may occur only between the hours of 8:00 a.m. and 10:00 p.m.

i. Delivery vehicles shall not carry or transport at any one time an amount of Cannabis, Cannabis Products, cash and/or cash equivalents worth, in total, more than three thousand dollars (\$3,000).

j. All orders to be delivered shall be packaged by the name or identification number of the Customer for whom the delivery is intended.

k. In addition to the requirements of Section 12.27.050 subdivisions A and B, the person responsible for making deliveries shall have a copy of the record of all delivery requests while making deliveries.

l. All Retailers that provide delivery service shall maintain at all times Commercial General Liability insurance providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Comprehensive Automobile Liability (owned, non-owned, hired) providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000). The Commercial General Liability policy shall provide contractual liability, shall include a severability of interest or equivalent wording, shall specify that insurance coverage afforded to the City shall be primary, and shall name the City, its officials and employees as additional insured. Failure to maintain insurance as required herein at all times shall be grounds for immediate suspension of the privilege of providing delivery service.

I. M-Retailers

1. M-Retailers must not admit any person without first verifying his or her status as a Qualified Patient or Primary Caregiver.
2. No physician recommendations for Medicinal Cannabis may be provided on site.

3. M-Retailers may not provide more Medicinal Cannabis to a Qualified Patient or Primary Caregiver than is necessary for the personal medicinal use of the Qualified Patient for whom the Medicinal Cannabis is intended, and may not dispense more Medicinal Cannabis to a Qualified Patient or Primary Caregiver per day than permitted by State law.
4. M-Retailers must take all practicable steps necessary to prevent and deter diversion of Medicinal Cannabis to any person who is not a Qualified Patient or Primary Caregiver. M-Retailers must limit access to Medicinal Cannabis to authorized personnel only. M-Retailers must maintain an inventory management system that accounts for all Medicinal Cannabis separately from Adult Use Cannabis if both types are sold or distributed at the Retailer.
5. M-Retailers must not admit any Qualified Patient under 18 years of age pursuant to MAUCRSA.
6. Medicinal Cannabis for low income persons
 - a. At least 2% (by weight) of the annual amount of Medicinal Cannabis in dried plant form provided by a M-Retailer to Qualified Patients and Primary Caregivers shall be provided at no cost to very low-income Qualified Patients who are Berkeley residents or their Primary Caregivers. This amount shall be calculated every six months, based on the amount dispensed during the immediately preceding six months. Medicinal Cannabis provided under this Section shall be the same quality on average as Medicinal Cannabis that is dispensed to other persons.
 - b. For purposes of this Section, income shall be verified using federal income tax returns or another reliable method approved by the City Manager.
 - c. For purposes this Section, "very low income" shall mean the household income levels established by the U.S. Department of Housing and Urban Development.
 - d. M-Retailers shall keep an accurate roster of very low-income Qualified Patients who are Berkeley residents, which shall include a copy of either a California Medical Cannabis Identification Card or a physician's recommendation, and, if using a Primary Caregiver, a written authorization from the Qualified Patient to be represented by such Primary Caregiver. Such

records shall be maintained in a manner that protects the confidentiality of the Qualified Patient and Primary Caregiver.

e. M-Retailers shall track distributions to very low-income Qualified Patients (or their Primary Caregivers) in an inventory management system compatible with the state Track-and-Trace program. M-Retailers shall generate a report every six (6) months showing the total percentage of Medicinal Cannabis sales distributed to Berkeley residents. If an M-Retailer voluntarily expands the program to residents outside of Berkeley, that percentage shall be calculated separately.

J. A-Retailers must not admit any person under 21 years of age. If an A-Retailer also holds an M-Retailer license, access to the M-Retailer portion of the establishment is subject to the requirements of subsection 12.22.040.I.

12.22.050 Distributors

A. Distributors must obtain operating permits from and are subject to inspections by the City of Berkeley Environmental Health Division.

~~B. Distributors must arrange for the testing of Cannabis and Cannabis Products consistent with the City of Berkeley testing procedures specified in Section 12.27.100 of this Chapter until such time as testing procedures specified by the Bureau of Cannabis Control are available and conducted locally.~~

~~C. Testing as specified by the Bureau of Cannabis Control shall be conducted no later than July 1, 2018 at which time BMC Sections 12.25.070.____ and 12.27.070.____ are repealed.~~

DB. Distributors must maintain a written or computerized log compatible with the State Track-and-Trace system documenting:

1. the date, type, and amount of Product tested;
2. the source(s) of any contaminated Cannabis
3. the results of the testing, including the name and level of the substance detected; and

4. the disposition of the Cannabis from which any contaminated sample was obtained, including the amount and the date and manner of disposition.

Such logs shall be maintained for at least one year and be made available to the City upon request.

EC. Distributors are subject to the provisions of the California Retail Food Code and the Sherman Food, Drug and Cosmetic Law, even if those laws are not directly applicable to Edible or Cosmetic Cannabis Products. Handwashing facilities shall be adequate and convenient and be furnished with running water at a suitable temperature. Handwashing facilities shall be located in preparation areas and where good sanitary practices require employees to wash and/or sanitize their hands, and provide effective hand-cleaning and sanitizing preparations and sanitary towel service or suitable drying devices.

FD. Scales and weighing mechanisms must be able to weigh to within 1/100th of a gram, shall be maintained in good working order and shall be subject to annual inspection by either the Alameda County Department of Agriculture/Weights and Measures or a licensed scale company.

12.22.060 ReservedManufacturers

A. All Manufacturers must obtain operating permits from and are subject to inspections by the City of Berkeley Environmental Health Division.

B. Compliance with State Food and Product Safety Requirements.

1. A Manufacturer that prepares Cannabis Products must comply with the relevant provisions of all State and local laws regarding the preparation, distribution, labeling and sale of food and cosmetics, even if those laws are not directly applicable to Edible or Cosmetic Cannabis Products.

2. Preparation of Edible and Cosmetic Cannabis Products.

a. Individuals involved in the production or distribution of Edibles and Cosmetic Cannabis Products shall thoroughly wash their hands before commencing production and before handling the finished product. Gloves must be worn when packaging Edibles or Cosmetic Cannabis Products.

b. In order to reduce the likelihood of foodborne disease transmission, individuals who are suffering from symptoms associated with acute

gastrointestinal illness or are known to be infected with a communicable disease that is transmissible through foodstuffs are prohibited from preparing Edibles or Cosmetic Cannabis Products until they are free of that illness or disease, or are incapable of transmitting the illness or disease through foodstuffs. Individuals who have sores or cuts on their hands must use gloves when preparing and handling Edibles or Cosmetic Cannabis Products.

c. All employees of Manufacturers who produce Edibles must be State certified food handlers. The valid certificate number of such Manufacturers must be on record at each Retailer where the edible product is distributed, and a copy of the certificate kept either on-site, or made available during inspections if kept off-site.

3. Scales and weighing mechanisms must be able to weigh to within 1/100th of a gram, shall be maintained in good working order and shall be subject to annual inspection by either the Alameda County Department of Agriculture/Weights and Measures or a licensed scale company.

4. Manufacture of Concentrates

a. Cold-water and mechanical extraction equipment shall be maintained in sanitary condition and approved for use by the City of Berkeley Environmental Health Division.

b. Any manufacture method using compressed gases or flammable solvents, whether volatile or non-volatile, shall be approved in advance and inspected by the City of Berkeley Fire Department and Toxics Management Division.

c. All Concentrates shall be produced under sanitary conditions and maintained free of filth and contaminants.

12.22.070 Reserved Cultivators

A. Cultivators must obtain operating permits from and are subject to inspections by the City of Berkeley Environmental Health Division.

B. Cultivator license types shall be the same as defined in MAUCRSA, with the exception of Nursery, as defined in Section 12.21.020.

C. Energy Use. Cultivators must include all feasible (under the current Title 24, Part 6) cost-effective water and energy efficiency measures, including but not limited to natural

daylighting, high efficiency lighting, networked lighting and mechanical controls, and natural cooling.

1. Cultivators must include the following systems to the extent feasible: on-site renewable energy generation; energy storage batteries; water collection, filtration and reuse; and rainwater harvesting.

2. Cultivators must include in any application for a Cannabis Cultivation Facility a description of all energy and water systems, measures employed to maximize efficient resource use, and the following metrics, with supporting documentation:

a. Planned lighting power density (watts/sf)

b. Planned lighting Energy Utilization Index (kBtu/sf/year)

c. Planned total site Energy Utilization Index (kBtu/sf/year)

d. Planned potable water consumption (gallons/sf/year)

3. Cultivators must mitigate the carbon dioxide emissions caused by the generation of electrical energy delivered to its Facility by participating in East Bay Community Energy's (EBCE) 100% renewable content option for electricity or equivalent. Until businesses have the option to purchase power through EBCE, the offset will be achieved through purchase of renewable energy certificates certified by the Center for Resource Solutions.

4. If a Facility uses natural gas to generate electricity for consumption at the site, the Cultivator must offset the carbon content of all electrical energy delivered to the Facility by participating in a program that is included in one of the Offset Project Registries approved by the California Air Resources Board and consists of a project or projects that are solely located in the United States and are either producing energy or reducing energy consumption.

5. For purposes of calculating carbon emissions, the carbon dioxide content of natural gas shall be 5.302 metric tons per 1,000 therms and the carbon dioxide content for electricity shall be the value, at the time of filing, from the most recent Power Content Label published by the California Energy Commission.

6. Cultivators shall be responsible for demonstrating compliance with this Section on a calendar-year basis. Documentation shall include copies of energy and water bills, as well as an authorization to energy and water providers to disclose energy and water consumption at the Facility directly to the City. All

parties that are responsible for energy and water bills shall also be responsible for providing such documentation and authorization.

7. The annual amount paid by a Cultivator to both mitigate carbon dioxide emissions caused by the generation of electrical energy to its Facility and to offset the carbon content of all electrical energy delivered to its Facility shall not exceed 10% of the Facility's annual energy bill. This fee shall be reconsidered after five years to determine whether it should be readjusted to reflect lower energy rates or higher costs of renewable energy certificates.

D. Class 2 Nurseries must track the amount of, and disposition of, flower remaining after seed harvesting.

E. Cultivators must store in a safe manner all pesticides approved for use. Only pesticides approved for use may be stored onsite. Any unapproved pesticides found onsite may trigger a crop hold until the live plants are tested and found free of unapproved pesticide. Plants with any level of unapproved pesticides may be destroyed in the presence of City officials designated by the City Manager.

F. Cultivators must maintain all growing rooms in a clean, safe and sanitary manner and free of visible molds and fungal growth.

G. Cannabis Cultivation Facilities shall not harbor infestations of rodents or non-beneficial insects.

H. In Facilities using CO2 enrichment, ambient oxygen sensors shall be installed in any hallways, offices, or other enclosed occupied spaces.

12.22.080 ~~Reserved~~ Testing Laboratories

Testing Laboratories must obtain operating permits from and are subject to inspections by the City of Berkeley Environmental Health Division.

12.22.090 ~~Reserved~~ Microbusinesses

A. Microbusinesses must obtain separate City-issued operating permits for each activity conducted on the premises.

B. Microbusinesses are subject to the operating standards set forth in this Chapter for each activity conducted on the premises.

C. If the operating standards for the activities are different, the more restrictive standard shall apply, except as follows:

1. Signage for Retail Nursery Microbusinesses shall be subject to the regulations for storefront Retailers.

D. If the operating permit for one of the activities is revoked, the entire Microbusiness must cease operation until all operating permits at the premises are reinstated.

12.22.100 ~~Reserved~~ Temporary Cannabis Events

A. Temporary Cannabis Events as defined in MAUCRSA are permitted in Cesar Chavez Park, subject to approval of a Special Event Permit issued by the City Manager's Office.

A.B. ~~Up to three events can be permitted annually.~~

12.22.110 ~~Reserved~~ Collectives Prohibited

Collectives previously authorized by the California Health and Safety Code shall be prohibited and must cease operation after January 9, 2019 pursuant to California Health and Safety Code Sections 11362.765 and 11362.775 and California Business and Professions Code Section 26033.

12.22.120 ~~Reserved~~ Fees.

The City Council may establish by resolution the fees that shall be charged for administration and implementation of this Chapter. The adoption of such fees shall not prevent the City from recovering enforcement costs not specified in such resolution.

12.22.130 ~~Reserved~~ Authority of City Manager

A. The City Manager or his or her designee shall have authority to determine the nature of any Cannabis Business or purported Cannabis Business and whether that entity complies with any of the requirements of this Chapter, Chapters 12.21 and 12.26, and Title 23, and to conduct inspections as provided in Chapter 1.16.

B. The City Manager or his or her designee may promulgate regulations for the administration and implementation of this Chapter, including, but not limited to, regulations relating to non-diversion, record-keeping, and tracking and tracing Cannabis.

C. The City Manager or his or her designee may require any Cannabis Business to obtain operating permits from the City of Berkeley Fire Department, Toxics Management Division, Environmental Health Division, or any other department or division.

D. The City Manager or his or her designee shall have authority to enter onto private property and perform such inspections as may be necessary or convenient to implement and enforce this Chapter, Chapters 12.21 and 12.26, and Title 23, and to adopt regulations to implement this Chapter, Chapters 12.21 and 12.26, and Title 23.

E. The City Manager or his or her designee may promulgate regulations for the selection of Retailers, Cultivators, and other Cannabis Businesses that require a selection process.

12.22.140 ~~Reserved~~ Severability

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

12.22.150 Reserved

12.22.160 Reserved

12.22.170 Reserved

12.22.180 Reserved

Section 3. That Berkeley Municipal Code Chapter 12.23 is repealed.

Section 4. That Berkeley Municipal Code Chapter 12.25 is repealed.

Section 5. That Berkeley Municipal Code Chapter 12.27 is repealed.

Section 6: 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.

ORDINANCE NO. -N.S.

ADDING BERKELEY MUNICIPAL CODE CHAPTER 20.40 TO ESTABLISH CANNABIS BUSINESS SIGNS AND CANNABIS PRODUCT ADVERTISING REGULATIONS

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

Section 1. That Berkeley Municipal Code Chapter 20.40 is added to read as follows:

**Chapter 20.40
CANNABIS BUSINESS SIGNS AND CANNABIS
PRODUCT ADVERTISING**

Sections:

- 20.40.010 Purpose.**
- 20.40.020 Definitions.**
- 20.40.030 Cannabis product advertising prohibited.**
- 20.40.040 Exceptions.**
- 20.40.050 Violations deemed a public nuisance.**
- 20.40.060 Enforcement.**
- 20.40.070 Reinspection fee.**
- 20.40.080 Exemptions.**
- 20.40.090 Joint and several liability.**
- 20.40.100 Severability.**
- 20.40.110 Permitted signs.**
- 20.40.120 Number of signs permitted on premises.**
- 20.40.130 Sign area limitations.**

20.40.010 Purpose.

The purposes of this chapter are to:

- A. To promote the general welfare and reduce illegal purchase and consumption of cannabis or cannabis products by persons under the age of 21, which is accomplished by limiting the exposure of persons under the age of 21 to cannabis product advertising; and
- B. To provide design criteria and development standards to be used in the review of applications for cannabis business signage to ensure that the cannabis

businesses are compatible with the other land uses in the City.

20.40.020 Definitions.

“Cannabis” and “Cannabis Products” shall have the same meaning as set forth in Berkeley Municipal Code Section 12.21.020.

"Cannabis product advertising" means any billboard, sign, poster, placard, device, graphic display, or other item which promotes or is designed to promote the sale, use or consumption of a particular brand of cannabis or cannabis products, but shall not mean any advertising on the packaging of the product itself.

"Owner or operator" includes the owner of the property at which the advertising subject to this chapter is located, the owner of any billboard or other structure on which cannabis product advertising is located, as well as the operator of any commercial or other establishment at that location.

"Person" means any individual, firm corporation, partnership, cooperative association, receiver, trustee, assignee public or private entity, or other legal entity.

"Publicly visible location" means any outdoor location and any window of a commercial establishment that is visible to the public from any street sidewalk, or other public thoroughfare. This shall not be construed to include the inside of any commercial establishment, with the exception of its windows.

20.40.030 Cannabis product advertising prohibited.

No person shall place or maintain, or cause or allow to be placed or maintained any cannabis product advertising in any publicly visible location, except as provided in this Chapter.

20.40.040 Exceptions.

This chapter shall not apply to cannabis product advertising which is:

A. Inside any commercial establishment, except that no cannabis product advertising may be placed in a publicly visible location inside any commercial

establishment.

20.40.050 Violations deemed a public nuisance.

Any violation of the provisions of this chapter is declared to be a public nuisance. The procedures for the abatement of such nuisances shall be governed by Berkeley Municipal Code Chapter 1.24 as may hereafter be amended.

20.40.060 Enforcement.

A. Infraction. Any person violating any provision or failing to comply with any requirement of this chapter shall be deemed guilty of an infraction as set forth in Chapter 1.20 of this code.

1. Each separate display of cannabis product advertising in violation of this chapter is deemed to be a separate offense.
2. Each day an item of cannabis product advertising remains in violation of this chapter is deemed to be a separate offense.

B. Civil Action. In addition to any other remedy provided by this chapter, any violation of this chapter may be enforced by a civil action brought by the City or any other interested person. The City or any other interested person may seek and the court shall grant as appropriate:

1. Injunctive relief, both temporary and permanent;
2. Reasonable attorney fees and costs of suit.

C. Remedies Not Exclusive. Nothing in this chapter shall preclude the City from seeking any other remedy provided by law.

20.40.070 Reinspection fee.

The City Council may adopt a resolution establishing a fee which must be paid by the owner or operator of a specified location whenever the City Manager, or his or her designee, determines upon reinspection that a person has failed to comply with any orders, notices or directions issued by the City under this chapter.

20.40.080 Exemptions.

This chapter shall apply to all existing cannabis product advertising in violation of this chapter unless the owners or operators of the location at which such advertising is located provide written documentation to the City Manager, or his or her designee, within thirty days from the effective date of the ordinance codified in this chapter that this chapter unreasonably interferes with any contracts executed before the date of adoption of said ordinance.

A. Failure to provide such timely, written documentation shall be deemed a waiver of the right to seek an exemption.

B. The City Manager is authorized to grant an exemption from enforcement of this chapter for up to 6 months from the date of adoption. The decision of the City Manager with respect to such exemption is final.)

20.40.090 Joint and several liability.

The advertiser, the property owner and any operator of any location at which prohibited cannabis product advertising exists shall be jointly and severally liable for violations of this chapter.

20.40.100 Severability.

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

20.40.110 Permitted signs.

A. Retailers that have a storefront and allow customer visits are allowed on-premises signs as set forth in BMC Chapter 20.24.

B. Delivery-only Retailers are allowed business complex signs as set forth in BMC

Section 20.16.070.

C. Non-retailers are allowed on-premises signs as set forth in BMC Chapter 20.32.

20.40.120 Number of signs permitted on premises.

A. The number of on-premises signs for Cannabis Retailers are limited to BMC Section 20.24.030.

B. The number of on-premises signs for Cannabis non-retailers are limited to BMC Section 20.32.030.

20.40.130 Sign area limitations.

A. The sign area for all signs of Retailers that have a storefront shall not exceed seven and a half (7.5) percent of the building face of the premises or seventy-five (75) square feet, whichever is less.

B. The sign area for all signs of Delivery only Retailers are subject to BMC Section 20.16.070.

C. The sign area for all signs of non-Retailers shall not exceed twelve (12) square feet.

D. Signage may not include depictions of cannabis or cannabis products. Logos with such depictions are also prohibited on signs.

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 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.

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 23C.25 TO MODIFY THE CANNABIS USES ORDINANCE

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

Section 1. That Berkeley Municipal Code Chapter 23C.25 is amended to read as follows:

Chapter 23C.25
CANNABIS USES

Sections:

- 23C.25.010 ~~Reserved~~Retail Uses
- 23C.25.020 Cannabis Cultivation
- 23C.25.030 Manufacturing, Testing and Distribution
- 23C.25.040 Microbusinesses

Section 23C.25.010 ~~Reserved~~Retail Uses

A. Retailer is defined in Section 12.21.020.

B. ALTERNATIVE A: STAFF RECOMMENDATION - Retailers may not be located within 600 feet of another Retailer or a public or private elementary school, 1,000 feet of a public or private middle or high school or 600 feet of a City-operated community center or skatepark.

B. ALTERNATIVE B: CHC RECOMMENDATION - Retailers may not be located within 1,000 feet of any public or private K-12 school, junior college, college, university, day care center, park, youth center or library.

B. ALTERNATIVE C: PC and CC RECOMMENDATION - Retailers may not be located within 600 feet of another Retailer or a public or private elementary school, middle school or high school.

C. Expansion of an approved Retailer shall follow the conversion regulations for the Zoning District in which it is located and shall comply with subdivision (B) of this Section.

D. An M-Retailer existing and authorized as of January 1, 2010, that does not comply with this Section, may continue at its current medical cannabis dispensing location and shall be considered a legal nonconforming use. Notwithstanding Section 23C.04.060 or subdivision (B) of this Section, the Zoning Officer may approve an Administrative Use

Permit to allow the expansion of a legal nonconforming medical cannabis dispensary use on any parcel or on two adjacent parcels where a dispensary was located on one of the parcels as of July 1, 2010.

E. No changes in ownership or approved location shall be approved until such time as the City Council established procedures and criteria to allow such changes.

F. Cannabis Retailers

1. ALTERNATIVE A: STAFF RECOMMENDATION - Six Cannabis Retailers as defined in Section 12.21.020 shall be permitted as of right with a Zoning Certificate in C-prefixed zones if they comply with the parking requirements applicable to the uses they include, and any security requirements promulgated by the Chief of Police.

1. ALTERNATIVE B: CC RECOMMENDATION - Thirty-two Cannabis Retailers as defined in Section 12.21.020 shall be permitted as of right with a Zoning Certificate in C-prefixed zones if they comply with quota for the district, the parking requirements applicable to the uses they include, and any security requirements promulgated by the Chief of Police.

1. ALTERNATIVE C: PC RECOMMENDATION - Eighteen Cannabis Retailers as defined in Section 12.21.020 shall be permitted as of right with a Zoning Certificate in C-prefixed zones if they comply with the parking requirements applicable to the uses they include, and any security requirements promulgated by the Chief of Police.

Section 23C.25.020 Cannabis Cultivation

A. Notwithstanding anything to the contrary in this Chapter, cultivation of cannabis as defined in Chapters 12.231 and 12.252 and MAUCRSA, as defined in BMC Section 12.21.010, shall be permitted as a matter of right with a Zoning Certificate in the M District, subject to the following limitations:

1. Such locations shall be limited to licensed Cannabis Businesses.
2. Cannabis may not be dispensed, and client, patient or member services or retail sales are prohibited, at such locations.
3. No single location used for cultivation and associated uses by a licensee may exceed 22,000 square feet of total canopy area, except that separate spaces used by different licensees may be aggregated on the same location.
4. There is no numeric limit for Cannabis Cultivation Facilities under 10,000 sf in total canopy area, up to 48,000 sf.

4.5. Up to six Major Cannabis Cultivation Facilities between the size of 10,000 sf and 22,000 sf in total canopy area are permitted.

5.6. Outdoor commercial cultivation is prohibited.

6.7. The total canopy area used for cannabis cultivation shall not exceed 180,000 square feet.

B. Cannabis nurseries, as defined in Chapter 12.231 are considered Cannabis Cultivation uses and are subject to the same regulations as Cultivators.

C. Such locations shall comply with all regulations in Chapter 12.2522, security regulations promulgated by the Chief of Police, and the requirements of this Chapter, and shall not be located within 300 feet of a private or public elementary, middle or high school. Such locations may include testing, processing, manufacturing and food preparation only to the extent expressly permitted by MAUCRSA.

D. No Cannabis uses may be approved under this Section until the City Council adopts a licensing process and standards for such uses. Such standards shall include a requirement that indoor cultivation uses provide for an energy offset through a program specified by the City to offset the net increased energy that is used by the Facility as compared to a regular industrial facility, and may include, but shall not be limited to, whether proposed Facilities will provide a percentage of all usable product cultivated at no cost to very low income patients and will use organic methods in cultivation and processing to the maximum extent reasonable; and whether their form of organization, ownership and practices ensure equity and accountability, low prices and an adequate supply of high quality cannabis to Customers.

E. Notwithstanding Subsection 23C.25.020.D, Cannabis Cultivators with Cannabis Cultivation Facilities (as defined in Section 12.2321.020) that do not exceed 10,000 square feet in total canopy area are permitted as a matter of right with a Zoning Certificate in the M District, subject to a limitation on total canopy area used for Cannabis Cultivation of 180,000 square feet.

Section 23C.25.030 Cannabis Manufacturing, Testing Labs and Distribution

A. Uses such as, but not limited to, testing, processing, and food preparation, that involve cannabis as defined in Chapter 12.2321 but do not involve dispensing, client, patient or member services, or cultivation (other than for testing), shall be evaluated and regulated under this Title without regard to the fact that they involve cannabis.

B. Manufacturers, Testing Labs, Research and Development and Distribution businesses which are licensed as Cannabis Businesses by the State may not be located within 300 feet of a public or private elementary, middle or high school.

C. For the purposes of this Chapter, the following Cannabis uses shall be evaluated and regulated for Zoning purposes in the same way as the existing non-Cannabis uses, with the exception of distance buffers from schools:

Cannabis Use	Non-Cannabis Use
Manufacturing, processing, food preparation	Light Manufacturing
Testing labs	Testing labs
Research and Development	Research and Development
Distribution	Wholesale Uses

Section 23C.25.040 Microbusinesses

A. Microbusinesses are defined in Section 12.21.020

B. Microbusinesses are subject to the development standards set forth in this Chapter for each activity conducted on the premises, with the following exceptions:

1. In cases where the development standards for two activities are different, the more restrictive standards shall apply.

2. Retail Nursery Microbusinesses

a. Two existing nurseries are permitted to convert to a Retail Nursery Microbusiness, regardless of the number of Retailers and Cultivators in the City.

b. ALTERNATIVE A: STAFF RECOMMENDATION - These businesses are permitted by right with a Zoning Certificate in C- and M- prefixed zones, if they comply with the development standards set forth in this Chapter for each activity conducted on the premises.

b. ALTERNATIVE B: PC and CHC RECOMMENDATION - These businesses are permitted with a Use Permit in all zoning districts, if they comply with the development standards set forth in this Chapter for each activity conducted on the premises.

c. If the existing nursery is located entirely or partially in an R-prefixed district, conversion to a Retail Nursery Microbusiness will be subject to requirements for non-conforming uses (Section 23C.04.060).

d. The 600-foot retail buffer shall not apply between Storefront Retailers and Retail Nursery Microbusinesses.

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 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.

ORDINANCE NO. -N.S.

ZONING ORDINANCE AMENDMENT TO SUB-TITLE 23 OF THE BERKELEY MUNICIPAL CODE TO MODIFY DEVELOPMENT STANDARDS AND AMEND USE TABLES RELATED TO CANNABIS USES

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

Section 1. That Berkeley Municipal Code Section 23E.16.070 is repealed.

Section 2. That the “Retail Sales” section of Table 23E.36.030 in Berkeley Municipal Code Section 23E.36.030 is amended to read as follows:

Table 23E.36.030 C-1 General Commercial District Provisions: Uses Permitted

Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales including Liquor Stores and Wine Shops	UP(PH)	Includes sale for off-site consumption at restaurants Prohibited within the University Avenue Strategic Plan Overlay (unless in conjunction with a restaurant or general food product store)
Department Stores	ZC*	
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	UP(PH)	Prohibited within the University Avenue Strategic Plan Overlay
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
<u>Cannabis Retailer</u>	<u>ZC</u>	<u>ZC shall only be issued after business is approved through the selection process</u> <u>Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22</u>

Section 3. That the “Retail Sales” section of Table 23E.40.030 in Berkeley Municipal Code Section 23E.40.030 is amended to read as follows:

Table 23E.40.030 C-N Neighborhood Commercial District Provisions: Uses Permitted

Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed. (Does not include Video Rental Stores)
Alcoholic Beverage Retail Sales including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	AUP Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	Prohibited	
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
<u>Cannabis Retailer</u>	<u>ZC</u>	<u>ZC shall only be issued after business is approved through the selection process</u>

Use	Classification	Special Requirements (if any)
		<u>Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22</u>

Section 4. That the "Retail Sales" section of Table 23E.44.030 in Berkeley Municipal Code Section 23E.44.030 is amended to read as follows:

Table 23E.44.030 C-E Elmwood Commercial District Provisions: Uses Permitted

Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores).
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC* Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	Prohibited	
Pet Stores, including Sales and Grooming of Animals	UP(PH)	Does not include boarding of animals
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
<u>Cannabis Retailer</u>	<u>ZC</u>	<u>ZC shall only be issued after business is approved through the selection process</u>

Use	Classification	Special Requirements (if any)
		<u>Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22</u>

Section 5. That the "Retail Sales" section of Table 23E.48.030 in Berkeley Municipal Code Section 23E.48.030 is amended to read as follows:

Table 23E.48.030 C-NS North Shattuck Commercial District Provisions: Uses Permitted

Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores).
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC* Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	Prohibited	
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
<u>Cannabis Retailer</u>	<u>ZC</u>	<u>ZC shall only be issued after business is approved through the selection process</u>

Use	Classification	Special Requirements (if any)
		<u>Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22</u>

Section 6. That the “Retail Sales” section of Table 23E.52.030 in Berkeley Municipal Code Section 23E.52.030 is amended to read as follows:

Table 23E.52.030 C-SA South Area Commercial District Provisions: Uses Permitted

Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants No sales of distilled alcoholic beverages are allowed along Adeline Street south of Ashby Avenue
Department Stores Over 3,000 s.f.	ZC* UP(PH)	
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops	Prohibited	Including Auction Houses
Pet Stores	UP(PH)	Including Sales and Grooming of Animals (but not Boarding)
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
<u>Cannabis Retailer</u>	<u>ZC</u>	<u>ZC shall only be issued after business is approved through the selection process</u> <u>Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22</u>

Section 7. That the “Retail Sales” section of Table 23E.56.030 in Berkeley Municipal Code Section 23E.56.030 is amended to read as follows:

Table 23E.56.030 C-T Telegraph Avenue Commercial District Provisions: Uses Permitted

Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC	As defined in Sub-title 23F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales including liquor stores and wine shops	Prohibited	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC UP(PH)	
Drug Paraphernalia (any use involving the sale or distribution thereof)	Prohibited	As defined in California Health and Safety Code Section 11364.5(d)
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops	Prohibited	Including Auction Houses
Pet Stores	UP(PH)	Including Sales and Grooming of Animals (but not Boarding)
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
<u>Cannabis Retailer</u>	<u>ZC</u>	<u>ZC shall only be issued after business is approved through the selection process</u> <u>Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22</u>

Section 8. That the "Retail Sales" section of Table 23E.60.030 in Berkeley Municipal Code Section 23E.60.030 is amended to read as follows:

Table 23E.60.030 C-SO Solano Avenue Commercial District Provisions: Uses Permitted

Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores	ZC*	

Use	Classification	Special Requirements (if any)
Over 3,000 s.f.	Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops	Prohibited	
Pet Stores including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
<u>Cannabis Retailer</u>	<u>ZC</u>	<u>ZC shall only be issued after business is approved through the selection process</u> <u>Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22</u>

Section 9. That the "Retail Sales" section of Table 23E.64.030 in Berkeley Municipal Code Section 23E.64.030 is amended to read as follows:

Table 23E.64.030 C-W West Berkeley Commercial District Provisions: Uses Permitted

Use	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
Retail Sales				
Retail uses as defined in Sub-title 23F, except otherwise listed.				
	Under 3,500	3,500-7,500	7,500 or more	
All Retail Sales Uses, except those specified below	ZC	AUP	UP(PH) **	**Except when part of a combination commercial/residential use; see Mixed Use Development heading

Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
<u>Cannabis Retailer</u>	<u>ZC</u>	<u>ZC shall only be issued after business is approved through the selection process</u> <u>Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22</u>

Section 10. That the "Retail Sales" section of Table 23E.68.030 in Berkeley Municipal Code Section 23E.68.030 is amended to read as follows:

Table 23E.68.030 C-DMU Downtown Mixed Use Commercial District Provisions: Uses Permitted

Use	Classification	Special Requirements
Retail Sales		
All Retail Sales Uses, except those listed below	ZC	As defined in Sub-title 23F, except otherwise listed
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Under 10,000 s.f.	AUP ZC	
Firearm/Munitions Businesses	Prohibited	
Pawn Shops, including Auction Houses	UP(PH)	
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	Prohibited	

Use	Classification	Special Requirements
<u>Cannabis Retailer</u>	<u>ZC</u>	<u>ZC shall only be issued after business is approved through the selection process</u> <u>Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22</u>

Section 11. That the “Other Industrial Uses” section of Table 23E.72.030 in Berkeley Municipal Code Section 23E.72.030 is amended to read as follows:

Table 23E.72.030 M Manufacturing District Provisions: Uses Permitted

Uses	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 40,000	More than 40,000	
Other Industrial Uses				
Art/Craft Studio	ZC <10,000	AUP 10,000 – 20,000	UP(PH) >20,000	Workspaces only, no Live/Work permitted.
Bus, cab, truck and public utility depots	AUP	UP		
Commercial Excavation	UP(PH)			Including earth, gravel, minerals, or other building materials, including drilling for, or removal of, oil or natural gas
Contractors	AUP		UP	
Dry Cleaning and Laundry Plants	ZC	AUP	UP(PH)	No retail service permitted
Laboratories, Testing and Commercial Biological Research	Prohibited			
Media Production	ZC <10,000	AUP 10,000 – 20,000	UP(PH) >20,000	
Recycled Materials Processing	ZC*	AUP	UP	* If all processing done indoors; if any outdoors, AUP

Repair Service (other than auto repair)	ZC	AUP	UP	No retail sales permitted
Services to Buildings and Dwellings	AUP			
Cannabis Cultivation	ZC			<p><u>For Large Cultivators (over 10,000 square feet of canopy) a ZC shall only be issued after business is approved through the selection process</u></p> <p>Subject to the requirements of Section-Chapter 23C.25 and BMC Chapters 12.231 and 12.252</p>

Section 12. 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.

ORDINANCE NO. -N.S.

ZONING ORDINANCE AMENDMENT TO CHAPTER 23F.04 OF THE BERKELEY MUNICIPAL CODE TO ADD AND MODIFY DEFINITIONS RELATED TO CANNABIS USES

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

Section 1. That Berkeley Municipal Code Chapter 23F.04 is amended to revise the definition of “Cannabis Uses”, add the definition of “Microbusiness” in alphabetical order, and amend the definition of Retail Products Store” as follows:

Cannabis Uses: Cannabis uses include retail sales, cultivation, manufacturing, testing, and distributing. See BMC Chapters [12.21](#), and [12.22](#), ~~[12.23](#)~~, ~~[12.25](#)~~, and ~~[12.27](#)~~ for cannabis regulations and Section 23C.25 for land use regulations.

Microbusiness: [Cannabis use involving more than one State license. See BMC Chapter 12.21 for definition.](#)

Retail Nursery Microbusiness: [A microbusiness that is restricted to growing and selling cannabis plants and seeds. See BMC Chapter 12.21 for definition.](#)

Retail Products Store: An establishment engaged in the sales of personal, consumer or household items to the customers who will use such items, including, but not limited to:

Retail Products Stores	Comments
Antique Stores	Includes Collectibles
Art/Craft Shops	
Art Galleries	
Art and Craft Supply Stores	
Audio/Video Records, Tapes, Disks Sales Shops	Excludes video rental stores
Automobile Parts Stores	Excludes service of auto parts
Bicycle Shops	Includes sales, parts and repair/service
Bookstores, Periodical Stands	
Clothing Stores	Includes apparel, hats, shoes and accessories
Computer Stores	Hardware and software

Retail Products Stores	Comments
Drugstores	Includes pharmaceutical, sundries, cosmetic/personal care items
Fabric, Textile and Sewing Supply Shops	
Flower and Plant Stores	Includes live, fresh-cut and/or dried flowers; excludes nurseries
Food Products Stores, Specialized	Includes Bakeries
Food Products Stores, General	Includes groceries, markets and supermarkets
Furniture Stores, Household or Office	Includes carpets and rugs
Garden Supply Stores, Nurseries	Does not include Cannabis Nurseries, see Cannabis Cultivation definition in 12.213.020
Gift/Novelty Shops	
Glass Pane and Mirror Stores	
Hobby Shops	
Household Hardware and Housewares Stores	
Household Electronics/Electrical Stores (Audio, Telephone and Video/TV)	Excludes video rental stores
Jewelry/Watch Shops	
Linen Shops	Includes bedding
Musical Instruments and Materials Stores	
Office Supply Stores	
Paint/Wallpaper Stores	
Photography Equipment Supply Stores	Includes cameras and film developing
Secondhand Stores	Includes used/vintage clothing and household goods
Small Appliance Stores	
Sporting Goods Stores	Includes equipment, clothing and supplies, excluding Firearm/Munitions Businesses

Retail Products Stores	Comments
Stationery, Cards and Paper Goods Stores	
Toy Stores	
Variety Stores	

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 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.

MINUTES FROM THE CANNABIS, COMMUNITY HEALTH AND PLANNING COMMISSIONS RELATED TO PROPOSED CANNABIS ORDINANCES

CANNABIS COMMISSION

APPROVED MINUTES OF THE CANNABIS COMMISSION MEETING FEBRUARY 1, 2018 (Partial)

A. Review staff proposed changes to cannabis ordinance language and vote on Commission recommendation to Council.

Chair Jones recommended to begin the discussion by going through the matrix attached in the packet.

Public Comment: Eight public comments. The comments stated that there should be 600' buffer from liquor stores as well and that there should be no delivery of cannabis outside of California. Deliveries should be allowed at businesses and hotels, not only residences. The comments also were concerned about limiting cultivation to only the M District, there are good locations outside of the M District, and there will not be enough incentive for businesses to come into Berkeley if we only allow cultivation in the M District. There are large enough sites in the MM District of cannabis cultivation. Another comment expressed concern about only allowing retailers to buy from licensed cultivators. Other comments were concerned that there are not proposed regulations about change of ownership, only regulations for change of location. Another comment encouraged to add language to grandfather existing dispensaries with temporary adult use licenses as adult use retailers in Section 23C.25.010.G. Other comments mentioned that there are a lot of redundancies in Chapters 21 and 22 with the State regulations.

Commissioner Rice responded to the public comments about location of cultivation. She asked for the public to submit written testimonies encouraging the expansion of cultivation outside of the M District. Commissioner Pappas voiced his concern that there needs to be selection process first for cultivators in the M District so that Council can see there is a need for expansion outside of the M District.

Retail: Medicinal Use

The Commission first discussed the topics within the *Retail: Medicinal Use* section of the attached matrix. Commissioner Cable stated that the 600' buffer between retailers should be reduced. Ferguson-Riffe stated that the 600' buffer should stay and is important. Commission Cooper mentioned that they should leave as is and deal with it when it becomes an issue later.

Motion/second for Commissioner Brewster to different buffers for Retail

business that sell non-smokeable products. (Jones/Cable). The motion carried 9-0-0-0. (Ayes: Brewster, Ferguson-Riffe, Jones, Carlisle, Pappas, Cable, Lampach, Rice, Cooper. Noes: None. Abstain: None. Absent: None)

The Commission discussed the issue of quotas for retailers. The Commission raised the question where there needs to be a definition of non-psychoactive/psychotropic products and if there should be a different quota limit for non-psychoactive use.

Motion/second to recommend no quotas for A and M retailers (Ferguson-Riffe/Carlisle). The motion carried 8-1-0-0. (Ayes: Brewster, Ferguson-Riffe, Jones, Carlisle, Pappas, Cable, Lampach, Rice. Noes: Cooper. Abstain: None. Absent: None)

Motion/second to recommend no quotas for Delivery-only retailers (Pappas/Brewster). The motion carried 8-1-0-0. (Ayes: Brewster, Ferguson-Riffe, Jones, Carlisle, Pappas, Cable, Lampach, Rice. Noes: Cooper. Abstain: None. Absent: None)

Motion/second to recommend approving the recommended security regulations for medicinal retailers (Jones/Carlisle). The motion carried 9-0-0-0. (Ayes: Brewster, Ferguson-Riffe, Jones, Carlisle, Pappas, Cable, Lampach, Rice, Cooper. Noes: None. Abstain: None. Absent: None)

The Commission agreed on the recommended on-site consumption language, and agreed with the recommended with the delivery regulations for medicinal use.

Retail: Adult Use

The Commission agreed with all staff recommendations for Adult-Use regulations' topics from the matrix except for the quota, see motion above.

Retail: Delivery-only

The Commission agreed with the location for delivery-only retailers, see motion above for quota recommendation.

Motion/second to recommend changing the buffer for delivery-only retailers to 300' from schools and no buffer from other retailers (Lampach/Cable). The motion carried 9-0-0-0. (Ayes: Brewster, Ferguson-Riffe, Jones, Carlisle, Pappas, Cable, Lampach, Rice, Cooper. Noes: None. Abstain: None. Absent: None)

Commissioner Jones recommended pushing the matrix topics of Cultivation, Manufacturing, and Other to the subcommittee discussion.

APPROVED MINUTES OF THE CANNABIS COMMISSION MEETING

**FEBRUARY 22, 2018
(Partial)**

VII.A: Continuation from 2-1-18 meeting: Review staff proposed changes to cannabis ordinance language and vote on Commission recommendation to Council.

Staff briefly presented the staff report, including the corrections in the matrix and proposed language. Staff also reported on the motions made by the Planning Commission on February 21.

Commissioner Ferguson-Riffe expressed concern about existing residential growers not being able to obtain licenses and be able to sell to other licensed cannabis businesses. The Commission also expressed concern about not being represented at other Commission meetings and requested to include a standing item in their agendas to discuss how they want to address other Commission that discuss cannabis regulations.

Public Comment: One comment. The public speaker was concerned that the residual solvents limits for testing for manufacturers (12.22.140) do not align with the State's limits.

Commission Brewster's proposed language:

The Cannabis Commission (CC) decided to review Commissioner's Brewster's proposed language before discussing it. Thus, they will address Brewster's memo at the next meeting.

Delivery-specific requirements:

The Commission discussed whether deliveries should be allowed at locations other than residences, including places of work, hotels, etc. The Commission requested that staff check whether the State law includes language on where deliveries are allowed. The Commission will discuss this topic at the next meeting when they have more information.

Motion/second to recommend to Council staff's proposed language on delivery-specific regulations and expand language to include deliveries to place of work, hotels, motels, extended places of stay (Jones/Lampach). Motion was withdrawn.

Cultivation:

The Commission reviewed the subcommittee's recommendations on cultivation. The CC discussed the allowed location of cultivation and expressed interest in expanding cultivation outside of the M District. The Commission made the following motions regarding cultivation regulations.

Motion/second to recommend to Council expanding cannabis cultivation into all M prefixed districts. (Cable/Jones). The motion carried 6-0-1-2. (Ayes:

Ferguson-Riffe, Jones, Carlisle, Lampach, Pappas, Cable. Noes: None. Abstain: Rice. Absent: Brewster, Cooper.)

Motion/second to allow cultivation location outside M prefixed districts on a case-by-case for equity or pre-existing businesses (may not be legally established) (Pappas/Jones). The motion carried 5-1-1-2. (Ayes: Ferguson-Riffe, Rice, Lampach, Pappas, Cable. Noes: Carlisle. Abstain: Jones. Absent: Brewster, Cooper.)

Motion/second to recommend to Council staff's proposed language for size, quota, limit, buffer, security, and on-site consumption of cultivation (Jones/Pappas). The motion carried 7-0-0-2. (Ayes: Ferguson-Riffe, Jones, Carlisle, Lampach, Rice, Pappas, Cable. Noes: None. Abstain: None. Absent: Brewster, Cooper.)

The Commission decided to continue the discussion on the rest of the matrix at the next meeting.

**APPROVED MINUTES OF THE CANNABIS COMMISSION MEETING
MARCH 15, 2018
(Partial)**

VII.B: Continuation from 2-22-18 meeting: Review staff proposed changes to cannabis ordinance language and vote on Commission recommendation to Council. Attachments calls out Cannabis Commission actions since 1-18-18 and Planning Commission action on 2-21-18.

Public Comment: Six comments. Security requirements for distribution should be less strict (no security guards), and distribution licenses should be allowed in manufacturing. Delivery-only businesses do not need security guards. The language about reconfiguration of product is redlined in the proposed language per State regulations, allow dispensaries to apply for a microbusiness license. Other cities recognize cannabis businesses even when they do not have regulations in place with temporary licenses. Concerned that 32 retailers is too many for Berkeley and buffers should be more than 600 feet. Berkeley should consider having a prevention policy and best practices for cannabis businesses. Also, Washington allows 1 retailers to 22,000 residents, 32 in Berkeley is too many. Recommend to Council that residential cultivation is an important issue and that nurseries should be allowed to be a storefront and not just wholesale.

The Commission discussed what topics that had not been discussed at previous meetings and made the following motions.

Motion/second to approve all language proposed by staff or discussed and approved by the Commission, except for the following: nurseries, manufacturing, testing, distributing, and security to discuss now and at the April 5th meeting (Jones/Cable). The motion carried 7-0-0-2. (Ayes: Jones, Carlisle, Cable, Brewster, Cooper, Rice, Pappas. Noes: None. Abstain: None. Absent: Lampach, Ferguson-Riffe.)

The Commission discussed security and recommended removing the security guard requirement for distribution, cultivation and delivery-only businesses.

Motion/second to remove the security guard requirement (12.21.040.G.2 and 4) for distribution, cultivation and delivery-only businesses (Carlisle/Cable). The motion carried 7-0-0-2. (Ayes: Jones, Carlisle, Cable, Brewster, Cooper, Rice, Pappas. Noes: None. Abstain: None. Absent: Lampach, Ferguson-Riffe.)

The Planning Commission discussed temporary licenses and distribution licenses and made the following motions. The Commission articulated the importance of allowing distribution businesses to begin operating as soon as possible.

Motion/second to allow temporary licenses to cannabis businesses (except storefront retailers) that already have a location as of December 31, 2017 but no business license, and conforms with state law, with a caveat that they must conform with any changes to state or local law or lose their business license. (Jones/Cable). The motion was withdrawn.

Motion/second to allow temporary distribution licenses to existing manufacturing businesses that cannot obtain a state distribution license because the requirement of separate premises, with a caveat that they must conform to any changes to state or local law or lose their business license. (Cable/Jones). The motion did not pass 4-1-2-2. (Ayes: Jones, Cable, Rice, Pappas. Noes: Cooper. Abstain: Brewster, Carlisle. Absent: Lampach, Ferguson-Riffe.)

APPROVED MINUTES OF THE CANNABIS COMMISSION MEETING

**APRIL 5, 2018
(Partial)**

VII.B: Continuation from 3-15-18 meeting: Review staff proposed changes to cannabis ordinance language and vote on Commission recommendation to Council related to nurseries, distribution, testing, manufacturing, and

temporary licenses.

Staff reviewed that proposed manufacturing and testing regulations are very similar to how existing regulations, with the addition of 300' buffers, and required conformance with all State regulations. The City will allow for a temporary license to allow existing businesses to have a distribution license, but waiting to see if the state will allow same site location. Distribution is recommended to be treated as a wholesale trade use in Berkeley. The proposed language says that nurseries would be subject to cultivation regulations.

Public Comment: Two comments. Asked if temporary distribution licenses can be issued to existing manufacturers at the same location, and what is cultivation in greenhouses considered?

The Commission discussed recommendations for manufacturing, testing and distribution and made the following motions. The Commission made no changes to their previous decision regarding cultivation and acknowledged that nurseries are included in cultivation. The Commission did not discuss temporary licenses.

Motion/second to approve staff's recommendation for manufacturing (Jones/Cable). The motion carried 6-0-0-3. (Ayes: Jones, Cable, Brewster, Ferguson-Riffe, Cooper, Rice. Noes: None. Abstain: None. Absent: Lampach, Carlisle, Pappas (not present during this vote).)

Motion/second to approve staff's recommendation for testing (Jones/Brewster). The motion carried 6-0-0-3. (Ayes: Jones, Cable, Brewster, Ferguson-Riffe, Cooper, Rice. Noes: None. Abstain: None. Absent: Lampach, Carlisle, Pappas (not present during this vote).)

Motion/second to approve staff's recommendation for distribution (Jones/Cable). The motion carried 7-0-0-2. (Ayes: Jones, Cable, Brewster, Ferguson-Riffe, Cooper, Rice, Pappas. Noes: None. Abstain: None. Absent: Lampach, Carlisle.)

**DRAFT MINUTES OF THE CANNABIS COMMISSION MEETING
NOVEMBER 8, 2018
(Partial)**

VII.A: Review upcoming cannabis items at Council and other commissions and vote on any commission actions in response to these items. Also appoint a representative for possible January Council meeting.

Staff Overview of Retail Nursery Microbusinesses (A.1):

Staff reviewed the staff report and explained that it is on the agenda based on Council direction from the October work session. The Cannabis Commission, Planning Commission and Community Health Commission will review this ordinance language at their November and December meetings. Recommendations from the commission will be incorporated into the ordinance language going to council in early 2019.

The commission asked for clarification on quota limit (2), buffers between microbusinesses and retailers and proximity to existing nurseries.

Public Comment (A.1): One comment. Speaker thinks a complete cannabis nursery (per Section 5408) will be better than cannabis sales in an existing non-cannabis nursery.

Motion/second to adopt and approve the draft ordinance by staff (staff language)

(Cooper/Jones). The motion carried 6-0-0-1. (Ayes: Jones, Rice, Brewster, Cooper, Cable, Pappas. Noes: None. Abstain: None. Absent: Carlisle.)

CHC recommendations and report (A.2 and 3)

Public Comment: One comment. Speaker asked if the Community Health Commission had read the new State regulations.

May Simpson spoke on behalf of the Community Health Commission (CHC): Community Health Commission has been studying scientific-based research and has spoken to doctors. The information so far has been inclusive but there is concern about use of cannabis having long term effect. There is particular concern about youth because their brain does not fully develop until age 25. We should be open minded and look at evidence from credible sources on both sides of issue.

The Cannabis Commission discussed issues included in the CHC report. There were questions about the validity of some of the concerns and the need for statistics about cannabis-related crime, youth use and hospitalizations since legalization of cannabis. There was some question about whether a prohibition of “characterizing flavors” would result in a prohibition of edibles. There was support for signs to discourage use by teens, pregnant women, and immigrants, and also support for working with the CHC to protect youth.

The Chair asked the CHC representative to inform the Cannabis Commission of any targeted concerns.

COMMUNITY HEALTH COMMISSION

FINAL MINUTES OF THE COMMUNITY HEALTH COMMISSION MEETING MARCH 22, 2018 (Partial)

3. M/S/C (Rojas-Cheathman/Futoran) Support Cannabis Ordinance Recommendation to Council with proposed edit (Attachment 8)

Ayes: Commissioners Rojas-Cheathman, Engelman, Kesarwani, Futoran, Carter, Smart, Lingas, Khalfay, and Wang

Noes: None

Abstain: Commissioner Brosgart and Spigner

Absent: Commissioner Speich and Katz

Excused: Commissioners Chen and Morales

Motion Passed.

4. M/S/C (Kesarwani/Rojas-Cheathman) Send Feedback to Cannabis Commission (Attachment 9)

Ayes: Commissioners Kesarwani, Rojas-Cheathman, Engelman, Futoran, Carter, Smart, Lingas, Khalfay, Spigner and Wang

Noes: Commissioner Brosgart

Abstain: Commissioner Engelman

Absent: Commissioner Speich and Katz

Excused: Commissioners Chen and Morales

Motion Passed.

DRAFT MINUTES OF THE COMMUNITY HEALTH COMMISSION SPECIAL MEETING DECEMBER 6, 2018 (Partial)

3. M/S/C (Speich/Futoran): Motion to approve Retail Nursery Microbusiness language that was passed by the Planning Commission including Use Permit in all districts.

Ayes: Commissioner Speich, Futoran, Carter, Smart, Spigner, Rojas-Cheatham, Khalfay

Noes: None

Abstain: None

Absent from vote: None

Excused: Commissioner Engelman, Goldmacher, Gupta, Simpson, Rosales, Katz

Motion Passed.

4. M/S/C (Spigner/Futoran): Motion to approve staff recommendations with recommended edits for CHC reasoning (clarifying no adult use consumption in any business; no changes to H; agreement with staff recommendations for medicinal cannabis for low-income persons; adding children, youth and young adults language to 10B).

Ayes: Commissioner Speich, Futoran, Carter, Smart, Spigner, Rojas-Cheatham, Khalfay

Noes: None

Abstain: None

Absent from Vote: None

Excused: Commissioner Engelman, Goldmacher, Gupta, Simpson, Rosales, Katz

Motion Passed.

PLANNING COMMISSION

FINAL MINUTES OF THE REGULAR PLANNING COMMISSION MEETING FEBRUARY 21, 2018 (Partial)

9. Action: **Public Hearing: Zoning Ordinance Cannabis Regulations**

Staff briefly presented the staff report on the proposed cannabis regulations including the use types, location of cannabis businesses, quotas, buffers, and levels of discretion.

Public Comments: 11 speakers.

Motion/Second/Carried (RK/RW) to close public hearing. Ayes: Lacey, Beach, Martinot, Schildt, Kapla, Wrenn. Noes: Vincent, Pinto, O'Farrell. Abstain: None. Absent: None. (6-3-0-0)

The Planning Commission (PC) addressed each Zoning Ordinance topic laid out in the staff report. The Commission agreed on staff's recommendation for locations of cannabis businesses within the Zoning districts. The PC agreed with staff's recommendation for cannabis use types, but discussed the possible options to allow existing non-cannabis nurseries to sell cannabis plants, for example, incidental sales of clones and seeds. The PC also agreed on staff's recommendations for quotas, buffers, and levels of discretion. However, the Commission discussed different options for equitable and geographical distribution and concentration of adult-use and medicinal retailers. And they requested that the Council refer back to the Planning Commission to discuss this issue. The Commission passed the following motions.

Motion/Second/Carried (RW/MKL) to recommend staff's proposal for cannabis businesses locations to Council. Ayes: Lacey, Beach, Martinot, Schildt, Kapla, Wrenn, Vincent, Pinto, O'Farrell. Noes: None. Abstain: None. Absent: None. (9-0-0-0)

Motion/Second/Carried (RW/BB) to recommend staff's recommendation for use types, and suggest to Council to refer back to the Planning Commission to allow incidental cannabis sales of clones and seeds at existing ornamental nurseries. Ayes: Lacey, Beach, Martinot, Schildt, Kapla, Wrenn, Vincent, Pinto, O'Farrell. Noes: None. Abstain: None. Absent: None. (9-0-0-0)

Motion/Second/Carried (CS/RW) to recommend staff's proposals on quotas (with at total of 18 storefront retailers and up to 12 adult use retailers), buffers, and levels of discretion. Request Council to refer back to Planning Commission consideration of

alternate methods of concentration and/or distribution of adult use and medical retailers including consideration of buffer between cannabis retailers, levels of discretion, and quotas. Ayes: Lacey, Beach, Schildt, Kapla, Wrenn, Vincent, Pinto, O'Farrell. Noes: Martinot. Abstain: None. Absent: None. (8-1-0-0)

**DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING
DECEMBER 5, 2018
(Partial)**

9. Action: Public Hearing: Retail Nursery Microbusiness

Staff reported that the Council voted at the September 2018 meeting to allow small Distributors and Cultivators to operate in Berkeley and to allow all cannabis businesses to operate as for-profit business. At the October 9, 2018 work session, the Council gave directions to maintain existing Retailer quotas, expand buffers for Retailers and supported the conversion of existing non-cannabis nurseries to cannabis retail nurseries. Staff described the draft ordinance, which would allow two existing nurseries to convert to Retail Nursery Microbusinesses (RNM) regardless of the number of Retailers and Cultivators in the City. RNM would be subject to the performance and development standards in place for the cannabis uses included as part of the RNM. The Commission held a public hearing, asked clarifying questions and discussed the proposed amendment.

Motion/Second/Carried (Schildt /Beach) to close the public hearing for item 9. Ayes: Martinot, Kapla, Schildt, Fong, Beach, Lacey, Wrenn, Hauser. Noes: None. Abstain: None. Absent: Pinto. (8-0-0-1)

Motion/Second/Carried (Kapla/Wrenn) to adopt proposed language and require a Use Permit for the conversion of an existing nursery to a Retail Nursery Microbusinesses. Ayes: Martinot, Kapla, Schildt, Fong, Beach, Lacey, Wrenn, Hauser. Noes: None. Abstain: None. Absent: Pinto. (8-0-0-1)

Public Comments: 4 Comments



Community Health Commission

ATTACHMENT 7

ACTION CALENDAR

September 13, 2018

To: Honorable Mayor and Members of the City Council
From: Community Health Commission
Submitted by: Nuha Afzal Khalfay, Chairperson, Community Health Commission
Subject: A Public Health Approach to the Proposed Cannabis Ordinance(s)

RECOMMENDATION

We recommend that the City Council delay the development timeline, approval, and implementation of the proposed cannabis ordinances for the City of Berkeley until the health protection and promotion measures outlined in this document have been fully integrated into the proposed ordinances, and take appropriate measures such as a moratorium to assure that the state does not issue licenses to businesses in Berkeley until such time as local policy is defined.

SUMMARY

California Proposition 64, the Adult Use Marijuana Act, permits local governments to establish regulations for the production, sale, marketing, and cultivation of marijuana for recreational use. On July 25, 2017, Mayor Arreguin and the City Council referred the development of local ordinances of non-medicinal cannabis to the City Manager and the Cannabis Commission, in order to protect public health, safety, and welfare.

Recent study findings indicate that legalization of recreational cannabis should be carried out cautiously, to prevent undue exposure of youth, pregnant women, and the expansion of problem use; that unfettered expansion and diversification of products and of marketing are not prudent; and that, like tobacco and alcohol, cannabis use may pose significant risks to public health, especially when initiated early.

In this document we take the lessons learned from the public health responses to tobacco and alcohol use and recommend limits on cannabis access, cultivation, sales and marketing in the City of Berkeley, as well as methods for investment in addressing problem cannabis usage and promoting the public's health.

FISCAL IMPACTS OF RECOMMENDATION

Limited loss in local tax revenue from the delay in implementing the relevant cannabis ordinances. Long-term savings to the Police, Fire, and Health, Housing & Community Services Departments, as well as the Berkeley Unified School District, from decreases in problem use among youth and pregnant women.

CURRENT SITUATION AND ITS EFFECTS

Based on the most reliable and up-to-date scientific evidence, while legalization can help mitigate the negative social effects of the war on drugs, excessively rapid introduction of newly legalized recreational cannabis (“cannabis”), presents a significant potential threat to the public health, safety, and welfare of the residents of Berkeley, and particularly to youth and pregnant women.

Even before legalization of adult use of cannabis, the perception of risk from cannabis consumption has dropped from 58.3% to 31.1% among youth nationally between 2000 and 2016;¹ and use during pregnancy has risen substantially between 2000 and 2014, increasing the risk of low birth weight.² Between 2009 and 2016 use in Northern California pregnant women increased from 4.2% to 7.1, in teen mothers the increase was from 12.5% to 21.8%, and in young mothers ages 18 to 24 years use rose from 9.8% to 19%.³

In 2013-2015, the prevalence of lifetime marijuana use (7 or more times) among 11th graders in the Berkeley Unified School District (BUSD) was 38%, almost double that of the state as a whole (19.2%) and substantively more than for Alameda county (22.0%),⁴ indicating that Berkeley youth have not had difficulty obtaining marijuana for recreational use. For BUSD 11th graders, 11.4% of boys and 4.4% of girls used marijuana on more than 10 days in the previous month, vs. 8.6% and 4.7% respectively, in Alameda County.⁵

In 2017, the National Academies of Sciences, Engineering and Medicine (NASEM) reviewed the available scientific evidence on the health effects of cannabis and cannabis-derived products, and while noting substantial evidence of therapeutic effectiveness of medicinal cannabis for a limited number of indications, noted evidence

¹ Johnston LD, O'Malley PM, Miech RA, Bachman JG, Schulenberg JE. *Monitoring the Future National Survey Results on Drug Use, 1975-2016: Overview, Key Findings on Adolescent Drug Use*. Ann Arbor: Institute for Social Research, The University of Michigan; 2017.

² Brown QL, Sarvet AL, Shmulewitz D, Martins SS, Wall MM, Hasin DS. Trends in Marijuana Use Among Pregnant and Nonpregnant Reproductive-Aged Women, 2002-2014. *JAMA*. 2017;317(2):207-209. doi:10.1001/jama.2016.17383.

³ Young-Wolff KC, Tucker L, Alexeeff S, et al. Trends in self-reported and biochemically tested marijuana use among pregnant females in California from 2009-2016. *JAMA*, 318(24): 2490-2491.

⁴ Kidsdata.org. *Marijuana use in lifetime, by grade level*. Accessed 12 March 18.

⁵ *Ibid*.

of association of cannabis use with harm in a wide range of areas.⁶ The NASEM study found “substantial evidence”⁷ to support the following conclusions:

- a) Initiation of use at an earlier age or more frequent use is a risk factor for the development of problem cannabis use;
- b) Maternal cannabis smoking during pregnancy is associated with low birth weight in offspring;
- c) Cannabis use is associated with increased risk of motor vehicle crashes;
- d) Cannabis use increases the risk of development of schizophrenia and other psychoses, with the highest risk among the most frequent users;
- e) Long-term cannabis smoking is associated with worse respiratory symptoms and more frequent chronic bronchitis episodes; and
- f) Increases in cannabis use frequency are associated with developing problem cannabis use.

The NASEM study found that less conclusive, but still worrisome, emerging evidence exists for a wide range of other harms, including impaired academic achievement and educational outcomes, development of substance use disorders, suicide completion, high blood pressure and increased unemployment, among others.

An additional concern is that even in states that have legalized adult use of marijuana, Federal immigration authorities are deporting immigrants (documented or undocumented) for cannabis possession, use, or working in the industry. At a time of heightened risk to the immigrant community, alerting immigrants to this additional legal hazard is important.

In light of these issues and other health effects, the Community Health Commission recommends setting a prudent and thoughtful approach to the complex issues surrounding legalization that should include strengthening the protection of youth and informing pregnant women and others on the foreseeable impacts of the legalization of adult use of recreational marijuana.

BACKGROUND

California Proposition 64, the Adult Use Marijuana Act, permits local governments to establish regulations for the production, sale, marketing and cultivation of marijuana for recreational use. On July 25, 2017, Mayor Arreguín and the City Council referred the

⁶ The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research | The National Academies Press. <https://www.nap.edu/catalog/24625/the-health-effects-of-cannabis-and-cannabinoids-the-current-state>. Accessed July 12, 2017.

⁷ ***The Academies defined Substantial Evidence as follows:*** *There is strong evidence to support or refute a statistical association between cannabis or cannabinoid use and the health endpoint of interest.*

development of local ordinances of non-medicinal cannabis to the City Manager and the Cannabis Commission, in order to protect public health, safety, and welfare.

The Community Health Commission wants to assure that the local ordinances put in place to regulate cannabis in Berkeley reflect a public health approach. We propose that the City of Berkeley's cannabis ordinances address the following issues to make sure the public's health is being protected:

RETAIL OUTLETS

- Limit retail outlets to six. Existing regulation for retail sales of medicinal marijuana limit the number of locations to six. As these six have been allowed to sell adult recreational as well as medicinal marijuana, we recommend that the City limit the total number of retail outlets for both medicinal and adult recreational use to six. We also know from tobacco that outlet density is positively correlated with youth cigarette smoking.⁸ Thus, for a city the size of Berkeley, with a population of approximately 121,240, six retail outlets are sufficient to provide a ratio of 1 outlet per 20,206 people.⁹ Los Angeles County is recommending 1 storefront outlet per 52,000 residents and Washington State started with 1:22,000 residents. If even 1-2 new retailers are allowed, they should be limited to “equity applicants.”
- Community input is needed on the decision to open any additional outlets and where these should be situated. We recommend a Conditional Use Permit to assure that the community is heard and so that the burden of retail outlets is not concentrated on one area of the City.
- Delivery-only retail establishments should only be allowed for delivery of medicinal marijuana. To reduce youth access, no additional delivery-only businesses should be allowed for adult recreational use. All sales and dispensing of Cannabis and Cannabis Products shall be conducted in-person on the Premises of the Cannabis Retailer. Off-site Delivery to the Consumer of adult use Cannabis or Cannabis Products is not allowed. Cannabis Retailing by means of Internet ordering or telephone ordering and Delivery to the Consumer service is prohibited in Berkeley.
- Any new retail outlet should have a 1,000 feet buffer from any school providing instruction in kindergarten or grades 1 through 12, Day Care Centers, parks, Youth Centers, libraries, junior colleges, colleges, or universities. The distance shall be measured by a straight line from the nearest point of the property line of the parcel on which the youth-serving facility is located to the nearest point of the property line of the parcel on which the applicant's business is located.

⁸ Finan LJ, Lipperman-Kreda S, Abadi M, et al. Tobacco outlet density and adolescents' cigarette smoking: a meta-analysis. *Tobacco Control*. Published Online First: 08 March 2018. doi: 10.1136/tobaccocontrol-2017-054065

⁹ United States Census Bureau. Quickfacts: Berkeley city, California.

www.census.gov/quickfacts/fact/table/berkeleycitycalifornia/PST045216. Accessed 14 March 18.

- Cannabis Retailers should sell only Cannabis and other Cannabis Products, produced and distributed by persons licensed by the State of California, and Cannabis Accessories. They may not sell other goods, including but not limited to food; tobacco products; alcoholic beverages; non-cannabis medicines or supplements, or items of clothing. The Cannabis Retailer shall not hold or maintain a permit as a food service establishment or cottage food establishment from the City of Berkeley. A Cannabis Retailer may not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. A Cannabis Retailer may not hold or maintain a license to sell tobacco products from the City of Berkeley or the State of California. A permit shall not be issued to authorize Cannabis Retailing in a Pharmacy.
- Lounges and other methods of on-site consumption of recreational marijuana should be prohibited. No Cannabis Product shall be smoked, ingested or otherwise consumed on the premises of a permit holder or in the public right-of-way within twenty-five feet of a Cannabis Retailer. Cannabis Retailers shall post a sign near their entrances and exits providing notice of this policy.

RESTRICTIONS ON ADVERTISING AND MARKETING

- Mirror the current BMC 20.66.030 Tobacco product advertising: No person shall place or maintain, or cause or allow to be placed or maintained any cannabis product advertising in any publicly visible location within one thousand four hundred feet of the perimeter of any school.
- No claims may be made in Advertising or Marketing materials in Berkeley for Cannabis or Cannabis Products or brands that assert such products are safe because they are regulated by the state or local licensing authority (e.g., “state-approved” or “state-licensed”). This restriction does not apply to the display of license or permit numbers where required.
- Advertising and Marketing materials in Berkeley for adult-use Cannabis or Cannabis Products or brands may not include claims of therapeutic or curative effects.
- Products that may not be sold in Berkeley may not be Advertised in Berkeley.
- Advertising and Marketing materials in Berkeley for Cannabis and Cannabis Products or brands may not be Attractive to Children or Youth.
- Advertising and Marketing materials in Berkeley may not depict activities or conditions considered risky when under the influence of Cannabis, such as operating a motorized vehicle or boat, being pregnant, or breastfeeding.

PROHIBITED PRODUCT TYPES

- (a) Cannabis Retailers should not offer for sale, or possess with intent to sell or offer for sale or use:
- i) Any Cannabis or Cannabis Product that is Attractive to Children or Youth.
 - ii) Any Cannabis or Cannabis Product with Packaging or Labeling that is Attractive to Children or Youth.
 - iii) Synthetic cannabinoid containing products.
 - iv) Cannabis flower with potency in excess of 20% THC content.
 - v) Cannabis Products with THC content in excess of 50%.
 - vi) Cannabis flower to which a Characterizing Flavor has been added.
 - vii) Cannabis Products, other than those Edible Cannabis Products noted in (b) below, to which a Characterizing Flavor has been added.
 - viii) Cannabis or Cannabis Products whose Packaging, Labeling, or Marketing materials include claims of health, therapeutic or curative effects, or claims related to “potency” (beyond listing of cannabinoid content), “strength,” “high,” or being “natural.”
 - ix) Cannabis or Cannabis Products that contain any noncannabinoid additive that would increase potency, toxicity or addictive potential, or that would create an unsafe combination with other psychoactive substances. Prohibited additives include, but are not limited to, nicotine, caffeine and alcohol [excepting a minimum of alcohol that is residual from manufacturing or required solvents for the cannabis containing product if the product’s Packaging, Labeling and Marketing make no other reference to alcoholic beverages].
 - x) Any Cannabis Product that would otherwise be classified as a potentially hazardous food (as defined in the Health and Safety Code 113871), including a food that requires time or temperature control to limit pathogenic microorganism growth or toxin formation.
 - xi) Any Cannabis-infused ready-to-drink beverages, powders, gels or other concentrates with instructions for the preparation of Cannabis-infused beverages.
 - xii) Any Cannabis product that the Health, Housing and Community Services Department determines is easily confused with a commercially available food without Cannabis.
- (b) A Cannabis Retailer may sell no more than 10 (ten) product variations (SKUs) of Edible Cannabis Products, with or without Characterizing Flavors, in the form of hard lozenges, or chocolates with no additional flavors, with individually wrapped servings not exceeding 10 mg THC, and packages not exceeding 100 mg per package.

- (c) Tinctures and other non-Edible Cannabis Products may not have Characterizing Flavors, may not exceed 1,000 mg THC per package for adult-use, and must have clear instructions and dispensing mechanism such as a marked dropper or other device for dispensing doses of 10 mg THC or less.
- (d) Cannabis or a Cannabis Product is presumed to have a Characterizing Flavor if a Manufacturer or any of the Manufacturer's agents or employees has:
- i) Made a public statement or claim that the Cannabis or Cannabis Product has or produces a Characterizing Flavor, including, but not limited to, text and/or images on the product's Labeling or Packaging that are used to explicitly or implicitly communicate information about the flavor, taste, texture or aroma of a Cannabis Product; or
 - ii) Taken actions directed to consumers that would reasonably be expected to result in consumers believing that the Cannabis or Cannabis Product imparts a Characterizing Flavor.

Every Cannabis Retailer shall maintain on the Premises the original Labeling and Packaging provided by the Manufacturer for all Cannabis Products that are sold or offered for sale by the establishment separately from the original Packaging designed for retail sale to the consumer. The original Labeling and Packaging from which the contents are sold separately shall be maintained during such time as the contents of the package are offered for sale, and may be disposed of upon the sale of the entire contents of such package.

WARNING LABELS

- The "exit packaging" for cannabis products, including edibles, should have large warning labels.

Any Opaque Exit Package provided by the retailer for Cannabis or Cannabis Product purchased by a customer must carry one of the following warnings in a black-outlined yellow box covering 20% of the front panel of the exit packaging and using at least 12 point font. Each of the warnings should be provided on an equal proportion of exit packaging provided. The Department of HHCS should review and update warnings as needed based on current scientific evidence at least every three years. Stickers are acceptable.

- a. **Are you pregnant or breastfeeding?** According to the Centers for Disease Control and Prevention (CDC), marijuana use during pregnancy can be harmful to your baby's health, including causing low birth weight and developmental problems. **GOVERNMENT HEALTH WARNING.**
- b. **Driving while high is a DUI.** Marijuana use increases your risk of motor vehicle crashes. **GOVERNMENT HEALTH WARNING.**

- c. **Not for Kids or Teens!** Starting marijuana use young or using frequently may lead to problem use and, according to the Centers for Disease Control and Prevention (CDC), may harm the developing teen brain. **GOVERNMENT HEALTH WARNING.**
- d. Marijuana use may be associated with **greater risk of developing schizophrenia** or other psychoses. Risk is highest for frequent users. **GOVERNMENT HEALTH WARNING.**
- e. Smoking marijuana long term may **make breathing problems worse.** **GOVERNMENT HEALTH WARNING.**

PRICING AND DISCOUNTING

- **PROHIBITION ON THE SALE OF CANNABIS FOR LESS THAN THE LISTED PRICE.** No Cannabis Retailer shall: (1) honor or accept a Price Reduction Instrument in any transaction related to the sale of Cannabis or Cannabis Products to a consumer; (2) sell or offer for sale Cannabis or Cannabis Products through any multi-package discount or otherwise provide to a consumer any Cannabis or Cannabis Products for less than the Listed Price in exchange for the purchase of any other Cannabis or Cannabis Product; (3) sell, sell at a discount, offer for sale, or otherwise provide any product other than Cannabis or Cannabis Products in exchange for the purchase of Cannabis or Cannabis Products; or (4) otherwise sell, offer for sale, or provide Cannabis or Cannabis Products for less than the Listed Price. In addition, Cannabis Retailers must sell, offer for sale, or provide Cannabis or Cannabis Products for the same listed price every day of the week in a given week.
- **PRICE FLOOR FOR CANNABIS AND CANNABIS PRODUCTS.** The Department of HHCS is authorized, but not required, after 5 years from the effective date of this measure, to establish minimum prices for Cannabis and Cannabis Products. If such a Price Floor is established, Cannabis Retailers may not sell Cannabis or Cannabis Products below the minimum price; City of Berkeley Department of HHCS must review the appropriateness of the Price Floor at least every two years and may adjust the Price Floors at that time to account for changes in the consumer price index, or other considerations related to reducing illegal commerce. The Department of HHCS may promulgate such rules as may be necessary for the purpose of carrying out this section.

REQUIRED IN-STORE SAFETY INFORMATION

- A Cannabis Retailer must display a warning sign prominently behind the main dispensing counter. The sign must be at least 3 feet by 3 feet and be displayed at eye height (i.e., with mid-point 5 feet above the floor).

WARNING:

1. **Are you pregnant or breastfeeding?** According to the U.S. Centers for Disease Control and Prevention (CDC), marijuana use during pregnancy can be harmful to your baby's health, including causing low birth weight and developmental problems.
2. **Driving while high is a DUI.** Marijuana use increases your risk of motor vehicle crashes.
3. **Not for Kids or Teens!** Starting marijuana use young or using frequently may lead to problem use and, according to the CDC, may harm the developing teen brain.
4. Marijuana use may be associated with **greater risk of developing schizophrenia** or other psychoses. Risk is highest for frequent users.
5. Smoking marijuana long-term may **make breathing problems worse.**

THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY

- A Cannabis Retailer must display each of the following three warning signs, which are (i) at least 2 feet wide by 1 foot tall; (ii) posted at eye height (i.e., with mid-point 5 feet above the floor); and (iii) posted prominently and conspicuously facing consumers in a location where it will be seen by all customers, such as behind a dispensing counter, check-in or check-out counter, stating in English and Spanish:
 - **ARE YOU AN IMMIGRANT? Using or possessing marijuana or working in the marijuana industry is legally risky for any noncitizen, even in California.** This includes lawful permanent residents, undocumented persons, student with visas, and others. Marijuana is illegal under federal law, and federal law controls immigration. If you need to take medical marijuana, see an immigration attorney for advice. THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY
 - **ARE YOU ON PROBATION OR PAROLE?** If you are prohibited from using drugs as a condition of your probation or parole, then possession or use of marijuana could violate your probation or parole. THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY
 - **ARE YOU A MEDICAL MARIJUANA CUSTOMER 18-20 YEARS OLD?** If you are caught possessing marijuana without medical authorization, you could face legal consequences. THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY

- The Department of HHCS shall review and, if necessary, update the text of the required warnings as needed, but no less than once every three years, based on current scientific evidence and legal information.

RESTRICTIONS ON BRANDED MERCHANDISE

- No Cannabis Business or Cannabis or Cannabis Product brand identification, including logos, trademarks or names, may be used or licensed for use on clothing, toys, games, or game equipment, or other items that are typically marketed primarily to or used primarily by persons under the age of 21, or that are Attractive to Children or Youth.

TAX PROPOSALS AND USES FOR SAID TAX

- The City of Berkeley recently reduced the tax on adult use cannabis from 10% to 5%. To be most effective at addressing the harms caused by the past criminalization of marijuana possession and to promote the public's health, we recommend in one year that the City Council raise the tax, with a ceiling of 15% of gross receipts, and an additional tax of up to one percent (1%) of the gross receipts from high potency cannabis and each high potency cannabis product cultivated, manufactured or sold by the taxpayer, multiplied by the percent of tetrahydrocannabinol (THC) content of the product above 17%. Experience from other states has shown a rapid fall in price in the first two years post-legalization, which will be likely to increase youth consumption.
- Building on the success of the Sugar Sweetened Beverage Tax and its board, we recommend that the City Council establish a Cannabis Tax Community Advisory Board of nine residents of the City of Berkeley to recommend use of tax proceeds and priorities for funding, make annual recommendations on the spending of tax proceeds, recommend appropriate efforts to evaluate previous expenditures, and to review the annual report. Spending decisions would remain with the City Council, which may choose not to accept any particular recommendation of the Cannabis Tax Community Advisory Board.
 - The Board shall have at least one public health professional, one expert in addiction or substance use prevention and treatment, one physician, a representative of a community based organization, a representative of community clinics, a school nurse or school-based mental health professional, a representative of a community based organization serving low income people, the city health officer or his or her designee. At least

two members shall be residents of communities disproportionately affected by drug-related incarceration.

- The Board shall advise and make recommendations on how to best to spend funds to the City Council, to:
 1. Prevent cannabis consumption by youth, during pregnancy or in excessive or harmful ways;
 2. Prevent other forms of substance abuse or addiction;
 3. Prevent other leading causes of illness, injury and premature death in the community whether or not arising from cannabis use; and/or
 4. Promote wellness and reduce inequity in health conditions;
 5. Reduce negative social impact of substance abuse;
 6. Reduce drug-related incarceration, including, for example:
 - i. Support to reduce new drug-related incarceration;
 - ii. Programs to assist residents in expungement or reclassification of records of marijuana convictions allowable pursuant to MAUCRSA;
 - iii. Re-entry programs for those released from incarceration to avoid recidivism; and
 - iv. Job training programs and other community-based and educational programs, especially those that will minimize drug-related incarceration.

- Recommended activities may include promoting or implementing policy, systems or environmental changes to create a healthier community or to reduce drug-related incarceration, providing education, or community-based programs serving residents of the City of Berkeley with a focus on low-income communities

RATIONALE FOR RECOMMENDATION

We are making these recommendations as we have learned from the public health experience with tobacco and alcohol that products intended for adults are often marketed and accessible to children and youth. We have also learned from the other states that have recently legalized adult use of marijuana that changes in consumption patterns and pricing may put the public's health at risk. Therefore, the Community Health Commission is making the above recommendations to safeguard the health, safety and welfare of the residents of the City of Berkeley.

ALTERNATIVE ACTIONS CONSIDERED

The alternative action is to allow the current discussion to go forward without the input of the Community Health Commission; this is not a viable option.

ENVIRONMENTAL SUSTAINABILITY

These measures are likely to reduce second hand smoke exposures from marijuana, exposure of cannabis business employees to second-hand smoke, and to delay or decrease water and electricity consumption related to cannabis production or sale.










CONTACT PERSON

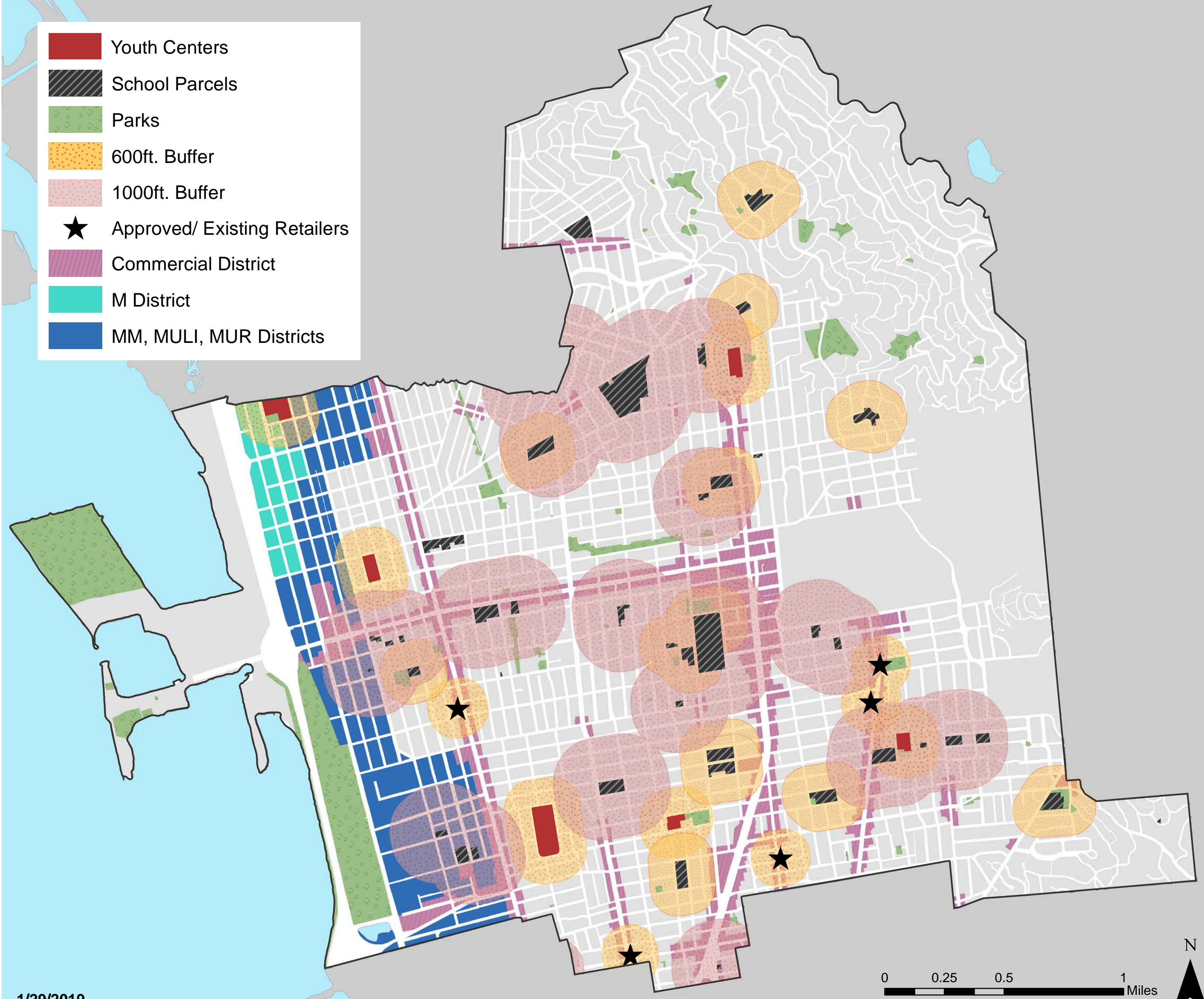
Robert Terrones, Secretary, Community Health Commission, (510) 981-5324

Attachments:

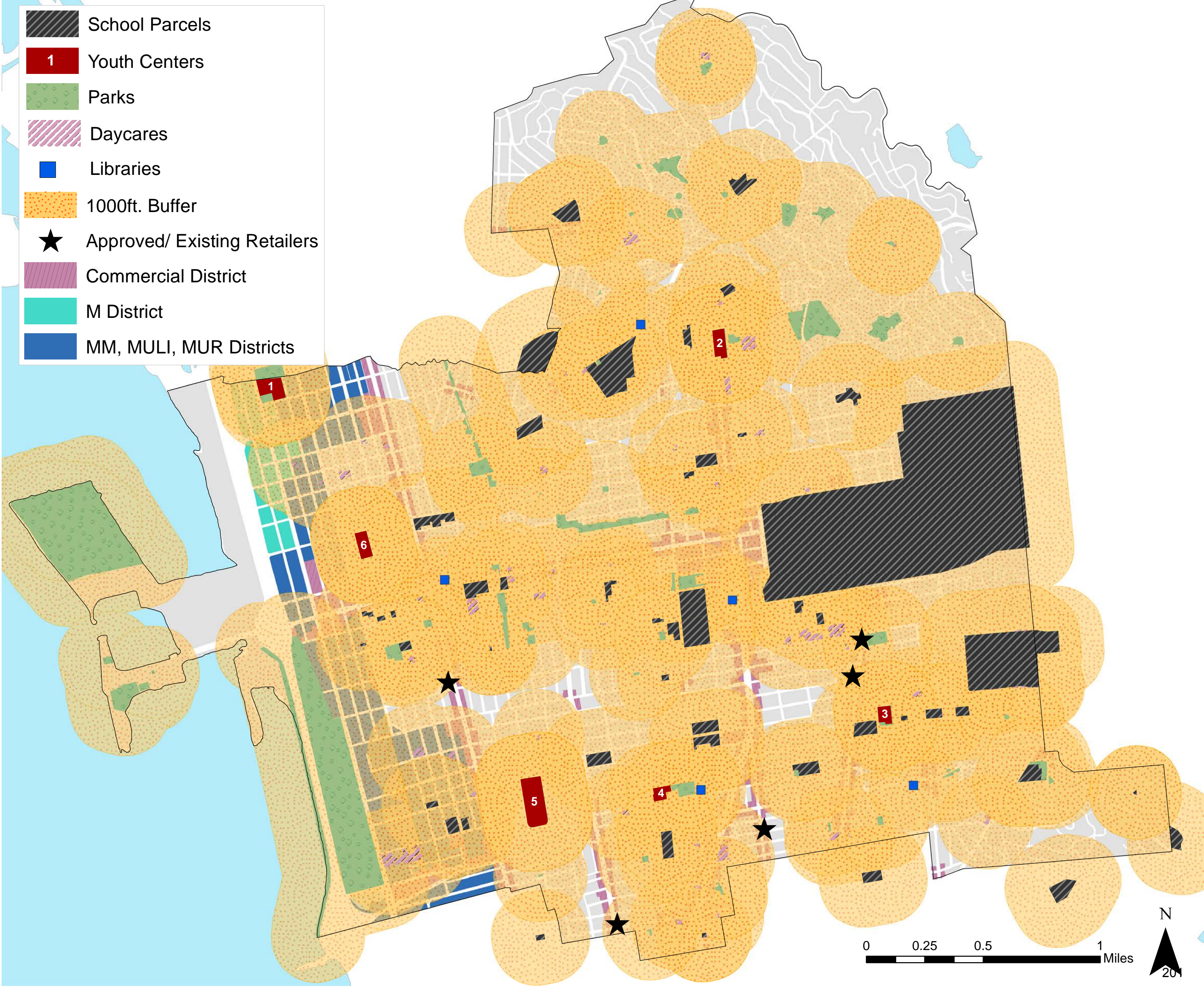
- 1: *Monitoring the Future National Survey Results on Drug Use, 1975-2016: Overview, Key Findings on Adolescent Drug Use*. Ann Arbor: Institute for Social Research, The University of Michigan; 2017.
2. Trends in Marijuana Use Among Pregnant and Nonpregnant Reproductive-Aged Women, 2002-2014. *JAMA*. 2017;317(2):207-209. doi:10.1001/jama.2016.17383.
3. Trends in self-reported and biochemically tested marijuana use among pregnant females in California from 2009-2016. *JAMA*, 318(24): 2490-2491.
4. Kidsdata.org. *Marijuana use in lifetime, by grade level*.
5. The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research | The National Academies Press.
<https://www.nap.edu/catalog/24625/the-health-effects-of-cannabis-and-cannabinoids-the-current-state>. Accessed July 12, 2017.
6. The Academies defined Substantial Evidence as follows: There is strong evidence to support or refute a statistical association between cannabis or cannabinoid use and the health endpoint of interest. Safeway (3), Berkeley Bowl (2), Whole Foods (2), Traders Joes, Berkeley Natural Grocery, Monterey Market, Star Grocery.
7. Tobacco outlet density and adolescents' cigarette smoking: a meta-analysis. *Tobacco Control*. Published Online First: 08 March 2018. doi: 10.1136/tobaccocontrol-2017-054065
8. United States Census Bureau. Quickfacts: Berkeley city, California.
www.census.gov/quickfacts/fact/table/berkeleycitycalifornia/PST045216. Accessed 14 March 18.

Alt A: 1,000 ft from Middle and High Schools








-  Youth Centers
-  School Parcels
-  Parks
-  600ft. Buffer
-  1000ft. Buffer
-  Approved/ Existing Retailers
-  Commercial District
-  M District
-  MM, MULI, MUR Districts

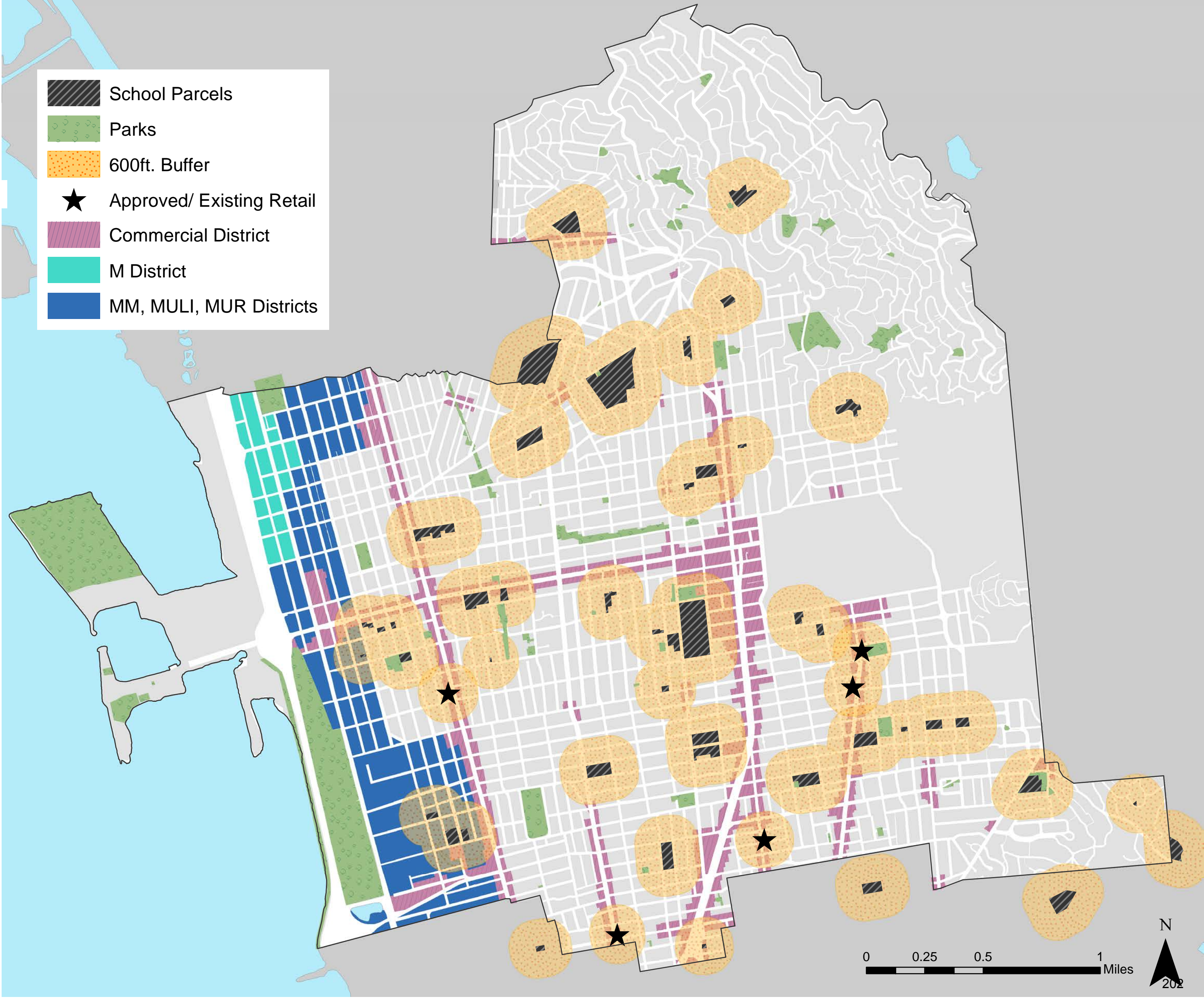


ALT B: Schools, Youth Centers, Parks, Libraries and Daycares with 1000ft Buffer



Alt C: 600ft Buffer from all Schools

-  School Parcels
-  Parks
-  600ft. Buffer
-  Approved/ Existing Retail
-  Commercial District
-  M District
-  MM, MULI, MUR Districts



0 0.25 0.5 1 Miles



**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

CONSIDERATION OF CANNABIS ORDINANCE REVISIONS

Notice is hereby given by the City Council of the City of Berkeley will conduct a public hearing to consider new ordinances to regulate cannabis businesses in the city. Changes to be considered are summarized below:

- Clarify cannabis business operational standards and development standards, such as quotas and buffers, for all businesses types;
- Revise ordinance language to reflect State regulations;
- Allow a new business type (Retail Nursery Microbusiness);
- Restrict cannabis advertising within the city; and
- Allow temporary cannabis events at Cesar Chavez Park.

The hearing will be held on, TUESDAY, MARCH 12, 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 as of **February 28, 2019**.

For further information, please contact Elizabeth Greene, Land Use Planning at 510-981-7410.

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 for further information.

Published: Berkeley Voice, March 1, 2019 **per California 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 28, 2019.

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Mark Numainville, City Clerk



Councilmember  
Cheryl Davila  
District 2

ACTION CALENDAR  
April 2, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmembers Cheryl Davila and Kate Harrison

Subject: Short-term referral to City Manager and budget referral for creation of a “vehicle dweller program” in Berkeley

RECOMMENDATION

Create a comprehensive program to support those living in their vehicles, including but not limited to RVs, to stay in Berkeley without fear of being criminalized, harassed, displaced, fined or having their vehicles confiscated, and with the support needed to have minimal impact on the neighborhoods in which they reside.

The program could include:

- Issuing 3-6 month permits for vehicles in running order with an option to renew if no validated complaints have been filed.
- Creating a registration process that identifies any additional support needed.
- Specifying a consistent, clear and transparent process for investigating complaints to determine validity and issuing warnings.
- Distributing permits equally across all parking permit districts and identifying any restrictions on parking (i.e. near schools given bus access, etc.).
- Creating an affordable sliding scale permit structure based on size of vehicle, weight, number of wheels, etc.
- Providing pump-out services, waste disposal and social services as needed.
- Creating a pump-out station for use by RVs within the City of Berkeley.
- Creating a program for up to \$3,000 per a vehicle for mechanical and sanitation repairs as well as registration and offering a grace period to get vehicles into compliance for a permit.

- Piloting a Safe Parking program modeled after Oakland's pilot: 4-8 sites with 6-10 vehicles parked at business, school, community or faith-based site parking lots, including support and sanitation services.

Vehicles with permits are exempt from Berkeley Municipal Code (BMC) Chapter 12.76 and BMC Section 14.40.120.

#### FISCAL IMPACTS OF RECOMMENDATION

\$711,000 annually. \$300,000 for vehicle repairs; \$11,000 for a pump out station; \$300,000 to pilot a safe parking program; \$100,000 annually for outreach, waste pick-up and disposal services, and mobile pump-out. Funds from HEAP or Measure P could be used for the pilot and Measure P funds could sustain and/or expand the program if successful.

#### ENVIRONMENTAL SUSTAINABILITY

Reduces public health hazards and environmental pollutants and litter due to poor sanitation and a lack of sanitation services.

#### BACKGROUND

City Council and City staff receive consistent requests from housed residents, berthers and businesses to identify a place for people to live in their vehicles that does not block city streets and for which services are provided to reduce garbage or sanitation issues. Many Berkeleyans seek to find a solution without criminalizing or abandoning those living in vehicles but would like to see a place for them where support is provided. Living in a vehicle is often safer than living on the street. Without truly affordable housing to offer those without shelter, providing a vehicle dweller park is a relatively low-cost, low-impact solution. By expanding affordable housing options in Berkeley, the goal would be to transition people into permanent housing, if desired.

Furthermore, *Robert Wilson Inc. vs. the City of Boise* asserts that until a City can offer alternative housing, it cannot criminalize people for their attempts to shelter themselves and their children. Vehicles and RVs are the affordable option for those who live and work in Berkeley, where they call home. Among those living in vehicles in Berkeley are families with young children (many under the age of 5), BUSD elementary, middle-school and high-school students, UCB and BCC students, and people who are employed but cannot afford housing. Those living in vehicles are very diverse in ethnicity, age, ability, some are employed, and some suffer from chronic or acute illness, including mental health. Vehicle dwellers reflect the same diversity of our housed community and deserve to be treated with equal care and respect.

According to an [update given by City of Berkeley staff at the February 26, 2019 City Council meeting](#), On any given night in Berkeley, there are nearly 1,000 people experiencing homelessness. While the City has implemented a number of programs to respond to this crisis, data from the homeless point-in-time count indicate that, for the

past several years, homelessness has nonetheless steadily increased. Furthermore, over the course of a year in Berkeley, nearly 2000 people experience homelessness of some duration. This number has been steadily growing at an average rate of 10% every 2 years.

Moreover, the growth of homelessness is highly disproportionate in its racial disparity: since 2006, 65% of homeless service users in Berkeley identify as Black or African American, compared to a general population of less than 10%. Similar disproportionalities arise for the representation of American Indians (.4% general, 4% homeless) and people identifying with two or more races (6.2% general, 17% homeless). African American people are more likely to be unsheltered in Berkeley (48% of the unsheltered population) than any other race—and are more than twice as likely to be unsheltered as white people (23%). This racial injustice is a direct result of decades of housing policy choices that have limited new affordable housing supply and constrained housing access for people of color in Berkeley and the greater Bay Area.

Despite this growing population, Berkeley's homeless services beds<sup>1</sup> have been serving fewer unique households over time—even after accounting for the change in system bed capacity over time. The average number of unique individuals served per system bed has dropped from a high in 2011 of over 5 to under 3 by 2017.

[According to the January 30, 2017 point-in-time count](#) conducted by the City of Berkeley, a majority of Berkeley's homeless population (664 people, or 68%) is unsheltered (living in cars, on the streets, or other places not meant for human habitation). The most recent count placed those living in their vehicles at approximately 200. The rate of long-term homelessness in Berkeley underscores the difficulty in the local housing market. Berkeley has a large chronically homeless population (long-term homelessness with a disability), with a rate (27%) almost double the national average (roughly 15%).

Among those who are experiencing their first episode of homelessness, more than a third (35%) had been homeless for a year or more; research has estimated this rate to be only about 20% nationally. And more than half (52%) reported they had become homeless because of “money issues”—the top response. Since 97% of homeless Berkeleyans reported they would be interested in permanent, affordable housing if it were available, these data collectively demonstrate that homelessness is not a “choice” in Berkeley, but rather the direct result of a competitive, expensive, supply-constrained housing market: once people lose housing in Berkeley, gaining new housing on their own is more difficult here than in other parts of the country.

### **Program Components:**

**Permit Program:** Register RVs or vehicles for 3-6 month permits at an affordable sliding scale permit structure based on size, weight and number of wheels of vehicle. Parking permits for vehicle residence should be distributed equally across parking permit areas. The City would need to identify any streets or locations not available for

vehicle residence. A contract and good neighbor policy should be signed that outlined responsibilities and expectations for the permit holder and City of Berkeley. Permits are renewable as long as contracts have not been violated and no complaints have been filed and validated. A clear, consistent, transparent and well-documented process should be established for validating or invalidating complaints, starting with a call into 311, as well as for issuing warnings.

**Pump-out, Sanitation, Mechanical & Registration, and Social Service Support**

**Services:** Create a pump-out station for use by RVs and/or contract with mobile pump-out services for Safe Parking Program (see below). In addition, sanitation services should be provided at Safe Parking Program sites picked up at permitted RVs per the waste disposal schedule for the permit location. The registration process should include social service options for permit applicants to select from. Up to \$3,000 per a vehicle, for a total amount of no more than \$300,000, should be made available for mechanical and sanitation repairs as well as registration and a time period to get vehicles in working order and registered in order to apply for a permit should be offered.

**Safe Parking Program:** The City of Oakland and Alameda County are piloting a Safe Parking program like those operating in Palo Alto and Santa Barbara. The program is being coordinated by the Interfaith Council of Alameda County who has identified four sites to house 10 vehicles each from 7:30pm to 7:30am and has sub-contracted Project WeHOPE to provide mobile showers, toilets, laundry and case management. Case managers then coordinate with local programs for integrated services.

Berkeley should follow Oakland, Palo Alto and Santa Barbara and implement a Safe Parking Program. This requires the City of Berkeley to reach out to business, faith-based, community-based or school-based sites to pilot a similar program here. The City could look into incentives for businesses that offer their lots for the program.

**CONTACTS:**

|                                          |              |
|------------------------------------------|--------------|
| Cheryl Davila, Councilmember, District 2 | 510.981.7120 |
| Kate Harrison, Councilmember, District 4 | 510.981.7140 |

**ATTACHMENTS:**

- [Safe Parking Program – Oakland](#)
- [Safe Parking Program – Santa Barbara](#)
- [Safe Parking Program – Palo Alto](#)
- RV Dweller Program – sample from Berkeley Friends on Wheels
- Code of Conduct Contract – sample from Berkeley Friends on Wheels
- Environmental protection agreements – sample from Berkeley Friends on Wheels



## **Berkeley Sanctioned Vehicle-Dweller Community Rules of Conduct**

### **Every resident must agree to these rules.**

1. A council of three people will officiate meetings for the community. They will run community meetings and post Agendas and hear of needs for “Special” meetings or reasons why no household member can attend.
2. Community Meetings will be held at least twice a month. At least one member of each household must be present at each meeting. If for some reason this cannot be feasible, it must be explained to the council at least 24 hours in advance of the meeting, except in cases of emergency.
3. No (street) drugs and/or alcohol to be used or seen in public areas of community, ever.
4. No physical, mental or emotional violence or abuse! You can rely on the community when you have conflict to support a resolution through a restorative justice process.
5. 10PM - 7AM noise curfew.
6. All **personal** gear must be kept in vehicles.  
*Exceptions:*
  - Bicycles (one bike per person) and bike trailers. (Bicycles and bike trailers should be kept either mounted on a vehicle, under a vehicle or near the door of a vehicle.
  - Outdoor furniture (tables, chairs, outdoor carpeting etc., which should instead be cleaned off each night before retiring)
7. Each home vehicle (RV, Live-in Trailer, etc.) may have up to 2 auxiliary vehicles (car, hauling trailer, etc.) associated with it.
8. All holding tanks and their valves must be in proper and legal working order (if in use/installed). There will be NO DUMPING, leaking or any other release of holding tank contents within the perimeter of the camp. (If you need help maintaining your vehicle’s valves/tanks, let someone know.)
9. Clean up after yourself.
10. If we are parked somewhere that has clearly marked parking spaces, the least that we could do is to show them that we are civilized and respectful enough to park in a way that shows consideration for others and ability to maintain order.
11. Each resident is responsible for any/all of their guests that visit the community. If a problem occurs with a guest, it is up to the person/family hosting them to address it. If it persists and the behavior doesn’t create an emergency or threat, it should be brought up

to the community at the next meeting. The community can then vote for a suspension of visitations for said guest/community member. If urgent, then the community can call for a special meeting.

12. Visiting hours will be. 8:00am to 8:00pm
13. Overnight guests are allowed 7 times in a 4 week period.
14. Each resident is responsible for their own pet's care and behavior. If your neighbor(s) help you to care for your pet(s), compensate them appropriately.
15. If the community observes a resident repeatedly neglecting or otherwise endangering the health/safety of their pet(s) (or the health/safety of members of the community as a result of the actions of their pet) and such behavior continues after no less than 2 prior warnings from neighbors, the community may contact Berkeley Animal Care Services to ensure the continuing health/safety of the pet(s) and/or the residents of the community.
16. Maintain a "Good Neighbor" policy.
  - Keep your personal area clean
  - Help your neighbors to keep your surrounding area clean
  - No major disturbances (i.e. loud pets/domestic disputes)
  - No human/animal waste left where others might step in it
  - DO NOT throw human waste away in nearby dumpsters!
  - Use non-violent communication
17. NO SHIT-STARTING!!! (Just what it sounds like.) There will be no harassment of fellow community members. If there is friction between two or more members of the community, then one/both/all of them should let one of the council members know so that they can be connected with appropriate mediation/support/conflict resolution services.
18. Do not call/threaten to call the police on members of the community. Exception: when the life or safety of a person (resident, or not) is in immediate danger.
19. Everyone must be considerate of their neighbors and their need for sleep. If a household has a personal problem to work out, they should do so without disturbing their neighbors. If the residents of any household (whether humans or pets) cause any of their neighbors to lose sleep or otherwise hinder their daily routine, the offending household's behavior will be discussed at the next community meeting, wherein their continued participation in the community will be reviewed.
20. Maintain a spirit of self-sufficiency and mutual aid. (Always be willing to help others. But, do not rely on/expect them to live your life for/with you.)

21. Each potential new resident is subject to a 5-day probationary period. After the 5-day period, there will be a community meeting to discuss making them a permanent resident or extending probation.
22. Breaking a rule constitutes a strike – three strikes and out (a minimum 30 day suspension or permanent expulsion).

**Internal governance will use the following modified consensus procedure:** Self rule with consensus. On items for approval, a desired 100% consensus is sought, with a graduated scale.

1. 70% minimum is required to approve an item, but it must be revisited monthly to revise and improve consensus percentage.
2. At 80% approval, an item gets revisited every two months to revise and improve consensus percentage.
3. At 90% approval, an item gets revisited every 6 months to revise and improve consensus.
4. If 100% approval is reached, the only way to revisit is with 51% approval to revisit.
5. If an item goes from above 70% approval to below 70% approval, it is dropped as an item unless resubmitted. [it is not part of the rules or no longer a resolution of the community.]
6. To submit, a proposal needs to be made with 10% community backing. To revisit an item earlier than scheduled requires 51% community support.
7. Items must be revised before being resubmitted.
8. Changes in the government can be made following these basic rules. Unpopular items can be revisited and lose consensus.

As the community evolves, these guidelines will allow for the government and community guidelines to evolve.

# Vehicle Dweller Proposal

## Berkeley Marina Friends on Wheels

### I. Recommendation

- a. Develop a green vehicle dweller park, similar to an RV park, for people living in their vehicles to stay without fear of harassment, displacement, fines or confiscation of their vehicles. The park would accommodate the following populations of currently unsheltered Berkeley residents:
  - Families with children
  - Single parents with children
  - Working couples and individuals
  - College Students
  - People with disabilities
  - Chronically Homeless
  - Veterans
  - People currently living in tent encampments if they acquire a vehicle <sup>11</sup>
  1. A suggested location is the vacant Hs. Lordships parking lot until another suitable location is found. Here, each household can be assigned four of the parking spaces, which is roughly 20 feet by 40 feet. Households with smaller vehicles, such as vans will only be assigned two spots, increasing occupancy. In a parking lot with 326 parking spots, there is space for roughly 81 “households.” Payment is subjected to a monthly charge between \$100 to \$300 max.
  2. Adopt self-governance rules the community has developed to establish order, as well as the pre-defined process for adding new community members. These are described in Attachment A.
- b. Develop new (or grant access to already existing) basic facilities available in the Berkeley Marina for use by residents of the Vehicle Dweller Park. These facilities include:
  - Access to drinking water
  - Public restrooms and showers
  - Laundry Room
  - Mobile Blackwater/septic tank pump-out service\*

\*Slipholders in the Berkeley Marina pay a \$25 monthly fee for this service
- c. In addition or as an alternative, adopt a vehicle-dweller on-street parking program, granting window stickers to mobile residents. The sticker fee contributes to a fund for managing street waste and preservation of public streets. The window sticker distinguishes travelers from local mobile residents. This program creates a database, ensuring the safety of all residents inside their homes and living inside vehicles on the public streets.
- d. In support of this alternative, develop a street map, marking safe parking areas for vehicle dwellers and tent intentional communities to live without harassment of police authority and the public. [An example of this map layout](#) was made in Los Angeles for each neighborhood—authored by their local police department. A map could begin to

# Vehicle Dweller Proposal

## Berkeley Marina Friends on Wheels

set an order for street parking and clearing busy public sidewalks, allowing recreational areas and shops have more available parking.

### **II. Eligibility/Membership**

The City will determine eligibility using education records, housing records, police/correctional records and employment records to verify residency or formal ties to Berkeley. Similarly to how clients of Pathways are pre-screened at local encampments, registered owners of vehicles which have already received citations for violations of Berkeley Municipal Code 6.20 will automatically be eligible for residency in the Park, rather than being asked to move to neighboring cities, where they may not have any ties. Only individuals who possess either a resident or guest Park permit and Park staff will be allowed on-site.

### **III. Fiscal Impacts of Recommendation**

1. Potential operating costs of an RV park are subjective to how many amenities and services will be provided. According to the [City of Lowell RV Park Feasibility and Development study](#), examples of these costs include, but are not limited to: security, garbage services, water, facility maintenance costs and employees' salary to work in the office, managing the RV park.
2. One or more of the residents of the Park could be trained to take on some of the administrative/maintenance duties, in exchange for a discount on their fee/rent.
3. Living inside a vehicle fosters a sense of self-sufficiency and independence. When a person has the ability to own their space, individuals can utilize their income to repay other financial debts such as credit card debt, pending collections, student loans, etc.

### **IV. Environmental Sustainability**

1. Adopting restoration and clean-up volunteer programs led by mobile residents can assist the shortage in hands at the East Bay Parks and Recreation to upkeep nature preserves. Free labor, and becomes part of our community culture.
2. Living inside a home with four wheels already has a greater impact in [reducing our personal carbon footprint more than half](#) compared to traditional households. We can help California create a model population, guiding other communities towards a path of environmental stewardship. This can bring us closer to our [California 2020 climate goals](#).
  - a. Landscape: Low-impact land development at RV parks holds a more intensely built environment at bay, even as parks weigh the conundrum of optimizing land for maximum RV sitting. *(Further Environmental Impacts, See attachment C)*
3. All vehicles in the Park must be registered with the Department of Motor Vehicles (DMV) and insured. Registered vehicles must pass smog, eliminating harmful emissions to the environment.

# Vehicle Dweller Proposal

## Berkeley Marina Friends on Wheels

### **V. Background**

At the vacant Hs. Lordships parking lot at the Berkeley Marina, families, students, elderly and disabled people have found a home: a safe place to park. The present privatization of land has defined parks, and natural preserves as the only places available for free to mankind. Economic refugees unable to earn enough cash to keep up with the present housing market have found sanctuary in these green spaces because it is often safer than parking on city streets.

Many citizens perceive the invasion of these spaces as a nuisance to the public and an environmental hazard. They only see the consequences of the problem: increased waste, safety hazards and people taking care of everyday tasks in public—such as cooking and sleeping.

California's lack of affordable housing is a major contributing factor to homelessness. The state has one of the nation's [highest rates of "poor renters,"](#) defined as people who spend at least 50% of their monthly income on housing. As a result, homeless Berkeley residents face more challenges finding housing here than elsewhere. Also, 1% of Berkeley residents are currently homeless, despite the fact that the vacancy rate in Berkeley is approximately 7.6%.

The United States Department of Housing and Urban Development (HUD) prioritizes funding for communities that can show that they have made progress in abolishing local laws that criminalize homelessness. *(See Attachment B for an excerpt of EveryOne Home's Draft Strategic Plan to End Homelessness from the section regarding Homeless Policies.)*

Without a sanctioned place for economic refugees to go, vehicles continue to be a form of sustainable housing for people who live on the streets, so that they can continue their roles in society. But without regulations and a safe parking place protecting these citizens from losing their only life possessions, whether inside backpacks or on wheels, the streets continue to be disorderly, unclean and unkempt. Where is this houseless population supposed to go?



Community Environmental Advisory Commission

ACTION CALENDAR

April 2, 2019

To: Honorable Mayor, Members of the City Council,  
 From: Community Environmental Advisory Commission (CEAC)  
 Submitted by: Michael Goldhaber, CEAC Chair  
 Subject: Effective Enforcement of Safe Lead-Paint Practices

RECOMMENDATION

Direct the City Manager to prepare two ordinances as described below and return them for vote of the City Council within two months, so that when passed the city staff can effectively intervene when painters ignore safe practices they have agreed to uphold in removing lead paint from structures built before 1978:

- 1) an ordinance adding safe lead-paint practices (already mandated by the state and federal governments) to the City Code so that such practices can be regularly enforced as part of code enforcement; [this ordinance could follow the wording of an ordinance proposed in the City of Emeryville in 2017 ({see Attachment 1}]
- 2) an ordinance in accord with California law that allows the city to be reimbursed for costs (staff time) for enforcement efforts (thus making it cost-effective for the City staff to engage in enforcement) and to automatically add fines up to \$1,000 for each day of failing to comply with orders to cease unlawful practices. This ordinance could apply generally to all municipal code violations, in addition to lead paint cleanup, to fund and reimburse stronger enforcement efforts by the City. [See Attachment 2, for legal justification].

FISCAL IMPACTS OF RECOMMENDATION:

Because the recommended actions would allow streamlining enforcement measures when lead-paint safe practices are ignored, and because the City would have a way to be reimbursed for any staff time resulting in successful litigation, the total effect would probably be a net saving for the City, quite apart from the reduced costs needed for any

kind of mitigation of lead poisoning of residents or the environment. (In addition to reimbursement for FTE's, the City is apparently permitted to level fines of up to \$1,000.00 per day for ongoing violations.)

#### CURRENT SITUATION AND ITS EFFECTS:

The only current mention of lead paint in the Municipal Code is 13.78.060 [Tenant Protections] C.7: "No Landlord of any Rental Unit located in the City of Berkeley, shall [...] in bad faith fail to follow appropriate industry standards to or protocols designed to minimize exposure to [...] lead paint [...]" The language says nothing about owners, developers, remodelers, etc., who are not acting as landlords.

The City currently requires that all permits that contain plans for construction or remodeling are stamped with the statement:

##### *Lead Hazard Warning*

*Due to the possible presence of lead-based paint, lead-safe work practices are required by law for all repairs that disturb paint in pre-1979 buildings. Failure to do so could create lead hazards that violate California Health and Safety Code, Sections 17920.10 and 105256 with potential fines for violations up to \$5,000 (Section [d] amended) or imprisonment for not more than 6 months in the county jail or both. For more information, visit [www.aclppp.org](http://www.aclppp.org)*

We understand that recipients of permits must declare that that they have read (and will heed) this warning. But at present the City staff has no adequate way to respond to reported violations of the declaration. Recently, knowledgeable residents observed neighbor's violations of safe practices and repeatedly complained to City officials but were unable to obtain any redress until CEAC did its best to intervene on their behalf, and even after that intervention, enforcement was limited. The limited investigation we were able to conduct, through the good offices of our Secretary revealed the City officials felt their hands were tied because the City has no lead-paint code of its own. Also, previously, we heard repeatedly that the City staff was reluctant to enforce because staff time such as for court appearances and evidence preparation would not be sufficiently compensated by the fines allowed by State law. We have now learned that State Law permits the City to enact an ordinance allowing FTE recovery of such staff time, as indicated Appendix 2

At its October 11, 2018 meeting, the Commission approved the above recommendation and requests that the Planning Commission bring said action to City Council for adoption.

M/S/C (Ticconi, Lim) to prepare two ordinances that when passed the city staff can effectively intervene when painters ignore safe practices they have agreed to uphold in removing lead paint from structures built before 1978. Ayes: Simmons, Varnhagen, Ticconi, and Goldhaber, Lim. Noes: None. Absent: Kapla, Gould. Abstained: Hetzel



BACKGROUND:

In 1991, Berkeley voters enacted a parcel-fee to be paid to joint Powers Authority in the County, now known Healthy Homes. There had been considerable confusion about the powers of Healthy Homes. **We restate once again: Because what was enacted to pay for this organization is a fee and not a tax, by State Law, Healthy Homes may investigate and even remediate but may not enforce laws.** In a previous resolution and in previous appearances before the City Council, CEAC has emphasized the need for City enforcement of lead-paint safety. **Only the City of Berkeley is in a position to enforce against violations that occur within its boundaries, except when CAL-OSHA choose to enforce unsafe labor practices.** Unfortunately, until July, CEAC was unaware that the city needs to update its own codes in the way described above.

ENVIRONMENTAL SUSTAINABILITY:

As we have reported previously, lead from paint can be serious ground contaminant as well as very dangerous toxin for infants and young children—or, for that matter, young animals—whose brains are still developing. Lead-paint particles insufficiently contained that land on the ground can be washed into the Bay where marine life can be contaminated.

RATIONALE FOR RECOMMENDATION:

Repeated failure by City staff to crack down on violations of State Law and of agreements freely entered into by developers and contractors with the Planning Department indicate the need for new and clear steps to make sure enforcement occurs. This, we have now learned, is clearly within the scope of the City's powers. No alternative to passing new ordinances would clarify the abilities and powers of city staff to carry out necessary enforcement of vital laws.

ALTERNATIVE ACTIONS CONSIDERED:

No alternative to passing new ordinances would clarify the abilities and powers of city staff to carry out necessary enforcement of vital rules. However, additional steps, such as better citizen education, while no substitute for adequate enforcement, would help ensure that even more violations are reported and nipped in the bud.

CITY MANAGER

See companion report.

CONTACT PERSON

Michael Goldhaber, Chair, Community Environmental Advisory Commission  
Viviana Garcia, Commission Secretary, 981-7460

## Attachments:

1. Proposed Emeryville ordinance as modified by CEAC
2. Excerpt of *California League of Cities Proceedings* from 2014

Attachment 1, PROPOSED EMERYVILLE ORDINANCE WITH OUR MODIFICATION:

“Lead-Safe Renovation, Repair and Painting Certification Required. No renovation of a building, facility or other structure shall be initiated within the city if such renovation is regulated under 40 CFR §745.82, unless the applicant for the renovation complies with all of the following:

(1) submits and complies with a sworn written statement, on a form prescribed by the Building Code Inspector, stating that:

a. individuals performing the renovation are properly trained in accordance with 40 CFR Part 745, Subpart E;

b. renovators and firms performing the renovation are certified in accordance with 40 CFR Part 745, Subpart E; and

c. the work practices in 40 CFR 745.85 will be followed during the renovation; and

(2) submits a copy of the certifications issued to renovators and firms performing renovations pursuant to 40 CFR Part 745, Subpart E.”

We recommend adding: “Violations are subject to fine” as authorized by California Government Code section 53069.4(a)(1).

Attachment 2, from a *California League of Cities Proceedings* from 2014:

“State law authorizes cities to recover much of the costs of enforcement as long as the city has adopted a proper ordinance. If done correctly, in many types of code enforcement cases, the city will have the right to recover all costs involved, from abatement costs to staff costs, attorney’s fees and incidental expenses. This can include those costs incurred in the administrative, civil, warrant and even appellate processes, among others.

“In addition, State law contains numerous provisions, some cited above, for recovery of enforcement costs when abatement action is taken pursuant to those statutes.(See, e.g., Gov. Code §§ 38772–38773.7)

“In addition, cities are authorized to enact ordinances for the recovery of attorney’s fees in “any action” to abate a nuisance, as well as abatement and administrative costs. Gov. Code § 38773.5.(See, e.g., Health & Safety. Code, § 17980.7(d)(1) [State Housing law provision providing for recovery of all costs, including investigation and enforcement costs]; Civ. Code § 3496 [providing for cost recovery in certain public nuisance cases].)——Excerpts from *California League of Cities Proceedings of May , 2014 Meeting on Protecting Neighborhood Livability....*]





Office of the City Manager

## ACTION CALENDAR

April 2, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Timothy Burroughs, Director, Planning and Development  
Kelly Wallace, Interim Director, Health, Housing, and Community Services

Subject: Companion Report: Effective Enforcement of Safe Lead-Paint Practices

### RECOMMENDATION

Based on the intent of the recommendation from the Community Environmental Advisory Commission (CEAC) for the City to expand enforcement of unsafe lead paint practices, refer to the City Manager to:

- Coordinate with the Alameda County Healthy Homes Program to clearly identify roles and responsibilities for expanding enforcement of unsafe lead practices, and to explore options for sharing resources that can support expanded local enforcement;
- Identify what resources, staff capacity, and program structure would be required to expand City enforcement of unsafe lead practices;
- Continue current work to educate building permit applicants and contractors about safe lead paint practices; train and certify all City of Berkeley Building and Housing Inspectors in lead paint safety; respond to, investigate, and enforce safe lead paint practices as needed; and administer the Public Health Division's Childhood Lead Poisoning Prevention Program; and
- Provide an update to City Council within one-year that identifies progress and next steps for expanding enforcement of unsafe lead practices

### FISCAL IMPACTS OF RECOMMENDATION

Adopting the recommendation in the City Manager's companion report would not result in any immediate fiscal impacts, but may ultimately result in a need for additional resources in order to expand enforcement of unsafe lead practices. One of the objectives of the City Manager's recommendation is to identify what additional resources will be required, and to identify potential sources of those additional funds and technical assistance. Expanded enforcement and other related efforts are not possible without additional resources.

### CURRENT SITUATION AND ITS EFFECTS

CEAC's recommendation is that the City Manager develop ordinances to add safe lead paint practice requirements to the Berkeley Municipal Code (BMC) to facilitate City

enforcement of those requirements, and to authorize the recovery of City costs and imposition of penalties for violations, which CEAC asserts would result in a net savings to the City.

Staff from the Planning Director's Office, the Building and Safety Division and Toxics Management Division, the Public Health and Environmental Health Divisions of HHCS, the Public Works Department, and the City Attorney's Office met several times to consider CEAC's recommendations and possible next steps. There was consensus that it is critical to protect Berkeley community members, particularly children, from the harmful effects of lead paint chips entering the environment. The challenge is identifying and securing the resources that would be required to expand and continually improve enforcement, outreach, and education.

The City already has authority under state law and the BMC to conduct enforcement of unsafe lead practices. Next steps are to determine resources and to refine City protocols for responding to reports of potential violations.

#### **CURRENT AUTHORITY TO ENFORCE AND LIMITATIONS TO ENFORCEMENT:**

##### *Enforcement Authority Under State Law*

State law provides the City with broad authority to require abatement of lead paint hazards and punish unsafe lead handling practices. The State Housing Law makes it unlawful for any dwelling unit to contain "lead hazards," which are defined to include "deteriorated lead-based paint, lead-contaminated dust, lead-contaminated soil, or disturbing lead-based paint without containment." (Health & Safety Code, § 17920.10.) Statue Housing Law expressly authorizes city building and health departments to enforce its provisions and further authorizes cities to designate a department or office to carry out enforcement of the statute. (*Id.*, §§ 17960, 17961, 17964.)

The Housing Law provides that the City may issue notices to abate violations within 30 days, or within a shorter period of time if "deemed necessary by the enforcement agency to prevent or remedy an immediate threat to the health and safety of the public or occupants of the structure." (Health & Safety Code, § 17980.) The City may also seek to enjoin violations of the Housing Law in court and seek court orders to abate violations of the statute. (*Id.*, §§ 17980-17982.) Violations of the Housing Law may also be prosecuted as a misdemeanor. (*Id.*, § 17995.)

Similarly, state legislation implementing the federal Residential Lead-Based Paint Hazard Reduction Act charges the State Department of Health Services with enforcement authority, which can then be delegated to the local "health department, environmental agency, housing department, or building department of any city, county, or city and county." (Health & Safety Code, § 10520, 105251(c).) Among other things, the statute requires certification for lead abatement work, and prohibits construction work "on any residential or public building in a manner that creates a lead hazard." (*Id.*,

§§ 105254-105255.) The Residential Lead-Based Paint Hazard Reduction Act authorizes the State Department of Health Services or the local enforcement agency to issue administrative orders to abate lead hazards and makes the violation of such an order an infraction punishable by a fine not to exceed \$1,000 per violation. (*Id.*, § 105256.)

#### *Enforcement Authority Under BMC*

Under the BMC, the Environmental Health Division, the Health Officer, the Building and Safety Division, and the centralized Code Enforcement Unit have authority to seek abatement of lead paint hazards under various City ordinances as well as the authority to seek abatement of lead paint hazards as a nuisance. (See, e.g., BMC § 11.36.020.E [Environmental Health Code, designating the “keeping of any building . . . which on account of its dilapidated condition . . . may endanger the life or health of residents therein” as a health and safety hazard subject to abatement]; BMC § 13.79.060.C.7 [tenant protection provisions requiring landlords to perform repairs to minimize exposure to lead paint]; BMC Chapter 19.40 [Berkeley Housing Code defining nuisance as “whatever is dangerous to human life or detrimental to health, as determined by the health officer; whatever renders air...unwholesome or detrimental to the health of human beings, as determined by the health officer].) These provisions can be enforced through abatement orders and the City’s existing administrative citation process. In addition, the City Attorney is authorized to initiate civil actions to abate public nuisances attributable to lead based hazards. (BMC §§ 1.26.010-.020.)

#### *City of Emeryville Approach*

CEAC recommends that Berkeley adopt an ordinance based on one used in the City of Emeryville, which adopted its Lead-Safe Renovation, Repair and Painting (RRP) Ordinance 17-004 on May 2, 2017. The Emeryville ordinance requires that any contractor working on a structure which falls under the federal Lead-Based Paint Poisoning Prevention In Certain Residential Structures requirements (40 CFR §745.82) submits a statement under penalty of perjury, including a valid RRP certificate number, that they are properly trained and certified, and will comply with safe lead-based paint practices. In this respect Emeryville’s practices match those used in Berkeley, but cite federal rather than state requirements.

In Emeryville as in Berkeley, however, no permit is required for the majority of painting activities. Painting, sanding, surface restoration, and similar maintenance-based repair activities do not require City permits. Further, many permits are issued to property owners acting as “owner-builders;” such owner-builder permits are also exempt from California State Licensing Board requirements and from EPA Lead Safe RRP certification requirements.

When Emeryville staff observe a possible violation of safe paint practice requirements, they generally refer the matter to the state for follow-up enforcement.

### Role of Alameda County Healthy Homes Program

The Alameda County Healthy Homes Program has funding for education and testing, through an annual fee of \$10 on all residential dwellings built before 1978. Berkeley was one of the first cities to participate in Healthy Homes, which is governed by a Joint Powers Authority (JPA). Berkeley's representative on the JPA is Councilmember Wengraf.

Despite collecting annual fees from Berkeley homeowners, Healthy Homes largely does not deploy its education and testing capacity in the City, as Berkeley receives funding from the state to support its own Childhood Lead Poisoning Prevention Program, in the Public Health Division.

More generally, throughout Alameda County the program provides customized allergen reduction services and minor home repairs to improve ventilation, in-home educational visits to reinforce asthma trigger reduction and injury prevention, lead-hazard control services, and assistance with other housing-related issues that impact health. Through the *No Cost Lead Paint Repair Funds* program, property owners in Alameda County can apply to receive funding to address lead hazards (qualification based on tenant's household income).

In the past, the Healthy Homes Program provided in-home consultations to identify lead hazards in the homes of Alameda County residents, including Berkeley residents. With reductions in funding in recent years, they have decreased capacity to provide this service.

Further, while in the past Alameda County Healthy Homes Program assisted the City of Berkeley in enforcement activities pertaining to unsafe lead work practices, it no longer enforces against such violations.

### CURRENT RESOURCES, STAFFING, AND APPROACH TO ENFORCEMENT

The City currently works in numerous ways to promote safe lead paint practices and compliance with regulations, and to investigate alleged violations.

Planning's Building and Safety Division educates every permit applicant about lead safe work practices with flyers and guides titled "Regulations on Lead," "Lead Safe During Renovation," and "Renovate Right," and by affixing stamps to all construction drawings which notify applicants of their legal responsibility for following Renovation, Repair and Painting certification practices. At permit issuance applicants are required to sign a Lead Hazard Declaration, under penalty of perjury, confirming that they understand their responsibility to implement lead-safe work practices and that that any paint disturbing activities are to be performed by or supervised by RRP certified individuals. All City Building Inspectors have attended lead safety training and received RRP certification. When violations of safe lead paint practices are observed on permitted projects by



Building or Housing Inspectors, they issue Notices of Correction to require immediate redress of any issues. All City Housing Inspectors are also RRP certified and inspect for lead safe work practices during the housing compliance inspections.

Despite these efforts, Building and Safety staff note that the RRP certification requirement is no guarantee that safe practices are actually used on the job site. Many of the largest cases of unsafe practices observed in Berkeley in recent years occurred on projects where contractors held proper certifications yet chose not to utilize the more costly safe lead paint practices.

Planning's Toxics Management Division (TMD) responds to allegations of unsafe lead paint practices, including on projects which do not require building permits (which are the majority of house painting projects). When TMD staff observe potential lead paint contamination, the painting contractor is required to provide proof of current RRP certification, and if the contractor lacks certification they are informed that paint removal must cease. Paint chips are assumed to be leaded if a home was built before 1978. The site is inspected for visible signs of paint chip contamination and, if paint chips are found, the contractor will be instructed to immediately collect all paint chips and then to properly dispose of lead containing paint chips at the Alameda County Household Hazardous Waste collection location. The contractor must also provide disposal records. After the contractor cleans the site TMD staff do a follow-up site inspection to ensure the site is free of paint debris and the contractor is continuing to follow proper RRP requirements for any further painting activities.

The City of Berkeley Public Health Division's Childhood Lead Poisoning Prevention Program (CLPPP) provides education and outreach to community members and service providers supporting children, consultations for families who are concerned with their child's blood lead level, and public health nursing case management for children whose blood lead level falls within the California Department of Public Health's defined case range (over 5 micrograms per deciliter of blood, or lower levels if found in very young children or those in publicly funded programs for low income clients) . Berkeley's CLPPP also coordinates with Alameda County Healthy Homes on lead education efforts such as the *No Cost Lead Paint Repair Funds* and community outreach efforts. For families that qualify for nursing case management services, an in-home consultation is conducted during the intake process. This includes an environmental visual review for issues that could negatively impact the health of the child and family members such as flaking and peeling paint in a house built before 1978. Education and referrals are provided when health and safety concerns are identified through the visit. Referrals to City of Berkeley programs have included the Rent Stabilization Board, the Rental Housing Safety Program, and TMD.

The City of Berkeley's approach to Code Enforcement is designed to encourage voluntary compliance, working with homeowners to address violations by making consistent progress in a financially feasible manner. Berkeley has consciously chosen

not to pursue a more punitive approach, because it is itself costly to administer and usually does not result in costs being fully recovered. Further, the burdens from a more punitive approach tend also to fall hardest on long-time and/or older homeowners who are least able to afford them. This explains why the City so rarely pursues nuisance penalties already available under the Municipal Code, as it largely proves counter-productive to the goal of achieving cooperative compliance.

### **PROPOSED NEXT STEPS**

Staff does not recommend drafting and adopting the two ordinances proposed by CEAC. The City already has authority to enforce lead paint requirements, and to levy fines and penalties as described above.

However, CEAC is correct that additional work is required to clearly articulate roles and responsibilities within the City for responding to concerns regarding unsafe lead practices and providing ongoing outreach and education. Additional resources are also required if enforcement and other activities are to be expanded. Here are two examples to further illustrate this point:

- While the Planning Department's Building and Safety Division regularly enforces safe practice requirements on projects with building permits, such projects represent a small fraction of maintenance-based house painting and similar repair work throughout the City. Additional efforts are required to address painting projects that are not subject to building permits.
- While the Planning Department's Toxics Management Division and the City's Public Health Division also respond to complaints regarding unsafe lead practices, neither division has sufficient resources or staff capacity to expand existing efforts.

Coordination with the County's Healthy Homes Program and discussions of the use of its Berkeley-specific resources must also be included in the development of an effective, comprehensive approach. Since cost-recovery through fines and penalties is not a practical method of funding comprehensive City enforcement work, a more thorough examination of staffing, costs and program structure would be required, as well as identification of an adequate revenue source.

### **BACKGROUND**

At its meeting of April 25, 2017, the City Council reviewed a proposal from CEAC to expand City enforcement of unsafe lead paint practices, particularly in households where children reside. The City Manager's April 25, 2017 companion report recommended a presentation to the City Council in coordination with the Alameda County Healthy Homes Programs to help educate Council and the community on existing efforts and potential next steps.

On July 18, 2017, the City Council convened a Worksession at which Healthy Homes, CEAC, and City staff were represented. Council expressed the need for the City and partners to identify opportunities for improved coordination and enforcement.

The March 26, 2019 CEAC recommendations and this companion report from the City Manager represent an effort to make progress toward identifying the necessary coordination and resources to expand enforcement of unsafe lead practices.

#### ENVIRONMENTAL SUSTAINABILITY

The recommendation is consistent with the City's environmental sustainability goals.

#### RATIONALE FOR RECOMMENDATION

The City already has authority to enforce lead paint practices under the various regulations cited above, so no new ordinance would be required.

The City Manager's recommendation would set in motion steps to improve and clarify coordination with the Healthy Homes Program, identify resources and next steps required to expand enforcement and other activities, and return to Council with an update within one year.

#### CONTACT PERSON

Timothy Burroughs, Director, Planning and Development Department, 510-981-7437  
Kelly Wallace, Interim Director, Health, Housing, and Community Services Department, 510-981-5107

Attachment 1: CEAC lead paint report, April 25, 2017

Attachment 2: City Manager lead paint Companion Report, April 25, 2017



Community Environmental Advisory Committee

## ACTION CALENDAR

April 25, 2017

To: Honorable Mayor and Members of the City Council  
 From: Community Environmental Advisory Commission (CEAC)  
 Submitted by: Michael Goldhaber, Chairperson, CEAC  
 Subject: Berkeley Lead Poison Prevention and Control

### RECOMMENDATION

Direct the City Manager to:

1. Implement an enforcement program as authorized by the state for lead paint hazards, at least when either:
  - a. A child under the age of four<sup>1</sup> occupies the residence or other building where lead paint hazard reduction practices are required; or
  - b. When a risk of soil contamination occurs as a result of failure to follow appropriate lead paint hazard reduction practices, including during remodels and demolition; and
2. Evaluate the program after one year of implementation and present the findings to the Community Environmental Advisory Commission, including total cost of the program, total value of fines enforced, and recent history of reported lead paint violations.<sup>2</sup>

### SUMMARY

Lead is a very serious, permanently-damaging neurotoxin, especially for growing brains. Lead paint, banned federally only in 1978, is up to 60% pure lead. Most Berkeley housing was built before the ban. The city should enforce state standards for the proper treatment of lead paint so as to keep children safe. At present, Berkeley does not.

### FISCAL IMPACTS OF RECOMMENDATION

Staff time to implement and evaluate program and costs related to enforcement. Penalties may offset some costs. In addition, CEAC would like to point out an example that Berkeley could follow:

The lead enforcement ordinance enacted by the City of San Diego implements a re-inspection fee, allowing the enforcer to assess a fee when re-inspecting a

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<sup>1</sup> A typical age for children to spend most of their play time outside the home and to be less likely to ingest dirt.

<sup>2</sup> In 2004, the City received a grant from the California Department of Health Services, Childhood Lead Poisoning Prevention Branch for funds to enforce lead hazard reduction compliance through June 30, 2006. In 2012, the City of Berkeley again received a grant to prevent and address lead hazards from unsafe renovations in Berkeley. The City of Berkeley has recognized how important lead hazard abatement is and previously applied for and received a grant for lead hazard enforcement.

building to determine compliance. Moreover, fees can be included in building permits and demolition/removal permits for the purpose of cost recovery.

### CURRENT SITUATION AND ITS EFFECTS

At present, purely out of fiscal concerns, the City does not enforce State requirements to deal with existing lead paint in such a way as to mitigate possible harms. It is known that painters, even those trained and certified, do not always comply with the rules regarding lead. An unknown number of members of sensitive groups are therefore very likely exposed and can suffer permanent, possibly severe damage.

### BACKGROUND

As recent national scandals remind us, such as in Flint, Michigan, lead is a neurotoxin and carcinogen that is harmful to everyone, especially infants, preschool children, and pregnant women. Even small amounts of lead can impact a child's learning ability, physical growth, and cause other long term issues. Aside from the tragic damage to children who are exposed to lead, the societal costs of lead poisoning are far from negligible. Although Oakland, California did not receive extensive media coverage, the lead contamination in some of its neighborhoods is far worse than that of Flint, Michigan.<sup>3</sup>

In 1978, lead was banned nationally in house paint, leaving 85% of Berkeley's current housing stock, which was built pre-1970, very likely to have lead. Lead paint, which is as much as 60% pure lead, remains in many older buildings; improper removal creates a lead hazard as defined by California Health and Safety Code §17920.<sup>4</sup>

State and Federal codes provide proper and safe procedures to remove lead paint and reduce exposure; these procedures help in reducing the release of lead paint dust or chips into living space and soils where children are at a high risk of being exposed to lead. California HSC 105255(c) authorizes the local enforcement agency to issue a cease and desist order if a lead hazard is determined to exist. Failure to comply with such an order is punishable with a fine not to exceed \$1,000. The local enforcement agency may also order the property owner to abate the lead hazard. Failure to comply is punishable with a fine not to exceed \$1,000. Subsequent violations are a misdemeanor punishable by \$5,000 fine or imprisonment for not more than 6 months. However, **there is currently no enforcement in the City of Berkeley** to ensure proper procedures are taken by workers, whether the workers even know about the procedures, or if the procedures are completely ignored, nor is there any type of recourse for those who report it.

In 2003, Senate Bill (SB) 460 took effect in California, amending State Housing Laws regarding lead hazards and enabling local jurisdictions to use any enforcement

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<sup>3</sup> Nathan McClintock, "Assessing soil lead contamination at multiple scales in Oakland, California: Implications for urban agriculture and environmental justice" Department of Geography, 507 McCone Hall, #4740, University of California, Berkeley, CA 94720, USA, 2012.

<sup>4</sup> Lead hazards are defined as a potential substandard building condition in California Department of Housing and Community Development Codes (California Health & Safety Code §17920.10). However, this designation of substandard-building condition should not be used as a reason to evict residents from their housing.

department to enforce the law. Local jurisdiction has not yet been exercised. Instead, residents continue to get ill from lead poisoning, as a dispute transpires between the city and state in regards to whose responsibility it is to enforce the law.

In 2004, the CEAC supported a staff report to the City Manager proposing a reduced enforcement plan for lead paint (Attachment 1). The City determined the economic environment were not conducive to initiating the program. In 2008 the CEAC evaluated the Alameda County Lead Poison Prevention Program (ACLPPP) and wrote the report intended for City Council (Attachment 2). The ACLPPP objected to the City Manager about the findings of the CEAC report. The CEAC report found the ACLPPP started as a successful program but due to underfunding, it had become ineffectual. The CEAC report did not go to Council. On October 13, 2015, the CEAC submitted a report to Council requesting a reduced lead paint enforcement program. The accompanying staff report recommended that CEAC review the county lead paint program and that Council should take no action at the time. The Council referred the report to the Agenda Committee for future scheduling.

The City of Berkeley Permit Service Center stamps all building permits that have plans with an electronic stamp that states:

*“Lead Hazard Warning: Due to the possible presence of lead-based paint, leadsafe work practices are required by law for all repairs that disturb paint in pre-1979 buildings. Failure to do so could create lead hazards that violate California Health and Safety Code, Sections 17920.10 and 105256 with potential fines for violations up to \$5,000 (Section [d] amended) or imprisonment for not more than 6 months in the county jail or both. For more information, visit [www.aclppp.org](http://www.aclppp.org)”*

Although the City is a member of a joint powers Lead Abatement District (LAD), the district has no enforcement powers, since it is funded by parcel fees, not taxes, and fees may not be used for enforcement. LAD correctly assumes that enforcement powers are within the authority of its member agencies. To explain, in 1991 the Cities of Berkeley, Alameda, and Oakland entered into an agreement to create an LAD, later joined by Emeryville. The member cities are severely underfunded<sup>5</sup> and provide outreach and education only when they receive lead hazard complaints. The City of Berkeley generally does not stop contractors from creating a lead hazard. When a lead hazard is reported as a complaint, no cease and desist orders are issued, allowing contractors and property owners to continue with violations. Rarely has any enforcement action been taken against a lead hazard using lead hazard laws. In the absence of a lead enforcement program, City inspectors who witness a lead hazard on the job are not required to abate the violation or issue any enforcement. It is crucial for the City of Berkeley to establish a local enforcement program that will reduce and ultimately prevent lead poisoning and environmental contamination.

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<sup>5</sup> Since LAD’s creation, the \$10 per pre-1978 dwelling fee has not been increased despite the Consumer Price Index rising by 76.8%. As a consequence, services provided by LAD have suffered dramatically, especially for lead abatement. LAD services are now mostly educational and are provided by Alameda County Healthy Homes Department (ACHHD). Currently, the ACHHD offers the City’s Public Health Division funding of around \$10,000 to assist the City’s Public Health division in casework management for high blood lead levels in children.

ENVIRONMENTAL SUSTAINABILITY

By far the most cost-effective way to prevent environmental contamination from improper removal of lead paint in renovations or demolitions is to ensure that proper procedures are followed, including by enforcement of existing state codes. Failure to employ proper procedures very likely will adversely impact the property, the soils, the workers and the tenants.

RATIONALE FOR RECOMMENDATION

Common sense requires the City enforce laws to prevent lead-paint contamination, especially when clear dangers to young children, who are otherwise likely to ingest lead in the course of normal play in exposed areas. Without enforcement, the natural inclination of many workers is to ignore or skirt sensible requirements in order to save time or money. The threat of enforcement and possible loss of certification or substantial fines can alter economic assumptions. Even one child's life ruined is too steep a price for saving the City enforcement costs.

ALTERNATIVE ACTIONS CONSIDERED

In 2003 the CEAC considered adopting these codes but the costs were considered too high. In 2008, the CEAC requested a pared-down version of the lead paint codes and council referred the recommendation to the budget process. CEAC also made a similar recommendation in 2015 and that was referred to the budget process. CEAC also considered merely posting notices of lead danger, which is already done. However, without enforcement, that is simply not enough.

On February 9, 2017, CEAC adopted this recommendation unanimously as follows: Motion/Seconded/Carried. Goldhaber/Ticconi. Ayes: Goldhaber, Varnhagen, Maslanka, Delfin-Polk and Ticconi. Noes: None. Absent: Kim Abstain: None.

CITY MANAGER

See companion report.

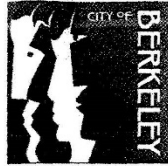
CONTACT PERSON

Nabil Al-Hadithy, Hazardous Materials Manager, Toxics Management, 510-981-7461

## Attachments:

1. June 4, 2004 Staff report to City Manager on Lead-Based Paint Mitigation Program.
2. February 2008 Draft CEAC report on Lead Poison Prevention Program.
3. October 13, 2015 CEAC and Staff reports on Berkeley Lead Poison Prevention and Control.

Attachment 1




Planning and Development Department

June 4, 2004

MEMORANDUM

To: Philip Kamlarz, City Manager

From: Daniel S. Marks, Director of Planning and Development  
 Nabil Al-Hadithy, on behalf of Lead Hazard Working Group 

Subject: Lead-Based Paint Mitigation Program

Senate Bill 460 (SB460) provides local jurisdictions with the authority to enforce codes and work practices regarding hazards from lead-based paint as established by Department of Health Services (DHS) *CCR Title 17, Housing Code* and Occupational Safety and Health codes. Implementation of these codes would create an intensive program that regulates lead hazards inside and outside buildings. The Toxics Management Division (TMD) and Health and Human Services' (HHS) Childhood Lead Poisoning Prevention program concur that lead can present a highly significant risk. HHS has an independent program that responds to children with known high lead blood levels. TMD has a program that responds to complaints prior to detection of high lead blood levels. The current TMD level of response, however, is far below what can be provided pursuant to SB460. As described in more detail below, while staff would like to do more, existing staff resources preclude establishment of a new program and increased enforcement. We would like to meet with you to discuss this further, after which a report can be prepared for the Community Environmental Advisory Commission and Councilmember Betty Olds (liaison with lead hazard joint powers association).

The TMD helped organize interdepartmental meetings to discuss the feasibility of responding to SB460. During these meetings, the City Attorney's office clarified that SB460 does not require local jurisdictions to conduct enforcement on lead hazards; rather it grants them authority, should the City choose to pursue this program.

The TMD analyzed the requirements for a lead-based paint mitigation program and outlined the attached detailed work program, which identifies response and enforcement responsibilities for staff from the following divisions and departments: TMD, Building and Safety, HHS, Housing, and Code Enforcement. The attached outline is significantly less than SB460 proposes, but meets the basic requirements of the SB460 program. Essentially, it does not require staff to purchase expensive equipment and be certified in various activities. The key to the proposed staff approach was to spread response and enforcement responsibilities between existing field staff, rather than have one department take on the entire program. Lead hazards, such as paint removal in violation of State codes, could be recognized in the field, stop work orders issued, information provided, and Notices of Violation issued if necessary by any field staff from the agencies listed above. Attachment 1 provides more information about the impact of the program to individual agencies.



Lead-Based Paint Mitigation Program  
Page 2

June 4, 2004

The estimated cost of this program in staff time is \$80,000 to \$120,000. This is equivalent to about 600 responses annually, some of which will take no more than 30 minutes to resolve, others will take 10 hours with enforcement. Existing staff cannot absorb the added work that would be generated by the new program. We are very concerned about taking on additional responsibilities that we believe we cannot fully carry out, and this expanded program would increase existing workloads. While we will continue to respond to complaints as much as possible, the proposed loss of 1 FTE to TMD in FY06 may mean that the current level of lead related responses, which is funded from the General Fund, will be curtailed in the future.

While the lead-hazard working group has concluded the program cannot be absorbed at this time, it recommends revisiting the issue if funds become available. In addition, we can provide more information about lead-based paint hazards to contractors and homeowners at the Permit Service Center.

The City's Childhood Lead Poisoning Prevention program in HHS will continue to facilitate lab reporting requirements as mandated by SB460 as well as help coordinate remediation and enforcement activities on cases that are associated with a child who has lead poisoning. HHS has also received a grant from DHS to develop the framework for a Lead Hazard Reduction Compliance and Enforcement Program. The first year of the three-year grant (\$15,000/year) is to fund planning a program for increased enforcement related to children with elevated blood levels.

SB460 Working Group included HHS, Housing, City Attorney, Planning, Code Enforcement, Building & Safety, and Toxics Mangement. Contacts include Vicki Alexander, Lyn Dailey, Alex Schneider, Wendy Cosin, Nabil Al-Hadithy, Drew Lerer, Greg Daniels, Joan MacQuarrie, Zach Cowan, and Carlos Romo.

**ATTACHMENT 1**  
**Lead Based Paint Mitigation Program - Cost Impact to City of Berkeley**

**Housing.** It is anticipated that Housing may be adversely impacted when a tenant landlord dispute requires greater time to resolve than other lead-hazard responses. The number of complaints will depend on the amount of outreach and education on this subject. It is important to inform tenants and landlords of the limited scope of this program. Clearance testing and remediation will not normally be required and most cases will end when the housing inspector has agreed to a visual clean up of the hazard.

**Code Enforcement.** The additional work on Code Enforcement is not expected to be significant. Most cases will be identified in the field or by complaint response. Most of these cases will not be high risk and can be closed after a visual inspection.

**Permit Service Center.** There will be a new signature line required for most building contracts and in addition, the PSC will provide the developer with best management and safe work guidelines as well as a list of certified contractors. The additional workload on PSC is thus limited for a couple of minutes per building permit.

**Building & Safety.** When an inspector observes a lead hazard, it will not usually be a high-risk hazard and hence can be corrected quickly. If a hazard is observed during construction and also involves children, then a high-risk condition may be present. In such cases, the Building Official may be required to issue a stop work order and a notice of substandard conditions and coordinate with PHD, EHD, and Toxics.

**Environmental Health.** The EHD will be impacted when division field inspectors observe a lead hazard in their course of work. These hazards, handled as visual corrections, will involve additional work as will referrals from another agencies which have already identified as a high-risk situation, requiring higher standards for clean up or clearance testing.

**Public Health.** The PHD will incur more work as additional sites where children are affected by lead will be identified.

**Toxics Management.** TMD will correct most lead hazards to a visual standard in industry in the course of its inspections. Where TMD will incur more work is referrals of high-risk sites. These will be managed with higher clearance testing and possibly clean up of surfaces and soils. TMD will also get its usual complaint response for such items. TMD will also be providing technical assistance for other departments. Finally, TMD will provide the necessary leaflets for identification of lead hazards, best management and safe work practices and some training for other departments.

**City Attorney.** Assistance with write-up of new lead-hazard municipal code based on SB460.

**ATTACHMENT 2**

**Senate Bill 460: Draft Outline of City of Berkeley Lead Based Paint Mitigation Program**

**Background**

The Childhood Lead Poisoning Prevention programs in place at the City of Berkeley and in Alameda County currently focus primarily on intervention when the Public Health Division (PHD) establishes a child lead poisoning case. SB 460 was written to give local jurisdictions the ability act proactively by preventing lead hazards from becoming lead poisoning cases. The City of Berkeley has had a limited lead hazard response for some years, through the Toxics Management Division. This document outlines an SB460 Lead Hazard Enforcement program that involves Health, Planning, Housing and Enforcement (481) departments.

Over the last year, several departments have met and agreed that even in an era of shrinking resources the pollution prevention goals of a lead enforcement program are necessary to consider. The goal is not to disproportionately impact any one division. This compromise creates a simple program where a large number of field staff and front desk staff, with minimal training, can provide education, mitigations and issue citations.

Code Enforcement will act as lead enforcement coordinating agency; but not all complaints or enforcements will be forwarded to Code Enforcement. Any cooperating agency taking a complaint call or finding a violation during their normal course of business is empowered to take corrective or enforcement actions and not involve Code Enforcement.

The Lead Enforcement program will require adoption of new municipal codes that will reference the relevant state codes and regulations. The proposed codes will deviate from the state in some areas where the City needs to simplify the program, such as assuming that all construction older than 1978 contains lead paint. These codes will be enforced administratively in most cases.

This proposed program outlined below attempts to break down the work expected for various City agencies.

**Lead Hazard Identification:**

Deteriorating lead based paint, lead contaminated dust, lead contaminated soil, or disturbing lead based paint without using safe work practices constitutes a lead hazard.

*For practical purposes, the City assumes that all structures built before 1978 contain lead-based paint. A contractor or property owner who disputes this may choose to conduct a lead paint investigation by state certified third party inspector/assessor.*

A lead hazard is present if any of the following occurs:

1. Uncontained lead chips or dust.
2. Use of the following prohibited methods:
  - Pressure washing without proper containment

- Open flame burning or torching
- Machine sanding or grinding without a HEPA exhaust tool
- Abrasive blasting or sandblasting
- Dry scraping
- 3. Work during adverse conditions which prohibit containment of lead chips and dust.
- 4. Work area not cleaned at end of each shift.

An inspector may issue a notice of violation (NOV) if a lead hazard is observed.

#### **Enforcement Response**

- A. Work on pre-1978 owner-occupied properties by homeowner.
  1. Primarily complaint driven.
    2. Must implement safe work practices according to BMPs.
    3. Must not create impact on children, pregnant women, neighbors or right of way.

*Inspector will distribute safe work practice leaflet and advise homeowner on corrections. Owner is required to clean up to a visual standard, see definition. Paint contaminated waste must be properly disposed of at Household Hazardous Waste facility and documentation made available to inspectors upon request.*

#### **B. Exterior Work on Non-Owner Occupied Dwellings**

1. Windows in work area must be covered with double-ply 6 mm poly to prevent dust entering building;
2. Occupants must be notified prior to commencement of work;
3. At least one lead safe entry way must be made available to occupants;
4. Workers must use proper personal protective equipment (PPE).
5. If the dwelling is a housing unit that receives federal assistance than the appropriate HUD Lead Safe Housing Rules must be followed.

*Inspector is required to issue an NOV if violations of the above are observed. In most cases, this requires a stop-work order issued by the inspector observing the violation. Penalties can be imposed if the violation is egregious or recurring. Worker protection issues should be referred to Cal OSHA.*

#### **C. Interior Work on Non-Owner Occupied Property**

1. Post "No Entry" signage in appropriate language
2. Close off work area by covering entryways with 6mm poly.
3. Remove furniture from work area.
4. Any item that cannot be removed should be wrapped in 6mm poly and sealed with duct tape.
5. Cover all carpets with 6mm poly.
6. Turn off all forced air HVAC.
7. Cover vents with 6mm poly.
8. Cover any gaps between boards or pipes in work area.
9. Clean up by HEPA vacuuming and triple rinse any solid non-porous surface with detergent and water.

10. Dispose of properly collected waste to household hazardous waste or hazardous waste contractor.
11. Retain shipping or other proof of proper disposal. Make available for City inspector on demand.

*If interior work is not carried out in the manner above, a stop work order in addition to the inspector issuing a NOV, will be ordered. The NOV will outline the work and timeline for corrections. For egregious or repeat violations, the inspector may impose a penalty*

**D. Existing Lead Hazard Conditions (Deteriorating Paint) - Rentals**

1. Inspectors will take action if they identify deteriorated paint in excess of 2 square feet in the interior, or 20 square feet on the exterior of a pre-1979 structure. Photograph for the record.

*In a dispute, the property owner may want to conduct a 3<sup>rd</sup> party investigation to determine if lead paint exists. If lead paint exists and a hazard is evident, then an NOV is issued and the owner must abate the hazard. Inspector may cite owners with egregious or recurring violations.*

If the violation is significant and if children are present the site should be referred to the TMD, Environmental Health Division (EHD), PHD, and the Building Official for a review of the case and necessary follow up.

*Serious visual contamination may require relocation and clearance before the dwelling can be reoccupied.*

**Notice of Violation**

The inspector will issue a Notice of Violation (NOV) to specify work to be done. An NOV will indicate the violation(s), and the corrective actions necessary and the time to comply. This suggests that there is follow-up by the inspector to confirm the corrections are done in a timely manner. The NOV may specify the requirement for the use of a state certified lead abatement contractor, the implementation of safe work practices, proper clean up procedures, and clearance testing. An NOV can be pre-formatted and check boxes will indicate the specific actions required. Alternatively, an NOV can be a written document to the violator. Failure to implement the NOV requirements within the specified time limit can result in citation and penalty.

**Visual Clearance**

Before completion of a job the inspector will insure that no paint debris, chips or dust is visible to the naked eye. If a neighbor's property has been contaminated then the inspector will use his/her judgment to discern between the responsible party's contamination and pre-existing contamination.

**Clearance Testing**

Interior clearance testing is a high priority activity for health professionals where there is a high risk of exposure to at risk individuals (pregnant women and children). Where a high risk

has been determined, clearance testing is recommended. The City may require a third party state certified inspector/assessor or clearance testing technician to conduct such tests. For purposes of this program, a clean up to visual clean up can be adopted for most sites that appear to be lower risk. Higher risk sites, such as a multiunit residential dwelling with children or where the lead paint has been powdered, will be referred to HHS or TMD for review and may require clearance testing.

**Other Duties**

**A. Permit Service Center**

The PSC will add a sign-off for contractors on permits that may create lead hazards such as demolition work. The contractor will be advised of the City's requirements and will provide best management practices (BMPs) and list of certified lead paint or other appropriate contractors.

**B. TMD, Building Official, and EHD.**

TMD, Building Official, and EHD would take on high risk lead enforcement referrals from other departments to consider requirements for clean up, clearance testing, and appropriate enforcement avenues. The City will use the services of the County lead program, in-house expertise, as well as third party consultants to make these determinations. Responsible party pays for third party consultants.

**Questions**

A. Should City invest in XRF? No. Even though this tool will provide a quick and cheap turnover for lead determination, it was determined that the staff time for operating and maintaining is too costly. The responsible party would either assume lead is present in a pre-1978 property or conduct a lead investigation by a state certified third party inspector.

Note: TMD posed this question to the Alameda County Childhood Lead Poisoning Prevention Program and the EHD posed the question to several county Environmental Health Divisions. They strongly advised against the city purchase of an XRF. The California Department of Health services has yet to authorize the use of an XRF to conduct clearance testing or soil sampling.

B. Should City invest in HEPA vacuum for the Tool Lending Library? No. The City should not purchase and maintain HEPA vacuums. Again this gives a great service to the community but it requires training and proper disposal of lead dust.

Note: Alameda County provides this service currently to the Berkeley Community. At this time there is no waiting period for their use. They currently maintain 8 HEPA vacuums to loan to the public.

C. Under what conditions, if any, shall the City require a lead certified painting contractor or certified inspector/assessor to conduct clearance sampling?

TMD in cooperation with PHD and EHD will make this decision on a case-by-case basis. Factors that influence the need for clearance is if children or pregnant woman are occupants, the extent of the contamination and the compliance history of the violator.

## Attachment 2



Community Environmental Advisory Commission

ACTION CALENDAR  
February , 2008

To: Honorable Mayor and  
Members of the City Council

From: Community Environmental Advisory Commission (CEAC)

Submitted by: Nabil A Al-Hadithy, Secretary, CEAC

Subject: City of Berkeley Lead Poison Prevention Program

RECOMMENDATION

CEAC recommends that :

- i. City Manager evaluates the effectiveness of the County Lead Poison Prevention Program (ACLPPP) and prepares a report to Council. If the report finds the program ineffective, the City must consider an alternative program such as a City lead poison prevention, education, and enforcement program in the Toxics Management Division.
- ii. Council approve a half time equivalent position in the mid term budget for Toxics Management Division to re-establish the Lead Poison Prevention Program and to service equipment to test for lead in toys, lunchboxes etc.

CURRENT SITUATION AND ITS EFFECTS

Millions of children have some elevated lead level due to exposure from lead paint in homes older than 1979. Poisoning often occurs with no obvious symptoms, it frequently goes unrecognized. Lead poisoning can cause learning disabilities, behavioral problems, and, at very high levels, seizures, coma, and even death. Health experts say there is no lower acceptable level of lead body burden.

City staff and the CEAC have studied the ACLPP Program over the past two years and found the services offered to the City have declined severely because of the Howard Jarvis proposition (Prop 218). The table below shows the decreased level of services provided to the City, based on input from the Alameda County LPPP.

The Joint Powers Association (JPA) exists only for the Cities of Oakland, Emeryville, Berkeley, and Alameda. The rest of county does not pay a \$10 per parcel as a property tax. The taxes collected since 1991 have not increased with cost of living and no longer pay for a reasonable level of service.

The JPA only requires a notification from the City to withdraw from the agreement.

2118 Milvia Street, Suite 300, Berkeley, CA 94704 TEL: (510) 981-7460 TDD: (510) 981-7474 FAX: (510) 981-7470

email: [toxics@ci.berkeley.ca.us](mailto:toxics@ci.berkeley.ca.us)

City Lead Poison Prevention Program  
Page 2 of 3

February , 2008

| CSA Funded Services in City of Berkeley                           | FY 03-04 Provided |                | FY 04-05 Provided |              | FY 05-06 Provided | FY 06-07 Projected Without Fee Increase |
|-------------------------------------------------------------------|-------------------|----------------|-------------------|--------------|-------------------|-----------------------------------------|
| Comprehensive Site Visit with Lead Evaluation and Lab Analysis    | 184               |                | 134- error        |              | Eliminated        | Eliminated                              |
|                                                                   | 101 Risk Asses.   | 83 Clearances. | 47 Risk Asses.    | 91 Clearance | Eliminated        |                                         |
| Basic Site Visit and/or Test Kit (In House Consultation)          | N/A               |                | N/A               |              | 110               | At Risk                                 |
| Lead Safe Painting Prep Kit                                       | 410               |                | 135               |              | 66                | At Risk                                 |
| Lead Safe Painting Class                                          | 3                 |                | 2                 |              | 3                 | At Risk                                 |
| Technical Assistance to property Owners with lead Poisoned child* | 25                |                | 32                |              | 32                | At Risk                                 |

\* Represents the total number for all four CSA Cities. Risk Asses is the performance of a detailed risk assessment. Clearances refers to work provided to clear lead paint. At Risk means that the services are only provided to children identified in the Health & Human Services as having high blood lead.

#### BACKGROUND

The adverse health effects of lead on children are one of the most severe public health impacts Berkeley faces. Berkeley has an older housing stock and the majority of housing units are considered to have some lead paint. Improper management or removal of the paint, or even natural aging and erosion of the paint, results in exposure to children and the environment. Normal weathering of outdoor lead paint results in leaching of lead into garden soils. Many homes have lead levels in soils within 3 feet of a lead paint exterior at or above hazardous waste levels. These soils present additional health impacts to children and adults.

In 2003, the legislature passed a law to make sure that children were protected from lead paint. This law allows environmental and other agencies to issue a cease and desist order and enforce against anyone creating a lead health hazard. It also allows municipalities to abate or otherwise correct the hazard. The City considered this law but decided on a fiscal conservative decision to delay the decision until the City budget improved. Staff has not considered this vital human health problem since 2003.

Recently, ACLPPP, assisted by member cities, approved hiring of a contractor to conduct a survey to gauge the support for two options that would increase the fee from \$10, per year per unit to \$30. The findings were that a \$30 increase was unlikely to win a 66.7% vote of the electorate.



City Lead Poison Prevention Program  
Page 3 of 3

February , 2008

On March 1, 2007, the Community Environmental Advisory Commission voted to fund a ¼ FTE to reestablish the Lead Poison Prevention Program Toxics Management Division that was cut over the past few years as a general fund cost saving.

The CEAC action was delayed to take input from council members. We received additional input to address other lead poison issues such as toxic toys. Since most inexpensive test sticks that test for lead are based on a colorimetric evaluation of a chemical reaction, it has been generally assumed that these tools do not work. Hence, we updated the CEAC position to include equipment for TMD staff and enough time to test non paint toxic issues. This requires an additional half FTE to include use of equipment to test toys, lunchboxes etc.

RATIONALE FOR RECOMMENDATION

The City has not voluntarily returned to the lead poison prevention issues it initiated in 2003 and we are learning that lead poison is much worse for human health and is now found in many more media, other than older paint. Waiting any longer would be to accept the adverse health effects on children and others.

FISCAL IMPACT

The cost of equipment and half time position would require a restoration of \$65,000 to TMD from General Funds.

### Attachment 3

October 13, 2015 CEAC and Staff reports on Berkeley Lead Poison Prevention and Control (Items 10a and 10b from the City Council Regular Meeting Agenda):

#### Action Calendar – New Business

10. a. [Berkeley Lead Poison Prevention and Control](#)

( [http://www.cityofberkeley.info/Clerk/City\\_Council/2015/10\\_Oct/Documents/2015-10-13\\_Item\\_10a\\_Berkeley\\_Lead\\_Poison\\_CEAC.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2015/10_Oct/Documents/2015-10-13_Item_10a_Berkeley_Lead_Poison_CEAC.aspx) )

**From: Community Environmental Advisory Commission**

**Recommendation:** Adopt a Resolution directing the City Manager to (1) implement an enforcement program per SB 460 of 2002 for lead paint hazards; (2) annually remind pediatricians and other medical providers to regularly test children between the ages of one and six for blood lead levels, and to report all blood lead levels above 5 microgram per deciliter, or if there is an increase of 1 microgram per deciliter to City Public Health for further investigation; and (3) evaluate the program after a year of implementation and present the findings to the Community Environmental Advisory Commission (CEAC).

**Financial Implications:** See report

Contact: Nabil Al-Hadithy, Commission Secretary, 981-7400

b. [Berkeley Lead Poison Prevention and Control](#)

( [http://www.cityofberkeley.info/Clerk/City\\_Council/2015/10\\_Oct/Documents/2015-10-13\\_Item\\_10b\\_Berkeley\\_Lead\\_Poison\\_CM.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2015/10_Oct/Documents/2015-10-13_Item_10b_Berkeley_Lead_Poison_CM.aspx) )

**From: City Manager**

**Recommendation:** Refer to the Community Environmental Advisory Commission (CEAC) a request to conduct a thorough review of the Alameda County Healthy Homes Department (ACHHD) Lead Poisoning Prevention Program performance measures and budget for 2010-2015 for their services in Berkeley as well as their projected activities and budget for the 2015/16 year. Take no action at this time on CEAC's recommendation in the October 13, 2015 report to implement an enforcement program per SB 460 of 2002 for lead paint hazards. In lieu of CEAC's second recommendation:

A. Annually remind Berkeley health care providers of the importance of regularly screening children between the ages of 6 months and 6 years for risk of lead poisoning, and obtaining blood lead levels at 12 and 24 months of age for those at risk, in accordance with guidelines of the American Academy of Pediatrics (AAP), Centers for Disease Control and Prevention (CDC), and California Department of Public Health (CDPH) Childhood Lead Poisoning Prevention Branch (CLPPB).

B. Continue providing public health lead poisoning prevention information, education, and evaluation by a Public Health Nurse for families of all children whose blood lead level exceeds the CDC's reference level (currently 5 µg/dL).

**Financial Implications:** See report

Contact: Eric Angstadt, Planning and Development, 981-7400





Office of the City Manager

## ACTION CALENDAR

April 25, 2017

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Carol Johnson, Director, Planning and Development Department  
 Subject: Companion Report: Berkeley Lead Poison Prevention and Control

### RECOMMENDATION

Refer to the City Manager the proposal from the Community Environmental Advisory Commission (CEAC) to evaluate the costs and feasibility of the lead paint enforcement proposal. In addition, staff will communicate with the Alameda County Healthy Homes Department on alternative ways to address enforcement and cleanup associated with lead paint hazards, and will work with Alameda County Healthy Homes Department to schedule a presentation before the City Council.

### FISCAL IMPACTS OF RECOMMENDATION

The proposal is complex and not clearly defined. Staff need time to evaluate a cost effective program. Staff will report back to Council and CEAC within 90 days.

### CURRENT SITUATION AND ITS EFFECTS

The CEAC proposes to establish an enforcement program for lead paint hazards, which are recognized as an important public health concern. Currently, lead paint violations are being handled either as a complaint response where staff give information and advice, or during inspections. Inspection staff has training on lead paint hazards and the City issues notices on permits to comply with lead paint laws.

The City rarely takes enforcement action on lead paint violators. Alameda County Healthy Homes Department is not authorized to enforce lead paint violations, and the U.S. Environmental Protection Agency (EPA) only issues violations to large contractors in the Bay Area.

The City relies on technical assistance and educational materials from the Alameda County Healthy Homes Department. If inspection staff finds lead paint hazards, they identify the hazard and require corrections during building and housing inspections. Lead paint enforcement is rarely done by the City or the EPA. The Alameda County Healthy Homes Department runs a lead paint advisory and assistance program funded by a special assessment for each unit in the cities of Oakland, Berkeley, Alameda and Emeryville, which was authorized by a joint powers agreement enacted in 1991.

The Alameda County Lead Poisoning Prevention Program was created in 1991 as a joint powers authority, prior to the state lead paint codes of SB 460 of 2002. Since 1991, the County program has not increased the \$10 per residential unit assessment fee to keep up with inflation.

On March 7, 2017 the Healthy Homes Department of Alameda County proposed to the City of Emeryville a simple enforcement process that does not require collection of evidence and laboratory analyses. The County proposes that a contractor without a Renovation, Repair and Painting Certification (RRP), that is working on a home constructed prior to 1979, will be in immediate violation and subject to a City citation. A contractor may choose to take representative samples of paint from the pre-1979 home to determine that it is not leaded paint. Homeowners are encouraged to attend RRP classes, but are not required to hold an RRP certification. Berkeley could adopt a similar ordinance to make it easier to issue citations to contractors for violations of these requirements.

#### BACKGROUND

The CEAC proposal would have staff take enforcement action if a child aged four years or less resides at the location of the lead paint hazard, to limit the impact on staff time. In general, the at-risk population from lead exposure is not limited to children aged four and under. Pregnant women, children under six, and people with compromised immunity such as the sick and elderly are all at risk.

Staff requests time to review appropriate enforcement actions and make recommendations on appropriate parameters for enforcement.

#### ENVIRONMENTAL SUSTAINABILITY

A properly outlined lead paint enforcement protocol will result better compliance with state laws and this will contribute to a continuation of the reduction in childhood lead poisoning.

#### RATIONALE FOR RECOMMENDATION

While well-motivated, the CEAC recommendation for an immediate penalties for lead paint violations requires more analysis, within the larger context of the City budget and referral prioritization processes. To enact any such program, the City would need better defined roles among City departments which could potentially conduct enforcement activities, a fully developed program budget, and an enacted fee structure to allow the City to recoup its costs.

#### CONTACT PERSON

Carol Johnson, Director, Planning and Development Department, 510-981-7401  
Nabil Al-Hadithy, Hazardous Materials Manager, Planning and Development, 510 981 7461

Attachment:

1. Alameda County Proposal for Lead Enforcement Ordinance to the City of Emeryville, March 7, 2017.



## City of Emeryville CALIFORNIA

### MEMORANDUM

**DATE:** March 7, 2017

**TO:** Carolyn Lehr, City Manager

**FROM:** Vice Mayor John J. Bauters  
Sheri Hartz, City Clerk

**SUBJECT:** Discussion Regarding Whether To Consider The Addition Of A Proposed Ordinance Related To Lead Safety

#### **RECOMMENDATION**

This item has been placed on the agenda at the request of Vice Mayor Bauters and is for discussion only. Following its discussion and consideration, Council may either take no action or may direct staff to bring the item forward for action at a subsequent meeting. Since the potential action contemplates either a new ordinance or the amendment of an existing ordinance, it would come back for a first reading and introduction at a future meeting to be determined, and then for second reading and adoption at the meeting following that.

#### **BACKGROUND**

At the City Council regular meeting on January 17, 2017, Vice Mayor Bauters requested and received majority support to add a presentation on lead safety by the Alameda County Healthy Homes Department to the March 7<sup>th</sup> agenda. He also requested a companion item for the Council to consider and determine whether it wishes to direct staff to prepare an ordinance or ordinance amendment related to lead safety regulations. This is that item.

#### **DISCUSSION**

As stated above, this item is meant for discussion only and no staff analysis has been performed at this time. Vice Mayor Bauters has submitted draft language that he proposes could be added to the Emeryville Municipal Code, along with other materials that are included as attachments to this staff report.

Included with the draft language submitted are some additional points that Vice Mayor Bauters requests be incorporated into the legislation, pending Council's concurrence.

If approved, Vice Mayor Bauters is recommending that the new requirements not be implemented for one year in order to allow sufficient time for owners of subject properties to be notified and provided with information, to ensure that any projects

Discussion - Proposed Ordinance Related To Lead Safety  
City Council Meeting | March 7, 2017  
Page 2 of 2

already in process are not delayed, and to give renovators the opportunity to get the necessary training in advance, if desired.

The draft ordinance references the Code of Federal Regulations where the full rule is located. The section that applies is 40 CFR 745, Part E, which can be found here:

[40 CFR Part 745, Subpart E - Residential Property Renovation](#)

**FISCAL IMPACT**

Fiscal impact, if any, is not known at this time.

**PREPARED BY:** Sheri Hartz, City Clerk

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



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Carolyn Lehr, City Manager

**ATTACHMENTS**

1. 2014 Letter from the EPA, Region 9, to local jurisdictions regarding the Lead-Based Paint Renovation, Repair and Painting (RRP) Rule
2. RRP Certified Renovator Training Information
3. Draft Language for possible inclusion into Emeryville's Municipal Code

Proposed addition to the Emeryville Municipal Code:

**Lead-Safe Renovation, Repair and Painting Certification Required.** No renovation of a building, facility or other structure shall be initiated within the city if such renovation is regulated under 40 CFR §745.82, unless the applicant for the renovation complies with all of the following:

- (1) submits and complies with a sworn written statement, on a form prescribed by the Building Code Inspector, stating that:
  - a. individuals performing the renovation are properly trained in accordance with 40 CFR Part 745, Subpart E;
  - b. renovators and firms performing the renovation are certified in accordance with 40 CFR Part 745, Subpart E; and
  - c. the work practices in 40 CFR 745.85 will be followed during the renovation; and
- (2) submits a copy of the certifications issued to renovators and firms performing renovations pursuant to 40 CFR Part 745, Subpart E.

Additional Recommendations:

1. Delay the date of effectiveness to May 1, 2018. The purpose would be to allow ample time for property owners, contractors and others impacted by this legislation to acquire any necessary certification prior to putting forth a project application.
2. Provide explicitly that any application for a renovation of a structure covered by the ordinance that was received prior to the date of effectiveness be exempted from this requirement, even if the actual renovation itself takes place after the date of effectiveness.
3. Require that the Building & Planning Division post and share information about this ordinance in City Hall, with relevant associations or trades, and with any person who inquires about renovations to a structure subject to the ordinance between the date of adoption and the date of effectiveness.
4. Instruct staff to mail a courtesy copy of the ordinance to the registered property owners of all residential structures constructed prior to 1978 within 120 days of adoption.
5. Coordinate 1-2 additional RRP Trainings with the Alameda County Healthy Homes Department so that interested parties can receive this training when the ordinance takes effect and help publicize the training on city media.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION IX  
 75 Hawthorne Street  
 San Francisco, CA 94105-3901

Building Official

Dear

On April 22, 2008, the U.S. Environmental Protection Agency (EPA) published a final regulation, the Lead-Based Paint Renovation, Repair and Painting (RRP) Rule, aimed at protecting the public from lead-based paint hazards associated with renovation, repair and painting activities. These activities can create hazardous lead dust when surfaces with lead paint, even from many decades ago, are disturbed. The rule requires that firms performing renovation, repair, and painting projects that disturb lead-based paint in homes, child care facilities and pre-schools built before 1978 have their firm certified by EPA (or an EPA authorized state), use certified renovators who are trained by EPA-approved training providers and follow lead-safe work practices. These requirements became fully effective April 22, 2010.

EPA and the 14 authorized states have certified more than 135,000 renovation firms that are qualified to conduct lead-safe renovations. EPA has accredited 566 RRP training providers, who have trained more than 600,000 individuals in lead-safe work practices. Despite these successes, EPA is concerned that there is a lack of public awareness of the benefits and requirements of the regulation. Many homeowners and property owners are still unaware of the dangers of lead contaminated dust that renovations can generate and many contractors continue to operate out of compliance with the regulation.

One initiative that EPA has begun to address this issue is to work with local building permitting officials to educate them about the rule and to seek their assistance in increasing compliance with the regulation. EPA is requesting permitting officials to require proof of RRP firm certification as a condition of issuing a permit for renovations of homes built before 1978. This simple requirement for renovators seeking permits to conduct renovations in pre-1978 housing benefits both consumers and contractors. Contractors benefit by our providing a fair and level playing field for contractors who are complying with the law by being certified. Homeowners and their families benefit by the reduction of lead contaminated dust generated during renovations.

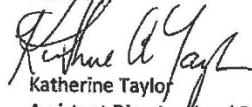
It is important to note that EPA is not requesting that building codes be updated to include the lead-safe work practices from the EPA RRP regulation, nor is EPA asking code officials to enforce or interpret the EPA RRP regulations. EPA is solely responsible for providing detailed guidance to contractors who are seeking training, certification or clarifications on when and how the RRP rule is applicable.

One way to easily alert contractors to this requirement is to provide an additional box to check on an application for a permit to renovate, repair or paint a pre-1978 residence, childcare facility or preschool, which requests verification of a contractor's certified status before issuing a permit.

*Printed on Recycled Paper*

Please let us know whether you are interested in working with us on this matter. Feel free to call our Regional Lead Coordinator, Nancy Kain (415-947-4280) or [kain.nancy@epa.gov](mailto:kain.nancy@epa.gov), with your comments and questions. Thank you for your consideration.

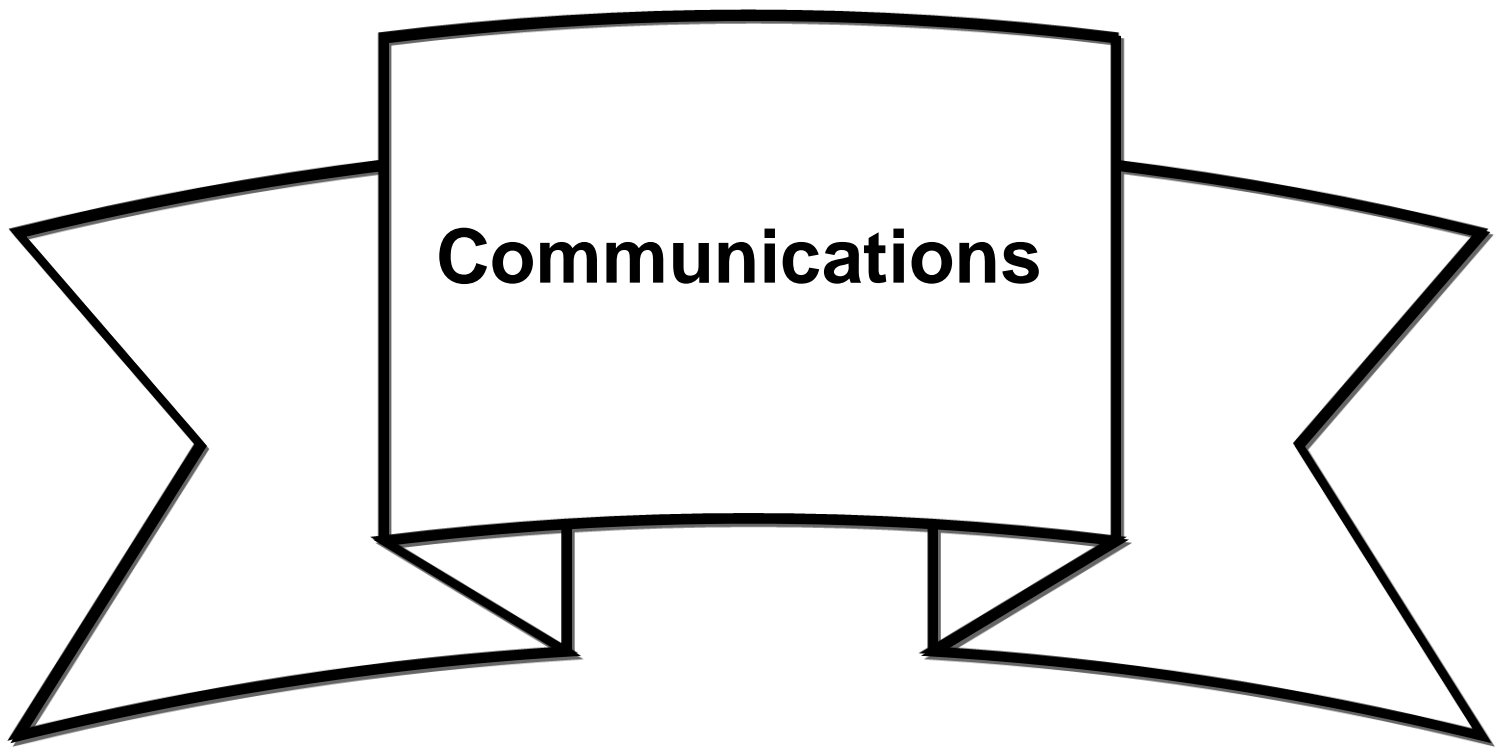
Sincerely,



Katherine Taylor  
Assistant Director, Land Division







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