

AGENDA



BERKELEY CITY COUNCIL MEETING

**Tuesday, January 28, 2020
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, (510) 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.*

1. Recognition of Young Musicians Choral Orchestra
2. Recognition of John McNamara

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. Contract: Lake Research Partners for 2020 Community Survey**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to approve a contract and any amendments with Lake Research Partners to develop and perform one (1) or two (2) surveys of registered voters, provide the associated analysis and reports, and any required polling services. The contract would be for a one year period, starting January 29, 2020 through January 31, 2021 for a total not to exceed amount of \$75,000.
Financial Implications: General Fund - \$75,000
Contact: Matthai Chakko, City Manager's Office, (510) 981-7000
- 2. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on January 28, 2020**
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: T1-Green Infrastructure Fund- \$462,000
Contact: Henry Oyekanmi, Finance, (510) 981-7300

Consent Calendar

- 3. Participation Agreement with Pension Stabilization Trust for an IRS Section 115 Trust Fund**
From: City Manager
Recommendation: Adopt a Resolution repealing and replacing Resolution No. 68,853-N.S. and authorizing the City Manager, as City's Plan Administrator, to enter into a Participation Agreement with Pension Stabilization Trust (PST), an IRS Section 115 Trust Fund; and authorizing the City's Plan Administrator to execute the legal and administrative documents on behalf of the City and to take whatever additional actions are necessary to enter into a Participation Agreement with PST.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 4. Contract No. 3200086 Amendment: Albany Community Access to Resources and Services (Albany CARES)**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to amend Contract No. 3200086 with the Albany Community Access to Resources and Services (Albany CARES) in an amount not to exceed \$50,000 for a total not to exceed contract amount of \$100,000, through June 30, 2020.
Financial Implications: Mental Health Services Act - \$50,000
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400
- 5. Jointly Apply for Infill Infrastructure Grant Funding for 1601 Oxford**
From: City Manager
Recommendation: Adopt two Resolutions that enable Satellite Affordable Housing Associates to access State of California Infill Infrastructure Grant (IIG) funds for its 1601 Oxford project by:
1. Authorizing the City Manager to prepare and submit a joint application for IIG funds; and
2. Authorizing the City Manager to take actions needed for the City's participation in the IIG program by adopting state-required terms about submitting an application, entering into the State's Standard Agreement and other documents.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400
- 6. Disposition of City-Owned, Former Redevelopment Agency Property at 1631 Fifth Street** *(Reviewed by the Land Use, Housing & Economic Development Committee)*
From: City Manager
Recommendation: Adopt a Resolution authorizing the sale of the City-owned, former Redevelopment Agency property at 1631 Fifth Street at market rate and authorizing the City Manager to contract with a real estate broker to manage the sale.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

Consent Calendar

7. **Agreement with the East Bay Municipal Utility District for Pavement Rehabilitation of Portions of Ellsworth Street and Stuart Street**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a cost sharing Agreement with the East Bay Municipal Utility District for the pavement rehabilitation on Ellsworth Street and Stuart Street during construction of the East Bay Municipal Utility District's Wildcat Pipeline Improvement Project in an amount not to exceed \$855,264 which includes a 20% contingency.
Financial Implications: Street Capital Improvement - \$855,264
Contact: Phillip Harrington, Public Works, (510) 981-6300

Council Consent Items

8. **2020 City Council Committee and Regional Body Appointments**
From: Mayor Arreguin
Recommendation: Adopt a Resolution approving the appointment of Council representatives to City Council Standing Policy Committees, Partnership Committees, Regional Bodies and Liaisons to City Boards and Commissions for a one-year term ending January 31, 2021 or until new appointments are made.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, (510) 981-7100
9. **Support the "New Border Vision" to expand public safety, protect human rights, and welcome people to our city**
From: Mayor Arreguin and Councilmembers Harrison, Hahn, and Robinson
Recommendation: Adopt a resolution supporting the "New Border Vision", a 21st century border policy that begins with the belief that migrants are part of the human family and should be treated with dignity and respect. Send a copy of the Resolution to U.S. Senators Dianne Feinstein and Kamala Harris, Congresswoman Barbara Lee and President Donald Trump.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, (510) 981-7100
10. **Dorothy Day House First Annual Fundraiser: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**
From: Councilmember Davila
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$150 from Councilmember Cheryl Davila, to Dorothy Day House for their First Annual Fundraiser on February 7, 2020 with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute.
Financial Implications: Councilmember's Discretionary Funds - \$150
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

Council Consent Items

11. Letter in Support of a Dedicated Bus Lane on the Bay Bridge

From: Councilmember Robinson and Mayor Arreguin

Recommendation: Send a letter to the California Department of Transportation (Caltrans), the Metropolitan Transportation Commission (MTC), Assemblymember Buffy Wicks, Assemblymember Rob Bonta, Assemblymember Jim Frazier, State Senator Nancy Skinner, and Senator Jim Beall in support of the reinstatement of a dedicated bus lane on the San Francisco-Oakland Bay Bridge.

Financial Implications: See report

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

Action Calendar

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

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

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

Action Calendar – Public Hearings

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

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

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.

Action Calendar – Public Hearings

12. Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, provide direction regarding proposed ordinance language alternatives and take the following action: Adopt the first reading of five ordinances to amend the Berkeley Municipal Code (BMC) Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F which would:

- A. Allow new business types (Delivery-Only Retailers, Consumption Lounges);
- B. Allow Retailers to continue to operate as Microbusinesses;
- C. Clarify cannabis business operational standards and development standards, such as quotas and buffers, for Storefront Retailers;
- D. Allow more opportunities for Commercial Cultivation by expanding location options; and
- E. Protect the health of the general public and youth with additional advertising, signage and sales regulations.

Financial Implications: See report

Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

Action Calendar – Old Business

13. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras *(Continued from December 3, 2019. Item contains supplemental material.)*

From: City Manager

Recommendation: Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.

Financial Implications: None

Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000

14. goBerkeley Residential Shared Parking Pilot Project Update and General Program Update *(Continued from December 3, 2019 and January 14, 2020.)*

From: City Manager

Recommendation: Receive a presentation providing an update on the Residential Shared Parking Pilot project and the goBerkeley program, and offer any comments to staff on the implementation of the project.

Financial Implications: None

Contact: Phillip Harrington, Public Works, (510) 981-6300

Council Action Items

15. Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours

From: Councilmember Kesarwani, Mayor Arreguin, and Councilmember Harrison

Recommendation: Adopt a resolution to allow recipients of a three-month “Grace Period” permit for safe RV parking to park overnight during non-business hours in designated City-owned parking lots pursuant to California Vehicle Code Section 21107.8(a)(1).

The resolution authorizes the City Manager to determine appropriate City-owned parking lots, with consideration for safe ingress and egress, accessibility of restroom facilities, and other health and safety considerations.

Financial Implications: See report

Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

Information Reports

16. Public Health Division’s Recommendations on Cannabis

From: City Manager

Contact: Kelly Wallace, Housing and Community Services, (510) 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 (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

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



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

~~~~~  
***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 January 16, 2020.***

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

Mark Numainville, City Clerk

## Communications

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

### **Item #12: Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F**

1. Elizabeth Starr
2. Carol Denney

## **BART MOU**

3. North Berkeley Now!

## **Cashless Business'**

4. Cassia

## **5G/Telecom**

5. Vivian Warkentin

6. Max Ventura

7. Aria Cahir

8. Alexander Benn

9. Larry Rail

10. Charlie Schad

## **Barbara Ann White Recognition**

11. Mansour Id-deen

## **Homelessness/Encampments**

12. Liz Werner

13. Lori Pottinger

## **Echo Campground**

14. Sage Linda Spatz

## **E-Scooters**

15. Vivian Warkentin

## **The Next Power Outage**

16. David Peattie

## **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  
January 28, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Matthai Chakko, Assistant to the City Manager  
 Subject: Contract: Lake Research Partners for 2020 Community Survey

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to approve a contract and any amendments with Lake Research Partners to develop and perform one (1) or two (2) surveys of registered voters, provide the associated analysis and reports, and any required polling services. The contract would be for a one year period, starting January 29, 2020 through January 31, 2021 for a total not to exceed amount of \$75,000.

FISCAL IMPACTS OF RECOMMENDATION

Funds for the 2020 Community Survey are allocated in the General Fund in the not to exceed amount of \$75,000 (011-21-201-000-0000-000-412-612990).

CURRENT SITUATION AND ITS EFFECTS

The recommendation of Lake Research Partners for this contract is based on their response to Request for Proposals (RFP) Specification Number (Spec No.) 20-11359-C for the 2020 Community Survey and evidence of its ability to fulfill the Scope of Services. The City received and staff analyzed three responses to the RFP.

By supplying data to inform service delivery, the 2020 Community Survey supports the Strategic Plan goal to be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

BACKGROUND

The City Manager's Office oversees a bi-annual community survey to help determine public opinions regarding measures that may be considered for the November ballot.

In December 2019, the City released RFP Spec No. 20-11359-C for the 2020 Community Survey. A panel of City staff performed a review of the submitted proposals and selected Lake Research Partners based on its ability to best meet the selection criteria. This included demonstrated understanding of the scope of services and approach, qualifications and previous experience of key staff, references, and cost. The Lake Research Partners proposal addressed all of the criteria and the panel found them to be qualified and the best selection for this City contract.

ENVIRONMENTAL SUSTAINABILITY

This survey will be conducted via telephone and/or text and will not be administered in paper form. As such, it reduces the use of paper which supports the City's environmental sustainability goal to achieve zero waste sent to landfills.

RATIONALE FOR RECOMMENDATION

The response submitted by Lake Research Partners was ranked highest and represents the best overall value to the City.

ALTERNATIVE ACTIONS CONSIDERED

The City could choose to put measures on the ballot without the assistance of a professional survey consultant or not put any measures on the ballot.

CONTACT PERSON

Matthai Chakko, Assistant to the City Manager, 981-7008

Attachments:

1: Resolution



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

CONTRACT: LAKE RESEARCH PARTNERS FOR 2020 COMMUNITY SURVEY

WHEREAS, the City Manager's Office oversees a bi-annual community survey to help determine public opinions regarding measures that may be considered for the November ballot; and

WHEREAS, a Request for Proposals (RFP) Specification Number 20-11359-C for the 2020 Community Survey was released in December 2019, and Lake Research Partners submitted a proposal in response to the RFP, which was evaluated and determined to be responsive in meeting all aspects of the scope of work and selection criteria and the best selection for this contract; and

WHEREAS, funds in the amount of \$75,000 per year to cover this expense are budgeted in the General Fund account 011-21-201-000-0000-000-412-612990.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with Lake Research Partners for the contract period of January 29, 2020 through January 31, 2021 in an amount not to exceed \$75,000. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
January 28, 2020

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 January 28, 2020

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 \$462,000.

| <u>PROJECT</u>          | <u>Fund</u> | <u>Source</u>       | <u>Amount</u>    |
|-------------------------|-------------|---------------------|------------------|
| T1-Green Infrastructure | 511         | T1 – Infrastructure | \$462,000        |
| <b>Total:</b>           |             |                     | <b>\$462,000</b> |

CURRENT SITUATION AND ITS EFFECTS

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

Formal Bid Solicitations and Request for Proposals  
Scheduled for Possible Issuance After Council  
Approval on January 21, 2020

CONSENT CALENDAR  
January 28, 2020

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.

RATIONALE FOR RECOMMENDATION

Need for the services.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Darryl Sweet, General Services Manager, Finance, 510-981-7329

Attachments:

- 1: Formal Bid Solicitations and Request for Proposals Scheduled For Possible Issuance After Council Approval on January 28, 2020
  - a) T1-Green Infrastructure

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

DATE SUBMITTED: January 28, 2020

| SPECIFICATION NO.  | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                | ESTIMATED COST   | BUDGET CODE TO BE CHARGED                           | DEPT. / DIVISION | CONTACT NAME & PHONE         |
|--------------------|-------------------------------------------------|----------------------|--------------------------|-----------------------------------------------------------------------------|------------------|-----------------------------------------------------|------------------|------------------------------|
| 20-11387-C         | T1-Green Infrastructure                         | 1/29/2020            | 2/22/2020                | Install Bio Swales, Rain Gardens & Pervious Pavers for cleaning Storm Water | \$462,000        | 511-54-623-675-0000-000-431-665120<br>(PWT1GI 1906) | PW/Eng           | Srinivas Muktevi<br>981-6402 |
| <b>DEPT. TOTAL</b> |                                                 |                      |                          |                                                                             | <b>\$462,000</b> |                                                     |                  |                              |
| <b>GRAND TOTAL</b> |                                                 |                      |                          |                                                                             | <b>\$462,000</b> |                                                     |                  |                              |





Office of the City Manager

CONSENT CALENDAR

January 28, 2020

To: Honorable Mayor and Members of the City Council  
 From: Henry Oyekanmi, Director, Finance Department  
 Subject: Participation Agreement with Pension Stabilization Trust for an IRS Section 115 Trust Fund

RECOMMENDATION

Adopt a Resolution repealing and replacing Resolution 68,853-N.S. and authorizing the City Manager, as City's Plan Administrator, to enter into a Participation Agreement with Pension Stabilization Trust (PST), an IRS Section 115 Trust Fund; and authorizing the City's Plan Administrator to execute the legal and administrative documents on behalf of the City and to take whatever additional actions are necessary to enter into a Participation Agreement with PST.

FINANCIAL IMPLICATIONS

Joining PST should result in better investment returns than those available using the investment policies for the City's pooled investments.

CURRENT SITUATION AND ITS EFFECTS

PST is a Section 115 multiple employer trust established by one or more municipalities for the funding and payment of their obligations under employee pension plans. The Board of Authority, which established the trust, has also signed agreements with two service providers to the trust, as described below and attached.

1. Trust Administrative Services Agreement with BTC. BTC acts as discretionary trustee to PST, with fiduciary oversight and authority over the operations and management of the trust, and with duties as set forth in the Agreement (attached).
2. Program Services Agreement with Keenan. Keenan provides administrative services to PST as set forth in the Agreement (attached).

The Board of Authority has also executed an Investment Policy Statement, establishing a comprehensive strategy for the acceptance and accumulation of invested assets under the PST (attached).

After the City Council approves the resolution to enter into a Participation Agreement with PST, the following next steps need to be taken:

- Execute the Participation Agreement whereby the City becomes a participant in the PST.
- Execute the Member Agreement whereby the City appoints a member to the PST Board of Authority.

### BACKGROUND

At the May 14, 2019 Council meeting, Council adopted Resolution No. 68,853-N.S. authorizing the City's Plan Administrator to execute the legal and administrative documents on behalf of the City and to take whatever additional actions are necessary to establish a Section 115 trust fund, establish the authority for the management of the Section 115 investments, develop investment policies for the Section 115 trust fund, and Select an initial model investment portfolio from the choices provided.

After appropriate City staff scrutiny and opportune clarifications from Keenan Financial Services, it was discovered that Resolution No. 68,853-N.S. imprecisely represented the facts as the City will not establish an IRS Section 115 Trust Fund but join PST, a pre-existing fund, through a Participation Agreement. As a consequence, City's Plan Administrator will execute the Participation Agreement whereby the City becomes a participant in the PST and will execute a Member Agreement whereby the City appoints a member to the PST Board of Authority.

### ENVIRONMENTAL SUSTAINABILITY

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

### RATIONAL FOR RECOMMENDATION

An adequately funded Section 115 Trust will help to offset the financial market volatilities and smoothen CalPERS employer retirement contributions. In addition, joining PST should result in better investment returns as opposed to those available using the investment policies for the City's pooled investments.

### ALTERNATIVE ACTIONS CONSIDERED

Not to join the IRS Section 115 Trust Fund.

### CONTACT PERSON

Henry Oyekanmi, Finance, (510) 981-7326

### Attachments:

#### 1. Resolution

Exhibit A: Pension Stabilization Trust for California Municipalities Program Service Agreement

Exhibit B: Pension Stabilization Trust for California Investment Policy Statement

Exhibit C: Amended and Restated Trust Administrative Service Agreement

#### 2. Staff Report May 14, 2019



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

REPEAL AND REPLACE RESOLUTION 68,853-N.S. AND CONTRACT WITH KEENAN FINANCIAL SERVICES TO ENTER INTO A PARTICIPATION AGREEMENT WITH PENSION STABILIZATION TRUST

WHEREAS, on May 14, 2019 Council meeting, Council adopted Resolution No. 68,853-N.S. authorizing the City's Plan Administrator to execute the legal and administrative documents on behalf of the City and to take whatever additional actions are necessary to establish a Section 115 trust fund, establish the authority for the management of the Section 115 investments, develop investment policies for the Section 115 trust fund, and Select an initial model investment portfolio from the choices provided; and

WHEREAS, during Contract review City staff discovered that Resolution No. 68,853-N.S. imprecisely represented the facts as the City will not establish an IRS Section 115 Trust Fund but join PST, a pre-existing fund, through a Participation Agreement; and

WHEREAS, Pension Stabilization Trust is a Section 115 multiple employer trust established by one or more municipalities for the funding and payment of their obligations under employee pension plans. The Board of Authority has executed an Investment Policy Statement, establishing a comprehensive strategy for the acceptance and accumulation of invested assets under the PST. The Board of Authority, which established the trust, has also signed agreements with two service providers to the trust, Keenan (program administrator) and BTC (discretionary trustee.)

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to enter into a Participation Agreement with Pension Stabilization Trust.

BE IT FURTHER RESOLVED that as originally authorized with Resolution No. 68,853-N.S., the City Manager is authorized to execute a contract, and any amendments, with Keenan Financial Services for the purposes of entering into a Participation Agreement with Pension Stabilization Trust.

BE IT FURTHER RESOLVED that the City's Plan Administrator is hereby authorized to execute the legal and administrative documents on behalf of the City and to take whatever additional actions are necessary to enter into a Participation Agreement with Pension Stabilization Trust.

Exhibits:

Exhibit A: Pension Stabilization Trust for California Municipalities Program Service Agreement

Exhibit B: Pension Stabilization Trust for California Investment Policy Statement

Exhibit C: Amended and Restated Trust Administrative Service Agreement

**PENSION STABILIZATION TRUST FOR CALIFORNIA MUNICIPALITIES  
PROGRAM SERVICES AGREEMENT**

This Program Services Agreement (the “**Agreement**”) is entered into as of **September 23, 2019** (“**Effective Date**”) between Keenan & Associates (“**Keenan**”), and the Pension Stabilization Trust for California Municipalities (“**PST**”), with reference to the following:

PST was created to assist participating public agencies (“**Adopting Entities**”) with the establishment and maintenance of a trust (the “**Trust**”) for investment of funds to be used for the payment of their obligations under employee pension plans (the “**Plan(s)**”) that provide pension benefits (referred to as “**Pension Liabilities**”) to eligible employees and their dependents, and for other purposes determined to be appropriate by the Adopting Entities.

PST is governed by a board (“**Board of Authority**”), made up of representatives of the Adopting Entities.

A Program Coordinator, a Discretionary Trustee and a Registered Investment Advisor together provide a program (the “**Program**”) to support PST.

In accordance with the terms and conditions of this Agreement, Keenan shall act as Program Coordinator and shall provide the services as described herein.

NOW, THEREFORE, the parties agree as follows:

1. **Services Provided By Keenan.** PST hereby engages Keenan, and Keenan hereby accepts the engagement, to provide the following services to PST with respect to the Program and the formation and operation of the Trust during the term of this Agreement:
  - a. **Assistance with Creation of Trust.** The Trust will be created and effective upon execution of the Participation Agreement at the first meeting of the Board of Authority. (“**Trust Effective Date**”) Keenan will work with the Discretionary Trustee to coordinate preparation and execution of the Participation Agreement, pursuant to which the Board of Authority will adopt the Trust Agreement, under which the Adopting Entities may designate certain funds to be irrevocably contributed for payment of Plan obligations. Keenan’s services in connection with creation of the Trust will consist of the following:
    - (1) Communicating with an Adopting Entity’s governing body regarding the structure and operation of the Program, and
    - (2) Communicating with the Board of Authority regarding the creation of the Trust.
  - b. **Referral to Service Providers.** The Program includes referrals to organizations handling:
    - (1) trustee, custodial and investment management services.
    - (2) financial auditing,

- (3) such additional services as the PST Board of Authority and Adopting Entities may request.

Keenan will coordinate the selection of the ancillary service providers noted above and shall work in conjunction with them in providing services to the Board of Authority and Adopting Entities.

- c. Board Member Services. Keenan will facilitate the installation of new members of the Board of Authority as new Adopting Entities join PST. Keenan will also:
    - (1) consult with the PST Board of Authority as to ongoing operations and activities; and
    - (2) facilitate communications and the coordination of issues that may arise between the PST Board of Authority, the Discretionary Trustee and/or the Investment Advisor;
  - d. Administrative Services. If applicable, Keenan will assist the PST Board of Authority in conducting its meetings, in a manner consistent with the Brown Act. Keenan will also:
    - (1) prepare meeting agendas and cover pages on behalf of PST Board of Authority,
    - (2) take meeting minutes and provide to the Board of Authority upon completion,
    - (3) assist with communication to all Board of Authority members as necessary and requested by the Board of Authority, and
    - (4) facilitate the action items resulting from the PST Board of Authority meetings.
  - e. Facilitation of Membership Process. Keenan will provide assistance in the completion of paperwork and other tasks associated with accepting new Adopting Entities into PST.
  - f. Coordinate Meetings with Service Providers. Keenan will coordinate meetings between the PST Board of Authority and the Discretionary Trustee and Investment Advisor and facilitate any additional or ongoing meetings that may be required.
  - g. Depository for Agreements. Keenan will act as the depository for all agreements, resolutions, meeting minutes and agendas for the Trust.
2. Other Services Provided by Trustee and Investment Adviser. Keenan will not provide trustee, custodial, investment management or securities broker services to PST or its Adopting Entities in connection with the creation, implementation or operation of the Trust. These services will be provided by the Discretionary Trustee and Registered Investment Advisor under a separate agreement between PST and the Trustee and a separate agreement between the Trustee and the Registered Investment Advisor.

3. **PST Board of Authority Responsibilities.** Throughout the term of this Agreement, the PST Board of Authority shall do the following:
  - a. **Board Authority.** The PST Board of Authority will have final and ultimate decision-making authority for all actions taken by the Trust. The Board of Authority will:
    - (1) execute all agreements on behalf of PST, including, but not limited to, service agreements with vendors and a Participation Agreement with each of Member that joins PST,
    - (2) appoint and direct the Discretionary Trustee,
    - (3) adopt an Investment Policy Statement (IPS) with a long term net objective.
  - b. **Execute Trust and Related Agreements.** Approve, execute and retain in effect a Trust and Investment Policy Statement, and such other agreements as may be required for the Trust to validly invest its assets, to meet the requirements of Section 115 of the Internal Revenue Code and any applicable California Code, and to comply with the requirements of GASB 68, as applicable, with respect to those assets of the Trust that are designated for funding Plan obligations.
  - c. **Decisions Related to Trust.** Make all decisions relating to the Trust, it being acknowledged by PST Board of Authority that Keenan shall have no authority or obligation to make any decisions regarding the Trust, contributions to be made to the Trust, obligations owed by Adopting Entities under their Plans, investments to be made by the Trust, or any other matters related to the Trust.
  - d. **Payments to Adopting Entities.** Direct the Discretionary Trustee to make payments of amounts payable to them under the terms of each Plan.
  - e. **Payments to Intermediaries.** Direct the Discretionary Trustee to make payments to intermediaries that provide coverage to participants of the Plan.
  - f. **Reimbursement of Reasonable Expenses.** Direct the Discretionary Trustee to make payments from the Trust to run the Trust such as, but not limited to, auditors, attorneys, or consultant(s).
4. **Member Responsibilities.** PST Adopting Entities shall provide accurate and timely information to the appropriate Service Providers concerning the Plan provisions, participating employees, costs, anticipated retirement dates of employees, and other relevant information necessary, in the requested format, for the Service Providers to provide services to Trust.
5. **Compensation of Keenan.** For the services provided by Keenan pursuant to this Agreement, Keenan shall receive the compensation described in Keenan's Fee Schedule which is attached to this Agreement as Attachment A. Keenan' fee schedule shall be subject to change from time to time with a 30-day written notice to the PST Board of Authority. If the Board of Authority objects to Keenan's change to the Fee Schedule in writing within 30 days, the prior Fee Schedule will remain in effect until such time as Keenan and the Board of Authority come to an agreement on a change to the Fee Schedule, or if no agreement can be

reached, until the end of that term. The Board of Authority acknowledges and agrees and hereby instructs the Discretionary Trustee to pay to Keenan out of assets held in the Trust the compensation that is due to Keenan under this Agreement.

6. **Compensation to Other Service Providers.** PST acknowledges and agrees that Investment Advisor and the Discretionary Trustee will each provide separate services on behalf of the Trust, and will each be compensated for and be responsible for their services in accordance with the terms of the written agreement between PST and the Discretionary Trustee and the written agreement between the Discretionary Trustee and the Investment Advisor. PST further acknowledges that the Actuary may provide separate services to Adopting Entities and will be compensated for and be responsible for its services in accordance with the terms of the written agreement between each member and the Actuary. Keenan shall only be responsible for providing the specific services included in this Agreement and under no circumstances shall Keenan be responsible or liable for the services provided by the other Service Providers.

7. **Term and Termination.**

- a. The "Term" of this Agreement shall commence on the Effective Date and shall continue until the date that is forty-eight (48) months from the Initial Funding Date. The "Initial Funding Date" is the first day of the month in which PST shall have funded the Trust.
- b. At the Term of this Agreement, (as indicated in this Agreement section 6.a.), shall automatically be extended for an additional twelve (12) months, unless either party has given the other party at least six (6) months prior written notice of its desire to not extend the Term, in which case the Term of this Agreement shall expire as of the date set at the Initial Funding Date or the most recent anniversary date thereof.
- c. Either party may terminate this Agreement during the Term of this Agreement upon the occurrence of any of the following events:
  - (1) The breach of this Agreement by either party if the breach is not cured within 30 days (or such longer period as may reasonably be required to cure the breach, but not to exceed 90 days) of receiving notice of the breach from the non-breaching party;
  - (2) The Initial Funding Date does not occur within twelve (12) months of the Trust Effective Date;
  - (3) The dissolution or insolvency of either party;
  - (4) The filing of a bankruptcy petition by or against either party (if the petition is not dismissed within 60 days in the case of an involuntary bankruptcy petition); or
  - (5) If either party reasonably interprets the application of any applicable law, rule, regulation, or court or administrative decision to prohibit the continuation of this Agreement or cause a penalty to either party if the Agreement is continued.

8. **Representations.** Keenan and PST make the following representations and warranties:

- a. **Keenan Representations.** Keenan represents and warrants that it has full right, authority, power and capacity to enter into, execute and deliver this Agreement and each agreement, document and instrument to be executed and delivered by Keenan pursuant to this Agreement and to carry out the transactions contemplated hereby and thereby. This Agreement and each agreement, document and instrument executed and delivered by Keenan pursuant to this Agreement constitutes a valid and binding obligation of Keenan, enforceable in accordance with their respective terms. The execution and delivery by Keenan of this Agreement and the performance of the transactions contemplated hereby have been duly and validly authorized by all necessary action under its organizational documents and under any agreement applicable to Keenan and do not require any notice to, consent from, or filing with, any third party.
- b. **PST Representations.** PST represents and warrants that it has full right, authority, power and capacity to enter into, execute and deliver this Agreement and each agreement, document and instrument to be executed and delivered by PST pursuant to the Program and to carry out the transactions contemplated hereby and thereby. This Agreement and each agreement, document and instrument executed and delivered by PST pursuant to the Program constitutes a valid and binding obligation of PST, enforceable in accordance with their respective terms. The execution and delivery by PST of this Agreement and the performance of the transactions contemplated hereby have been duly and validly authorized by all necessary action under its organizational documents and under any agreement applicable to PST and do not require any notice to, consent from, or filing with, any third party.

9. **Indemnification.**

- a. If either party breaches this Agreement, then the breaching party shall defend, indemnify and hold harmless the non-breaching party, its officers, agents and employees against all claims, demands, actions, liabilities or costs (including, without limitation, reasonable attorneys' fees and expenses) arising from such breach.
- b. If Keenan (i) becomes the subject of a subpoena or is otherwise compelled to testify or (ii) becomes the subject of a claim, demand, action or liability from a person or entity that is not a party to this Agreement (collectively, a "Third-Party Demand") relating to its obligations under this Agreement and such Third-Party Demand is not a direct result of the negligence or willful misconduct of Keenan, then the other party shall defend, indemnify and hold harmless the party receiving the Third-Party Demand, its officers, agents and employees against all claims, demands, actions, liabilities or costs (including, without limitation, reasonable attorneys' fees and expenses) incurred in resolving such Third-Party Demand.
- c. The party receiving the Third-Party Demand ("Indemnified Party") shall notify the other party ("Indemnifying Party") promptly in writing of any such Third-Party Demand and reasonably cooperate with the Indemnifying Party in connection with



responding to the Third-Party Demand. The failure to notify the Indemnifying Party of the Third-Party Demand shall not relieve the Indemnifying Party of any liability it may have to the Indemnified Party except to the extent such liability was caused by the Indemnified Party's failure to notify the Indemnifying Party of the Third-Party Demand.

- d. The Indemnifying Party shall defend or settle the Third-Party Demand on behalf of the Indemnified Party in the Indemnifying Party's sole discretion except that the Indemnifying Party shall not admit any liability of the Indemnified Party or commit the Indemnified Party to payment of any damages or other expenses.

10. **General Provisions.**

- a. **Privacy of PST information.** Keenan acknowledges that in the course of carrying out its duties under this Agreement, it may receive confidential information relating to Adopting Entities. Keenan agrees that neither it nor its agents will use such information beyond the purpose for which it was provided or disclose such confidential information to other parties, other than the other Service Providers, as required for Keenan and the other Service Providers to fulfill their respective responsibilities as stated in this Agreement, the Trust, and the agreements between PST and the Discretionary Trustee, except to the extent required by the Internal Revenue Service, by law, or with the consent of the PST Board of Authority. Additionally, Keenan, its agents or affiliates agree to take appropriate steps to secure such confidential information from misuse or unauthorized disclosure. The obligations of this Section shall survive termination of this Agreement. Keenan further agrees that such confidential information will remain the property of PST and Keenan will return the confidential information and all copies thereof (other than confidential copies that Keenan may be required to retain to demonstrate its performance under this Agreement) to PST upon request or termination of this Agreement.
- b. **Consent to Provide Keenan Access to Information.** PST hereby agrees that, for the purpose of allowing Keenan to perform its services under this Agreement, PST agrees to release to Keenan all information necessary for the actuarial study and Keenan shall have access to and receive copies of all reports, correspondence and communications sent or furnished by Trustee, Investment Advisor to or from PST in connection with the Program. Specifically, Keenan shall have access to Trust information on the website maintained by the Discretionary Trustee for the Trust.
- c. **Proprietary and Confidential Information.** PST acknowledges that it may receive certain information with respect to the business practices and records of Keenan which may be confidential in nature ("**Information**"). PST agrees that such Information is proprietary and confidential and shall not be disclosed or used for any purpose other than as necessary in connection with this Agreement, unless such disclosure is required pursuant to an order of a court of competent jurisdiction, by law, or Keenan agrees in writing to such disclosure. The confidentiality and non-disclosure obligations of this Section shall survive termination of this Agreement. PST further agrees that Information will remain the property of Keenan and to

return the Information and all copies thereof to Keenan upon request or upon termination of this Agreement.

- d. Insurance. Keenan shall procure and maintain to the extent available on reasonable terms the following minimum insurance coverages during the Term and shall provide certificates of insurance to PST upon request:

Workers' Compensation. Workers' Compensation Insurance in conformance with the laws of the State of California and applicable federal laws.

Bodily Injury, Death and Property Damage Liability Insurance. General Liability Insurance (including motor vehicle operation) with a Two Million Dollar (\$2,000,000) limit of liability for each occurrence and a Two Million Dollar (\$2,000,000) aggregate limit of liability.

Professional Liability Insurance. Professional Liability Insurance with a Two Million Dollar (\$2,000,000) limit of liability for each occurrence and a Two Million Dollar (\$2,000,000) aggregate limit of liability.

Cyber Liability/Privacy Insurance. Cyber Liability Insurance with a Two Million Dollar (\$2,000,000) limit of liability for each occurrence and a Two Million Dollar (\$2,000,000) aggregate limit of liability.

Fidelity Insurance. Fidelity Insurance with a Two Million Dollar (\$2,000,000) limit of liability for each occurrence and a Two Million Dollar (\$2,000,000) aggregate limit of liability.

- e. Invalidity. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any of the other provisions of this Agreement, all of which shall remain in full force and effect.
- f. Complete Agreement; Amendments. This Agreement contains the entire understanding between the parties related to the subject matter covered by this Agreement and supersedes all prior and collateral statements, proposals, presentations, communications, reports, agreements or understandings, if any, related to such matters. No modification or amendment to any provision hereof shall be binding unless in writing and signed by authorized representatives from both parties.
- g. Waivers. No failure or delay in exercising any right, power or privilege under this Agreement shall be construed as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege under this Agreement.
- h. Third-Party Beneficiaries. Notwithstanding any provision herein to the contrary, this Agreement is not intended and shall not be construed as creating or conferring any rights or remedies on any third parties that are not parties to this Agreement.



Enforcement of any remedy for breach of this Agreement may only be pursued by the parties to this Agreement.

- i. Notices. Any written notices required by the terms of this Agreement shall be sent by certified mail (or other form of guaranteed delivery) to the address of the Party given below:

PST:                      Todd Cusimano, Town Manager  
Town of Corte Madera  
300 Tamalpais Drive  
Corte Madera, CA94925

Keenan:                  Keenan & Associates  
Attn: Vice President, Corporate Legal  
2355 Crenshaw Blvd. Suite 200  
Torrance, CA 90501-3325

- j. Force Majeure. Neither party shall be held responsible for the delay or failure to perform services or obligations under this Agreement when such delay or failure is due to fire, flood, epidemic, strikes, acts of God or any public enemy, unusually severe weather, failure or malfunction of any electronic, electric or mechanical equipment, legislative or regulatory acts of any public authority, delays or defaults caused by any public carriers, or other circumstances which cannot reasonably be forecast or provided against.
- k. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.
- l. Assignment; Successors. This Agreement may not be assigned by either party without the prior written consent of the other party. The terms and conditions of this Agreement apply to the parties, their heirs, executors, administrators, successors, and permitted assigns.
- m. Dispute Resolution.

- (1) In the event of any dispute arising out of or relating to this Agreement that cannot be settled through informal discussion or mediation, such dispute shall be resolved by submission to binding arbitration before Judicial Arbitration & Mediation Services ("JAMS") or ADR Services, at the claimant's choice, in Los Angeles County, California, before a retired judge or justice. If the parties are unable to agree on a retired judge or justice, the selected arbitration service (JAMS or ADR Services) will select the arbitrator.
- (2) In any such arbitration, the parties shall be entitled to take discovery in accordance with the provisions of the California Code of Civil Procedure, but either party may request that the arbitrator limit the amount or scope of such discovery, and in determining whether to do so, the arbitrator shall

balance the need for the discovery against the parties' mutual desire to resolve disputes expeditiously and inexpensively.

- (3) The prevailing party in any action, arbitration, or proceeding arising out of or to enforce any provision of this Agreement will be awarded reasonable attorneys' fees and costs incurred in that action, arbitration, or proceeding, or in the enforcement of any judgment or award rendered.
- n. Scope of Services Rendered; Other Plans. The parties specifically agree and recognize that Keenan is a service provider to PST and is not providing tax, accounting or legal advice to PST. The parties understand that PST is responsible, together with its legal counsel, for the continued qualification of the Trust in accordance with applicable law. Keenan shall have no responsibility whatsoever with regard to any other qualified or non-qualified employee benefit plans maintained by PST other than as provided in this Agreement or as in any other written agreement entered into between Keenan and PST. Keenan shall further have no responsibility or liability for any services provided by the Actuary, Discretionary Trustee, Registered Investment Advisor or any other service provider to the Trust or PST in connection with the Program, and shall be responsible solely for the services described herein which Keenan has agreed to provide to PST.
- o. Legal Fees. In the event of any dispute relating to this Agreement, the prevailing party shall be entitled to recover attorneys' fees and costs, including but not limited to, those incurred in resolving the dispute.
- p. Construction. Any rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement, or any amendments or exhibits hereto.
- q. Interest on Overdue Payments. All payments and invoices are due and payable upon presentation by Keenan. In the event PST fails to pay any invoice within thirty days of presentation, Keenan shall be entitled to receive interest on such outstanding invoice from the date of presentation at the rate of (a) 1-1/2 percent per month or (b) the maximum interest rate permitted by applicable law, whichever is lower.
- r. Counterparts and Facsimile Signatures. This Agreement may be executed in counterparts and by facsimile signatures, which will be effective as if original signatures.

*[Signature Page Follows This Page]*


IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first written above. Each person signing this Agreement on behalf of a party represents and warrants that he or she has the necessary authority to bind such party.

**Pension Stabilization Trust for California Municipalities (PST)**

By:   
Todd Cusimano, MuniPSI Board Chair

Its: \_\_\_\_\_

**KEENAN & ASSOCIATES**

By:   
Gail Beal, Senior Vice President

## PENSION STABILIZATION TRUST FOR CALIFORNIA MUNICIPALITIES

### INVESTMENT POLICY STATEMENT

The purpose of this Investment Policy Statement is to establish a comprehensive strategy for the acceptance and accumulation of invested assets under the Pension Stabilization Trust for California Municipalities for, among other things, to assist Adopting Entities in meeting applicable funding requirements for the funding of pension liability (generally referred to as "**Pension Liability**").

This Investment Policy Statement shall be consistent with the governing law, including the Internal Revenue Code of 1986 as amended from time to time (the "**Code**"), California laws, including applicable provisions of the California Government Code.

### TRUST FUNDING STATEMENT

The purpose of the Trust is to provide a uniform method of investing contributions and earnings of all contributed amounts between funds deposited within the Trust Fund, as such term is defined within the Trust. The Trust shall be funded primarily by irrevocable contributions made on a discretionary basis by the Adopting Entities.

### BOARD OF AUTHORITY

The Board of Authority (the "**Board of Authority**") is directly responsible for the implementation and oversight of this Investment Policy Statement. This responsibility includes the selection and ongoing evaluation of investments and/or investment managers in accordance with applicable laws and regulations. However, these investment responsibilities may be delegated to an authorized third-party trustee. In this case, the Board of Authority has appointed Benefit Trust Company ("**BTC**") as Discretionary Trustee and Trust Fund custodian, who may further designate and delegate any corresponding Investment Manager Advisor responsibilities as set forth below. On behalf of the Trust, and as approved by the Board of Authority, BTC shall administer the assets of the Trust in such a manner that the investments are:

- Prudent; in consideration of the stated purpose of the Trust, any underlying Plan and in accordance with Article 16, Section 17 of the California Constitution creating a Retirement System, and California Government Code Sections 53216.1, 53216.5 and 53216.6, and other applicable requirements;
- Diversified; among a broad range of investment alternatives;
- Permitted; in accordance with the terms of the Trust, any applicable Plan document and in accordance with California Government Code Sections 53216.1, 53216.5 and 53216.6 and other applicable requirements;
- Selected; for the exclusive benefit of the Plan participants as it relates to the funding of

pension benefits, or as otherwise deemed appropriate for the purposes set forth by the Trust.

The above notwithstanding, the Board of Authority retains the responsibility to oversee the management of the Trust, including BTC's, or any successor trustee's, requirement that investments and assets held within the Trust continually adhere to the requirements of California Government Code.

### **INVESTMENT OBJECTIVES**

The Trust authorizes the use of a broad range of investment choices that have distinctly different risk and return characteristics. In general, assets held in the Trust Fund will be for the primary purpose of meeting present and future pension contribution obligations and may be invested in accordance with California Government Code Sections 53216.1, 53216.5 and 53216.6 that subject to applicable legal requirements may provide greater latitude to increase purchasing power and capital growth potential if deemed prudent to do so.

Though investment responsibilities are delegated to the Trustee, the Board of Authority determines the range of asset allocations from which Adopting Entities may select for the investment of their assets held in the Trust Fund. Appendix A of this Investment Policy details the range of asset allocations selected by the Board of Authority. The asset allocations may be modified from time to time by amending the Appendix. Related to the investments and the holding of investments themselves, the Trustee shall actively manage model portfolios representing the range of asset allocations selected by the Board of Authority, and said model portfolios shall be listed in the Participation Agreement for selection by Adopting Entities.

### **PERIODIC ANALYSIS AND EVALUATION**

The Board of Authority and/or its designees shall periodically meet with the Trustee to review investment performance reports that analyze the performance of the managers selected in each market sector that take into consideration:

- adherence to applicable legal constraints on investment prudence;
- consistency and adherence to stated investment management style and discipline;
- risk adjusted performance relative to managers with similar style;
- long-term investment performance relative to appropriate benchmarks; and
- changes in investment personnel managing the portfolio.

**ETHICS AND CONFLICT OF INTEREST**

Officers, employees, and agents involved in the investment process shall refrain from personal business activities that could conflict with proper execution of the investment program, or which could impair their ability to make impartial decisions. Officers, employees, and agents involved in the investment process shall abide by the California Government Code Section 1090 et seq. and the California Political Reform Act (California Government Code Section 81000 et seq.)

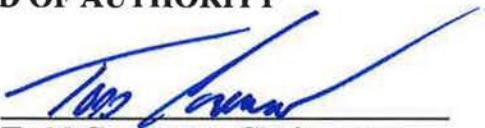
**AMENDMENT**

The Board of Authority shall have the right to amend this Policy, in whole or in part, at any time and from time to time.

**ADOPTION**

The Board of Authority hereby adopts the provisions of this Investment Policy Statement as of this 23 day of September, 2019.

**BOARD OF AUTHORITY**

By:   
\_\_\_\_\_  
Todd Cusimano, Chairman



**APPENDIX A: Asset Allocation and Model Portfolios**

Subject to the ability of the Board of Authority and Trustee to deviate from these guidelines as set forth under the heading "Investment Objectives" in the Statement, the Board of Authority has determined after due consideration that the investment objectives of the Trust are to safeguard the principal of the funds held in the Trust, as well as to meet the Trust's liquidity needs and to achieve a favorable return on the funds held in the Trust, subject to the ability of an Adopting Entity as described in Section 7.1 of the Trust to affect the balance of these considerations for its own Account by selecting its own asset allocation represented by various model portfolios. The model portfolio options made available to Adopting Entities shall be as follows:

- Fixed Income (100% fixed income securities)
- Conservative (16% equity securities, 84% fixed income securities)
- Moderate (33% equity securities, 67% fixed income securities)
- Moderate Growth (45% equity securities, 55% fixed income securities)
- Growth (61% equity securities, 39% fixed income securities)
- Aggressive Growth (76% equity securities, 24% fixed income securities)

It is understood that the target asset allocation will vary from time to time based upon market fluctuations, and that model portfolio asset allocations may be adjusted +/- 5% from time to time at the discretion of the Trustee without the requirement of further action by the Board of Authority.

In order to participate in this Trust, the Adopting Entity shall state that it understands and agrees that the Trustee shall be under no duty to question the prudence of the model portfolio the Adopting Entity directs, and shall have no liability for any loss of any kind which may result by reason of the inherent volatility of the asset allocation directed. Once the Adopting Entity has directed the Account to be invested pursuant to a model portfolio as listed above the Trustee will assume discretionary authority and responsibility for its management.

The Adopting Entity may change the designation of the model portfolio to be utilized by executing an amendment to Section 9 of the Participation Agreement. Said amendment will go into effect upon the acknowledgement of receipt by the Trustee.

The Trustee shall manage the Trust investments on a discretionary basis such that the total allocation among various fixed income investment styles, capitalizations, fund managers and securities is established and re-balanced from time-to-time so as to meet the Trust's various asset allocation objectives with the least amount of risk. The Trust assets shall not be invested in any proprietary investment vehicles of the Trustee or any of its affiliates or advisors.

**Equity Investments**

The purpose of the aggregate equity allocation within the Trust is to provide a total return consisting primarily of appreciation, with dividend income a secondary consideration. In order to maximize return opportunity while minimizing risk, the Trustee shall, in its discretion, allocate the Trust's equity allocation among a diverse group of equity fund managers, taking into consideration

such factors as investment style (value, growth, international, etc.) as well as the capitalization (large, mid, small, etc.) of the investment.

Permitted equity investments shall include:

- Publicly traded common stocks, preferred stocks, securities convertible into common stocks, and securities which carry the right to buy common stocks, listed on a major United States stock exchange, including stocks traded through the NASDAQ Stock Market;
- American Depository Receipts (“ADRs”);
- SEC-registered open-end mutual funds and Bank, Insurance Company or Trust Company commingled funds which invest primarily in stocks and other instruments which are allowable securities under these policies and objectives;
- Closed-end SEC-registered mutual funds which invest primarily in stocks and other instruments which are allowable securities under these policies and objectives; and
- Exchange Traded Funds (“ETFs”) which invest primarily in stocks and other instruments which are allowable securities under these policies and objectives.

In managing the equity portfolio, the Trustee shall not do any of the following:

- buy equity securities on margin;
- short-sell equity securities;
- buy or sell futures contracts in any form, except that the Trustee is authorized to buy or sell such contracts specifically for purposes of, and only for purposes of, a hedge against portfolio loss;
- buy or sell put or call options on stocks, indexes or futures contracts;
- buy or sell foreign securities not registered through an SEC filing or not denominated in U.S. dollars; or
- buy or sell any securities which are not publicly traded.

However, all of the above restrictions shall be permitted in open-end or closed-end mutual funds, comingled funds, or ETFs, if in the opinion of the Trustee these activities are consistent with fund objectives and prudent management, and the investments provide for daily liquidity.

Additionally, certain securities may not be held directly, but only in open-end or closed-end mutual funds, comingled funds, or ETFs. These include common stocks, preferred stocks, and securities convertible into common stocks and securities that carry the right to purchase common stocks of non-U.S. companies traded on global exchanges, traded in any currency, as well as restricted securities of U.S. and non-U.S. companies, including securities issued through private offerings, and forward currency contracts or currency futures contracts to hedge foreign currency exposure.

Not more than 5% of the Trust assets shall be invested in any single equity security issue or issuer. The foregoing limitation is not intended to apply to the percentage of Trust assets invested in a single diversified mutual fund.



Both an investment fund manager's performance and the performance of individual securities, if purchased, will be compared to the following benchmarks based upon the particular investment style and capitalization range:

|                         |                            |
|-------------------------|----------------------------|
| Domestic Equities:      | S&P 500                    |
| International Equities: | MSCI EAFE and ACWI ex.U.S. |

The Trustee shall pay particular attention to rolling 3 and 5 year time frames as well as shorter periods should the situation warrant. In addition, the Trustee shall measure and compare the exposure to risk of the Trust's equity portfolio with benchmarks appropriate for the investment style and capitalization range of each such investment.

### **Fixed Income Investments**

The purpose of the aggregate fixed income allocation within the Trust is to provide a total return consisting of income and appreciation, while preserving capital by investing in a diversified portfolio of high quality fixed income securities. The investment objective of the fixed income portfolio is to achieve a total return commensurate with the overall bond market as measured by the Barclay's Aggregate Bond Index for domestic securities, and the Barclay's Global Bond Index for international securities, with attention given to rolling 3 and 5 year time frames as well as shorter periods should the situation warrant. In addition, the Trustee shall measure and compare the exposure to risk of the Trust's fixed income portfolio with benchmarks appropriate for the investment style and capitalization range of each such investment.

Permitted securities shall include:

- Obligations of the U.S. Government and its agencies;
- Bonds issued by U.S. Corporations or U.S. subsidiaries of foreign companies that are incorporated within the U.S. and carry a minimum BBB rating;
- Certificates of Deposit issued by banks or savings and loans of sound financial condition under FDIC management, with never more than the amount insured by FDIC (including interest) in any single institution;
- Money market funds and money market instruments of an investment grade commonly held in money market funds such as repurchase agreements, banker's acceptances, commercial paper, etc.
- SEC-registered open-end mutual funds and Bank, Insurance Company and Trust Company commingled funds which invest primarily in bonds and other instruments which are allowable securities under these policies and objectives;
- Closed-end SEC registered mutual funds which invest primarily in bonds and other instruments which are allowable securities under these policies and objectives;

- Exchange Traded Funds (“ETFs”) which invest primarily in bonds and other instruments which are allowable securities under these policies and objectives;
- Investment grade foreign government or corporate bonds carrying a minimum BBB rating, whether or not denominated in U.S currency, and whether or not hedged for foreign currency risk.
- Securities backed by pools of consumer or corporate receivables other than mortgages (“Asset-backed Securities”), provided that these securities have been registered with the SEC for public offering and that they meet the requirements of these policies and objectives and carry a minimum BBB rating; and
- U.S. Agency mortgage-backed pass-through securities.

In managing the fixed income portion of the Trust assets, the Trustee shall not do any of the following:

- buy fixed income securities on margin;
- short-sell fixed income securities;
- buy or sell futures contracts in any form, except that the Trustee is authorized to buy or sell such contracts specifically for purposes of, and only for purposes of, a hedge against portfolio loss;
- buy or sell put or call options on bonds, indexes or futures contracts;
- buy or sell foreign securities not registered through an SEC filing or not denominated in U.S. dollars; or
- buy or sell any securities which are not publicly traded except U.S. Government or agency-backed mortgages.

However, all of the above restrictions shall be permitted only in open-end or closed-end mutual funds, comingled funds, or ETFs, if in the opinion of the Trustee these activities are consistent with fund objectives, prudent management, risk mitigation, and the investments provide for daily liquidity. In addition, investment in non-investment grade bonds or loans by such funds shall be permitted so long as the average aggregate rating of the funds are investment grade, and in the opinion of the Trustee the proportion of non-investment grade bonds to investment grade bonds in the portfolio is prudent.

Not more than 5% of the Trust assets shall be invested in any single corporate debt security issue or issuer. No limit shall apply to the percentage of Trust assets invested in a single diversified mutual fund, nor does the limitation apply to obligations of the U.S. Government and its agencies, U.S. agency mortgage-backed pass-through securities or to a mutual fund that invests in such

obligations or securities.

**Use of Mutual Funds**

The Board of Authority envisions that the Trustee will invest predominantly in open and closed-end mutual funds. The Board recognizes that the limitations and restrictions set forth in this Statement cannot be imposed on the managers of such mutual funds and that mutual funds held by the Trust may be managed outside of the requirements of this Statement. Nonetheless, the Trustee shall seek to identify mutual funds that comply as closely as possible to these guidelines and shall diligently monitor for prompt removal and replacement of those that do not.

**Performance Review**

In the execution of its fiduciary responsibilities, the Trustee shall review, on a regular basis, the performance of the various investments and fund managers employed by the Trust to determine if assets are being properly managed according to the stated objectives and policies set forth in the Trust Agreement and in this Statement. The Trustee shall view performance and investment risk on the basis of a full 3 to 5-year market cycle, though the stated objectives and policies of the Trustee may result in the prompt sale of a security or dismissal of a fund manager based upon shorter term results. In addition, any deviation or change in the structure, management or investment style of any fund manager employed shall precipitate a review by the Trustee to determine whether or not that manager should be retained.

**AMENDED AND RESTATED  
TRUST ADMINISTRATIVE SERVICES AGREEMENT**

This Amended and Restated Trust Administrative Services Agreement (“**Agreement**”), dated this 23rd day of September, 2019, is between **Benefit Trust Company** (“**BTC**”) and **Todd Cusimano** (“**Chairman**”) with reference to the following:

**A. General Purposes.** The undersigned is the Chairman of the Pension Stabilization Trust for California Municipalities Board of Authority (“**Board of Authority**”) which is authorized to assume responsibility for the assets of Adopting Entities who as Adopting Entities have executed a participation agreement (hereinafter the “**Participation Agreement**”, a sample of which is attached as “**Exhibit A**”), and having adopted and established the Pension Stabilization Trust for California Municipalities (hereinafter the “**Trust**”, attached as “**Exhibit B**”), to be used by governmental and public entity employer(s) (“**collectively “Adopting Entities” and individually, an “Adopting Entity”**”) for the funding and payment of their obligations under employee pension plans (the “**Plan(s)**”) that provide pension benefits (referred to as “**Pension Liabilities**”) to eligible employees and their dependents, and for other purposes determined to be appropriate by the Adopting Entities. The Board of Authority is also authorized to appoint BTC, as trustee, and for adequate consideration, BTC otherwise agrees to perform services specified herein.

**B. Services Provided By BTC.** Upon the signing of this Agreement, BTC will have been deemed to have executed the Trust as attached hereto and during the term of this Agreement, BTC further agrees to serve as a discretionary trustee, with fiduciary oversight and authority over the operations and management of the Trust as specified therein and related to the following:

1. **Compliance.** BTC shall administer the Trust document, and any applicable documents and amendments, and contributions received from the Adopting Entity in Trust in a manner intended to comply with the requirements of Section 115 of the Internal Revenue Code (the “**Code**”), as amended, and other applicable legal guidelines, including Governmental Accounting Standards Board Statement No. 68 and such other embodying regulations thereunder, as well as applicable provisions of state law that govern the investment of excess funds for approved governmental purposes.
2. **Maintenance of Separate Accounts.** BTC shall establish within the Trust a fund, or funds as applicable: One separate fund, or funds, as applicable (the “**Trust Fund**”), shall hold funds irrevocably designated for the payment of retiree health and welfare benefits or other similar Pension Liabilities, including applicable fees and expenses, as reported and impacted by applicable legal requirements. The disbursement of any monies from the Trust Fund or Funds (as defined in the Trust Agreement and referred to collectively herein as “**Accounts**”) shall only be made by BTC as provided for and in accordance with the terms of the Trust.



3. **Custodian.** BTC shall serve as the custodian, or shall have the authority to delegate the responsibility for same to a sub-custodian, as applicable, of all assets of the Trusts, to which it shall retain responsibility for the titling and ownership (including registration of assets in nominee name, if required under applicable law) of all contributions, earnings or other assets held in the Trust. In such capacity, BTC shall receive contributions from the Adopting Entity and shall further agree to allocate all contributions to one or more Accounts as designated by the Adopting Entity, including allocation into one or more Accounts within three (3) business day following the later of the date such contributions were received or the date on which the BTC is notified where such funds are to be allocated. In such capacity, BTC shall hold all Trust funds in the designated Accounts and allocate any income earned thereon in the manner set forth by the terms of the Trust. If the Trustee or any sub-custodian receives any contributions or other amounts from the Adopting Entity after any applicable trading deadline or receives such contributions without any further designation of the amount or Accounts to which such amounts should be allocated, or the allocation instructions are incorrect, the Trustee shall deposit all such amounts received to the Trust Fund in a default investment vehicle established by the Trust, until the Adopting Entity's investment direction can be properly completed. If, after a period of thirty (30) days the Trustee is unable to obtain revised instructions from the Adopting Entity, the Trustee shall return all such previously-deposited amounts to the Adopting Entity, including allocated earnings therein.
  
4. **Investment Management and Monitoring.** BTC shall have oversight and authority to Act as a Discretionary Trustee, exercising full authority and discretion to manage the investment of the Trust, thereby utilizing the services of its own advisors as BTC may desire. In this capacity, BTC shall have full investment authority and discretion, on behalf of the Accounts, to purchase, sell and trade in securities of all types, including cash and cash equivalents, in such amounts, at such prices, and in such manner as it may deem advisable, subject to applicable laws, including applicable provisions of any governing state laws or regulations, as well as this Agreement, the established Investment Policy Statement approved by the Board of Authority, and such other guidelines, policies and restrictions applicable to each Account. In addition, BTC shall assist in the preparation and establishment of a written Trust Investment Policy Statement for Board of Authority approval, as well as provided direct access for all Board of Authority members to applicable holdings and transaction information so that they may monitor the operations of the Trust and investment of the Accounts for compliance with Investment Policy Statement requirements. BTC may utilize the services of a non-discretionary Investment Advisor in the exercise of these duties. Morgan Stanley operates as the Trustee's non-discretionary Investment Advisor as of the date of the execution of this Agreement.

In the alternative, and only upon written approval received from the Board of Authority, BTC may, under the terms of the Trust Agreement, select a discretionary investment manager (the "Investment Manager") who shall serve at

BTC's direction to assume the responsibilities listed above and in such case will be entitled to the same protections and indemnifications enumerated herein as BTC. The Trustee has not appointed a discretionary Investment Manager as of the date of the execution of this Agreement.

5. **Accounting and Reporting Transactions.** BTC shall maintain accurate records of all financial transactions in accordance with the written terms and conditions of the Trust. Unless circumstances dictate otherwise for which the Board of Authority would be duly notified, account statements will be delivered electronically to Board of Authority no more than twenty (20) business days after the valuation period ends.
6. **Customer Service.** BTC shall provide customer service support that shall include:
  - a) **Internet Access to Accounts.** BTC shall provide the Board of Authority and Adopting Entities with secure, online, 24-hour a day, Internet access to Trust account financial information that shall include daily access to all assets held in each Account, contributions received, current asset valuation information and other transactions and expenditures allocated to each fund
  - b) **Telephone Response Team.** BTC shall be available between the hours of 8 a.m. and 5 p.m. (C.S.T.), Monday through Friday, and shall further provide and maintain adequate staff, to receive telephone inquiries and respond to questions from the Board of Authority or any authorized representative of the Adopting Entity. BTC representatives will either make every reasonable effort to respond to any questions or inquiries or shall redirect such questions or inquiries to the appropriate party for further response.
  - c) **Meetings and Teleconferences.** BTC shall make itself available, on an as needed and commercially reasonable basis, to meet with or participate in applicable teleconference communication with the Board of Authority, or other appropriate representatives for informational meetings or other necessary business requirements. Any face-to-face meetings that are deemed necessary between the parties shall be arranged for a mutually agreeable time.
7. **BTC Duty of Care.** In exercising its discretionary duties and responsibilities as Trustee as otherwise set forth herein, BTC shall act in accordance with Article XVI, Section 17 of the California Constitution and California law promulgated thereunder, each as amended, including the obligation to administer the Trust as a prudent person would, by considering the purposes, terms, distribution requirements, and other circumstances of the Trust, and through exercising reasonable care, skill and caution dictated under the then-existing circumstances.



C. **Additional Services.** In addition to the services provided as referenced above, BTC shall perform other services as agreed to in advance and in writing between the parties, with such services and applicable fees being determined separately as delineated on the Fee Schedule and any Addendum attached hereto as "Exhibit C.

D. **Responsibilities of the Board of Authority.** During the term of this Agreement, the Adopting Entity and/or the Board of Authority as applicable based on binding resolution or other similar authority as communicated to the Trustee by the applicable party, will be responsible for the following Trust administration activities:

1. Execute and adopt the terms of the Trust, through signing of the Participation Agreement, as well as adopt the Investment Policy Statement, a sample of which is attached as "Exhibit D", and provide copies of such documents to BTC.
2. Facilitate any efforts and processes necessary to ensure the Plan Administrator executes applicable written agreements providing any required consent to compliance with the terms of the Trust or any other corresponding documentation.
3. Hold periodic meetings of the Board of Authority, for the purpose of reviewing investment performance and compliance with Investment Policy Statement guidelines, as well as engage in annual review and analysis of any applicable modifications to the Investment Policy Statement through meetings and discussions with the Trustee, as applicable.
4. Provide names of individuals authorized to act on behalf of the Trust in writing, including all applicable Plan Administrators and their Authorized Representatives, as well as notify BTC in writing of any changes as soon as a successor is designated.
5. BTC shall be entitled to rely upon the accuracy and completeness of all information furnished to them by the Board of Authority or by any person designated to act on behalf of the Board of Authority.

Should BTC or any delegated Investment Manager commence work at the direction of Board of Authority prior to receipt of the signed Participation Agreement, the Board of Authority shall accept and ratify all actions taken by BTC or the Investment Manager to the extent such actions are consistent with the direction of the Board of Authority or the Adopting Entity, as applicable. Any errors or noncompliance that arises therefrom shall be corrected as otherwise set forth in this Agreement.

E. **Fees for Trust Administration Services.** The Board of Authority agrees that the Adopting Entities will pay BTC (including applicable fees to be paid to its Investment Advisor or duly appointed Investment Manager by BTC) the fees and other allowable expenses set forth in the Fee Schedule Addendum attached to this Agreement as "Exhibit C" directly from Trust assets. Subject to the mutual agreement between the parties, BTC retains the right to change fees for service from time to time upon 30 days written notice to Board of Authority. In the event the

Board of Authority rejects a fee change by sending written notice to the Trustee prior to the date such fee change is to become effective, the current fee schedule shall remain in effect through the end of the current contract term.

**F. Responsibility for Errors: Indemnification**

1. The Board of Authority will promptly notify BTC of any errors or omissions in information supplied by the Board of Authority, its agent or other representatives. In such event, BTC's sole obligation, to the exclusion of any other obligation or remedy for damage or loss, including special or consequential damages, shall be to use its reasonable efforts to correct any resulting errors in any information, records or in any reports it has prepared for the Board of Authority (including amending Trust statements, if required), or any other errors that have been identified by the Adopting Entity or its representatives.
2. BTC and its officers, directors, employees and other representatives (collectively referred to as a "BTC Indemnified Person") shall be fully protected and indemnified, defended and held harmless by the Board of Authority or an Adopting Entity, in relying upon information, direction or instructions received from an Authorized Representative as provided in the Trust, which instructions or directions BTC reasonably believes to be authentic and issued by an Authorized Representative. Should it become necessary to perform some act hereunder and there is neither direction in the Trust nor information or instructions from the Board of Authority, the Adopting Entity on file with BTC relating thereto, and if no such information or instructions can be obtained after reasonable inquiry, BTC shall have full power and authority to act in BTC's discretion, consistent with the purposes of the Trust and its role as trustee. This indemnification will protect a BTC Indemnified Person from all losses, claims, damages, liabilities and expenses incurred (including reasonable attorneys' fees and applicable court expenditures resulting from BTC's actions as described in this Section F(2)), with such costs being paid by the Adopting Entity. In so acting or in following any instructions from an Authorized Representative, BTC or any other BTC Indemnified Person shall not be liable except to the extent that the actions of BTC or any BTC Indemnified Person constitute fraud, bad faith, willful misconduct or gross negligence.
3. BTC, as the case may be, will indemnify defend and hold harmless an Adopting Entity, the Board of Authority and their officers, directors, employees and other representatives (anyone of which is hereafter referred to as an "Adopting Entity Indemnified Party") to the full extent lawful to protect an Adopting Entity Indemnified Party from all losses, claims, damages, liabilities and expenses incurred by an Adopting Entity Indemnified Party (including reasonable fees and disbursements of counsel including applicable court expenditures) which are the result of either BTC's fraud, bad faith, willful misconduct or gross negligence.



4. BTC will correct at its own expense any errors in the records and reports prepared and attributable to their errors, but BTC shall not otherwise be responsible for special or consequential damages, nor shall it correct any such errors for which the Board of Authority has knowledge but fails to properly and timely notify BTC in compliance with applicable law.
5. In accordance with applicable legal requirements, Board of Authority will promptly notify BTC and the Investment Manager if applicable after the settlement date of any errors made or allegedly made in any requested trade of which Board of Authority has knowledge. The trade will be assumed to have been effected in accordance with the original request if notification is not given within required timeframes. If a loss occurs as a result of a trade for which the Board of Authority has knowledge but fails to properly and timely notify BTC and the Investment Manager if applicable of the error, Board of Authority will indemnify BTC and the Investment Manager with respect to any loss resulting from such trade.
6. Neither BTC nor Investment Manager if applicable will be liable for any loss to the Board of Authority, any Plan Administrator or its Plan participants for failure or refusal of any transfer agent or investment sponsor to act upon investment instructions, or for any loss incurred due to the inaccuracy, incompleteness, or lack of timeliness of information received from the transfer agent or investment sponsor, unless such losses are caused by the instructions provided by BTC or Investment Manager as applicable.

**G. Term**

1. (a) This Agreement shall become effective on the date stated above, and may not be terminated for a period of forty-eight (48) months following the date the Trust is initially funded unless there has been: (i) a failure to fund the Trust within twelve (12) months of the date stated above or otherwise make an agreed upon contribution and the Trustee elects to terminate the Trust, (ii) a breach of this Agreement or a failure of either party to comply with applicable laws or regulations, and such breach or failure is not cured within a period of fifteen (15) days, (or such longer reasonable period, not to exceed sixty (60) days as may be required to effect a cure) after the date of such written notice of breach and election to terminate.
- (b) Notwithstanding the provisions of Section G-1(a) above, either party may terminate this Agreement on the occurrence of the following events, provided that the terminating party gives the other party ninety (90) days advance written notice for such termination:
  - i. The termination of the Keenan Program Services Agreement; or

- ii. The receipt by the Adopting Entity of a ruling from the IRS that the Plan and/or the Trust do not meet the requirements of the Internal Revenue Code Section 115 and/or that, as such, the earnings of the trust are not exempt from tax, and such adverse ruling is not reversed before the ninety (90) day notice period has elapsed.
2. At the end of the Agreement's initial term, the Agreement shall automatically renew for successive twelve (12) month periods unless either BTC or the Board of Authority provide the other party with at least ninety (90) calendar days' prior written notice of intent to terminate on the scheduled expiration date. The parties agree that the longer period of notice required to be provided by the terminating party is reasonable and necessary in order for the Board of Authority to transition services to a new trustee. No additional fees shall be charged by BTC with respect to the termination of its services except as provided in this Agreement. However, the non-payment of a bill does not constitute notice of termination and all fees for services performed through the date a written notice is received are due and payable to BTC. The obligation of Board of Authority to pay fees and disbursements for services performed through the date of termination and the rights and obligations of the parties under all sections will survive such termination.
3. Upon the termination of this Agreement and payment of any outstanding fees and after establishment of any necessary reserve requirements as otherwise set forth in the Trust, BTC will relinquish its trustee and custodial relationship as provided for in the Trust, as well as provide Board of Authority with copies of trust accounting records, if so requested in writing by Board of Authority, at any time within seven (7) years of the date of termination of this Agreement. Forms, procedures, software, worksheets, checklists and other processes developed by BTC to perform the services required under this Agreement are the property of BTC and are not considered the records of the Board of Authority. A fee will be charged based on time and cost to perform any work necessary for the new trustee to take over the work performed at the request of the Board of Authority, such fee to be mutually agreed upon by the parties in advance of such work being performed.
4. The above notwithstanding, if the termination of this Agreement is the result of a dispute over fees paid, or to be paid, to the Trustee as set forth under this Agreement, in addition to the duties and responsibilities for trustee and custodial transfer as set forth above, BTC shall provide copies of all reports, records or account statements otherwise to the Board of Authority, as requested, as well as shall retain a copy of such records, reports and other information pending the resolution of any ongoing dispute regarding the fees paid, or to be paid hereunder.



H. Maintenance and Confidentiality of Records

1. **Books, Records and Adopting Entity Information.** BTC agrees to the following with respect to all Trust information, books and records and information provided by the Board of Authority to BTC:
  - a) Retention and Security of Documents and Adopting Entity Data. BTC shall maintain copies of all executed Trust related documents, including the Participation Agreement, written directions of the Adopting Entity or Board of Authority with respect to Accounts, Plan Administrator designations authorized signatory information, and the Investment Policy Statement, as well as shall use commercially accepted standards in retaining, backing up, storing and recovery of any and all Adopting Entity data and other electronic documentation in a secure environment.
  - b) Safekeeping of Books and Records. BTC agrees to maintain facilities and procedures for the safekeeping of all documents, records, books, files and other materials relative to the Trust and transactions facilitated on behalf of the Adopting Entities that participate in the Trust (collectively, the “**Books and Records**”). BTC agrees to maintain such Books and Records for the duration of this Agreement and not to destroy such Books and Records without Adopting Entity’s prior written consent. Adopting Entity and any applicable regulatory body shall have reasonable access during normal business hours to such Books and Records. BTC shall provide all necessary assistance in conjunction with any inspection or audit by any applicable regulatory body for no additional fees, but the reasonable out of pocket expenses incurred in connection with such inspection or audit shall be payable at the expense of the Trust at the time such expenses are incurred in accordance with the terms of this Agreement and the Trust thereunder.
  - c) Confidentiality of Adopting Entity Data. All data and information submitted by Adopting Entity to BTC in connection with this Agreement or the Trust (“**Adopting Entity Data**”) is and shall remain the exclusive proprietary information and property of the Adopting Entity and shall be considered confidential information. Adopting Entity Data shall not be (1) used by BTC other than pursuant to this Agreement or the Trust, (2) disclosed, sold, assigned, leased or otherwise provided to third parties by BTC except in connection with the provision of services to an Adopting Entity pursuant to this Agreement, unless Adopting Entity or the Board of Authority specifically authorize the release or disclosure of such information; or (3) commercially exploited by or on behalf of BTC, its employees or agents. BTC shall take such steps as shall under the circumstances be reasonable, prudent and appropriate to protect and keep confidential the Adopting Entity Data and shall inform its employees of the confidential nature of the Adopting Entity Data. BTC agrees to cause

each person or entity directly or indirectly controlled by BTC and the officers, employees and agents of BTC and each such controlled person or entity to comply with the confidentiality provisions of this Agreement.

2. **Required Disclosure.** In the event that BTC becomes legally compelled to disclose any Adopting Entity Data, BTC will provide Adopting Entity with prompt written notice thereof in order for Adopting Entity to seek a protective order or other restriction on disclosure. If BTC is required to disclose information after Adopting Entity has sought such protective order or other restriction on disclosure, BTC will furnish only that portion of the Adopting Entity Data that it is legally compelled to disclose and no other. BTC agrees to regard and preserve as confidential all records and other information relative to the Trust and will not, without written authority from Board of Authority, disclose to others during the term of this Agreement or thereafter any such records or other information except as required by applicable law. However, should a court of law, governmental agency, participant/employee whether current or former (or attorney thereof) request information that is otherwise legally available, BTC shall be held harmless for inadvertently and without malice disclosing such information requested. Likewise, BTC shall not be responsible for and equally held harmless for any other disclosure for which it is legally compelled to provide based on the action or inaction of the Adopting Entity, the Board of Authority or any of its representatives.
3. **Records Inspection.** BTC agrees, during the term of this Agreement, all records maintained for the Trust shall be open to inspection and audit by Board of Authority at reasonable times, and that such records shall be preserved and retained for the greater of three years after the related filing date or such other period as may be required by applicable governing regulations as in effect from time to time. On a periodic basis, or if otherwise required in accordance with any legal requirement, BTC, shall engage an independent certified public accountant whose identity and fees are approved by the Board of Authority with such approval to not be unreasonably withheld, to audit records and information related to the Trust, with the reasonable cost of such audit to be paid for by the Trust. A copy of the report of such audit shall be furnished to the Adopting Entity, the Board of Authority and to any other parties authorized to receive such information.



I. Other Provisions

1. **Entire Agreement, Amendment.** This Agreement, as well as the attached Exhibits, including the Participation Agreement, Trust, Fee Schedule and any Addendum, as well as other applicable schedules and exhibits, if any, constitute the entire agreement between the parties with respect to the administration of the Trust and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended and any provision hereof waived, but only in writing signed by the party against whom such amendment or waiver is sought to be enforced. The waiver by either party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other subsequent breach. To the extent there is any conflict between the terms of this Agreement and the terms and conditions of the Trust, the Trust shall control any dispute arising therefrom.
  
2. **Responsibilities of Parties.** In carrying out their responsibilities under this Agreement, BTC and Board of Authority shall at all times be subject to the following requirements:
  - a) BTC and Board of Authority shall act in accordance with applicable laws and shall also act in compliance with the documents and instruments governing the Trust, insofar as such documents and instruments are consistent with the provisions of applicable state law and any regulations promulgated thereunder. The Board of Authority further agrees that it shall ensure it has all necessary authorities to contribute any applicable funds to the Trust and shall have all necessary authorizations to act on behalf of the Adopting Entity or the Plans to the extent necessary and in compliance with Section 7.5 of the Trust.
  
  - b) To the extent applicable as it relates to Trust Fund, BTC and the Investment Manager, as delegated, and Board of Authority shall act solely in the interest of the participants and their beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Trust.
  
  - c) To the extent of all Trust assets held within the Accounts, BTC and the Investment Manager, as delegated, and Board of Authority shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, but shall also strictly adhere to other applicable state law requirements related to the investment of excess fund assets.

d) Board of Authority shall have the responsibility for selecting the investment asset allocation mixes to include in the Trust, after receiving assistance from BTC and/or Investment Manager accordingly. The Board of Authority further acknowledges that past performance is no guarantee of future performance of any investments.

3. **Force Majeure.** No party to this Agreement will be deemed to be in default for any performance, or delay, or failure to perform under this Agreement resulting, directly or indirectly, from: (a) any governmental action or inaction, labor disputes, mechanical or electrical breakdown, any failure of communication lines, telephone or other interconnect problems or unauthorized access, provided such failure (i) is not the fault of such party; or (ii) could not be reasonably controlled by such party; or (b) any natural disaster; or (c) other events beyond the reasonable control of the parties; provided, further, that such events shall not be excused to the extent they can be obviated by the implementation of BTC's Business Recovery Plan.

4. **Dispute Resolution.** The Board of Authority and BTC expressly agree to be bound by Section 15.9 of the Trust regarding the arbitration of disputes.

5. **Notice.** Any notice under this Agreement shall be given in writing by certified mail, return receipt requested, to the address listed below.

6. **Commencement Date.** This Trust Administrative Services Agreement shall commence as of the date first written above.

**Chairman:** Todd Cusimano  
Town of Corte Madera  
**Address of Notice:** 300 Tamalpais Drive  
Corte Madera, CA 94925

**By:**   
\_\_\_\_\_  
Todd Cusimano, Chairman of the Board of Authority

**BTC:** Benefit Trust Company.  
**Address of Notice:** 5901 College Boulevard, Suite 100  
Overland Park, KS 66211

**By:**   
\_\_\_\_\_  
Scott W. Rankin, Senior Vice President



EXHIBIT A

=== SAMPLE ===

**PENSION STABILIZATION TRUST FOR CALIFORNIA MUNICIPALITIES  
PARTICIPATION AGREEMENT**

THIS PARTICIPATION AGREEMENT is entered into by the undersigned California public entity (the "Adopting Entity") and Benefit Trust Company, a Kansas corporation, as Trustee (the "Trustee") of the Pension Stabilization Trust for California Municipalities (the "Trust"), effective as of the date specified on the signature page (the "Effective Date"), with reference to the following:

A. The Board of Authority (the "Board") of the Trust has established the Trust to help California Municipalities stabilize the funding of their pension benefit liabilities by creating a secure vehicle to hold assets pending their contribution to a pension plan in satisfaction of a public entity's funding obligation. The Trust is intended to qualify as a trust arrangement that is tax exempt under applicable guidance and procedures under Section 115 of the Internal Revenue Code.

B. The Adopting Entity has adopted a pension plan for its eligible employees (the "Plan") to which the Adopting Entity is required to make regular contributions. To the extent the Adopting Entity may from time to time have excess funds, a portion of which can be used to pre-fund contributions to the Plan, the Adopting Entity desires to have a secure trust to which it may contribute such funds and to have the trust hold such pre-funding contributions.

C. In order to participate in the Trust, the Adopting Entity must be a public entity in the State of California and must enter into this Participation Agreement (the "Agreement").

NOW, THEREFORE, the Adopting Entity and the Trustee agree as follows:

1. **Participation.** The undersigned Adopting Entity agrees to all of the provisions, terms and conditions of the Trust and agrees to participate in the Trust in accordance with the terms of this Agreement. The Adopting Entity agrees to cooperate in providing any information reasonably required by the Trustee or the Board to administer the Trust properly.

2. **Representations of Adopting Entity.** The Adopting Entity makes the following representations and warranties, and acknowledges that the Trustee is relying on these representations in entering into this Agreement:

(a) The Adopting Entity is a public entity within the State of California under the California Constitution and applicable sections of the Government Code.

(b) By executing this Agreement, the Adopting Entity acknowledges that it has determined that the Trust is appropriate for the pre-funding of a portion of its pension liabilities under the Plan.

(c) The Plan has been adopted by all necessary action of the governing body of the Adopting Entity and remains in full force and effect, in compliance with all applicable legal requirements.

(d) The adoption of this Agreement has been approved by all necessary action of the Adopting Entity's governing body and the person signing this Agreement on its behalf is authorized to do so.

(e) Neither the execution and delivery of this Agreement by the Adopting Entity, nor compliance by the Adopting Entity with any of the provisions hereof, nor the consummation of the transactions contemplated hereby, will result in a default, or give rise to any right of termination, cancellation or acceleration, under any term, condition or provision of any agreement or other instrument or obligation to which the Adopting Entity is a party or by which it or any of its properties or assets may be bound.

(f) The Adopting Entity has received a copy of the Pension Stabilization Trust Agreement (the "Trust Agreement"), is aware of the terms and conditions thereof and agrees that in the event of any conflict between the terms of the Trust and this Agreement, the terms of the Trust will control.

(g) The Adopting Entity has not received any legal, accounting or investment advice from the Trustee, the Board or their representatives. The Adopting Entity acknowledges that it has had the opportunity to consult with independent legal counsel regarding this Agreement and the Trust.

3. **Administration Fees.** The Trustee will allocate reasonable fees for administration to each Adopting Entity's account in the Trust in accordance with the fee schedule established from time to time with the Board of Authority. Such fees shall not exceed 0.30% (30 basis points) per annum on the value of the assets held in the Account. Fees will be collected monthly directly from the Account.

4. **Responsibility for Legal Compliance.** The Adopting Entity acknowledges that the Trustee will not be responsible for compliance with any obligations or to enforce any obligations the Adopting Entity may have under the Plan. All such compliance shall be the responsibility of the Adopting Entity.

5. **Indemnification.** The Adopting Entity agrees to indemnify and hold harmless the Trust, the Trustee and the Board from any and all liabilities and losses, including attorneys' fees, arising out of the claim by any person for damages caused by or resulting from the failure of the Adopting Entity to comply with the provisions of the Plan, the Trust or applicable requirements of federal or state law.



**6. Amendment and Termination.**

(a) This Agreement and the Declaration of Trust constitute the entire agreement of the parties concerning the Adopting Entity's participation in the Trust. This Agreement may be amended only through a written document executed by the Trustee and the Adopting Entity.

(b) The Agreement may be terminated by the Adopting Entity by providing 90 days written notification of its intent to terminate its participation in the Trust; provided that upon such a termination, none of the assets held in the Trust for contribution to the Plan shall be returned or otherwise made available to the Adopting Entity for any purpose other than for reimbursement for contributions paid to said Plan. The Adopting Entity may however direct upon termination that the balance of its Account be delivered to the trustee of a similar trust with similar withdrawal restrictions as the Trust.

(c) The Trust may be terminated in accordance with the provisions of the Trust Agreement.

(d) The Adopting Entity's rights and obligations under this Agreement cannot be assigned without the written consent of the Trustee.

**7. Right to Rely.**

(a) The Adopting Entity acknowledges that the Trustee will rely upon any representations that it or any of its authorized representatives make to the Board.

(b) The Adopting Entity hereby designates the persons identified on the signature page of this Agreement as the persons authorized to represent the Adopting Entity in connection with matters regarding the Adopting Entity's participation in the Trust and the disbursement of funds from the Trust (the "Authorized Representative"), and agrees that the Board and the Trustee may rely upon the representations of the Authorized Representative until and unless notified in writing that this person is no longer authorized to represent the Adopting Entity in this manner. Any such notice must identify a new person who will serve as the Adopting Entity's Authorized Representative.

**8. General Provisions.**

(a) Any notice required under this Agreement shall be in writing and shall be furnished to the recipient at the addresses provided separately by the parties, unless the recipient has provided the sender with notice of a change of address.

(b) This Agreement shall be governed by the laws of the State of California.

(c) The failure of the Trustee to seek redress for violation of or to insist upon the strict performance of any provision of the Agreement shall not be deemed a waiver and will not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation. The rights and remedies provided in this Agreement are cumulative

and the use of any right or remedy does not limit the Trustee's right to use any or all other remedies. All rights and remedies in this Agreement are in addition to any other legal or equitable rights that the Trustee may have.

(d) Every provision of the Agreement is intended to be severable. If any term or provision hereof is invalid for any reason whatsoever, its invalidity will not affect the validity of the remainder of the Agreement.

(e) This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had all signed the same document. All counterparts shall be construed together and shall constitute one agreement.

(f) Unless the context requires otherwise, the use of a feminine pronoun includes the masculine and the neuter, and vice versa, and the use of the singular includes the plural, and vice versa.

(g) The headings used in this Agreement are provided for convenience and are not intended to be a part of this Agreement or to influence the interpretation of the terms of this Agreement. This Agreement shall not be construed on the basis of which party drafted the Agreement or a particular provision thereof.

9. **Selection of Model Portfolio.** The Adopting Entity has reviewed its tolerance for risk and its requirements for the investment of the Account, and has also reviewed the model portfolios offered by the Trustee. Solely and by virtue of this review, the Adopting Entity hereby directs the Trustee to invest the assets of the Account in accordance with the following model portfolio with its commensurate approximate target asset allocation, understanding that the target asset allocation will vary from time to time based upon market fluctuations, and that model portfolio asset allocations may be adjusted +/- 5% from time to time at the discretion of the Trustee:

CHECK ONE:

- Fixed Income (100% fixed income securities)
- Conservative (16% equity securities, 84% fixed income securities)
- Moderate (33% equity securities, 67% fixed income securities)
- Moderate Growth (45% equity securities, 55% fixed income securities)
- Growth (61% equity securities, 39% fixed income securities)
- Aggressive Growth (76% equity securities, 24% fixed income securities)

The Adopting Entity understands and agrees that the Trustee shall be under no duty to question the prudence of the model portfolio the Adopting Entity directs, and shall have no liability for any loss of any kind which may result by reason of the inherent volatility of the asset allocation directed. Once the Adopting Entity has directed the Account to be invested pursuant to a model portfolio as listed above the Trustee will assume discretionary authority and responsibility for its management.

The Adopting Entity may change the designation of the model portfolio to be utilized by executing an amendment to this section 9 of the Participation Agreement. Said amendment will go into effect upon the acknowledgement of receipt by the Trustee.

10. List two Individuals appointed as Authorized Representatives:

\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this Agreement as of \_\_\_\_\_, 2019.

**Adopting Entity:**

sample – not for signature

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BENEFIT TRUST COMPANY,  
TRUSTEE FOR THE PENSION  
STABILIZATION TRUST FOR  
CALIFORNIA MUNICIPALITIES**

By:

\_\_\_\_\_  
Scott W. Rankin, Senior Vice President



EXHIBIT B

PENSION STABILIZATION TRUST  
FOR  
CALIFORNIA MUNICIPALITIES

THIS AGREEMENT is made by and between the Board of Authority of the Pension Stabilization Trust for California Municipalities (the "Board") and Benefit Trust Company, a Kansas corporation, as Trustee (the "Trustee"), effective as of September 23, 2019 (the "Effective Date"), with reference to the following.

A. The obligation to fund pension plans for public employees creates an annual funding obligation that may at times create a strain on the financial resources of public entities in the State of California. At other times, however, such entities may have a budget surplus that could be used to pre-fund a portion of the entity's funding obligation to be used to supplement the entity's funding obligation in years when the entity may experience a funding shortfall.

B. The Pension Stabilization Trust for California Municipalities (the "Trust") has been established to help stabilize the funding of the pension benefit liabilities of participating public entities (collectively, "Adopting Entities" and individually, an "Adopting Entity") by creating a secure vehicle to hold assets pending their contribution to a pension plan in satisfaction of an Adopting Entity's funding obligation.

C. The Board desires to establish this Trust as an essential part of the governmental purposes of the Adopting Entities, pursuant to a trust arrangement that is tax exempt under applicable guidance and procedures under Section 115 of the Code.

C. The Trust and the plans adopted by the Adopting Entities constitute a retirement system subject to the provisions of, and the restrictions and requirements contained in, Article XVI, Section 17 of the California Constitution.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the Board and the Trustee agree as follows:

ARTICLE I  
DEFINITIONS

"Account" means the account established for an Adopting Entity pursuant to Article 7.1(b).

"Adopting Entity" means the public entity in the State of California that participates in the Trust.

**“Agreement”** means this agreement for the Pension Stabilization Trust for California Municipalities.

**“Authorized Representative”** shall mean a representative appointed by each Adopting Entity to perform the functions specified in this Agreement.

**“Board”** means the Board of Authority of the Trust.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Days”** means calendar days.

**“Fiscal Year”** means the 12-month period beginning July 1 and ending June 30.

**“Investment Advisor”** means the independent registered investment adviser appointed by the Trustee pursuant to the authority granted to the Trustee in Section 7.2 of the Agreement.

**“Investment Manager”** means the independent registered investment manager appointed by the Trustee to assume discretionary management of the Trust pursuant to the authority granted to the Trustee in Section 7.1(a) of the Agreement, subject to the approval of the Board.

**“Investment Policy Statement”** means the investment guidelines for the Trust Fund, as adopted by the Board, which establishes the investment guidelines and authority related to the investment of Trust assets in an Adopting Entity’s Account by the Trustee (with the advice of the Investment Advisor), subject to the terms of the Trust.

**“Participant”** means an employee or former employee of an Adopting Entity who is covered by a pension plan adopted by the Adopting Entity.

**“Plan”** means any pension plan in which the employees of an Adopting Entity participate, that is funded, in part, through the Trust.

**“Trust”** means the trust established by this Agreement.

**“Trustee”** means the person or entity appointed and acting as Trustee of the Trust in accordance with the terms of this Agreement. The initial Trustee is Benefit Trust Company.

**“Trust Fund”** means the assets held in trust under the Agreement.

## ARTICLE II

### PURPOSE AND ESTABLISHMENT OF TRUST

**2.1 Establishment of Trust.** This Agreement establishes the Trust. The principal of the Trust consists of all funds deposited by the Adopting Entities, to be held, administered and disposed of by the Trustee as provided in this Trust Agreement.



**2.2 Purposes of the Trust.** The Trust shall be for the purpose of receiving, holding, investing, reinvesting and disbursing the assets of the Adopting Entities that have been contributed to pre-fund a portion of the Adopting Entities' pension obligations.

**2.3 The Trust Fund.** The Trust Fund shall consist of all cash, securities, property, and assets of whatever kind and nature, owned, held or otherwise acquired by the Trustee pursuant to this Agreement, including the contributions described under Article III below, and all earnings thereon.

**2.4 Appointment of Initial Trustee.** Benefit Trust Company is hereby appointed to act as the initial Trustee of the Trust.

### ARTICLE III CONTRIBUTIONS

**3.1 Contributions.** Contributions to the Trust shall be governed by the following provisions:

(a) An Adopting Entity may from time to time make contributions to the Trust, in such amounts as the Adopting Entity shall determine are appropriate. Contributions by an Adopting Entity shall be deposited into the Account established to hold the contributions of that Adopting Entity.

(b) All contributions shall be made in cash or in the form of such other property as the Trustee may from time to time deem acceptable and which shall have been delivered to the Trustee. The contributions so received, together with the income and any other increment thereon shall be held, invested, reinvested and administered by the Trustee pursuant to the terms of this Agreement.

(c) The Trustee shall not be responsible for or have any obligation related to the timing or collection of any contribution or the calculation or payment of amounts to any Plan or of any benefits to Participants; and no Adopting Entity shall be responsible for or have any obligation related to the timing or collection of any contribution by another Adopting Entity or the calculation or payment of amounts to any Plan or of any benefits to Participants who are employees or former employees of another Adopting Entity.

(d) The Trustee shall not accept any contributions received after any trading deadline or with incomplete or incorrect instructions. If any such contributions are inadvertently deposited to the Trust, the Trustee shall as soon as practicable return such previously-deposited amounts to the Adopting Entity.

**3.2 Compliance with Laws.** The Trust is established and maintained by the Board as an integral part of the governmental purposes of the Adopting Entities. The Trust is therefore intended to satisfy all requirements of the United States Department of Treasury pursuant to Section 115 of the Code. Except to the extent of corrections made with respect to contributions made in error as permitted in accordance with Article VI below: (a) all contributions made to the Trust and deposited into each Account and the earnings thereon, shall be retained in the designated

Account until the same shall have been contributed to the applicable Plan of an Adopting Entity; and (b) under no circumstances shall any amounts held in any Account be used for any purpose other than for such contributions.

#### ARTICLE IV

##### ESTABLISHMENT OF RETIREMENT SYSTEM

**4.1 Establishment of Retirement System and Board.** The Plans in which the employees of Adopting Entities participate and the Trust, together, constitute the Retirement System. It is expressly acknowledged that the Retirement System is subject to the provisions of Article XVI, Section 17 of the California Constitution and the provisions of Section 53215 et seq. of the Government Code.

#### ARTICLE V

##### ESTABLISHMENT AND DUTIES OF BOARD

**5.1 Establishment of Board.** The Board is hereby established as the governing body of the Trust.

**5.2 Number and Selection of Board Members.** Each Adopting Entity may but shall not be required to appoint a member of the Board to serve at the pleasure of the Adopting Entity that appointed such member; provided that the Board shall consist of at least one (1) member. One member shall be elected by the members of the Board to serve as chair of the Board at the pleasure of the Board. Each member of the Board shall have a term of one (1) year, which shall automatically renew for additional one (1) year periods; provided that the members may be removed and a successor appointed by the Adopting Entity that appointed such member, with or without cause. Each member of the Board may resign at any time, and his or her successor shall be appointed promptly by the applicable Adopting Entity, provided that if a new member is not so appointed, the remaining members of the Board may appoint a member if necessary to maintain a Board of sufficient members.

**5.3 General Authority, Responsibilities and Duties of the Board.** The Board shall have the plenary authority and fiduciary responsibility for investment of moneys in and administration of the Trust, subject to the following:

(a) The Board shall have the sole and exclusive fiduciary responsibility over the assets of the Retirement System. The Board shall also have sole and exclusive responsibility to administer the Retirement System in a manner that will assure prompt delivery of benefits and related services to the Participants.

(b) The members of the Board shall discharge their duties with respect to the Retirement System solely in the interest of, and for the exclusive purposes of funding a portion of



the pension benefits of Participants and defraying reasonable expenses of administering the Retirement System. The Board's duty to Participants shall take precedence over any other duty.

(c) The members of the Board shall discharge their duties with respect to the Retirement System with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

(d) The members of the Board shall diversify the investments of the Retirement System so as to minimize the risk of losses and to maximize the rate of return, unless under the circumstances it is clearly not prudent to do so.

(e) The Board, consistent with the exclusive fiduciary responsibilities vested in it, shall have the sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of the Retirement System, if deemed necessary by the Board.

(f) Consistent with its fiduciary responsibility hereunder, the Board shall periodically monitor the performance of the Trustee and the Investment Adviser with respect to the investment of Trust assets.

(g) The Board shall, as provided in Section 53219 of the Government Code, carry on the business of the Retirement System. The Board shall make all decisions on behalf of the Retirement System by resolution, in accordance with the terms of this Trust Agreement, and shall perform such other acts and execute such other documents as are specified in this Trust Agreement. Documents requiring execution by the Board may be signed by any member of the Board acting alone. Except as otherwise expressly restricted by the California Constitution and by law, the Board may invest, or delegate the authority to invest, the assets of the Trust through the purchase, holding or sale of any type of financial instrument or financial transaction, including the stock of any company, association or corporation and other securities representing an ownership or equity interest in a company, association, corporation, partnership, trust, limited liability company or other legal entity, or the assets thereof. The Trustee at the Board's direction may execute and deliver agreements with service providers to the Trust for the purpose of receiving services necessary for the administration of the Trust.

(h) The Board shall provide an annual report as required by law and as specified in this subsection, in the manner determined appropriate by the Board. The Board may delegate the preparation of such report to the Trustee or other entity, so long as the Board oversees the work in preparing such report and provided that the Board retains responsibility for the timeliness and contents of such report. The report shall include a description of securities held and a comprehensive report of transactions involving the investment of the assets. The annual report shall also include a detailed statement of the expenses of operating the Trust, including compensation paid, fees paid, net profit and loss statements, including the acquisition cost, the book value, and market value of the total assets as of the date of the report. The Trustee will provide trust account statements to the Board electronically each month, with an electronic annual statement provided at the end of the Fiscal Year.



**5.4 Meetings of the Board.**

(a) All meetings of the Board, including, without limitation, regular, adjourned regular and special meetings shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, Section 54950 et seq. of the Government Code.

(b) Regular meetings of the Board shall be held at such time as the Board may fix by resolution from time to time, and if any day so fixed shall fall upon a legal holiday then, upon the next succeeding business day at the same hour. No notice of any regular meeting of the Board need be given to the members of the Board.

(c) Special meetings of the Board shall be held whenever called by the chairperson of the Board or by a majority of the members of the Board.

(d) A majority of the members of the Board shall constitute a quorum at any meeting of the Board.

**5.5 Actions of Board.** Every act or decision done or made by a majority of the members of the Board present at, or otherwise participating in, any meeting duly called, noticed, held and conducted at which a quorum is present shall be the act or decision of the Board.

**5.6 Compensation.** Members of the Board shall receive no compensation for serving as members of the Board unless otherwise approved by the Adopting Entities.

**ARTICLE VI**

**WITHDRAWALS**

**6.1 Withdrawals from Trust Fund.** An Authorized Representative of each Adopting Entity is the sole party authorized to withdraw or otherwise direct the Trustee to make disbursement of amounts from the Trust Fund and such amounts shall not be withdrawn except for the purpose of contribution to a pension plan in which the employees of an Adopting Entity participate. Under no circumstances shall any Trust Fund amount be paid to or in any way revert to an Adopting Entity directly, except as provided in Sections 6.2 and 6.3. Each Authorized Representative of an Adopting Entity is authorized only to withdraw amounts designated within the Trust Fund for funding of the Plan that provides pension benefits to the employees of that Adopting Entity. An Authorized Representative shall, from time to time and subject to the liquidity requirements and restrictions set forth within the Investment Policy Statement, direct the Trustee to make payments out of the Trust Fund to the trustee or custodian of the Plan that provides pension benefits to the employees of the Adopting Entity. The Trustee shall not be responsible for determining whether withdrawals made by the Authorized Representative are permissible, and shall be entitled to rely upon the determination of the Authorized Representative that such withdrawals are in compliance with the terms of the this Agreement.

**6.2 Mistake.** Any mistake in any payment or in any direction, certificate, notice or other document furnished or issued by the Board, by an Authorized Representative, or by the Trustee in connection herewith may be corrected when the mistake becomes known, and the Board

may direct any adjustment or action that it deems practicable under the circumstances to remedy the mistake. The above notwithstanding, the Trustee must be properly notified of any mistakes or other correction requests within prescribed periods and time limitations as prescribed under applicable law.

**6.3 Refund of Contribution Made to the Trust Fund.** No contribution made to the Trust Fund may be refunded unless a contribution was made:

- (i) Because of a mistake of fact; or
- (ii) Conditioned upon a favorable Internal Revenue Service ruling and such favorable ruling is revoked or not obtained.

Any refund or other return of contributions under subsection 6.3(i) must be made within one (1) year from the date the contribution was made.

## ARTICLE VII

### INVESTMENT OF TRUST FUND

**7.1 The Trust Fund and Trustee Option to Appoint a Discretionary Investment Manager.**

(a) The Trust Fund shall be held, managed, administered, valued, invested, reinvested, distributed, accounted for and otherwise dealt with, by the Trustee, in accordance with the provisions of this Agreement. In the alternative, and only written approval received from the Board, the Trustee may select a discretionary Investment Manager who shall serve at the Trustee's direction to assume primary responsibility for the duties listed above and in the performance of said duties the Investment Manager will be entitled to the same protections and indemnifications enumerated herein as is the Trustee.

(b) There shall be established within the Trust a separate Account for each Adopting Entity. Each Account shall be separately held, managed, administered, valued, invested, reinvested, distributed, accounted for and otherwise dealt with, in accordance with the provisions in this Agreement. The Trustee shall invest the assets of the Account in accordance with the model portfolio options described in the Investment Policy Statement which the Adopting Entity exercises its authority to select in the Participation Agreement. The Adopting Entity understands and agrees that the Trustee shall be under no duty to question the prudence of the model portfolio the Adopting Entity directs, and shall have no liability for any loss of any kind which may result by reason of the inherent volatility of the asset allocation directed. Once the Adopting Entity has directed that the Account be invested pursuant to a model portfolio as listed in the Participation Agreement the Trustee will assume discretionary authority and responsibility for its management.

(c) The Adopting Entity may change their designation of the model portfolio to be utilized by executing an amendment to Section 9 of the Participation Agreement, said amendment to go into effect upon Trustee's acknowledged receipt.



The assets held in each Account shall be charged with the liabilities in respect of that Account and all expenses, costs, charges and reserves of that Account. Any general liabilities, expenses, costs, charges or reserves of the Trust which are not readily identifiable as pertaining to any particular Account shall be allocated and charged by the Trustee to and among each of the Accounts in such manner and on such basis as directed by the Board or the Authorized Representative, but if no such direction is forthcoming then as the Trustee in its discretion deems fair and equitable. Each allocation of liabilities, expenses, costs, charges and reserves by the Trustee shall be conclusive and binding for all purposes.

**7.2 Appointment of Investment Advisor.** The Trustee shall, in the exercise of its discretion over the investment of the Trust Funds, have the authority to appoint a nondiscretionary Investment Advisor. The Investment Advisor shall advise the Trustee in the manner to invest, reinvest, sell and hold all assets of the Trust Fund in accordance with the guidelines established herein. Specifically, the Investment Advisor shall be responsible for advising the Trustee as to the investments and/or portfolio managers to be used to implement the investment strategies authorized by the Investment Policy Statement established by each Adopting Entity as well as assisting the Trustee in selecting asset allocation models for the Trust Fund, as appropriate, and reporting on the performance of investments held in the Trust.

**7.3 Review and Approval of Investment Policy Statement.** The investment objectives of the Trust are primarily to safeguard the principal of the funds held in the Trust, to meet the Trust's liquidity needs and to achieve a favorable return on the funds held in the Trust, subject to the ability of an Adopting Entity to affect the balance of these considerations for its own Account by selecting its own model portfolio and asset allocation as described in Section 7.1(b) herein. An Investment Policy Statement shall be adopted by the Board prior to investment of any contributions received to fund the Trust on behalf of the Adopting Entities. The Investment Policy Statement shall remain in effect until amended or superseded in writing by the Board. The Investment Policy Statement shall provide for the investment of assets of the Trust Fund in a manner consistent with this Agreement and in compliance with the investment requirements of applicable law.

**7.4 Monitoring of Discretionary Investment Manager.** The Trustee, or its designated agents or other representatives, shall be responsible for monitoring the performance of any duly appointed discretionary Investment Manager such that the services provided by the Investment Manager are in compliance with the terms of the Investment Policy Statement, the investment advisory agreement between the Trustee and the Investment Manager, and applicable law. The Trustee shall further be responsible for reviewing the overall performance of the Investment Manager relative to performance goals and objectives specified in the Investment Policy Statement. In the event the Trustee determines that investment decisions of the Investment Manager are inconsistent with an Investment Policy Statement, the investment advisory agreement between the Investment Manager and the Trustee, or applicable law, the Trustee shall take such actions as are commercially reasonable and necessary to correct or recover from such investment decisions as are prudent on behalf of the Trust.

**7.5 Termination and Replacement of Discretionary Investment Manager.** If the Trustee determines that the Investment Manager is not performing its duties in accordance with



the Investment Policy Statements, the investment advisory agreement with the Trustee or applicable law, or that the Investment Manager is not satisfactorily meeting its performance goals and objectives, the Trustee shall have full discretion to terminate the Investment Manager. Throughout any corresponding transition period prior to or commensurate with the selection and delegation of investment management responsibilities to a successor Investment Manager, the Trustee shall ensure that the assets of the Trust continue to be invested in the manner the Trustee deems prudent and most appropriate under the circumstances then-prevailing, as long as in compliance with the general terms and conditions of the Investment Policy Statements and applicable law.

**7.6 General Fiduciary Duties of Trustee.** In the performance of its investment related functions under this Agreement, the Trustee acknowledges that, to the extent of its role and responsibilities set forth herein, it is a fiduciary to the Trust, the Board, and the Adopting Entities. The Trustee agrees that it shall act in accordance with the standards set by the California Constitution and applicable provisions of the Government Code, and shall act with the care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the Trust and the Plans, to the extent known by the Trustee, that a prudent person acting in a like capacity and familiar with those matters would administer the Trust and use and exercise reasonable care, skill and caution, in the administration of the Trust and performance of investment related functions with respect to funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the Trust. The Board shall be entitled to rely upon the actions and decisions of the Trustee in the performance of its duties under this Agreement. Subject to the foregoing duty of the Trustee, the Trustee shall not be liable for any investment losses suffered by the Trust.

## ARTICLE VIII

### GENERAL POWERS OF TRUSTEE

In addition to the specific powers and duties of the Trustee set forth in in this Agreement, the Trustee shall have the following powers:

- (i) to purchase, hold and sell assets on behalf of the Trust in the nominee name of the Trustee for the benefit of the Trust;
- (ii) to sell assets of the Trust to the extent necessary to allow an Authorized Representative to make a withdrawal from the Trust Fund;
- (iii) to arbitrate, defend, enforce, release or settle any claim of or against the Trust;
- (iv) to vote, in person or by proxy, upon all securities held by the Trust;
- (v) to the extent consistent with the Investment Policy Statements, to exercise, buy or sell subscription and conversion rights and participate on behalf of securities held by the Trust in reorganizations, recapitalizations, consolidations, mergers, exchanges, foreclosures, liquidations and creditors' and bondholders' agreements;

- (vi) to do all such acts, take all such proceedings, and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to administer the Trust, provided that such actions or proceedings are not inconsistent with the terms of this Trust;
- (vii) to employ and pay from the assets of the Trust reasonable compensation to agents, investment counsel and attorneys, accountants, or other similar parties, including any person, partnership, corporation or other entity with which the Trustee may be associated, for purposes that the Trustee determines to be necessary for the administration of the Trust, as well as any other parties the Board has engaged to provide related services pursuant to a written agreement;
- (viii) to withdraw from the Trust compensation and expenses payable to the Trustee in such amounts as are agreed to between the Board and the Trustee under any written administrative service agreement or other similar arrangement;
- (ix) to execute and deliver all documents and instruments necessary for the administration of the Trust on behalf of the Trust; and
- (x) to cause any or all of the assets of the Trust Fund to be commingled, to the extent such investment and the issuance thereof would be exempt under the provisions of Sections 2(a)(36), 3(b)(1) or 3(c)(11) of the Investment Company Act of 1940 or Section 3(a)(2) of the Securities Act of 1933, with the assets of trusts created by others, causing such money to be invested as part of a common and/or collective trust fund.

## ARTICLE IX

### GENERAL DUTIES OF TRUSTEE

In addition to the specific powers and duties of the Trustee set forth in in this Agreement, the Trustee shall have the following duties:

**9.1 General.** The Trustee shall, in the performance of all of its duties on behalf of the Trust, act solely in the manner directed herein and discharge its duties hereunder with the care, skill, prudence and diligence under the circumstances that a prudent person acting in a like capacity and familiar with such matters would use in such circumstances.

**9.2 Records.** The Trustee shall keep accurate and detailed accounts and records of all investments, receipts, disbursements, and other transactions, including all separate Accounts and assets contained within the Accounts. For purposes of accounting and administration, the records of the Trust shall be maintained on an accrual basis method on the basis of a Fiscal Year. The Board shall have the right to review and inspect all such Accounts and other records relating thereto at all reasonable times, as well as to request an audit of all Trust Fund activities. Each Adopting Entity shall have the right to review and inspect the Account maintained for such Adopting Entity.



**9.3 Trustee Reports.** The Trustee shall furnish to the Board monthly reports, as well as an annual statement of account, to be delivered within ten (10) days after the end of each month and within twenty (20) days after the end of each Fiscal Year, setting forth all earnings of the Trust, all contributions made to the Trust, including an accounting of the specific Trust Fund to which such contributions were made, all withdrawals from each Trust Fund, and all transfers from the Trust Fund. The Trustee shall also furnish to the Board and each Adopting Entity similar monthly reports and similar annual statements for the separate Account maintained for the Adopting Entity, within the same time. Unless the Board or an Adopting Entity shall have filed with the Trustee written exceptions or objections to any such reports or statements within ninety (90) days after receipt thereof, the reports and statements shall be deemed to be approved and the Trustee shall be released and discharged with respect to all matters and things embraced therein.

**9.4 Audits.** If the Board determines that an audit is desirable, the Trustee shall assist the Board with the engagement of an independent certified public accountant to audit the Trust under such time frames and parameters specified by the Board, with the cost of such audit to be paid for by the Trust Fund and allocated to the separate Accounts as determined by the Board. A copy of the report of such audit shall be furnished to the Board, the Trustee and such other persons as the Board or the Board's Authorized Representative shall designate.

**9.5 Authorized Representatives.** The Board may authorize Authorized Representatives to direct the Trustee with respect to withdrawals from Accounts over which they have administrative responsibilities. The Board shall inform the Trustee immediately in writing of the appointment of any Authorized Representative to whom the Board has given such authorization. Generally, the Board and Authorized Representatives shall each authorize two or more authorized signatories who may request withdrawals on their behalf. Subject to any requirement of proof required by the Trustee in verifying the identity of any Authorized Representative, the Trustee may rely on such designations and follow any instructions of such individuals, in writing, and the Trustee's business record entry of any directions by any of them shall be conclusive proof of the Board's authorization of such instructions. Any transactions initiated by the Trustee before receiving actual notice of any change with respect to (a) such Board members and/or Authorized Representative(s) or their authority, or (b) the termination of the Trust, shall be valid and binding on the Board, the Authorized Representatives, their successors and assigns, and the Trust.

**9.6 Fiduciary Bonds.** Upon request, the Trustee shall provide to the Board evidence of a bond, surety or security, as maintained by the Trustee, for any employee of the Trustee who works with or on behalf of the Trustee in carrying out its duties and responsibilities related to the Trust.

**9.7 Compliance with Laws.** The Trustee shall administer the Trust and all assets invested hereunder at all times in conformity with all applicable provisions of state and federal law.

## ARTICLE X

### MAINTENANCE AND CONFIDENTIALITY OF RECORDS



**10.1 Books, Records and Board Information.** The Trustee agrees to the following with respect to all Trust information, books and records and information provided by the Board or the Adopting Entities to the Trustee.

(a) The Trustee shall maintain copies of all executed Trust related documents, including the written directions of the Board or Adopting Entities with respect to Accounts, Authorized Representative designations, authorized signatory information, and the Investment Policy Statement, as well as shall use commercially accepted standards in retaining, backing up, storing and recovery of any and all data and other electronic documentation in a secure environment.

(b) The Trustee agrees to maintain facilities and procedures for the safekeeping of all documents, records, books, files and other materials relative to the Trust and transactions facilitated on behalf of the Plans that participate in the Trust (collectively, the "Books and Records"). The Trustee agrees to maintain such Books and Records for the duration of its service as Trustee and not to destroy such Books and Records without the Board's prior written consent. The Board and any applicable regulatory body shall have reasonable access during normal business hours to such Books and Records. The Trustee shall provide all necessary assistance in conjunction with any inspection or audit by any applicable regulatory body for no additional fees, but the reasonable out of pocket expenses incurred in connection with such inspection or audit shall be payable at the expense of the Trust at the time such expenses are incurred.

(c) All data and information submitted by the Board or the Adopting Entities to the Trustee in connection with this Agreement ("Data") is and shall remain the exclusive proprietary information and property of the Board or the Adopting Entities and shall be considered confidential information. Data shall not be (1) used by the Trustee other than pursuant to this Agreement, (2) disclosed, sold, assigned, leased or otherwise provided to third parties by the Trustee except in connection with the provision of services pursuant to this Agreement, unless the Board specifically authorizes the release or disclosure of such information; or (3) commercially exploited by or on behalf of the Trustee, its employees or agents. The Trustee shall take such steps as shall under the circumstances be reasonable, prudent and appropriate to protect and keep confidential the Data and shall inform its employees of the confidential nature of the Data. The Trustee agrees to cause each person or entity directly or indirectly controlled by the Trustee and the officers, employees and agents of the Trustee and each such controlled person or entity to comply with the confidentiality provisions of this Agreement.

**10.2. Required Disclosure.** If the Trustee becomes legally compelled to disclose any Data, the Trustee will provide the Board with prompt written notice thereof in order for the Board to seek a protective order or other restriction on disclosure. If the Trustee is required to disclose information after the Board has sought such protective order or other restriction on disclosure, the Trustee will furnish only that portion of the Data that it is legally compelled to disclose and no other. The Trustee agrees to regard and preserve as confidential all records and other information relative to the Trust and will not, without written authority from the Board, disclose to others during the term of this Agreement or thereafter any such records or other information except as required by applicable law. However, should a court of law or a governmental agency request information that is otherwise legally available, the Trustee shall be held harmless for inadvertently and without malice disclosing such information requested. Likewise, the Trustee shall not be



responsible for and equally held harmless for any other disclosure for which it is legally compelled to provide based on the action or inaction of the Board or any of its representatives.

**10.3. Records Inspection.** The Trustee agrees that, during the term of this Agreement, all records maintained for the Trust shall be open to inspection and audit by the Board at reasonable times, and such records shall be preserved and retained for the greater of three years after the related filing date or such other period as may be required by applicable governing regulations as in effect from time to time. On a periodic basis, or if otherwise required in accordance with any legal requirement, the Trustee shall engage an independent certified public accountant whose identity and fees are approved by the Board with such approval to not be unreasonably withheld, to audit records and information related to the Trust, with the reasonable cost of such audit to be paid for by the Trust. A copy of the report of such audit shall be furnished to the Board and to any other parties authorized to receive such information.

## ARTICLE XI

### LIABILITIES AND IMMUNITIES

**11.1 Immunity of Board, Trustee or Other Fiduciaries.** Except as otherwise provided by controlling law, neither the establishment of the Trust created hereunder nor any modification hereof nor the creation of any fund or Account or the payment of any benefits shall be construed as giving to any Participant any legal or equitable right against the Board or any member of the Board, or against the Trustee or any fiduciary, except as provided in this Agreement.

#### 11.2 Responsibility for Errors

(a) The Board or an Authorized Representative will promptly notify the Trustee of any errors or omissions in information supplied by the Board, the Authorized Representative, their agent or other representatives. In such event, the Trustee's sole obligation, to the exclusion of any other obligation or remedy for damage or loss, including special or consequential damages, shall be to use its reasonable efforts to correct any resulting errors in any information, records or in any reports it has prepared (including filing amended returns, restating audited financial statements, Trustee reports, etc. if required), or any other errors that have been identified.

(b) The Trustee will fully protect, indemnify, defend and hold harmless the Board, the Adopting Entities, their officers, directors, employees and other representatives, and the Participants (any one of which is hereafter referred to as an "Indemnified Party") to the full extent lawful to protect an Indemnified Party from all losses, claims, damages, liabilities and expenses incurred by an Indemnified Party (including reasonable fees and disbursements of counsel including applicable court expenditures) which are the result of the Trustee's fraud, bad faith, willful misconduct or negligence.

(c) The Trustee will correct at its own expense any errors in the records and reports prepared and attributable to their errors, but the Trustee shall not otherwise be responsible for special or consequential damages, nor shall it correct any such errors for which the Board or an Adopting Entity has knowledge but fails to properly and timely notify the Trustee in compliance with applicable law.



(d) In accordance with applicable legal requirements, the Board will promptly notify the Trustee after the settlement date of any errors made or allegedly made in any requested trade of which the Board has knowledge. The trade will be assumed to have been effected in accordance with the original request if notification is not given within required timeframes.

(e) Neither the Trustee, its Investment Advisor nor a duly appointed Investment Manager will be liable for any loss to the Board, any Adopting Entity, any Authorized Representative or any Participant for failure or refusal of any transfer agent or investment sponsor to act upon investment instructions, or for any loss incurred due to the inaccuracy, incompleteness, or lack of timeliness of information received from the transfer agent or investment sponsor, unless such losses are caused by the instructions provided by the Trustee.

**11.3 Indemnification of Trustee.** The Trustee and its officers, directors, employees and other representatives shall be fully protected and indemnified from all losses, claims, damages, liabilities and expenses incurred (including reasonable attorneys fees and expenses) in reliance upon information, direction or instructions received from the Board or an Authorized Representative as provided in this Trust Agreement, which instructions or directions the Trustee or other indemnified person reasonably believes to be authentic and issued by any such party. Indemnification shall be approved by the Board and paid out of the Trust. Should it become necessary to perform some act hereunder and there is neither direction in this Trust Agreement nor information nor instructions from the relevant Authorized Representative or Board, and if no such information or instructions can be obtained after reasonable inquiry, the Trustee shall have full power and authority to act in the Trustee's discretion, consistent with the purposes of this Trust. In so acting or in following any instructions from an authorized party, the Trustee shall not be liable except to the extent that the actions of the Trustee constitute fraud, bad faith, willful misconduct or negligence.

## ARTICLE XII

### TRUSTEE'S COMPENSATION

The Trustee shall be entitled to reasonable compensation for its services as agreed upon with the Board. The Trustee shall also be entitled to reimbursement for all direct expenses properly incurred on behalf of the Trust. Such compensation and reimbursement shall be paid to the Trustee out of the Trust Fund.

## ARTICLE XIII

### RESIGNATION, REMOVAL AND SUCCESSION OF TRUSTEE

**13.1 Resignation or Removal.** The Trustee may resign as Trustee of the Trust, upon sixty (60) days' prior written notice to the Board, at any time with or without cause, and the Board may remove the Trustee, upon sixty (60) days' prior written notice to the Trustee, at any time with or without cause. The Trustee shall be entitled to fees and disbursements for services performed through the date of termination.

**13.2 Records.** Upon resignation or removal, the Trustee will provide the Board with copies of all Trust accounting records, if so requested in writing by the Board, at any time within seven (7) years of resignation or removal. Forms, procedures, software, worksheets, checklists and other processes developed by the Trustee to perform the services required under this Agreement are the property of the Trustee and are not considered the records of the Plans. If the resignation or removal is the result of a dispute over fees paid, or to be paid, to the Trustee, in addition to the duties and responsibilities for Trustee and custodial transfer as set forth above, the Trustee shall provide copies of all reports, records or Account statements otherwise to the Board, as requested, as well as shall retain a copy of such records, reports and other information pending the resolution of any ongoing dispute regarding the fees paid, or to be paid hereunder.

**13.3 Succession.** Upon the resignation or removal of the Trustee, the Board shall appoint a successor Trustee who shall have the same powers and duties as those conferred upon the Trustee hereunder or such other powers and duties as are agreed by the Board and the successor Trustee. Upon acceptance of such appointment by the successor Trustee, the Trustee shall assign, transfer, and pay over to such successor Trustee the funds and properties then constituting the assets of the Trust. No successor Trustee shall be subject to any liability or responsibility with respect to any act or omission of any prior Trustee.

#### ARTICLE XIV

#### AMENDMENT AND TERMINATION

**14.1 Trust Amendments.** This Agreement may be amended at any time, in whole or in part, by the Board. No such amendment shall have the effect of diverting any portion of the Trust Fund for purposes other than the funding of pension liabilities for which the amounts held in the Trust Fund has been irrevocably designated for the exclusive benefit of the Participants. Furthermore, no amendment shall be made or approved by the Board that adds to or increases the Trustee's duties or responsibilities without its prior written approval or consent.

**14.2 Termination of Trust.** This Agreement may be terminated at any time by the Board, subject to any requirements of applicable law. Upon such termination, the assets of the Trust Fund shall continue to be held in the Trust until the Authorized Representative directs the Trustee to pay such amounts in accordance with Section 6.1 of this Agreement, less any applicable reserving requirements as specified below. In making such payments, the Trustee may reserve from the assets in the Trust such amounts as it shall reasonably deem necessary to provide for any sums chargeable against the Trust for which the Trustee may be liable, or for payment of expenses in connection with the settlement of its Accounts and the termination of this Agreement as may be mutually agreed in writing by the parties.

#### ARTICLE XV

#### MISCELLANEOUS

**15.1 Protection From Creditors.** No amounts held in the Trust Fund shall be subject in any way to alienation, sale, transfer, assignment, pledge, attachment, garnishment, execution or encumbrance of any kind on account of creditors of the Board, an Adopting Entity, or a Participant,



and any attempt to accomplish the same shall be void. All assets held in the Trust Fund are held in trust irrevocably for the sole benefit of the Participants of each Plan to which contributions are made out of the Trust Fund, and neither the Board nor any Adopting Entity has any equitable or reversionary interest in the Trust Fund or the assets held in the Trust Fund. The Board and the Adopting Entities are not beneficiaries of the Trust or the Trust Fund. None of the benefits, payments, proceeds or claims of any Participant in a Plan shall be subject to any creditors and, in particular, the same shall not be subject to attachment or garnishment or other legal process by any creditor, nor shall any such beneficiary have the right to alienate, anticipate, commute, pledge, encumber or assign any of the benefits or payments or proceeds which such Participant may expect to receive, contingently or otherwise, from the Trust or as otherwise required under applicable law.

**15.2 Employment Not Affected.** The terms of employment of any employee of an Adopting Entity shall not be affected in any way by this Agreement nor shall this Agreement be construed in any way so as to guarantee or extend the employment of any employee of an Adopting Entity.

**15.3 Construction of Trust.** This Agreement shall be construed and enforced according to the laws of the State of California and in accordance with applicable provisions of the Internal Revenue Code. To the extent the terms of this Agreement are in conflict with the provisions of any other agreement between the parties, the terms of this Agreement shall control; provided, however, that nothing in this Agreement shall be deemed to expand, diminish or otherwise affect the terms of any Plan adopted by an Adopting Entity.

**15.4 Severable Provisions.** If any provision of this Agreement shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions of the Trust Agreement.

**15.5 Headings.** The headings of this Agreement are for convenience only and are not substantive terms of the Agreement.

**15.6 Singular and Plural.** Whenever the singular of any term is used in this Agreement, it shall refer to the plural of such as appropriate under the circumstances.

**15.7 Force Majeure.** No party having duties under this Agreement will be deemed to be in default for any performance, or delay, or failure to perform under this Agreement resulting, directly or indirectly, from: (a) any governmental action or inaction, labor disputes, mechanical or electrical breakdown, any failure of communication lines, telephone or other interconnect problems or unauthorized access, provided such failure (i) is not the fault of such party; or (ii) could not be reasonably controlled by such party; or (b) any natural disaster; or (c) other events beyond the reasonable control of the parties; provided, further, that such events shall not be excused to the extent they can be obviated by the implementation of the Trustee's Business Recovery Plan.

**15.8 Notices.** Any notice under this Agreement shall be given in writing by certified mail, return receipt requested, to the applicable address listed below, or such subsequent address has is provided by written notice.

Board of Authority

Benefit Trust Company  
5901 College Boulevard, Suite 100  
Overland Park, KS 66211  
Attention: Scott Rankin

**15.9 Arbitration of Disputes.** This Agreement contains an arbitration clause and the parties agree as follows:

(a) All parties to this Agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.

(b) Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.

(c) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.

(d) The arbitrators do not have to explain the reason(s) for their award.

(e) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

(f) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

(g) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this Agreement.

No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class action who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this Agreement except to the extent stated herein.

With respect to controversies or disputes which may arise between each party (including any affiliates, as well as the Investment Manager, as a third party beneficiary of this Agreement, having the right to enforce any of the parties' obligations herein) under this Agreement concerning matters involving alleged violations of the Advisers Act or applicable state investment advisory laws, it is understood that the Securities and Exchange Commission and various state securities regulatory agencies believe that an agreement to submit disputes to arbitration does not constitute a waiver of any rights provided under the Investment Advisers Act or applicable state investment



advisory laws, including the right to choose a forum, whether by arbitration or adjudication, in which to seek the resolution of disputes.

**Arbitration Provision:**

Notwithstanding the preceding paragraph, all parties agree that any and all disputes that may arise between each party (including any affiliates, as well as the Investment Manager, as a third-party beneficiary of this Agreement with rights to enforce any of the parties' obligations herein) concerning any transaction or the construction, performance or breach of this Agreement or any other agreement between the parties, whether entered into prior to, on, or subsequent to the date of this Agreement, shall first be addressed by good faith negotiations between each party. In the event either party determines that they are not able to resolve the dispute through negotiation, then the dispute shall be determined by arbitration conducted before, and only before, an arbitration panel set up by the JAMS in accordance with their arbitration procedures. The parties shall attempt to agree upon one arbitrator to hear the matter. If the parties are unable to so agree, each party shall appoint one arbitrator and the two arbitrators so appointed shall in turn choose a third arbitrator. If the arbitrators chosen by the parties cannot agree on the choice of a third arbitrator within a period of 30 days after their nomination, then the third arbitrator shall be appointed by the President of the JAMS. Either party may initiate arbitration by filing a written claim with the JAMS. Any arbitration under this Agreement shall be conducted pursuant to the Federal Arbitration Act and the laws of the State of California.

**15.10 Binding Effect.** This Agreement shall be binding upon the Trustee, the Board and each Authorized Representative.

This Pension Stabilization Trust for California Municipalities shall commence as of the date first written above and may be signed in counterparts.

**BOARD OF AUTHORITY**

By:   
Todd Cusimano, Chairman

**BENEFIT TRUST COMPANY**

By:   
Scott W. Rankin, Senior Vice President

EXHIBIT C

**Benefit Trust Company  
Fee Schedule and Service Addendum**

**Trustee, Custodial and Communication Services** – Benefit Trust Company shall be compensated for assumption of fiduciary responsibility, custodial services and for performing communication and other non-investment related services as specified in the Service Agreement, as follows. All fees will be collected from the Trust and allocated pro-rata to the participating Accounts.

**Asset Based Trustee Fee**                      0.10% (10 basis points) per annum on the value of the assets held in trust. Asset based Trustee fees will be assessed monthly.

**Asset Based Investment Advisory Fee**                      0.10% (10 basis points) per annum on the value of the assets held in trust. Asset based fees will be assessed monthly and paid to the Trustee's Investment Advisor, or in the alternative to a discretionary Investment Manager should one be appointed.



EXHIBIT D

=== **SAMPLE** ===

**PENSION STABILIZATION TRUST FOR CALIFORNIA MUNICIPALITIES**  
**INVESTMENT POLICY STATEMENT**

The purpose of this Investment Policy Statement is to establish a comprehensive strategy for the acceptance and accumulation of invested assets under the Pension Stabilization Trust for California Municipalities for, among other things, to assist Adopting Entities in meeting applicable funding requirements for the funding of pension liability (generally referred to as "**Pension Liability**").

This Investment Policy Statement shall be consistent with the governing law, including the Internal Revenue Code of 1986 as amended from time to time (the "**Code**"), California laws, including applicable provisions of the California Government Code.

**TRUST FUNDING STATEMENT**

The purpose of the Trust is to provide a uniform method of investing contributions and earnings of all contributed amounts between funds deposited within the Trust Fund, as such term is defined within the Trust. The Trust shall be funded primarily by irrevocable contributions made on a discretionary basis by the Adopting Entities.

**BOARD OF AUTHORITY**

The Board of Authority (the "**Board of Authority**") is directly responsible for the implementation and oversight of this Investment Policy Statement. This responsibility includes the selection and ongoing evaluation of investments and/or investment managers in accordance with applicable laws and regulations. However, these investment responsibilities may be delegated to an authorized third-party trustee. In this case, the Board of Authority has appointed Benefit Trust Company ("**BTC**") as Discretionary Trustee and Trust Fund custodian, who may further designate and delegate any corresponding Investment Manager Advisor responsibilities as set forth below. On behalf of the Trust, and as approved by the Board of Authority, BTC shall administer the assets of the Trust in such a manner that the investments are:

- Prudent; in consideration of the stated purpose of the Trust, any underlying Plan and in accordance with Article 16, Section 17 of the California Constitution creating a Retirement System, and California Government Code Sections 53216.1, 53216.5 and 53216.6, and other applicable requirements;
- Diversified; among a broad range of investment alternatives;

- Permitted; in accordance with the terms of the Trust, any applicable Plan document and in accordance with California Government Code Sections 53216.1, 53216.5 and 53216.6 and other applicable requirements;
- Selected; for the exclusive benefit of the Plan participants as it relates to the funding of pension benefits, or as otherwise deemed appropriate for the purposes set forth by the Trust.

The above notwithstanding, the Board of Authority retains the responsibility to oversee the management of the Trust, including BTC's, or any successor trustee's, requirement that investments and assets held within the Trust continually adhere to the requirements of California Government Code.

### INVESTMENT OBJECTIVES

The Trust authorizes the use of a broad range of investment choices that have distinctly different risk and return characteristics. In general, assets held in the Trust Fund will be for the primary purpose of meeting present and future pension contribution obligations and may be invested in accordance with California Government Code Sections 53216.1, 53216.5 and 53216.6 that subject to applicable legal requirements may provide greater latitude to increase purchasing power and capital growth potential if deemed prudent to do so.

Though investment responsibilities are delegated to the Trustee, the Board of Authority determines the range of asset allocations from which Adopting Entities may select for the investment of their assets held in the Trust Fund. Appendix A of this Investment Policy details the range of asset allocations selected by the Board of Authority. The asset allocations may be modified from time to time by amending the Appendix. Related to the investments and the holding of investments themselves, the Trustee shall actively manage model portfolios representing the range of asset allocations selected by the Board of Authority, and said model portfolios shall be listed in the Participation Agreement for selection by Adopting Entities.

### PERIODIC ANALYSIS AND EVALUATION

The Board of Authority and/or its designees shall periodically meet with the Trustee to review investment performance reports that analyze the performance of the managers selected in each market sector that take into consideration:

- adherence to applicable legal constraints on investment prudence;
- consistency and adherence to stated investment management style and discipline;
- risk adjusted performance relative to managers with similar style;
- long-term investment performance relative to appropriate benchmarks; and

- changes in investment personnel managing the portfolio

**ETHICS AND CONFLICT OF INTEREST**

Officers, employees, and agents involved in the investment process shall refrain from personal business activities that could conflict with proper execution of the investment program, or which could impair their ability to make impartial decisions. Officers, employees, and agents involved in the investment process shall abide by the California Government Code Section 1090 et seq. and the California Political Reform Act (California Government Code Section 81000 et seq.)

**AMENDMENT**

The Board of Authority shall have the right to amend this Policy, in whole or in part, at any time and from time to time.

**ADOPTION**

The Board of Authority hereby adopts the provisions of this Investment Policy Statement as of this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

===SAMPLE – NOT FOR SIGNATURE===



**APPENDIX A: Asset Allocation and Model Portfolios**

Subject to the ability of the Board of Authority and Trustee to deviate from these guidelines as set forth under the heading "Investment Objectives" in the Statement, the Board of Authority has determined after due consideration that the investment objectives of the Trust are to safeguard the principal of the funds held in the Trust, as well as to meet the Trust's liquidity needs and to achieve a favorable return on the funds held in the Trust, subject to the ability of an Adopting Entity as described in Section 7.1 of the Trust to affect the balance of these considerations for its own Account by selecting its own asset allocation represented by various model portfolios. The model portfolio options made available to Adopting Entities shall be as follows:

- Fixed Income (100% fixed income securities)
- Conservative (16% equity securities, 84% fixed income securities)
- Moderate (33% equity securities, 67% fixed income securities)
- Moderate Growth (45% equity securities, 55% fixed income securities)
- Growth (61% equity securities, 39% fixed income securities)
- Aggressive Growth (76% equity securities, 24% fixed income securities)

It is understood that the target asset allocation will vary from time to time based upon market fluctuations, and that model portfolio asset allocations may be adjusted +/- 5% from time to time at the discretion of the Trustee without the requirement of further action by the Board of Authority.

In order to participate in this Trust, the Adopting Entity shall state that it understands and agrees that the Trustee shall be under no duty to question the prudence of the model portfolio the Adopting Entity directs, and shall have no liability for any loss of any kind which may result by reason of the inherent volatility of the asset allocation directed. Once the Adopting Entity has directed the Account to be invested pursuant to a model portfolio as listed above the Trustee will assume discretionary authority and responsibility for its management.

The Adopting Entity may change the designation of the model portfolio to be utilized by executing an amendment to Section 9 of the Participation Agreement. Said amendment will go into effect upon the acknowledgement of receipt by the Trustee.

The Trustee shall manage the Trust investments on a discretionary basis such that the total allocation among various fixed income investment styles, capitalizations, fund managers and securities is established and re-balanced from time-to-time so as to meet the Trust's various asset allocation objectives with the least amount of risk. The Trust assets shall not be invested in any proprietary investment vehicles of the Trustee or any of its affiliates or advisors.

**Equity Investments**

The purpose of the aggregate equity allocation within the Trust is to provide a total return consisting primarily of appreciation, with dividend income a secondary consideration. In order to maximize return opportunity while minimizing risk, the Trustee shall, in its discretion, allocate the Trust's equity allocation among a diverse group of equity fund managers, taking into consideration

such factors as investment style (value, growth, international, etc.) as well as the capitalization (large, mid, small, etc.) of the investment.

Permitted equity investments shall include:

- Publicly traded common stocks, preferred stocks, securities convertible into common stocks, and securities which carry the right to buy common stocks, listed on a major United States stock exchange, including stocks traded through the NASDAQ Stock Market;
- American Depository Receipts (“ADRs”);
- SEC-registered open-end mutual funds and Bank, Insurance Company or Trust Company commingled funds which invest primarily in stocks and other instruments which are allowable securities under these policies and objectives;
- Closed-end SEC-registered mutual funds which invest primarily in stocks and other instruments which are allowable securities under these policies and objectives; and
- Exchange Traded Funds (“ETFs”) which invest primarily in stocks and other instruments which are allowable securities under these policies and objectives.

In managing the equity portfolio, the Trustee shall not do any of the following:

- buy equity securities on margin;
- short-sell equity securities;
- buy or sell futures contracts in any form, except that the Trustee is authorized to buy or sell such contracts specifically for purposes of, and only for purposes of, a hedge against portfolio loss;
- buy or sell put or call options on stocks, indexes or futures contracts;
- buy or sell foreign securities not registered through an SEC filing or not denominated in U.S. dollars; or
- buy or sell any securities which are not publicly traded.

However, all of the above restrictions shall be permitted in open-end or closed-end mutual funds, comingled funds, or ETFs, if in the opinion of the Trustee these activities are consistent with fund objectives and prudent management, and the investments provide for daily liquidity.



Additionally, certain securities may not be held directly, but only in open-end or closed-end mutual funds, comingled funds, or ETFs. These include common stocks, preferred stocks, and securities convertible into common stocks and securities that carry the right to purchase common stocks of non-U.S. companies traded on global exchanges, traded in any currency, as well as restricted securities of U.S. and non-U.S. companies, including securities issued through private offerings, and forward currency contracts or currency futures contracts to hedge foreign currency exposure.

Not more than 5% of the Trust assets shall be invested in any single equity security issue or issuer. The foregoing limitation is not intended to apply to the percentage of Trust assets invested in a single diversified mutual fund.

Both an investment fund manager's performance and the performance of individual securities, if purchased, will be compared to the following benchmarks based upon the particular investment style and capitalization range:

|                         |                            |
|-------------------------|----------------------------|
| Domestic Equities:      | S&P 500                    |
| International Equities: | MSCI EAFE and ACWI ex.U.S. |

The Trustee shall pay particular attention to rolling 3 and 5 year time frames as well as shorter periods should the situation warrant. In addition, the Trustee shall measure and compare the exposure to risk of the Trust's equity portfolio with benchmarks appropriate for the investment style and capitalization range of each such investment.

### **Fixed Income Investments**

The purpose of the aggregate fixed income allocation within the Trust is to provide a total return consisting of income and appreciation, while preserving capital by investing in a diversified portfolio of high quality fixed income securities. The investment objective of the fixed income portfolio is to achieve a total return commensurate with the overall bond market as measured by the Barclay's Aggregate Bond Index for domestic securities, and the Barclay's Global Bond Index for international securities, with attention given to rolling 3 and 5 year time frames as well as shorter periods should the situation warrant. In addition, the Trustee shall measure and compare the exposure to risk of the Trust's fixed income portfolio with benchmarks appropriate for the investment style and capitalization range of each such investment.

Permitted securities shall include:

- Obligations of the U.S. Government and its agencies;
- Bonds issued by U.S. Corporations or U.S. subsidiaries of foreign companies that are incorporated within the U.S. and carry a minimum BBB rating;
- Certificates of Deposit issued by banks or savings and loans of sound financial condition under FDIC management, with never more than the amount insured by FDIC (including interest) in any single institution;

- Money market funds and money market instruments of an investment grade commonly held in money market funds such as repurchase agreements, banker's acceptances, commercial paper, etc.
- SEC-registered open-end mutual funds and Bank, Insurance Company and Trust Company commingled funds which invest primarily in bonds and other instruments which are allowable securities under these policies and objectives;
- Closed-end SEC registered mutual funds which invest primarily in bonds and other instruments which are allowable securities under these policies and objectives;
- Exchange Traded Funds ("ETFs") which invest primarily in bonds and other instruments which are allowable securities under these policies and objectives;
- Investment grade foreign government or corporate bonds carrying a minimum BBB rating, whether or not denominated in U.S currency, and whether or not hedged for foreign currency risk.
- Securities backed by pools of consumer or corporate receivables other than mortgages ("Asset-backed Securities"), provided that these securities have been registered with the SEC for public offering and that they meet the requirements of these policies and objectives and carry a minimum BBB rating; and
- U.S. Agency mortgage-backed pass-through securities.

In managing the fixed income portion of the Trust assets, the Trustee shall not do any of the following:

- buy fixed income securities on margin;
- short-sell fixed income securities;
- buy or sell futures contracts in any form, except that the Trustee is authorized to buy or sell such contracts specifically for purposes of, and only for purposes of, a hedge against portfolio loss;
- buy or sell put or call options on bonds, indexes or futures contracts;
- buy or sell foreign securities not registered through an SEC filing or not denominated in U.S. dollars; or
- buy or sell any securities which are not publicly traded except U.S. Government or agency-backed mortgages.

However, all of the above restrictions shall be permitted only in open-end or closed-end mutual funds, comingled funds, or ETFs, if in the opinion of the Trustee these activities are consistent



with fund objectives, prudent management, risk mitigation, and the investments provide for daily liquidity. In addition, investment in non-investment grade bonds or loans by such funds shall be permitted so long as the average aggregate rating of the funds are investment grade, and in the opinion of the Trustee the proportion of non-investment grade bonds to investment grade bonds in the portfolio is prudent.

Not more than 5% of the Trust assets shall be invested in any single corporate debt security issue or issuer. No limit shall apply to the percentage of Trust assets invested in a single diversified mutual fund, nor does the limitation apply to obligations of the U.S. Government and its agencies, U.S. agency mortgage-backed pass-through securities or to a mutual fund that invests in such obligations or securities.

### **Use of Mutual Funds**

The Board of Authority envisions that the Trustee will invest predominantly in open and closed-end mutual funds. The Board recognizes that the limitations and restrictions set forth in this Statement cannot be imposed on the managers of such mutual funds and that mutual funds held by the Trust may be managed outside of the requirements of this Statement. Nonetheless, the Trustee shall seek to identify mutual funds that comply as closely as possible to these guidelines and shall diligently monitor for prompt removal and replacement of those that do not.

### **Performance Review**

In the execution of its fiduciary responsibilities, the Trustee shall review, on a regular basis, the performance of the various investments and fund managers employed by the Trust to determine if assets are being properly managed according to the stated objectives and policies set forth in the Trust Agreement and in this Statement. The Trustee shall view performance and investment risk on the basis of a full 3 to 5-year market cycle, though the stated objectives and policies of the Trustee may result in the prompt sale of a security or dismissal of a fund manager based upon shorter term results. In addition, any deviation or change in the structure, management or investment style of any fund manager employed shall precipitate a review by the Trustee to determine whether or not that manager should be retained.



Office of the City Manager

CONSENT CALENDAR  
May 14, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Henry Oyekanmi, Director, Finance Department  
Subject: Contract: Keenan Financial Services to Establish, Maintain and Invest for an IRS Section 115 Trust Fund

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract with Keenan Financial Services to establish a pension Section 115 trust that includes Keenan Financial Services providing trust administration, trustee/custodian, and investment advisory services for the Trust; and authorizing the City's Plan Administrator to execute the legal and administrative documents on behalf of the City and to take whatever additional actions are necessary to establish a Section 115 trust fund, establish the authority for the management of the Section 115 investments, develop investment policies for the Section 115 trust fund, and Select an initial model investment portfolio, from the choices provided.

FISCAL IMPACTS OF RECOMMENDATION

Approving the vendor to establish and maintain the Trust and make investments for the Section 115 pension trust fund should result in better investment returns than those available using the investment policies for the City's pooled investments.

BACKGROUND

At the November 28, 2017 Council meeting, the City Manager was directed to bring back to Council a proposal to establish an Irrevocable Supplemental Pension Trust and other options as proposed by staff.

At the June 26, 2018 Council meeting, the City Council adopted a Resolution appointing the City Manager as the Plan Administrator and authorizing the City Manager to take the necessary steps to negotiate and execute the documents to establish a Section 115 Trust Fund to use as a pension rate stabilizing fund, and delegate authority for managing the Section 115 Trust Fund investments.

Compensation packages for the City of Berkeley employees include California Public Employees Retirement System (CalPERS) pensions, a Police Retirement Income Benefit Plan and three retiree medical plans (Miscellaneous Retiree Health Premium



Assistance Plan; Police Retiree Premium Assistance Plan; and Fire Employees Retiree Health Plan), referred to as other post-employment benefits (OPEB).

Recent changes in rate smoothing strategies by CalPERS have increased volatility in employer contribution rates in pensions. Monies set aside in a Section 115 Trust can be used to ease budgetary pressures resulting from unanticipated spikes in employer contribution rates. For example, a CalPERS employer who has extra money after making their current CalPERS contribution might set aside some or all of the surplus to use in future years when the required contribution is less affordable. The City wants to take steps to better manage and reduce its pension and other post-employment benefit liabilities. These actions will represent best practices for financial management, slowing the increases in the City's annual pension costs, and positioning the City to achieve retiree medical cost savings into the future.

Steps already taken by the City to address pension costs include implementing pension reform by establishing second-tier pension plans for all new employees. PEPRAs miscellaneous will be enrolled in a 2% at 62 plan and PEPRAs safety members (police and fire) will be enrolled in a 2.7% at 57 plan. PEPRAs members are required to pay half the normal cost of their plans.

However, changes by CalPERS, and past investment market losses by CalPERS have led to rapidly increasing pension rates and costs. The related ramp up in annual costs will continue for the next several years.

The City wants to take steps to better manage and reduce its pension and other post-employment benefit liabilities.

Until recently, the City's only option for reducing the unfunded actuarial accrued liability was to commit additional funds to CalPERS. Unfortunately, these funds would be subject to the same market volatility as the CalPERS investment policy, and the funds are not accessible to the City for other pension expenses. In the last couple of years, a private letter ruling was received from the IRS that establishes that under Section 115 of the Internal Revenue Code, public agencies or municipalities could create a separate trust to "pre-fund" its CalPERS unfunded liability. This will provide an alternative to sending the funds to CalPERS, and will provide greater local control over the assets and investment portfolio management.

A League of California Cities' Retirement System Sustainability Study and Findings (January 2018) revealed the following:

1. Rising pension costs will require cities over the next seven years to nearly double the percentage of their General Fund dollars they pay to CalPERS. Between FY 2018-19 and FY 2024-25, cities' dollar contributions will increase by more than 50 percent. For example, the impact would be the following for the City of Berkeley if CalPERS payments increased by 50 percent, as the League expects.

| Estimated Employer Contribution | FY 19 Adopted Budget | FY 24-25 Based on California League of Cities Estimate |
|---------------------------------|----------------------|--------------------------------------------------------|
| Miscellaneous                   | \$29.96M             | \$44.54M                                               |
| Police                          | \$14.57M             | \$19.69M                                               |
| Fire                            | \$7.33M              | \$10.18M                                               |

2. For many cities, pension costs will dramatically increase to unsustainable levels;
3. Many cities face difficult choices that will be compounded in the next recession.
4. Tangible savings resulting from PEPRAs will not have a substantial effect on city budgets for decades.

According to the League, some things cities can do today are the following:

1. Develop and implement a plan to pay down the city’s Unfunded Actuarial Liability (UAL). Possible methods include shorter amortization periods and pre-payment of cities UAL.
2. Consider local ballot measures to enhance revenues
3. Create a pension rate stabilization program: Establishing and funding a local Section Trust Fund can help offset unanticipated spikes in employer contributions.
4. Change service delivery methods and levels of certain public services
5. Use procedures and transparent bargaining to increase employee pension contributions
6. Issue a pension obligation bond (POB). However, financial experts including the Government Finance Officers Association (GFOA) strongly discourage local agencies from issuing POBs. Moreover, this approach only delays and compounds the inevitable financial impacts.

On April 4, 2017, the City Manager presented to Council a report titled [Projections of Future Liabilities - Options to Address Unfunded Liabilities Tied to Employee Benefits \(https://www.cityofberkeley.info/Clerk/City\\_Council/2017/04\\_Apr/City\\_Council\\_04-04-2017\\_-\\_Special\\_Meeting\\_Agenda.aspx\)](https://www.cityofberkeley.info/Clerk/City_Council/2017/04_Apr/City_Council_04-04-2017_-_Special_Meeting_Agenda.aspx) which provided a thorough overview of the City’s long term expenditure obligations. On that same date, the City’s actuary presented to Council a presentation titled [Pension and OPEB Funding Study](#) which identified options to address the City’s unfunded liabilities tied to post-employee benefits.

One of the recommendations made by the City’s actuary is the establishment of an irrevocable supplemental (Section 115) pension trust with an initial “seed” deposit of \$3 million as a “start up” contribution. Going forward the City should set aside approximately 3% of payroll which is about \$4 million in year 1 and 4% of payroll which is approximately about \$5.5 million in year 2 and for the foreseeable future.

This Council report deals with the recommendation from both the League and the City's actuary which is to establish a local Section 115 Trust Fund to help offset future spikes in employer contributions.

**CURRENT SITUATION AND ITS EFFECTS**

The City identified three agencies that provide professional Trust administrative, trustee/custodial, and investment advisory or management services: Public Agency Retirement Services (PARS), PFM Asset Management LLC (PFM), and Keenan, and Requests for Proposals (RFP) were sent out. In their responses to the RFP, they identified their team of companies to provide the Trust services as follows:

PARS team:

- Trust Administrator-PARS
- Trustee/Custodian-US Bank
- Investment Manager-Highmark Capital Management

PFM team:

- Trust Administrator-PFM
- Trustee/Custodian-Wells Fargo Bank
- Investment Manager-PFM

Keenan Financial Services team:

- Trust Administrator-Keenan
- Trustee/Custodian-Benefit Trust Company
- Investment Manager-Morgan Stanley

The RFPs were evaluated by a review committee consisting of the Director of Finance, the Treasury Manager and an outside consultant for the City.

The RFPs were evaluated using the following criteria:

- |                                     |     |
|-------------------------------------|-----|
| 1. Firm's integrity and competence  | 20% |
| 2. Price Proposal                   | 20% |
| 3. Qualifications to do the project | 50% |
| 4. Socially Responsible investing   | 10% |

Following is the RFP Rating Sheet:

RFP RATING SHEET OF VENDORS

|                                 | Keenan Financial Services | PFM Asset Management LLC | Public Agency Retirement Services (PARS) |
|---------------------------------|---------------------------|--------------------------|------------------------------------------|
| Firm's integrity and competence | 20                        | 20                       | 20                                       |
| Price proposal                  | 20                        | 11                       | 10                                       |



|                                  |     |    |    |
|----------------------------------|-----|----|----|
| Qualifications to do the project | 50  | 50 | 50 |
| Socially responsible investing   | 10  | 0  | 10 |
| Total                            | 100 | 81 | 90 |

All three firms have significant experience establishing and maintaining Section 115 trusts and providing investment options and investment advisory services. All three reviewers gave Keenan Financial Services the highest rating based on the above criteria. Staff recommends establishing a pension Section 115 trust with Keenan Financial Services.

It should be pointed out that PFM would not sign the City’s socially responsible investing forms and gave the following reason for not doing so:

“While PFM as a firm may comply with some of these criteria, we have no way to consistently research, analyze, and confirm compliance on an ongoing basis. Therefore, PFM, as a firm and investment advisor, is not able to document, disclose, or confirm compliance with the social responsibility criteria listed above adopted by the City.”

After the City Council approves the resolution to approve a contract with Keenan Financial Services establish, maintain and invest for an IRS Section 115 trust, the following next steps need to be taken:

1. Sign Board of Authority Member Agreement
2. Sign Pension Stabilization Trust for California Municipalities Participation Agreement, and appoint two individuals as authorized representatives
3. Develop investment policies for the Section 115 Trust, to be approved by the City Council
4. Select an initial model investment portfolio, from the choices provided.  
Staff recommends the Moderate portfolio consisting of 33% equity securities and 67% fixed income securities. The City may change the designation of the model portfolio in the future by executing an amendment to section 9 of the Participants’ Agreement.
5. Make the deposits into the Section 115 Trust  
The current plan is as follows:
  - a. Immediately deposit the nearly \$4 million that is currently in the PERS Savings fund.
  - b. Immediately deposit the \$4 million allocated by Council during the budget process
  - c. Deposit the \$1.1 million discount the City saved by prepaying the FY 2019 unfunded liability payments required by CalPERS, by June 30, 2019.

6. Keenan is to provide quarterly and annual investment reports to Council.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

An adequately funded Section 115 Trust can be used to help offset future spikes in CalPERS employer retirement contributions. In addition, establishing the trust fund should result in better investment returns than those available using the investment policies for the City's pooled investments.

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, 981-7300

Attachments:

1: Resolution

Exhibit A: Board of Authority Member Agreement

Exhibit B: Pension Stabilization Trust for California Municipalities Participation Agreement

Exhibit C: Keenan Financial Services Investment Portfolio Options

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

CONTRACT: KEENAN FINANCIAL SERVICES TO ESTABLISH, MAINTAIN AND INVEST FOR AN IRS SECTION 115 TRUST FUND

WHEREAS, it is determined to be in the best interest of the City to set aside funds for the pre-funding of its CalPERS pension obligation to be held in trust for the exclusive purpose of making future contributions of the City's required pension contributions and any employer contributions in excess of such required contributions at the discretion of the City; and

WHEREAS, a tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Internal Revenue Code (as amended) and the Regulations issued thereunder, and is a tax-exempt trust under the relevant statutory provisions of the State of California; and

WHEREAS, the City's establishment and operation of the Section 115 trust has no effect on any current or former employee's entitlement to post-employment benefits; and

WHEREAS, an RFP was sent to all firms with significant experience establishing and maintaining Section 115 trusts and providing investment options and investment advisory services; and

WHEREAS, the responses to the RFP were evaluated by a committee consisting of the Director of Finance, the Treasury Manager, and an outside consultant for the City; and

WHEREAS, all three reviewers gave Keenan Financial Services the highest rating based on the criteria outlined in the RFP.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract, and any amendments, with Keenan Financial Services to establish an IRS Section 115 Trust Fund, to include trust administrative, trustee/custodian, and investment advisory services.

BE IT FURTHER RESOLVED that the City's Plan Administrator is hereby authorized to execute the legal and administrative documents on behalf of the City and to take whatever additional actions are necessary to establish a Section 115 trust fund, establish the authority for the management of the Section 115 investments, develop investment policies for the Section 115 trust fund, and Select an initial model investment portfolio, from the choices provided.



**PENSION STABILIZATION TRUST FOR CALIFORNIA MUNICIPALITIES**

**BOARD OF AUTHORITY MEMBER AGREEMENT**

WHEREAS, the Board of Authority of the Pension Stabilization Trust for California Municipalities (the "PST") adopted the Trust; and

WHEREAS, the PST allows up to one Member of the Board of Authority to be appointed by each Adopting Entity; and

WHEREAS, the Member must sign a written acceptance and agree to administer the PST; and

WHEREAS, the Member's written acceptance must be in a form satisfactory to the Board of Authority;

NOW, THEREFORE, the Adopting Entity, the Member and the Board of Authority agree as follows:

Section 1:

Appointment as Member: The Board hereby confirms the appointment by \_\_\_\_\_ of \_\_\_\_\_, as Member, pursuant and subject to the terms and conditions of the PST.

Section 2:

Acceptance as Member: \_\_\_\_\_ hereby accepts his or her appointment as Member pursuant and subject to the terms and conditions of the PST and agrees to administer the PST.

**IN WITNESS WHEREOF**, the duly authorized parties hereto have executed this Agreement as of \_\_\_\_\_, 2017.

**Adopting Entity:**  
\_\_\_\_\_  
\_\_\_\_\_

**CHAIRMAN OF THE BOARD OF THE  
PENSION STABILIZATION TRUST FOR  
CALIFORNIA MUNICIPALITIES**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**ACCEPTANCE AS MEMBER**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

**PENSION STABILIZATION TRUST FOR CALIFORNIA MUNICIPALITIES  
PARTICIPATION AGREEMENT**

THIS PARTICIPATION AGREEMENT is entered into by the undersigned California public entity (the "Adopting Entity") and Benefit Trust Company, a Kansas corporation, as Trustee (the "Trustee") of the Pension Stabilization Trust for California Municipalities (the "Trust"), effective as of the date specified on the signature page (the "Effective Date"), with reference to the following:

A. The Board of Authority (the "Board") of the Trust has established the Trust to help California Municipalities stabilize the funding of their pension benefit liabilities by creating a secure vehicle to hold assets pending their contribution to a pension plan in satisfaction of a public entity's funding obligation. The Trust is intended to qualify as a trust arrangement that is tax exempt under applicable guidance and procedures under Section 115 of the Internal Revenue Code.

B. The Adopting Entity has adopted a pension plan for its eligible employees (the "Plan") to which the Adopting Entity is required to make regular contributions. To the extent the Adopting Entity may from time to time have excess funds, a portion of which can be used to pre-fund contributions to the Plan, the Adopting Entity desires to have a secure trust to which it may contribute such funds and to have the trust hold such pre-funding contributions.

C. In order to participate in the Trust, the Adopting Entity must be a public entity in the State of California and must enter into this Participation Agreement (the "Agreement").

NOW, THEREFORE, the Adopting Entity and the Trustee agree as follows:

1. **Participation.** The undersigned Adopting Entity agrees to all of the provisions, terms and conditions of the Trust and agrees to participate in the Trust in accordance with the terms of this Agreement. The Adopting Entity agrees to cooperate in providing any information reasonably required by the Trustee or the Board to administer the Trust properly.

2. **Representations of Adopting Entity.** The Adopting Entity makes the following representations and warranties, and acknowledges that the Trustee is relying on these representations in entering into this Agreement:

(a) The Adopting Entity is a public entity within the State of California under the California Constitution and applicable sections of the Government Code.

(b) By executing this Agreement, the Adopting Entity acknowledges that it has determined that the Trust is appropriate for the pre-funding of a portion of its pension liabilities under the Plan.

(c) The Plan has been adopted by all necessary action of the governing body of the Adopting Entity and remains in full force and effect, in compliance with all applicable legal requirements.

(d) The adoption of this Agreement has been approved by all necessary action of the Adopting Entity's governing body and the person signing this Agreement on its behalf is authorized to do so.

(e) Neither the execution and delivery of this Agreement by the Adopting Entity, nor compliance by the Adopting Entity with any of the provisions hereof, nor the consummation of the transactions contemplated hereby, will result in a default, or give rise to any right of termination, cancellation or acceleration, under any term, condition or provision of any agreement or other instrument or obligation to which the Adopting Entity is a party or by which it or any of its properties or assets may be bound.

(f) The Adopting Entity has received a copy of the Pension Stabilization Trust Agreement (the "Trust Agreement"), is aware of the terms and conditions thereof and agrees that in the event of any conflict between the terms of the Trust and this Agreement, the terms of the Trust will control.

(g) The Adopting Entity has not received any legal, accounting or investment advice from the Trustee, the Board or their representatives. The Adopting Entity acknowledges that it has had the opportunity to consult with independent legal counsel regarding this Agreement and the Trust.

3. **Administration Fees.** The Trustee will allocate reasonable fees for administration to each Adopting Entity's account in the Trust in accordance with the fee schedule established from time to time with the Board. Such fees shall not exceed 0.30% (30 basis points) per annum on the value of the assets held in the account. Fees will be collected monthly directly from the account.

4. **Responsibility for Legal Compliance.** The Adopting Entity acknowledges that the Trustee will not be responsible for compliance with any obligations or to enforce any obligations the Adopting Entity may have under the Plan. All such compliance shall be the responsibility of the Adopting Entity.

5. **Indemnification.** The Adopting Entity agrees to indemnify and hold harmless the Trust, the Trustee and the Board from any and all liabilities and losses, including attorneys' fees, arising out of the claim by any person for damages caused by or resulting from the failure of the Adopting Entity to comply with the provisions of the Plan, the Trust or applicable requirements of federal or state law.

6. **Amendment and Termination.**

(a) This Agreement and the Declaration of Trust constitute the entire agreement of the parties concerning the Adopting Entity's participation in the Trust. This Agreement may be amended only through a written document executed by the Trustee and the Adopting Entity.

(b) The Agreement may be terminated by the Adopting Entity by providing 90 days written notification of its intent to terminate its participation in the Trust; provided that



upon such a termination, none of the assets held in the Trust for contribution to the Plan shall be returned or otherwise made available to the Adopting Entity for any purpose.

(c) The Trust may be terminated in accordance with the provisions of the Trust Agreement.

(d) The Adopting Entity's rights and obligations under this Agreement cannot be assigned without the written consent of the Trustee.

**7. Right to Rely.**

(a) The Adopting Entity acknowledges that the Trustee will rely upon any representations that it or any of its authorized representatives make to the Board.

(b) The Adopting Entity hereby designates the persons identified on the signature page of this Agreement as the persons authorized to represent the Adopting Entity in connection with matters regarding the Adopting Entity's participation in the Trust and the disbursement of funds from the Trust (the "Authorized Representative"), and agrees that the Board and the Trustee may rely upon the representations of the Authorized Representative until and unless notified in writing that this person is no longer authorized to represent the Adopting Entity in this manner. Any such notice must identify a new person who will serve as the Adopting Entity's Authorized Representative.

**8. General Provisions.**

(a) Any notice required under this Agreement shall be in writing and shall be furnished to the recipient at the addresses provided separately by the parties, unless the recipient has provided the sender with notice of a change of address.

(b) This Agreement shall be governed by the laws of the State of California.

(c) The failure of the Trustee to seek redress for violation of or to insist upon the strict performance of any provision of the Agreement shall not be deemed a waiver and will not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation. The rights and remedies provided in this Agreement are cumulative and the use of any right or remedy does not limit the Trustee's right to use any or all other remedies. All rights and remedies in this Agreement are in addition to any other legal or equitable rights that the Trustee may have.

(d) Every provision of the Agreement is intended to be severable. If any term or provision hereof is invalid for any reason whatsoever, its invalidity will not affect the validity of the remainder of the Agreement.

(e) This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had all signed the same document. All counterparts shall be construed together and shall constitute one agreement.

(f) Unless the context requires otherwise, the use of a feminine pronoun includes the masculine and the neuter, and vice versa, and the use of the singular includes the plural, and vice versa.

(g) The headings used in this Agreement are provided for convenience and are not intended to be a part of this Agreement or to influence the interpretation of the terms of this Agreement. This Agreement shall not be construed on the basis of which party drafted the Agreement or a particular provision thereof.

9. **Selection of Model Portfolio.** The Adopting Entity has reviewed its tolerance for risk and its requirements for the investment of the Account, and has also reviewed the model portfolios offered by the Trustee. Solely and by virtue of this review, the Adopting Entity hereby directs the Trustee to invest the assets of the Account in accordance with the following model portfolio with its commensurate approximate target asset allocation, understanding that the target asset allocation will vary from time to time based upon market fluctuations, and that with the exception of Fixed Income, model portfolio asset allocations may be adjusted +/- 5% from time to time at the discretion of the Trustee:

CHECK ONE:

- Fixed Income (100% fixed income securities)
- Conservative (16% equity securities, 84% fixed income securities)
- Moderate (33% equity securities, 67% fixed income securities)
- Moderate Growth (45% equity securities, 55% fixed income securities)
- Growth (61% equity securities, 39% fixed income securities)
- Aggressive Growth (76% equity securities, 24% fixed income securities)

The Adopting Entity understands and agrees that the Trustee shall be under no duty to question the prudence of the model portfolio the Adopting Entity directs, and shall have no liability for any loss of any kind which may result by reason of the inherent volatility of the asset allocation directed. Once the Adopting Entity has directed the Account to be invested pursuant to a model portfolio as listed above the Trustee will assume discretionary authority and responsibility for its management.

The Adopting Entity may change the designation of the model portfolio to be utilized by executing an amendment to this section 9 of the Participation Agreement. Said amendment will go into effect upon the acknowledgement of receipt by the Trustee.

10. List two Individuals appointed as Authorized Representatives:

---



---

IN WITNESS WHEREOF, the parties have executed this Agreement as of \_\_\_\_\_, 2018.

**Adopting Entity:**

\_\_\_\_\_

**BENEFIT TRUST COMPANY, TRUSTEE  
FOR THE PENSION STABILIZATION  
TRUST FOR CALIFORNIA  
MUNICIPALITIES**

Signature: \_\_\_\_\_

By: \_\_\_\_\_  
Scott W. Rankin, Senior Vice President

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBT D

|                                             | KENNAN FINANCIAL SERVICES |               |                 |                    |         |                      |       |       |        |  |
|---------------------------------------------|---------------------------|---------------|-----------------|--------------------|---------|----------------------|-------|-------|--------|--|
|                                             | INVESTMENT OPTIONS        |               |                 |                    |         |                      |       |       |        |  |
|                                             | Fixed<br>Income           | Conservative  | Moderate        | Moderate<br>Growth | Growth  | Aggressive<br>Growth |       |       |        |  |
| Total Equities                              | 0.00%                     | 16.00%        | 33.00%          | 45.00%             | 61.00%  | 75.00%               |       |       |        |  |
| Total Bonds                                 | 100.00%                   | 84.00%        | 67.00%          | 55.00%             | 39.00%  | 25.00%               |       |       |        |  |
| Total                                       | 100.00%                   | 100.00%       | 100.00%         | 100.00%            | 100.00% | 100.00%              |       |       |        |  |
| <b>Domestic equities:</b>                   | <b>Style</b>              | <b>Ticker</b> | <b>Expenses</b> |                    |         |                      |       |       |        |  |
| <b>1. Large Cap domestic equities:</b>      |                           |               |                 |                    |         |                      |       |       |        |  |
| a. Alger capital appreciation focus         | Large growth              | ALGYX         | 0.65%           | 0%                 | 1%      | 3.5%                 | 6%    | 6%    | 8%     |  |
| b. Columbia contrarian core                 | Large blend               | COFYX         | 0.66%           | 0%                 | 2%      | 3%                   | 4%    | 5%    | 7%     |  |
| c. Oakmark select                           | Large value               | OANLX         | 0.82%           | 0%                 | 2%      | 4%                   | 4%    | 6%    | 7%     |  |
| <b>2. Small/ Mid cap domestic equities:</b> |                           |               |                 |                    |         |                      |       |       |        |  |
| a. Hartford midcap                          | Mid growth                | HMDYX         | 0.76%           | 0%                 | 0%      | 1%                   | 2%    | 4%    | 6%     |  |
| b. Alger small cap focus                    | Small growth              | AGOZX         | 0.90%           | 0%                 | 1%      | 3%                   | 4%    | 5%    | 6%     |  |
| c. Undiscovered managers' behavioral value  | Small blend               | UBVFX         | 0.79%           | 0%                 | 1%      | 1%                   | 2%    | 4%    | 5%     |  |
| <b>3. Real Estate Investment Trusts:</b>    |                           |               |                 |                    |         |                      |       |       |        |  |
| a. Cohen & Steers Real Estate securities    | Real Estate               | CSZIX         | 0.88%           | 0%                 | 1%      | 2%                   | 2%    | 3%    | 4%     |  |
| b. PGIM Global Real Estate                  | Real Estate               | PGRQX         | 0.80%           | 0%                 | 0%      | 1%                   | 2%    | 2.5%  | 3%     |  |
| <b>Total Domestic Equities &amp; REITs</b>  |                           |               |                 | 0                  | 8%      | 19%                  | 26%   | 35.5% | 46.0%  |  |
| <b>International/ Global Equities:</b>      |                           |               |                 |                    |         |                      |       |       |        |  |
| a. John Hancock International Growth        | Int'l growth              | JIGTX         | 0.93%           | 0%                 | 2%      | 2%                   | 3%    | 4%    | 4%     |  |
| b. Brandeis International small cap         | Int'l SMID                | BISRX         | 1.00%           | 0%                 | 1%      | 1.5%                 | 2%    | 3%    | 4%     |  |
| c. American Funds New Perspectives Fund     | Global growth             | ANWFX         | 0.55%           | 0%                 | 1%      | 2%                   | 2%    | 3%    | 4%     |  |
| d. American Funds New World Fund            | Emerging markets          | NFFFX         | 0.76%           | 0%                 | 1%      | 1%                   | 1.5%  | 2%    | 3%     |  |
| e. PGIM Jennison Global Opportunities       | Global growth             | PRJQX         | 0.84%           | 0%                 | 0%      | 1%                   | 1.5%  | 2%    | 3%     |  |
| f. Oakmark International                    | Int'l value               | OANIX         | 0.81%           | 0%                 | 1%      | 2%                   | 3%    | 3%    | 3%     |  |
| g. Hartford International Value             | Int'l value               | HILYX         | 0.91%           | 0%                 | 1%      | 2%                   | 3%    | 4%    | 4%     |  |
| h. Thornburg Investment Income Builder      | Global Blend              | TIBOX         | 0.85%           | 0%                 | 1%      | 3%                   | 3%    | 5%    | 5%     |  |
| <b>Total International/Global Equities</b>  |                           |               |                 | 0%                 | 8%      | 15%                  | 19%   | 25.5% | 30.0%  |  |
| <b>Fixed Income:</b>                        |                           |               |                 |                    |         |                      |       |       |        |  |
| a. BlackRock Total Return                   | Domestic Bond             | MPHQX         | 0.39%           | 16%                | 14%     | 11%                  | 9%    | 6%    | 4%     |  |
| b. Guggenheim Investment Grade Bond         | Domestic Bond             | GIUSX         | 0.50%           | 16%                | 14%     | 11%                  | 9%    | 6%    | 4%     |  |
| c. PGIM Total Return Bond                   | Domestic Bond             | PTRQX         | 0.46%           | 16%                | 14%     | 11%                  | 9%    | 6%    | 4%     |  |
| d. Western Asset Core Plus Bond             | Domestic Bond             | WAPSX         | 0.42%           | 16%                | 14%     | 11%                  | 9%    | 6%    | 4%     |  |
| e. Guggenheim Macro Opportunities           | Domestic Bond             | GIOIX         | 0.97%           | 16%                | 12%     | 11%                  | 9%    | 6%    | 4%     |  |
| f. Hartford World Bond                      | Global Bond               | HWDYX         | 0.67%           | 8%                 | 7%      | 4%                   | 4%    | 3%    | 1%     |  |
| g. Brandywine Global Opportunities Bond     | Global Bond               | GOBSX         | 0.56%           | 6%                 | 5%      | 4%                   | 3%    | 3%    | 1.5%   |  |
| h. Brandywine Global Alternative Credit     | Global Bond               | LMAMX         | 1.25%           | 6%                 | 4%      | 4%                   | 3%    | 3%    | 1.5%   |  |
| <b>Total Bonds</b>                          |                           |               |                 | 100%               | 84%     | 67%                  | 55%   | 39%   | 24%    |  |
| <b>Total Investments</b>                    |                           |               |                 | 100%               | 100%    | 100%                 | 100%  | 100%  | 100%   |  |
| <b>Expected Return</b>                      |                           |               |                 | 4.50%              | 5.00%   | 6.00%                | 6.99% | 7.69% | 8.46%  |  |
| <b>Expected Standard Deviation</b>          |                           |               |                 | 3.12%              | 4.26%   | 6.09%                | 7.41% | 9.48% | 11.89% |  |





Office of the City Manager

CONSENT CALENDAR  
January 28, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Kelly Wallace, Interim Director, Health, Housing & Community Services  
 Subject: Contract No. 3200086 Amendment: Albany Community Access to Resources and Services (Albany CARES)

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to amend Contract No. 3200086 with the Albany Community Access to Resources and Services (Albany CARES) in an amount not to exceed \$50,000 for a total not to exceed contract amount of \$100,000, through June 30, 2020.

FISCAL IMPACTS OF RECOMMENDATION

Mental Health Services Act (MHSA) funding from the State of California in the amount of \$50,000 is available in the FY2020 budget for the Albany CARES program in the following ERMA GL Code: 315-51-503-526-2017-000-451-612990. The Contract Management System number for this contract amendment is CMS No. R1754.

CURRENT SITUATION AND ITS EFFECTS

Per the City Council approved FY2018/19 MHSA Annual Update, Contract No. 3200086 with the City of Albany was executed to support the Albany CARES program. Albany CARES provides a one-stop venue for residents to learn about and receive referrals to resources for help with a range of social, mental health and economic issues. The intent of the program is to complement current services provided by other agencies and fill in where gaps exist through service coordination and linkages.

The City Council approved FY2019/20 Mental Health Services Act (MHSA) Annual Update, included \$50,000 of MHSA funds for services provided through the Albany CARES program through June 30, 2020.

BACKGROUND

Since the passage of Proposition 63 in 2004, the Health, Housing & Community Services Department, Mental Health Division, has received annual MHSA funding which is utilized to expand and transform the mental health service delivery system to better meet the needs of underserved and inappropriately served communities, among others. This initiative has provided new opportunities for the Mental Health Division to further develop and expand its system of care, adding new programs to the divisions own

program and utilizing non-profit providers and community partners in the planning and delivery of comprehensive mental health services for the residents of Berkeley and Albany. The contract this report seeks to extend advances this goal and will provide improved coordination between the Cities of Berkeley and Albany.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental impacts or opportunities associated with the action recommended in this report.

RATIONALE FOR RECOMMENDATION

Allocating funding for Albany CARES provides mental health services and supports for vulnerable residents in the City of Albany.

ALTERNATIVE ACTIONS CONSIDERED

Funding for Albany CARES is in the City Council approved FY2019/20 MHSA Annual Update. In order for MHSA funded mental health services and supports for residents in the City of Albany to continue, no other alternative actions were considered.

CONTACT PERSON

Karen Klatt, Community Services Specialist III, HHCS, 510-981-7644  
Steven Grolnic-McClurg, Manager of Mental Health Services, HHCS, 510-981-5249

Attachments:

1: Resolution

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

CONTRACT NO. 3200086 AMENDMENT: ALBANY COMMUNITY ACCESS TO  
RESOURCES AND SERVICES (ALBANY CARES) PROGRAM

WHEREAS, Mental Health Services Act (MHSA) funds are allocated to mental health jurisdictions across the state for the purposes of transforming the mental health system into one that is consumer and family driven, culturally competent, wellness and recovery oriented, includes community collaboration, and implements integrated services; and

WHEREAS, the City's Department of Health, Housing & Community Services, Mental Health Division, currently receives MHSA funds on an annual basis to provide mental health services and supports to the residents of Berkeley and Albany; and

WHEREAS, in order to utilize funding for programs and services, the Mental Health Division must have a locally approved Plan, Annual Update, or Three Year Program and Expenditure Plan in place for the funding timeframe; and

WHEREAS, on October 30, 2018 by Resolution No. 68,639-N.S., the City Council authorized the City Manager to approve the MHSA Fiscal Years 2018 through 2019 Annual Update, which included allocating \$50,000 to the City of Albany for the Albany CARES program to provide mental health services and supports to vulnerable residents from ERMA GL Code: 315; and

WHEREAS, per the approved FY2018/19 MHSA Annual Update, Contract No. 3200086 with Albany CARES was executed; and

WHEREAS, on July 23, 2019 by Resolution No. 69,033-N.S., the City Council authorized the City Manager to approve the MHSA Fiscal Years 2019 through 2020 Annual Update, which included allocating an additional \$50,000 to the City of Albany for the Albany CARES program.

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. 3200086 with Albany CARES for mental health services and supports through June 30, 2020, increasing the contract by \$50,000 to bring the total not to exceed amount of the contract to \$100,000. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.







Office of the City Manager

CONSENT CALENDAR  
January 28, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Kelly Wallace, Interim Director, Health, Housing & Community Services  
 Subject: Jointly Apply for Infill Infrastructure Grant Funding for 1601 Oxford

RECOMMENDATION

Adopt two Resolutions that enable Satellite Affordable Housing Associates to access State of California Infill Infrastructure Grant (IIG) funds for its 1601 Oxford project by:

1. Authorizing the City Manager to prepare and submit a joint application for IIG funds; and
2. Authorizing the City Manager to take actions needed for the City's participation in the IIG program by adopting state-required terms about submitting an application, entering into the State's Standard Agreement and other documents.

FISCAL IMPACTS OF RECOMMENDATION

There are no direct fiscal impacts for being a joint applicant for IIG funds. However, as a joint applicant, the City may share responsibility for completing the affordable housing development. Staff will evaluate the requirements and risks, and if needed, enter into a side agreement with Satellite Affordable Housing Associates (SAHA) or its affiliate to clarify responsibilities and mitigate risk to the City.

CURRENT SITUATION AND ITS EFFECTS

SAHA intends to pursue IIG funds for its 1601 Oxford project, a 35-unit affordable housing development for low-income seniors. The City reserved \$6 million for the project in 2018, and SAHA has been seeking state and local funds to complete the financing package, and secured Alameda County A1 bond funding and state No Place Like Home funding. Housing staff recommend that Council adopt the attached resolutions so the City can support SAHA's IIG application for 1601 Oxford.

The IIG Notice of Funding Availability (NOFA) and final program guidelines were released on October 30, 2019, and include a requirement for developers to apply jointly with a jurisdiction. Applications are due in February. The IIG NOFA did not include specific resolution language, so the attached resolution is based on language required for a joint application for a different state funding program. On December 10, 2019,

Council approved joint applications for IIG to support projects that applied for funding through the 2019 Housing Trust Fund Request for Proposals.

Jointly applying for IIG funds is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

#### BACKGROUND

IIG promotes infill housing development and funds infrastructure improvements related to site preparation or demolition, utility service, pedestrian and bicycle infrastructure, environmental remediation, and other improvements related to the affordable housing development.

Other state funding programs have required joint applications between the City and developer, and the City submitted successful joint applications for Affordable Housing and Sustainable Communities funds (for Grayson Apartments at 2748 San Pablo) and No Place Like Home funds (for Berkeley Way). Joint applicants are typically required to accept joint liability, but the City and joint applicant may enter into a side agreement that establishes project responsibilities and indemnifies the City. Joint applications also demonstrate the City's commitment to advancing affordable housing locally.

#### ENVIRONMENTAL SUSTAINABILITY

There are no environmental sustainability effects directly associated with the recommendations in this report.

#### RATIONALE FOR RECOMMENDATION

Council has identified housing affordability as a critical issue facing the City. Pursuing all available sources of affordable housing funding is consistent with City priorities.

#### ALTERNATIVE ACTIONS CONSIDERED

The City could decline to jointly apply to the State for housing funds, making 1601 Oxford ineligible for IIG funds unless the County agreed to serve as a joint applicant. This could delay the project and would not be consistent with the City's Strategic Plan goal; it is therefore not recommended.

#### CONTACT PERSON

Jenny Wyant, Community Development Project Coordinator, HHCS, 510-981-5228

#### Attachments:

- 1: Resolution – Joint Application for Infill Infrastructure Funds for 1601 Oxford
- 2: Resolution – Authorization to Participate in the Infill Infrastructure Grant Program

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

JOINT APPLICATION FOR INFILL INFRASTRUCTURE FUNDS FOR 1601 OXFORD

WHEREAS, on October 16, 2018, City Council reserved \$6 million to support the development of 1601 Oxford, Satellite Affordable Housing Associates' (SAHA) affordable housing project for seniors; and

WHEREAS, SAHA indicated an interest in pursuing Infill Infrastructure Grant (IIG) funding from the State of California's Housing and Community Development Department (HCD); and

WHEREAS, on October 30, 2019, HCD released a Notice of Funding Availability and program guidelines for IIG funds, which require applicants to jointly apply for IIG funds with the jurisdiction in which the project is located; and

WHEREAS, the City of Berkeley (City) may be required to accept a portion of the project's liability as a condition of the joint application, though the risk may be mitigated by a side agreement negotiated between the City and SAHA.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it approves the submission of a joint application with SAHA, or SAHA's affiliate for the IIG application in the upcoming round or future IIG funding rounds.

BE IT FURTHER RESOLVED that the City Manager shall work to mitigate risk to the City from serving as a joint applicant, including negotiating an agreement with SAHA regarding mutual responsibilities.

BE IT FURTHER RESOLVED that the City Manager, or her designee, is authorized to execute the IIG Program Application Package and the IIG Program Documents as required by HCD for participation in the IIG program.

BE IT FURTHER RESOLVED that the City Manager, or her designee, is hereby authorized to execute all original or amended documents or agreements to effectuate this action; a signed copy of said documents, agreements, and any amendments will be kept on file in the Office of the City Clerk.

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

AUTHORIZATION TO PARTICIPATE IN THE INFILL INFRASTRUCTURE GRANT PROGRAM

WHEREAS, the State of California, Department of Housing and Community Development (“Department”) issued a Notice of Funding Availability for Infill Infrastructure Grant Program funds dated October 30, 2019, as may be amended from time to time, (“NOFA”), under the Infill Infrastructure Grant Program (“IIG” or “Program”) authorized by Assembly Bill 101 (Stats. 2019, ch. 159, § 20) and Part 12.5 (commencing with section 53559) of Division 31 of the Health and Safety Code.

WHEREAS, the NOFA relates to the availability of approximately \$194 million in funds for projects located in Large Jurisdictions under the IIG Program; and

WHEREAS, the City of Berkeley (“City”) is an Eligible Applicant within the meaning of Section 302(j) of the IIG Program Guidelines, dated October 30, 2019 (“Guidelines”).

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Berkeley does hereby determine and declare as follows:

SECTION 1. That City is hereby authorized and directed to apply for and if awarded, accept the IIG Program funds, as detailed in the NOFA, up to the amount authorized by the Guidelines and applicable state law.

SECTION 2. That the City Manager, or his or her designee, is hereby authorized and directed to act on behalf of City in connection with an award of IIG Program funds, and to enter into, execute, and deliver any and all documents required or deemed necessary or appropriate to evidence the loan of IIG Program funds, the City’s obligations related thereto, and the Department’s security therefore. These documents may include, but are not limited to, a State of California Standard Agreement (“Standard Agreement”), a regulatory agreement, a promissory note, a deed of trust and security agreement, and any and all other documents required or deemed necessary or appropriate by the Department as security for, evidence of, or pertaining to the IIG Program funds, and all amendments thereto (collectively, the “IIG Program Documents”).

SECTION 3. That City shall be subject to the terms and conditions that are specified in the Standard Agreement; that the application in full is incorporated as part of the Standard Agreement; that any and all activities funded, information provided, and timelines represented in the application are enforceable through the Standard Agreement; and that City will use the IIG Program funds in accordance with the Guidelines, other applicable rules and laws, the IIG Program Documents, and any and all IIG Program requirements.





Office of the City Manager

CONSENT CALENDAR

January 28, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

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

Subject: Disposition of City-Owned, Former Redevelopment Agency Property at 1631 Fifth Street

RECOMMENDATION

Adopt a resolution authorizing the sale of the City-owned, former Redevelopment Agency property at 1631 Fifth Street at market rate and authorizing the City Manager to contract with a real estate broker to manage the sale.

POLICY COMMITTEE RECOMMENDATION

On November 21, 2019, the Land Use, Housing & Economic Development Committee adopted the following action: M/S/C (Hahn/Droste) to move the item with a positive recommendation authorizing the sale of 1631 Fifth Street. Vote: All Ayes.

SUMMARY

The City received 1631 Fifth Street from the Berkeley Redevelopment Agency (BRA) at its dissolution. BRA planned to sell prior to the statewide dissolution of redevelopment. The City Council previously approved the market rate sale of these properties as part of the state-mandated Long Range Development Management Plan adoption in 2014.

The site at 1631 Fifth Street is not large enough or zoned densely enough to support the cost-effective construction and operation of affordable housing. Developing this vacant lot would require investment of additional City funds before it could be used as housing. Selling the properties will yield a return on the City's Community Development Block Grant (CDBG) investment that will be applied to the City's priorities for permanent affordable housing via the Housing Trust Fund (HTF).

To maximize the number of interested buyers, staff are requesting Council authorization to select a real estate broker to manage the sale as staff do not typically manage market sales of single family home sites. City land disposition procedures require that the resulting contract for sale be approved by Council via ordinance.

FISCAL IMPACTS OF RECOMMENDATION

Staff estimate the sale may yield \$300,000 to \$500,000, and that a broker's fee for selling them may be 3% of the sale price, or \$9,000 to \$15,000. The properties have not yet been appraised but will be during the sale process.

The property was acquired with CDBG funds, which restricts revenue from their sales to CDBG-eligible uses. Staff recommend depositing the proceeds in the HTF so they can be used for CDBG-eligible housing activities including acquisition and rehabilitation. Staff will provide an information report following the sales to confirm the total contribution to the HTF.

CURRENT SITUATION AND ITS EFFECTS

The City owns two properties it received as the Successor Agency to Redevelopment: a 5,000 square foot vacant lot at 1631 Fifth Street and a vacant single family home at 1654 Fifth Street. The former Redevelopment Agency intended to sell both properties, but the process was halted due to redevelopment's dissolution statewide. Neither property has sufficient size or appropriate zoning to develop affordable housing efficiently, and any proposed affordable housing would be small scale and require additional City subsidies. The City also is incurring ongoing maintenance costs and liabilities while it holds the properties.

City staff consulted with legal counsel at Goldfarb & Lipman, LLP and the City Attorney's Office to review the applicability of the Surplus Lands Act to these former redevelopment agency properties. They concluded that process was not required and the properties could be sold at market rate. Staff confirmed the recent revisions to the Surplus Lands Act (AB 1486) do not apply.

Staff are recommending the City contract with a local real estate broker with experience selling small parcels. A private broker will have the expertise to manage sales (including marketing) and reach the broadest pool of Bay Area buyers.

At its July 11, 2018 meeting, the Housing Advisory Commission voted to support the staff recommendation:

Action: M/S/C (Owens/Amezcuca) to recommend to Council to approve the sale of two Successor Agency to Redevelopment properties at 1631 Fifth Street and 1654 Fifth Street at market value and deposit the proceeds in the Housing Trust Fund.

Vote: Ayes: Amezcua, Holman, Johnson, Kesarwani, Lewis, Owens, and Winters.  
Noes: Lord. Abstain: None. Absent: Tregub (excused), Wolfe (excused), and Wright (excused).

The possibility of using either of these properties in the Small Sites program was discussed at the July HAC meeting. An NCLT representative provided input on NCLT's past attempt to develop 1631 Fifth Street and the inability to identify a feasible project, and, considering the additional investment of City funds that would be required for

rehabilitation and development, it was determined that neither site is appropriate for this program.

Staff issued a Request for Proposals to sell the single family home at 1654 Fifth Street to operate as homeless housing, per Council direction on June 11, 2019. Staff is currently working with the Housing Advisory Commission to make a recommendation to Council regarding the proposals received.

1631 Fifth Street was not considered for an RFP as new construction of affordable housing would require significant investments and may not be feasible due to the size of the lot.

On November 21, 2019, the Land Use, Housing & Economic Development Committee recommended the City Council authorize the sale of 1631 Fifth Street.

**BACKGROUND**

Following the dissolution of all California redevelopment agencies, the Berkeley Redevelopment Agency prepared a state-mandated Long Range Development Management Plan (LRDMP) which the City Council, acting as the Successor Agency, adopted in 2014. The LRDMP included the recommendation to sell both sites at market rate. In 2015, for reasons related to redevelopment law and the dissolution process, and acting at the direction of the State Department of Finance, the Redevelopment Agency's Oversight Board removed these two properties from the LRDMP and listed them as housing assets to facilitate their disposition on the market.

**1631 Fifth Street**

The former Redevelopment Agency acquired this site with other acquisitions in this neighborhood between 1969 and 1971 as part of a larger "Neighborhood Development Program". The characteristics of the property are provided in *Figure 1*.

**Figure 1. Property Characteristics**

|                 | <b>1631 Fifth Street</b> |
|-----------------|--------------------------|
| <b>Land Use</b> | Vacant Lot               |
| <b>Lot Area</b> | 5,525 sq ft              |
| <b>Acres</b>    | 0.13                     |
| <b>Zoning</b>   | MU-R                     |

In 1983, the Redevelopment Agency demolished a residential building at 1631 Fifth Street to build new affordable housing, but abandoned the plans after discovering high levels of lead contamination. The lot has remained vacant since this time. In 1997, the Redevelopment Agency approved the remediation and development of the site, but the

selected developer was unable to execute an agreement and the sale was never completed.

The Redevelopment Agency conducted an RFP for housing at the site in 2008, but the only response was Northern California Land Trust's (NCLT) proposal to move the Kenney Cottage (now at 1281 University Avenue) to the site. This proposal did not come to fruition due to NCLT's bankruptcy, but NCLT did manage a small community garden at the site from 2009 to 2011. Staff confirmed the use of 1631 as a community garden does not make it subject to the limitations of Measure L related to parks and open space.

### **1654 Fifth Street**

In late 2019, staff issued a Request for Proposals to sell the single family home at 1654 Fifth Street to operate as homeless housing, per Council direction on June 11, 2019. Staff is currently working with the Housing Advisory Commission to make a recommendation to Council regarding the proposals received.

### **Administration**

When the Redevelopment Agency dissolved, the Department of Health, Housing and Community Services took over managing its housing assets and other remaining responsibilities on behalf of the Successor Agency, although no staffing was added to handle these responsibilities. Former Redevelopment Agency assets assumed include 13 homebuyer loans, two properties under long-term leases and the two sites designated for sale. HHCS pays the Public Works Department to provide periodic landscaping services for this property. The City will retain these ongoing costs and liabilities as long as it owns the site.

### **ENVIRONMENTAL SUSTAINABILITY**

There are no sustainability effects associated with the recommendation of this report.

### **RATIONALE FOR RECOMMENDATION**

This site has been intended for sale since it was first acquired by the Redevelopment Agency in the late 1960s and early 1970s as part of a neighborhood development initiative. The City Council previously approved the market rate sale of 1631 Fifth Street as part of the LRDMP adoption in 2015.

This site is not large enough or zoned densely enough to support the cost-effective development and operation of affordable housing. Developing the site would require an investment of additional City funds. Selling the property will yield a return on the City's CDBG investment that will be applied to the City's affordable housing priorities via the Housing Trust Fund. In addition to the Berkeley Way development commitment, the HTF recently provided two other proposed developments predevelopment loans — Satellite Affordable Housing Associates' Oxford Apartments and Bay Area Community Land Trust's Stuart Street rehabilitation. The HTF program is also supporting three additional sites via Measure O bond funding: Staff also received HTF inquiries related to other development activities.



A small vacant lot is not a typical government real estate asset, and is better suited for sale by a real estate broker familiar with these types of properties and the local market. Private brokers have the resources and knowledge needed (including marketing) and are likely to reach the broadest pool of Bay Area buyers. The City opted to select a local real estate broker, Korman & Ng, for its most recent small asset sale of 2931 Shasta Road (a former Fire Department house) in 2012.

ALTERNATIVE ACTIONS CONSIDERED

The City could consider:

- Retaining the property for a future determination on its usefulness. Staff are not recommending this option due to the small size and location of 1631 Fifth Street as well as the costs and liabilities associated with holding vacant properties.
- Selling or leasing 1631 Fifth Street to a housing organization for development and operation as affordable housing. Staff are not recommending this option because it would require additional investment of City funds which are needed for developments currently in the pipeline. New construction and operating housing at this scale is not efficient and cannot leverage much (if any) non-City funds. The Redevelopment Agency did not receive viable proposals for previous attempts to develop affordable housing. HHCS received inquiries related to leasing the vacant site for the placement of tiny homes for the homeless or other populations but is recommending the market rate sale with proceeds going in to the Housing Trust Fund in order to expand permanent affordable housing opportunities.

CONTACT PERSON

Amy Davidson, Senior Community Development Project Coordinator, Health, Housing & Community Services, (510) 981-5406

Mike Uberti, Community Development Project Coordinator, HHCS, (510) 981-5114

Attachments:

1: Resolution

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

DISPOSITION OF CITY-OWNED, FORMER REDEVELOPMENT AGENCY  
PROPERTY AT 1631 FIFTH STREET

WHEREAS, the City acquired the property at 1631 Fifth Street via its role as the Successor Agency to the Redevelopment Agency of the City of Berkeley; and

WHEREAS, the Redevelopment Agency planned to sell the site prior to the redevelopment dissolution legislation; and

WHEREAS, The Successor Agency Oversight Board, acting at the direction of the State Department of Finance, designated 1631 Fifth Street as a housing asset to facilitate their market rate sale; and

WHEREAS, the site's status as a former Redevelopment property enables the City to follow redevelopment law's disposition requirements for market rate returns and exempts the City from the Surplus Land Act (AB 2135 & AB 1486); and

WHEREAS, the property was acquired with Community Development Block Grant (CDBG) funds, which restricts revenue from its sale to CDBG-eligible uses, including the Housing Trust Fund; and

WHEREAS, the General Plan's Housing Element Policy H-2 states the City should aggressively search out, advocate for, and develop additional sources of funds for permanently affordable housing, including housing for people with extremely low incomes and special needs; and

WHEREAS, selling the property at market rate will maximize Housing Trust Fund contributions and provide leverage for permanent affordable housing projects.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the property at 1631 Fifth Street be sold for a purchase price that shall be equal to or greater than the appraised market value of the property.

BE IT FURTHER RESOLVED that the City Manager contract with appropriate real estate professionals to market and sell the property.



Office of the City Manager

CONSENT CALENDAR  
January 28, 2020

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: Agreement with the East Bay Municipal Utility District for Pavement Rehabilitation of Portions of Ellsworth Street and Stuart Street

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a cost sharing Agreement with the East Bay Municipal Utility District for the pavement rehabilitation on Ellsworth Street and Stuart Street during construction of the East Bay Municipal Utility District's Wildcat Pipeline Improvement Project in an amount not to exceed \$855,264 which includes a 20% contingency.

FISCAL IMPACTS OF RECOMMENDATION

Funding is available from the planned FY 2021 Street Capital Improvement Program budget. No other funding is required, and no other projects will be delayed due to this expenditure.

The cost to the City of Berkeley (City) to pay for its portion of the pavement rehabilitation (Rehabilitation) on Ellsworth Street and Stuart Street is \$855,264 which includes a 20% contingency. This funding will be allocated from the Streets program baseline Capital Improvement Fund (501) budget in either FY 2021 or FY 2022 depending on the timing of the East Bay Municipal Utility District (EBMUD) pipeline project. Funding allocations will be subject to the City's annual appropriations process. Per the Agreement, payments will be made to EBMUD upon completion of the Rehabilitation and submittal of an approved invoice.

CURRENT SITUATION AND ITS EFFECTS

The alignment for the Wildcat Pipeline begins at Bancroft Avenue and follows Ellsworth Street to Stuart Street, then down Stuart Street to Benvenue Avenue, per the location map enclosed as Attachment A. This work will require trench excavation on both streets to install these utility improvements. Per the City's standard detail for trench resurfacing, the trench is required to be resurfaced for the width of the trench plus an additional one foot on either side. This will result in a linear patch of new pavement down the length of the alignment that is approximately eight feet

wide. Without approval of the attached resolution, the area beyond the trench pavement restoration would remain in its current condition.

Under the proposed cost sharing agreement, the City would pay EBMUD for restoration of the street pavement that is outside of the trench resurfacing area while EBMUD would fund the portion of the street within the trench resurfacing area. This arrangement allows for the full width rehabilitation of Ellsworth Street and Stuart Street, with an average pavement width of approximately 40'. This would help defray the costs of a future paving rehabilitation project, in lieu of just providing standard asphalt pavement restoration over the pipeline trench areas. The pavement restoration of these street sections is part of the City's pavement improvement program.

The pavement rehabilitation is planned to be completed by mid-spring 2021. This timeframe allows the City to budget for its portion of the costs included in the agreement. The cost sharing agreement between the parties completes pavement rehabilitation on approximately 5,400 linear feet of City streets.

All funds paid to EBMUD will go to the contractor as payment for bid prices and quantities used. The contractor will be required to submit statements of compliance and disclosure forms as if this were a City constructed project, such as Nuclear Free Zone, Oppressive States, Sanctuary City, etc. The contractor shall also be required to pay prevailing wages. EBMUD will not be retaining any of the funds for administrative purposes.

The pavement rehabilitation supports a Strategic Plan Priority Goal, by providing state-of-the-art, well-maintained infrastructure, amenities, and facilities.

#### BACKGROUND

EBMUD plans to construct a new 48" underground transmission pipeline (Wildcat Pipeline) in the City of Berkeley to improve the capacity of the existing Wildcat Aqueduct. The Wildcat Aqueduct is a critical transmission pipeline that serves 65,000 customers in Berkeley as well as customers in El Cerrito, Albany, Richmond, San Pablo, Pinole, Hercules, and Crockett. The new Wildcat Pipeline will improve reliability of water service to Berkeley residents.

#### ENVIRONMENTAL SUSTAINABILITY

Collaborating with EBMUD on the Wildcat Pipeline Project will support sustainable practices outlined by the City in its 2009 Climate Action Plan by conserving oil resources required for asphalt production, and reduce greenhouse gas emissions that result from trucks hauling rock and asphalt used to construct the roadway.



RATIONALE FOR RECOMMENDATION

This cost sharing agreement will advance the pavement restoration of Ellsworth and Stuart streets. In addition, combining the trench pavement restoration with restoration of the remaining width of the street minimizes duplicative paving efforts. It conserves staff, financial and material resources, and minimizes disruption to the public. Lastly, this approach will also provide for an aesthetically enhanced street free of trench lines resulting from operations to install the underground utility improvements.

ALTERNATIVE ACTIONS CONSIDERED

City Council may choose not to enter into the proposed agreement with EBMUD. However, if this action is taken then the City will be unable to capitalize on the benefits outlined above.

CONTACT PERSON

Andrew Brozyna, Deputy Director of Public Works, (510) 981-6396  
Nisha Patel, Manager of Engineering, (510) 981-6406  
Ronald A. Nevels, Supervising Civil Engineer, (510) 981-6439

Attachments:

1. Resolution
- 2: Site Map

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

AGREEMENT WITH THE EAST BAY MUNICIPAL UTILITY DISTRICT FOR  
PAVEMENT REHABILITATION OF ELLSWORTH STREET AND STUART STREET

WHEREAS, the East Bay Municipal Utility District (EBMUD) plans to construct a new 48” underground transmission pipeline (Wildcat Pipeline) on segments of Ellsworth Street and Stuart Street in the City of Berkeley to improve reliability of water service to its customers; and

WHEREAS, Ellsworth Street and Stuart Street are both in need of pavement rehabilitation; and

WHEREAS, the construction of the Project necessitates repairs to the existing pavement in the area of Project trenching, including five-inch minimum depth by one-foot tee-cut pavement restoration over the trench area or resurfacing moratorium streets, in compliance with the excavation restoration requirements of the City of Berkeley Municipal Code, to be completed at the expense of EBMUD; and

WHEREAS, City desires that in lieu of providing the City’s standard asphalt pavement restoration in some locations, EBMUD provide additional pavement rehabilitation, in the form of two-inch to five-inch thick mill-and-resurfacing or slurry sealing, to extend beyond the trenching area, to be completed at the expense of City; and

WHEREAS, EBMUD has agreed to perform the additional rehabilitation of the pavement on Ellsworth Street and Stuart Street, as part of the Project, subject to payment from the City for that portion of the pavement outside the Project area; and

WHEREAS, City desires additional roadway work within the Project area, in the form of curb ramp rehabilitation and replacements, concrete sidewalk replacement, and new gutter installation, to be completed at the expense of City; and

WHEREAS, EBMUD has agreed to perform the additional roadway work on Ellsworth Street and Stuart Street as part of the Project, subject to payment from the City; and

WHEREAS, EBMUD and City see a public benefit in coordinating EBMUD’s Project asphalt pavement repair and the City’s planned pavement and roadway rehabilitation; and

WHEREAS, EBMUD and City have delineated the location and extent of the areas to be rehabilitated by Plans and have described the details of the work by Specification; and

WHEREAS, funding is available in the Capital Improvement Fund (501) in the FY 2021/2022 Streets CIP Budgets.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager and/or her designee is authorized to execute the Agreement and any amendments by and between the City of Berkeley and the East Bay Municipal Utility

District for Paving Work on Ellsworth Street and Stuart Street as part of the Wildcat Pipeline Project in an amount not to exceed \$855,264 which includes a 20% contingency.

# ATTACHMENT 2

## LOCATION MAP







Office of the Mayor

CONSENT CALENDAR

January 28, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: 2020 City Council Committee and Regional Body Appointments

RECOMMENDATION

Adopt a Resolution approving the appointment of Council representatives to City Council Standing Policy Committees, Partnership Committees, Regional Bodies and Liaisons to City Boards and Commissions for a one-year term ending January 31, 2021 or until new appointments are made.

BACKGROUND

There are a number of City Council appointments to various Partnership Committees, Regional Bodies and Liaisons to City Boards and Commissions. Every two years after the General Municipal Election, the Mayor makes recommendations on new Council representatives.

On January 22, 2019, the City Council adopted Resolution No. 68,744-N.S. making appointments to Council Standing Policy Committees, Partnership Committees, Regional Bodies, and Liaisons to City Boards and Commissions until January 31, 2020. Given that these appointments will expire at the end of this month, the Council must make new appointments.

On December 11, 2018, the City Council established a system of Standing Policy Committees. The Governing Policies and Procedures for Standing Policy Committees require appointment of committee members by the full Council no later than January 31st each year. The recommendations for those Standing Policy Committees are also included in the proposed resolution.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY

Not Applicable.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1: Resolution

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

APPROVING APPOINTMENTS TO STANDING CITY COUNCIL POLICY COMMITTEES, PARTNERSHIP COMMITTEES, LIASIONS TO BOARDS AND COMMISSIONS AND REGIONAL BODIES FOR 2020

WHEREAS, the City Council has numerous appointments to various Partnership Committees, Regional Bodies and Liaisons to City Boards and Commissions, and must make new appointments every two years following the General Municipal Election; and

WHEREAS, six new Standing Policy Committees were established by the City Council on December 11, 2018; and

WHEREAS, the City Council adopted Resolution No. 68,744-N.S. appointing Council representatives to Council Policy Committees, Regional Bodies, Partnership Committees and Liaisons to City Boards and Commissions for terms ending January 31, 2020 or until new appointments are approved by the full Council; and

WHEREAS, pursuant to Resolution No. 68,726-N.S. and the Governing Policies and Procedures for Standing Policy Committees, appointments to Council Standing Policy Committees must be made by January 31st each year; and

WHEREAS, these Committee appointments will expire on January 31, 2020 and new appointments must be made; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley the City of Berkeley officially makes the following appointments for the period ending January 31, 2021 or until new appointments are approved:

**City Council Standing Policy Committees:**

Agenda & Rules Committee

Appoint Mayor Arreguín, Vice-Mayor Hahn and Councilmember Wengraf  
Appoint Councilmember Bartlett as Alternate

Budget & Finance Committee

Appoint Mayor Arreguin, Councilmember Davila and Councilmember Droste  
Appoint Councilmember Harrison as Alternate

Facilities, Infrastructure, Transportation, Environment & Sustainability Committee

Appoint Councilmember Davila, Councilmember Harrison and Councilmember Robinson  
Appoint Vice-Mayor Hahn as Alternate

Public Safety Committee

Appoint Councilmember Kesarwani, Councilmember Robinson and Councilmember Wengraf  
Appoint Councilmember Droste as Alternate

Land Use, Housing & Economic Development Committee

Appoint Councilmember Bartlett, Councilmember Droste and Councilmember Harrison

Appoint Mayor Arreguin as Alternate

Health, Life Enrichment, Equity & Community Committee

Appoint Councilmember Bartlett, Vice-Mayor Hahn, and Councilmember Kesarwani

Appoint Councilmember Robinson as Alternate

**Partnership Committees:**

4x4 Joint Task Force Committee on Housing: Rent Board/City Council

Appoint Mayor Arreguín, Councilmember Davila, Councilmember Harrison and

Councilmember Robinson

3x3 Committee of the Berkeley City Council and the Berkeley Housing Authority

Appoint Mayor Arreguin, Councilmember Davila and Councilmember Kesarwani

2x2 Committee of the City Council and the Board of Education

Appoint Mayor Arreguin and Vice-Mayor Hahn

Appoint Councilmember Droste as Alternate

**Regional Committees:**

Alameda County Transportation Commission

Appoint Mayor Arreguín

Appoint Councilmember Droste as Alternate

Alameda County Waste Management Authority

Appoint Councilmember Wengraf

Appoint Vice-Mayor Hahn as Alternate

Delegate to Association of Bay Area Governments General Assembly

Appoint Councilmember Bartlett

Appoint Councilmember Droste as Alternate

Joint Powers Authority - East Bay Community Energy Authority

Appoint Mayor Arreguín

Appoint Councilmember Harrison as Alternate

Joint Powers Agreement - East Bay Regional Sports Fields

Appoint Councilmember Kesarwani

Appoint Councilmember Davila as Alternate

Joint Powers Authority - Lead Abatement

Appoint Councilmember Wengraf

Appoint Councilmember Droste as Alternate

League of California Cities - East Bay Division

Appoint Councilmember Harrison

Appoint Councilmember Robinson as Alternate

Oakland Airport Noise Forum  
Appoint Councilmember Davila

**Council Liaisons to City Boards and Commissions:**

Board of Library Trustees  
Appoint Vice-Mayor Hahn

Community Health Commission  
Appoint Councilmember Kesarwani

Mental Health Commission  
Appoint Councilmember Davila





Office of the Mayor

CONSENT CALENDAR  
JANUARY 28, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguin and Councilmembers Kate Harrison, Sophie Hahn, and Rigel Robinson

Subject: Support the “New Border Vision” to expand public safety, protect human rights, and welcome people to our city.

### RECOMMENDATION

Adopt a resolution supporting the “New Border Vision”, a 21st century border policy that begins with the belief that migrants are part of the human family and should be treated with dignity and respect. Send a copy of the Resolution to U.S. Senators Dianne Feinstein and Kamala Harris, Congresswoman Barbara Lee and President Donald Trump.

### FINANCIAL IMPLICATIONS

No financial implications to the City.

### BACKGROUND

The residents of Berkeley have a long history and deep commitment to welcoming immigrants, refugees, and those in exile. In 1971, the City Council declared Berkeley to be a “City of Refuge”, and reaffirmed their decision in 1986 relating to Central American refugees, in 2007 after U.S. Immigration and Customs Enforcement (ICE) enforcement action took place throughout the Bay Area, and again in 2016 after the election of Donald Trump.

In early 2017, the Mayor convened a Sanctuary City Task Force, bringing immigrant rights groups, legal providers, health care providers, BUSD, UC Berkeley, Berkeley City College and other stakeholders together to discuss ways to implement our City of Refuge policy, and provide resources to support our undocumented community. On June 25, 2017, the city adopted an amendment to the City of Refuge Policy stating that “no department, agency, commission, officer or employee of the City of Berkeley shall use any City funds or resources to assist in the enforcement of Federal immigration law or to gather or disseminate information status of individuals in the City of Berkeley unless such assistance is required by federal or state statute, regulation or court decision”. Consistent with our City of Refuge Policy, the City Council should take further

action and work with the Southern Border Communities Coalition to bring light to the greater authorization powers held by the federal border authorities and protect our civil liberties.

When we think of a "border city" we often think of those communities immediately along the US-International border. However, under federal law 8 C.F.R. 287.1, Berkeley is a border city as it falls within 100 miles of a land or sea border, and as such Berkeley is subject to the "warrantless powers" of Department of Homeland Security (DHS) employees who may assert the power under 8 U.S.C. 1357(a)(3) to interrogate our residents, set up checkpoints, and board and search our cars, trains, buses, planes, boats, without needing a warrant or the equivalent of probable cause as is normally required under the U.S. Constitution's Fourth Amendment and the California Constitution's Article 1 Section 13.

As a border city, federal authorities within the Department of Homeland Security ("HSI") Customs of Border Protection ("CBP"), Homeland Security Investigations ("HSI"), and Immigration Customs Enforcement ("ICE") - and local enforcement bureaus serving on a joint task force with any DHS agency - may act without warrant to: set up checkpoints, search vehicles, BART, AC Transit, enter onto private property and racially profile and interrogate anyone suspected of not being a citizen. Recent polls estimate that 1 in 4 Californians have been stopped at an internal checkpoint by border authorities<sup>1</sup>. Furthermore, DHS agencies have a long history of abusing their power to bring fear and death to their victims.

Border authorities engage in widespread corruption and abuse of power with little accountability. In the last year alone, at least 12 people have died in CBP custody<sup>2</sup>. Since 2010, over 90 people have been killed during CBP encounters, 21 in California<sup>3</sup>. At least 28 of those killed were U.S. citizens. In 2018, CBP officers were arrested at a rate 5 times the average for state and local police officers<sup>4</sup>. The DHS Office of Inspector General has found that CBP lacks adequate safeguards to address employee misconduct. However, they are continuously expanding and using large sums of the federal budget for their unsupervised inhumane misconduct.

---

<sup>1</sup> Tom K. Wong, US Immigr. Pol'y Ctr., Public Opinion About the Border, at the Border 19 (2019), <https://usipc.ucsd.edu/publications/usipc-border-poll-final.pdf>.

<sup>2</sup> Garrett M. Graff, *The Border Patrol Hits a Breaking Point*, POLITICO Magazine (July 15, 2019), <https://www.politico.com/magazine/story/2019/07/15/border-patrol-trump-administration-227357>

<sup>3</sup> *Deaths by Border Patrol*, Southern Border Communities Coalition, [https://www.southernborder.org/deaths\\_by\\_border\\_patrol](https://www.southernborder.org/deaths_by_border_patrol)

<sup>4</sup> Justin Rohrlich & Zoë Schlanger, *Border Officers Are Arrested 5 Times More Often than Other US Law Enforcement*, Quartz (July 16, 2019), <https://qz.com/1664253/cbp-officers-arrested-5-times-as-often-as-other-law-enforcement/>.

The power of border authorities is only growing. With over 60,000 employees, CBP is the largest law enforcement agency in the U.S. and poised to become a national police force with extra-constitutional powers<sup>5</sup>. Each year, the U.S. spends more on border and immigration enforcement than the combined budgets of the FBI; Bureau of Alcohol, Tobacco, Firearms and Explosives; Drug Enforcement Administration; Secret Service; and U.S. Marshals - plus the entire annual budget of the NYPD. Such a large and unjust federal agency must be checked for the protection of our civil liberties. Being that Berkeley established itself as a sanctuary city, it is part of its commitment to protect immigrants and refugees from these abusive federal agencies and speak up against federal law.

The New Border Vision resolution calls to end these abuses; it calls for compassionate border governance based on expanding public safety, protecting human rights, and creating a welcoming environment for residents and newcomers. This resolution aims to protect our human rights and stand up against unjust federal law by holding authorities accountable, keeping families together, providing humanitarian aid, rescue and recovery, protecting vulnerable individuals, and creating a welcoming environment for residents and newcomers. Given Berkeley's status as a border city under federal law, it is important to advocate for changes to federal law to provide greater oversight and limits to the power of federal border officials. Berkeley needs to take the first step to address this unjust federal power that jeopardizes the safety of our community and engage with other communities and cities to do the same.

#### ENVIRONMENTAL SUSTAINABILITY

No identified environmental effects.

#### CONTACT PERSON

Mayor Jesse Arreguin 510-981-7100

#### Attachments:

- 1: Resolution
- 2: New Border Vision Fact Sheet- Berkeley Law International Human Rights Law Clinic
- 3: New Border Vision May 2019 Report- Southern Border Communities Coalition
- 4: New Border Vision One-Pager
- 5: Map of United States Enforcement Zone

---

<sup>5</sup> See Garrett M. Graff, *The Green Monster*, POLITICO Magazine (Nov./Dec. 2014), <https://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220>; *About CBP*, U.S. Customs & Border Protection, <https://www.cbp.gov/about>

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

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY  
CALLING FOR A "NEW BORDER VISION" TO EXPAND PUBLIC SAFETY, PROTECT HUMAN  
RIGHTS, AND WELCOME PEOPLE TO OUR CITY

WHEREAS, the Berkeley Council has found that peace is inseparable from justice, and the residents of Berkeley have welcomed to our city those who have been forced into exile and those who have come fleeing torture and death (BMC 3.68.010 E,L); and

WHEREAS, the Berkeley Council declared Berkeley to be a City of Refuge in 1971 (Resolution No 44,784 -N.S.), reaffirmed that decision in 1986 relating to Central American refugees (Resolution 52,526-N.S.), in 2007 after ICE raids took place in the Bay Area Communities (Resolution 52,526-N.S.), and again in 2016 due to increased hate crimes after the election of Donald Trump, and against xenophobic rhetoric used during the campaign (Resolution 67,763-N.S.); and

WHEREAS, in early 2017, a Sanctuary City Task Force was convened, which brought immigrant and civil rights groups, faith leaders, legal experts, school and university officials, and community activists together to discuss ways to strengthen our City of Refugee policy, as well as support our undocumented community members; and

WHEREAS, over the past two years, the Task Force and working groups developed resources and protocols to clarify the rights of undocumented individuals and city/community partners in the case of ICE enforcement activity; and

WHEREAS, the Berkeley School Board in December passed a sanctuary campus policy which clearly articulates restrictions on information sharing, providing access to school facilities, and collaboration with immigration officials; and

WHEREAS, the Director of the Berkeley Health, Housing and Community Services Department also provided guidance to department staff on ICE protocols; and

WHEREAS, on March 14, 2017, City Council adopted a resolution to Denouncing the Presidential Executive Order to Build a US-Mexico Border Wall and divest from all companies involved (No. 67,865); and

WHEREAS, on July 25, 2017, the City Council affirmed that no department, agency, commission, officer or employee of the City of Berkeley shall use any City funds or resources to assist in the enforcement of Federal immigration law or to gather or disseminate information on the status of individuals in the city of Berkeley unless required by law; and



WHEREAS, the City Council affirms no department, agency, commission, officer or employee shall deny access to any city service or benefits to residents on the basis of their immigration status; and

WHEREAS, On July 24, 2018, the City Council passed a resolution to Support California's Sanctuary Immigration Policies and Lawsuits Against Trump's Policies (No. 68,573), by calling on the City Council to support SB 54, AB 103, and AB 450; and

WHEREAS, on October 31, 2017, the City Council adopted a resolution Directing Berkeley to Divest from All Entities Involved in Targeting Immigrants (No. 68,208); and

WHEREAS, these laws serve to make all Californians, Immigrants, Citizens and undocumented alike feel secure and protected in speaking and seeking aid from California law enforcement and protect them from unannounced workplace immigration raids and work to ensure that those being detained on the grounds of their citizenship are treated fairly and not being help under poor conditions; and

WHEREAS, on February 13, 2018, the City Council passed a resolution Opposing the Threats of Imminent Enforcement Sweeps by ICE (No. 68,328) after it was widely reported that federal immigration officials planned a major enforcement sweep in the Bay Area and across other parts of Northern California; and

WHEREAS, the City is made up of a diverse population, and 19% of City residents were born outside of the United States<sup>6</sup> but now form part of the fabric of our communities and contribute to the cultural, social and economic vibrancy of the City; and

WHEREAS, the City is a border city as it falls within 100 miles of a land or sea border under 8 C.F.R. 287.1, and as such the residents of the City are subject to the "warrantless powers" of Department of Homeland Security (DHS) employees who assert the power under 8 U.S.C. 1357(a)(3) to interrogate our residents, set up checkpoints, and board and search our cars, trains, buses, planes, boats, and other conveyances without needing a warrant or the equivalent of probable cause as is normally required under the U.S. Constitution's Fourth Amendment and the California Constitution's Article 1 Section 13; and

WHEREAS, the City also falls within 25 miles of an external boundary of the United States and as such the residents of the City are subject to DHS employees entering onto their private property, but not their dwelling, to patrol the border under 8 U.S.C. 1357(a)(3), which also undermines the constitutional rights of City residents; and

---

<sup>6</sup> <https://datausa.io/profile/geo/berkeley-ca/#demographics>

WHEREAS, City residents are subject to profiling by DHS employees because the U.S. Department of Justice's "Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity"<sup>7</sup> prohibits profiling except in the vicinity of border, which includes our City, and this runs counter to California law under the Racial and Identity Profiling Act and Penal Code Section 13519.4; and

WHEREAS, the Department of Homeland Security is made up of multiple agencies who enforce border security in various ways, at physical land borders, at sea and in the interior of the country described as the expansive border region, which includes the City, and agencies consist of U.S. Customs Border Protection (CBP) and its component agency, Border Patrol, but also U.S. Immigration Customs Enforcement (ICE), Homeland Security Investigations (HSI), the US Coast Guard and the Cybersecurity and Infrastructure Agency, among others; and

WHEREAS, the City depends on local, state, and federal laws to protect the natural and cultural heritage of California and address climate change through laws that protect our air quality, water quality, biological diversity, historical sites, sacred places, and other valuable resources, and all of these laws can be waived in their entirety by DHS without judicial review under Real ID Act Section 102 for the purpose of building border barriers, undermining our well-being and the principle of due process embedded in the U.S. Constitution's Fifth Amendment; and

WHEREAS, we are less safe, not more safe, when DHS employees operate with absolute power, and without transparency or accountability, asserting that they are not subject to our laws, which leads to a culture of impunity and high rates of abuse and corruption that endanger the country, with 42 CBP officers arrested for corruption since 2004 in California<sup>8</sup>; and

WHEREAS, the impunity of DHS employees operating in the border region has led to the assault of countless people and the killing of more than 90 people, including citizen and non-citizen women, children and men since 2010, of which 21 were killed in California and at its borders, and no DHS employee has ever been held accountable<sup>9</sup>; and

WHEREAS, border deterrence tactics such as walls and other barriers intentionally funnel people into dangerous and remote corridors that has led to the deaths of over 7,000 people since 1994, when Operation Gatekeeper began at the California border, with a current death toll of an estimated 400 men, women and children a year, which amounts to one person dying

---

<sup>7</sup> Page 2, Footnote 2 of 2014 DOJ Guidance: <https://www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf>

<sup>8</sup> [http://www.pogoarchives.org/m/prisons/CBP-2017-033851-and-CBP-2018-035232-Redacted\\_20180423.pdf](http://www.pogoarchives.org/m/prisons/CBP-2017-033851-and-CBP-2018-035232-Redacted_20180423.pdf)

<sup>9</sup> [https://www.southernborder.org/deaths\\_by\\_border\\_patrol](https://www.southernborder.org/deaths_by_border_patrol)

every day for the last 25 years as a result of irresponsible policies that use risk to life as a deterrence<sup>10</sup>; and

WHEREAS, border policies criminalize rather than manage migration, leading to the inhumane treatment of families seeking life, liberty, and the pursuit of happiness, which are described as inalienable rights in the U.S. Declaration of Independence, and have led to the mass incarceration of more than 50,000 migrants, which include 24,177 in California as of 2017<sup>11</sup>; and

WHEREAS, nearly one million people arrive to the United States every day, around 196,000 people every day via California, and more than 99 percent of them come with prior authorization as citizens, residents, and visa holders, but often face long waits at California’s border because of poor border management despite the government’s allocation of over \$13 billion a year to U.S. Customs and Border Protection alone<sup>12</sup>; and

WHEREAS, the United States loses billions of dollars and thousands of jobs every year due to long wait times at our southern border that delay trade and travel, and the cost is felt across every state, all of which are dependent on trade with Mexico as our largest trading partner; and

WHEREAS, over 160 countries took an unprecedented action in December 2018 by signing a Global Compact on Migration that calls for the protection of human rights at borders, setting new global standards and best practices for border governance as detailed in the United Nations Office of the High Commissioner for Human Rights “Recommended Principles and Guidelines on Human Rights at International Borders”; and

WHEREAS, current U.S. border policies are out of sync with global best practices and undermine our well-being, and we need our country to change its approach to the border and become a model of good border governance to create humane and functional borders for the 21st century; and

WHEREAS, border communities in conjunction with human rights experts have drafted a “New Border Vision” that adopts global best practices and relates them to the U.S. borders to expand public safety, protect human rights, and welcome people with dignity at our borders; and

WHEREAS, the “New Border Vision” leads with our values beginning with the belief that migrants are part of the human family and should be treated with dignity and respect; that migration is the exercise of the inalienable right to life, liberty, and the pursuit of happiness and as such, migrants should be humanized rather than criminalized; that we should treat all people as we would want to be treated, and give everyone full and fair opportunity to be safe; and

---

<sup>10</sup> [https://www.southernborder.org/deaths\\_by\\_border\\_patrol](https://www.southernborder.org/deaths_by_border_patrol)

<sup>11</sup> <https://www.bjs.gov/content/pub/pdf/p17.pdf>

<sup>12</sup> <https://explore.dot.gov/views/BorderCrossingData/Monthly?:isGuestRedirectFromVizportal=y&embed=y>

WHEREAS, expanding public safety in the "New Border Vision" means expanding public trust of DHS, but there can be no trust if there is no accountability and border agents treat residents as second-class citizens and migrants as criminals, the "New Border Vision" calls for the following:

- Decriminalize migration and focus border authorities and resources on true organized crime and terrorist threats, so that everyone, including border residents and migrants, feel safe in the presence of border authorities and do not have reason to fear mistreatment;
- Set a high standard for effective, professional and accountable law enforcement so that border authorities are trained, supervised, and recognized for adhering to best practices that build trust and keep us all safe, regardless of our status;
- Respect human rights without creating zones of exceptions or impunity, end mass detention, and provide people who suffer abuse by border authorities with meaningful access to justice to hold border authorities accountable; and

WHEREAS, protecting human rights in the "New Border Vision" means preserving the dignity of life, rather than intentionally endangering it or treating it as an acceptable collateral consequence of our policies, the "New Border Vision" calls for the following:

- Prioritize human rights at the border, allowing people to seek protection or safe return with the assistance of our government, rather than prosecution by the government; migrants seeking protection should not be turned back into harm's way;
- Provide immediate aid, rescue, and recovery to people in distress at the border, and support rather than prosecute humanitarian aid workers who fill gaps left by the government to save lives;
- Protect children by keeping families together, locating them in the community rather than in detention, and giving child welfare specialists a primary role, not border law enforcement authorities; and

WHEREAS, welcoming people with dignity in the "New Border Vision" means creating an efficient, effective, and humane entry system to foster goodwill, but that is challenging at a militarized border, the "New Border Vision" calls for the following:

- Expand the channels for entry with adequate and accountable staff, more lanes at ports, more open hours, and more opportunities to approach so no one is left waiting for unreasonable amounts of time;



- Set the standard for border authorities to conduct welcoming, expeditious, non-threatening, professional interviews to identify people entering and screen for people who may need protection;
- Direct border authorities to refer migrants seeking protection to other agencies or community organizations that are not law enforcement and are better suited to provide trauma, medical, psychological, legal, language and other assistance in whole-of-government and whole-of-society approach to humanitarian response; and

WHEREAS, the “New Border Vision” is grounded in good governance principles that call for evidence-based and data-driven decision-making, consideration of affected communities including border residents, transparency and oversight, and full accountability without exceptions, waivers, or zones of immunity.

**NOW THEREFORE BE IT RESOLVED THAT THE CITY OF Berkeley:**

- 1. Recognizes that the City of Berkeley is a border city, which falls into the zone of border enforcement, as defined in 8 C.F.R. 287.1, and as such have a particular stake in the border policies that affect our residents as well as our country.**
- 2. Supports a “New Border Vision” that expands public safety, protects human rights, and welcomes people with dignity at the border. Our government should lead with our values, address our needs and adhere to good governance principles to create humane and well-functioning borders for the 21st century.**
- 3. Calls on Congress to eliminate “powers without warrant” in 8 U.S.C. 1357, which subjects City residents to potential unreasonable searches by federal authorities, undermining constitutional protections that the City is charged with protecting.**
- 4. Calls on Congress to end the border-region exception to the prohibitions on profiling, which subjects City residents to potential profiling by federal authorities, undermining California’s protection against profiling, which the City is charged with protecting; and calls on Congress to legislate universal prohibitions.**
- 5. Calls on Congress to eliminate the blanket waiver authority in Real ID Section 102, which gives federal authorities absolute and unreviewable authority to waive all local, state, and federal laws to build border barriers, undermining the well-being of City residents, the protection of their natural and cultural heritage in California, and their due process rights.**
- 6. Calls on Congress to end the criminalization of migrants for simply being migrants by eliminating 8 U.S.C. 1325, which leads to the criminal prosecution and incarceration of people asking for help; instead we should limit the adjudication of migrant cases to civil immigration proceedings to determine what remedies they**

**may be eligible for including asylum.**

BE IT FURTHER AND FINALLY RESOLVED that copies of this Resolution be sent to U.S. Senator Dianne Feinstein and Kamala Harris, Congresswoman Barbara Lee and President Donald Trump.

**Berkeley is a border city, which puts the civil liberties of its residents at risk of abuse by federal border authorities.**

Federal border authorities have extraordinary powers within 100 miles of the coast to stop, search, and interrogate residents. Within 25 miles of the coastal border, they can enter onto private property.

- As Berkeley is a coastal city, federal border authorities within the Department of Homeland Security (“DHS”)—Customs and Border Protection (“CBP”), Homeland Security Investigations (“HSI”), and Immigration Customs Enforcement (“ICE”)—and local enforcement bureaus serving on a joint task force with any DHS agency, may act without a warrant to:
  1. set up checkpoints;
  2. search vehicles, BART, AC Transit, etc.;
  3. enter onto private property; and
  4. racially profile and interrogate anyone suspected of not being a citizen.
- 1 in 4 Californians have been stopped at an internal checkpoint by border authorities.

**Border authorities engage in widespread corruption and abuse of power with little accountability.**

With over 60,000 employees, CBP is the largest law enforcement agency in the U.S. It is also dangerous.

- In the last year alone, at least 12 people have died in CBP custody. Since 2010, over 90 people have been killed during CBP encounters, 21 in California and at its borders. In 2018, CBP officers were arrested at a rate 5 times the average for state and local police officers.
- CBP has failed to effectively investigate misconduct cases. The DHS Office of Inspector General has found that CBP lacks adequate safeguards to address employee misconduct. A report by the Police Executive Research Forum concluded that CBP’s use-of-force policies were “*far outside the mainstream of U.S. law enforcement*” and that many CBP deadly-force cases “*did not appear to meet the test of objective reasonableness.*”

CBP’s actions have eroded the trust of the public.

- 4 in 10 Californians have little or no trust that CBP Border Patrol agents will protect the rights and civil liberties of border residents and migrants. An even higher number have little or no trust that Border Patrol agents will be held accountable for abuses of authority.

**The power of border authorities is only growing.**

CBP is poised to become a national police force with extraconstitutional powers. Its stated goal is “[t]o serve as the premier law enforcement agency.”

- In 2019, CBP was allocated \$17.1 billion—almost four times more than in 2003. In 2017, nearly \$300 million was allocated to hire an additional 7500 Border Patrol agents.
- Each year, the U.S. spends more on border and immigration enforcement than the combined budgets of the FBI; Bureau of Alcohol, Tobacco, Firearms and Explosives; Drug Enforcement Administration; Secret Service; and U.S. Marshals—plus the entire annual budget of the NYPD.

**The New Border Vision resolution calls to end these abuses; it calls for compassionate border governance based on:**

1. Expanding public safety: holding border authorities accountable;
2. Protecting human rights: keeping families together, providing humanitarian aid, rescue and recovery, and protecting vulnerable individuals; and
3. Creating a welcoming environment for residents and newcomers.

# A NEW BORDER VISION

*Creating 21st century border governance by expanding public safety, protecting human rights, and welcoming residents and newcomers.*

**MAY 2019**





# INTRODUCTION

## We need a New Border Vision.

A New Border Vision is a path forward. It is a guiding light and a chance to move with common purpose to unite us, rather than divide us. It is our opportunity to lead with our values, address our needs, and adhere to good governance to generate well-functioning and rights-respecting borders for the 21st century.

The United States was founded on the belief that all people have the inalienable human rights to life, liberty, and the pursuit of happiness – regardless of where they come from. As a nation formed by indigenous communities and immigrants, some of whom came involuntarily, we still strive to build a more perfect union that protects these rights for all people including new migrants and refugees.

Migration has helped define this country and the global community, making every country a place of origin, transit, and destination. But the widespread failure to protect migrants, exposing them to abuse, exploitation, and harm, recently led the world of nations in December 2018 to adopt the Global Compact on Migration to reduce the vulnerabilities to migrants everywhere by respecting, protecting, and fulfilling their human rights. Our national belief in human rights – inalienable rights – can similarly inspire us now.

Over the years, the United States helped give shape to a human rights movement that drew inspiration from our founding principles. But our current border policy turns away from this proud history. For years, this country has forgotten our commitment to human rights, choosing instead to criminalize migrants and engage in deadly and unaccountable border enforcement, undermining public safety. This administration has gone further, eroding the very human rights this country was founded upon.

Border communities and the people who live in, arrive to, or travel through them have suffered as a result. Our voices should be paramount in the national debate about the border. Instead, the border region – the place we call home – has repeatedly been used as a proving ground by politicians wanting to demonstrate their iron will while exploiting people's fears about immigrants. These politicians have only hurt our humanity. To this, we say 'No More.' We offer a new vision that decriminalizes migration and sets us on a new path to act with our values and fulfill our moral and legal obligations to uphold human rights.

A New Border Vision is a framework for positive and compassionate action. It is our chance to create responsive and responsible border governance for the 21<sup>st</sup> century. This New Border Vision focuses on three priorities for creating good border governance:

- 1. Expanding Public Safety**
- 2. Protecting Human Rights**
- 3. Welcoming Residents & Newcomers**

## VALUES FOR A NEW BORDER VISION

### ***Uphold the inalienable human rights of life, liberty, and the pursuit of happiness.***

In our Declaration of Independence, life, liberty, and the pursuit of happiness are described as inalienable rights. They are the most fundamental human rights and are endowed to migrants just as they are endowed to citizens. In fact, migration is the pursuit of these rights. The protection of these universal human rights must be given primacy in all border governance measures.

### ***Partner with border communities in decision-making about the border.***

Border communities in the United States are economically vibrant, naturally beautiful, and culturally diverse. They are places of encounter, opportunity and hope, and they are home to millions of border residents who are our nation's chief ambassadors and welcomers. Border residents are directly affected by border governance and must be taken into account in a central way. Border communities know the border region better than anyone else and must be consulted about their priorities.

### ***Recognize the dignity and humanity of people who are migrating.***

Migration is a human phenomenon as old as time and a part of nearly every family's story. It is a defining feature of our globalized world, making every country, including the United States, a country of origin, transit, and destination. If governed well, migration is a source of prosperity, innovation, and sustainable development. Thoughtful border governance helps to increase opportunities for safe, orderly, and regular migration and to minimize the need for dangerous and irregular migration. Migration should never be criminalized. Good border governance recognizes our common humanity and shared potential.

### ***Honor the principle of non-discrimination.***

The principle of non-discrimination is a cherished constitutional value found in the equal protection clause of the 14th amendment. Border governance measures must not exclude or mistreat people based on race, ethnicity, gender, national origin, religion, sexual orientation, gender identity or expression, disability or any other human trait. Our traits are what make us human and should not imperil us or be cause for exclusion or mistreatment.

### ***Strive for social cohesion and inclusion.***

As a country, we have long aspired to find unity in diversity, with the words *E Pluribus Unum* (out of many, one) emblazoned on the nation's seal. We are a democracy inspired by indigenous people, forged by diverse immigrants and freed people, and continuously rejuvenated by newcomers from around the world. Our policies and public statements must recognize that diversity is our strength and, with our words and our deeds, we must strive to foster social cohesion and avoid stigmatizing, xenophobic, racist, alarmist, or inaccurate language.



# EXPANDING PUBLIC SAFETY



Our communities are safe when everyone is supported to pursue their full potential in an environment of harmony, safety, equality, and justice. We are safe when everyone can access quality education, healthcare, homes, and jobs. We are safe when we are protected from flooding, fires, and other disasters. We are safe when we can call first responders for help without the threat of violence or deportation. In short, we are safe when everyone can thrive. The role of government is to invest in the things that keep us safe and help us thrive.

That is not currently happening in the border region. Instead of investing in revitalizing border communities, the current administration is doubling down on militarizing them. Instead of contributing to our safety, unaccountable border authorities engage in abuse and corruption while the administration continues to push for deadly walls that exacerbate flooding and

devastate our cultural and natural heritage. Public safety depends on public trust, but there can be no trust when the administration is unwilling to hold itself accountable and is fixated on policies that are harmful and out of touch with reality.

Despite the rhetoric, no known terrorist has entered via our southern border, and the best way to ensure no one ever does is to provide humane and orderly processes at our border, which we currently lack. According to the FBI, border cities are among the safest in the country, with the lowest rates of violent crime and property crime. On an annual basis, less than a fraction of one percent of people entering the country arrive without prior authorization, and an even smaller fraction demonstrate intent to commit crimes or do harm. In that context, the militarization of border communities does not make sense and does not expand our safety. On the contrary, it makes us far less safe. What does increase our safety is creating border policies that are responsive to our needs and responsible to the communities they are intended to serve.

Responsive border policies focus on actual needs in border communities that ensure families feel safe and thrive. Such policies also focus on genuine threats and recognize that migration, in and of itself, is not a threat. Nor is it a crime. Migration is the human experience of seeking life, liberty, and the pursuit of happiness. Facilitating the humane and orderly movement of people across the border increases public safety.

Responsible policies train border authorities in global best practices, including in limiting the use of force, and train them to prioritize saving people and to avoid tactics that endanger them. Such policies require border authorities to protect the human rights of everyone, everywhere in the United States, including in border communities that are often wrongly viewed as exempt from these protections.

Expanding the notion of public safety is in everyone's interest. Responsible border management means that families – residents and migrants alike – feel safe in their well being and do not have reason to fear border authorities. It means border authorities are trained, supervised, and recognized for adhering to best practices that build trust and help keep us all safe. It also means that people who suffer from the abuse by border authorities have meaningful access to justice, and border authorities are held accountable.

# GOALS FOR EXPANDING PUBLIC SAFETY

---

## ***Engage in strategic planning to focus border authorities and resources***

- » Engage in evidence-based strategic planning to identify true threats and appropriate responses to organized crime and terrorism: this means focusing on these threats, not migration. Programs such as Zero Tolerance and Operation Streamline that criminalize migrants and separate families should end.
- » Focus border authorities at the border: this means deploying them at the borders, proportionate to true threats, and eliminating interior checkpoints, roving patrols, and collaboration with local police. These practices erode trust in law enforcement and restrict freedom inside the United States.
- » Focus resources on detection of true criminal and terrorist threats: this means investing in tools that work, such as ground sensors, vehicle scanners and technologies with privacy protections, not expensive, harmful, and ineffective walls.

## ***Employ best practices for effective and professional policing***

- » Adhere to best practices: this means implementing the highest policing standards from the Police Executive Research Forum (PERF) and the International Association of Chiefs of Police (IACP), to reward professionalism, prevent abuse and corruption, and create a culture of accountability.
- » Provide ongoing training, especially on the use of force: this means considering human life as paramount and training authorities on de-escalation and non-lethal responses, such as for rock throwers; limiting force to a proportionate response; using lethal force only when proportionate and absolutely necessary to prevent death or serious injury; and establishing clear consequences for abuse of power.
- » Prioritize and protect life, avoiding tactics that endanger life: this means border authorities embrace a role as preservers of life; assessing risks associated with a tactic; and ending tactics that potentially harm people, such as scatter tactics that disorient migrants, high-speed car chases, and “prevention through deterrence” strategies such as barriers that funnel people into dangerous corridors.

## ***Respect human rights***

- » Enforce the protection of human rights fully: this means law enforcement should investigate and prosecute persons that violate these rights, including border authorities. Establish firewalls to protect personal data and enable migrants to effectively seek help, report crime, and participate in judicial proceedings.
- » End unreasonable searches, seizures, and surveillance in the border region: this means requiring border authorities to have probable cause or a warrant to board and search vehicles and boats or enter private land, without exception; it also means limiting the use of drones, intercept equipment, facial recognition, and other surveillance in order to ensure protection of civil liberties.
- » End mass incarceration of migrants at the border: this means ending the current practice of detention; detention should only be used as a last resort after community-based alternatives and should be limited in scope and duration, be necessary and proportionate, and based on individual assessment. Children and families should never be detained. Ever.



# PROTECTING HUMAN RIGHTS



Every day, millions of people cross borders in pursuit of their inalienable rights. Our borders should be a model to the world on how to protect and uphold human rights. Instead, we have endangered people with policies that create lawlessness and impunity, undermining good border governance. Border regions are often treated as zones of exception for human rights. That should never be the case. Good border governance depends on the full defense of human rights.

Our border communities recognize and respect the reality of families with mixed immigration status. The people without status who live in our homes, worship in our churches, volunteer at our schools, and in so many other ways enrich our communities are not threats to our national security. To the contrary, they demonstrate how border communities practice *convivencia* (living together) in vibrant ways. Migration control and border enforcement tactics that target and victimize these families and our communities must be discarded. Migration is not a crime and the migrants living among us should not be treated as if it were.

The protection of human rights is of particular concern for the border residents who live inside the United States in the spaces between ports of entry. We often must pass through checkpoints as far away as 100 miles into the interior. In these zones, border authorities assert excessive power, beyond the power of other law enforcement agencies, which leads to harassment, abuse, racial profiling and intimidation of border residents and travelers. If human rights are to mean something, they must be fully protected in border communities, without exception.

Migrants in distress at our borders are also particularly vulnerable to human rights abuses. These include families who are seeking protection from danger they face in their home countries. We are obligated to respect the right to asylum and must offer other protections to keep people out of imminent danger.

Vulnerable migrants also include those who are blocked from safe migration channels. Unable to access the ports of entry because of turnbacks or lack of information, these migrants are forced to cross between the ports, often relying on smugglers. They pass through remote and treacherous areas leading hundreds of migrants to die in transit each year in our southern border region.

Good border governance requires the protection of human rights and respect of human dignity of every person. It also requires providing more avenues for safe migration, including expanding the pathways for legal immigration and expanding protections for people in danger. It also includes protecting children and other vulnerable individuals arriving at the border, prioritizing human rights in the processing of asylum seekers and others seeking protection, and preserving life through immediate aid and rescue.

# GOALS FOR PROTECTING HUMAN RIGHTS

---

## ***Prioritize human rights in border governance***

- » Prioritize human rights in policy and practice to facilitate effective border governance: this means shifting away from an enforcement-at-any-cost perspective that threatens human rights, harms community well-being, creates zones of impunity, erodes trust, and is ultimately ineffective.
- » Protect individuals from return or expulsion to countries where they face the risk of persecution and torture: this means providing a safe and effective process for people to seek available protections. People should never be returned to countries where they will be exposed to human rights violations.
- » Ensure that the return of migrants with no legal right to stay is safe, dignified and follows due process: this means returning people only after an individual assessment and exhaustion of remedies; returning them with their families (who are not eligible for protections) and with identity documents and belongings; and ending returns at night, to dangerous places, or remote areas far from apprehension.

## ***Provide immediate aid, rescue, and recovery***

- » Provide immediate humanitarian aid to ensure human dignity: this means, border authorities should be trained and equipped to provide first aid, water, food, blankets, sanitary items, and rest to individuals who present themselves or are encountered. The government should provide support to organizations that provide aid to migrants in their communities and help family members reunite.
- » Prioritize rescue and recovery: this means increasing search and rescue capacity, locating rescue beacons with 911 cell-relay along remote routes, and making every effort to rescue, recover, identify, and repatriate remains through international multi-stakeholder collaborations that include the effective participation of and regular communication with families of the disappeared.
- » Recognize the ancient, moral, and sacred duty of individuals to help others in distress: this means ensuring that people who provide humanitarian aid, rescue, and recovery are not penalized for or obstructed from doing so, and their aid provisions are never destroyed. Instead they should be supported to fill gaps the government is unable to fill.

## ***Protect children and other vulnerable individuals***

- » Protect the best interests of children at all times regardless of their migration status or that of their parents: this means treating children as children first, maintaining family unity, locating children in the community, and having child welfare specialists play a primary role with children, not border authorities.
- » Increase sensitivities to vulnerable populations: this means border authorities (who are mostly male) should be regularly trained to communicate with people they encounter who are female, indigenous, ethnic minorities, religious minorities, LGBTQ, traumatized, or otherwise vulnerable.
- » Provide support and pursue justice for families impacted by border militarization: this means providing federal and state victim support services for families who have been harmed or killed; and fully investigating and prosecuting border authorities alleged to be responsible.

# WELCOMING RESIDENTS & NEWCOMERS



Our borders are places of encounter, opportunity, and hope, but our current policy has undermined their potential and growth. The nearly one million people who arrive in the United States daily include border residents, visitors, merchants, and migrants. They are strengthening connections with our global neighbors, building goodwill, and fueling our economy so that we can all thrive.

Over 99 percent of people arriving have prior authorization to enter the country. Less than one percent come without prior authorization and most of them seek protection in the form of asylum or other assistance. A smaller number arrive seeking a better life like generations of migrants before them. Our welcoming system must respond to all of them in an effective, humane, and efficient way.

Given the volume and variety of people arriving, responsible border governance requires that we have sufficient channels for people with prior authorization (visas, passports) to cross the border. It is also essential that we have adequate and accountable personnel to staff those crossings. The country loses billions of dollars and thousands of jobs every year due to the long wait times at our southern border crossings. The cost is felt across the nation, which depends on trade with Mexico, now our largest trading partner. Long lines at the border also impact local businesses, degrade air quality, and imperil the well being of elderly, pregnant and disabled individuals who cannot withstand long waits.

We must ensure clear processes and sufficient access for migrants without prior authorization to approach the ports of entry to seek asylum, protection, or other assistance. Migration should never be criminalized. To do so is to criminalize a fundamental human experience. In order for the United States to engage in managing migration in a manner consistent with our values, our policies must reflect our humanity.

The welcoming of migrants necessitates a whole-of-government and whole-of-society approach that begins before migrants arrive at the border. It begins with the cooperation and coordination of local, state, national and international governments and nongovernmental organizations on both sides of the border to respond to the human rights concerns and needs of migrants. The role of border authorities with regard to migrants is to identify newcomers in a professional manner, identify their reason for entry, and make appropriate and timely referrals. That's it. Referrals include child welfare specialists, asylum officers, trauma counselors, medical teams, humanitarian aid organizations, and other partnering community organizations to assist migrants.

To facilitate the welcoming of migrants, it's imperative that border authorities and others coordinating with them on both sides of the border provide migrants access to interpretation in a language they understand, access to information about their rights, freedoms, and available protections, and access to other relevant assistance including cultural liaisons and legal counsel to communicate effectively and exercise their human rights fully. All of this should be done in a cage-free environment that honors the dignity of migrants. This will facilitate expeditious processing in conformance with national and international obligations.

# GOALS FOR WELCOMING RESIDENTS & NEWCOMERS

---

## ***Expand channels to welcome people at ports of entry***

- » Respect international obligations to asylum seekers and others seeking protection, ensuring entry systems provide migrants the opportunity to present themselves expeditiously: this means sufficient staffing and facilities to avoid turnbacks and eliminate prolonged waits outside the country.
- » Increase channels for entry of border residents, visitors, merchants, and migrants: this means adequate and accountable staff, more lanes at ports, more open hours, and more opportunity to approach and be processed so that no one is deterred and compelled to pursue irregular entry.
- » Provide accommodation for elderly, pregnant, disabled, and others in need to physically access channels safely: this means assisting with mobility, providing seating, providing access to shade and water, and providing expeditious processing when necessary.

## ***Expedite interviews to identify and refer arrivals***

- » Conduct interviews in an efficient, professional, confidential, non-threatening, non-coercive way: this means a clear standard for treating everyone with dignity and respect; it also means extending full due process for credible fear interviews that should only be conducted by asylum officers, not border agents.
- » Identify the reason for entry without engaging in discrimination: this means no profiling based on race, ethnicity, gender, national origin, religion, sexual orientation, gender identity and expression, disability or other identity traits. Human traits should never be cause for exclusion or mistreatment.
- » Make appropriate and timely referrals for people who are at particular risk: this means referrals to governmental or nongovernmental entities to address the needs of children, asylum seekers, victims of trafficking or violence, and those with medical concerns. People waiting should have adequate water, food, sanitation, and a comfortable temperature in a humane, cage-free environment.

## ***Provide access to interpretation, information and assistance***

- » Provide access to interpretation for arrivals who need help with communication: this means language or sign interpretation, or verbal explanation for those who are not literate.
- » Provide access to information about rights, freedoms, and available protections: this means proactively giving this information to arrivals subject to enforcement measures and possible return, and distributing widely in countries of origin.
- » Provide access to assistance in a whole-of-government approach: this means having sufficient trained personnel, other than border authorities, to provide medical and psychological assistance, trauma response, cultural liaison, child guardianship, legal assistance and other assistance in cooperation with nongovernmental service providers as needed.



# RULES FOR GOOD BORDER GOVERNANCE

## ***Drive decision-making with accurate and unbiased data.***

Good border governance is driven by data that grounds responsible decision-making in reality, not rhetoric. High-quality data enables research, guides coherent and evidence-based policymaking, informs public discourse, and allows for effective monitoring and evaluation of the implementation of policies.

## ***Partner with affected stakeholders.***

The impact of border policies on border residents, visitors, merchants, and migrants should be addressed in the development, implementation, and evaluation of border governance policies. Good border governance responds to the concerns of affected communities and incorporates the input of stakeholders, which include local governments, civil society organizations, and international actors. In a whole-of-government and whole-of-society approach to border governance, stakeholders are partners in responding to challenges and needs, and local border communities do not bear the cost or burden of responding alone.

## ***Be transparent to the public.***

Transparency is a cornerstone of good border governance and means that information about policies and their implementation must be freely available and accessible to those affected by them. The public must be informed about the data collected, reports produced, budgets allocated, money spent, policies proposed, decisions made, evaluations completed, evidence collected, and videos recorded, and the location of detainees. Responses to Freedom of Information Act (FOIA) requests should come within weeks, not years.

## ***Ensure meaningful oversight.***

Oversight is necessary to ensure compliance with goals, policies, and standards of professionalism. Good border governance must strengthen internal monitoring of the Department of Homeland Security (Office of Civil Rights and Civil Liberties, Office of Inspector General, Office of Professional Responsibility). It must also include external monitoring by independent auditors, civilian review bodies, and international observers.

## ***Hold authorities accountable.***

A cornerstone to public trust is accountability. Government officials must be accountable to those they govern and there can be no exceptions, no waivers from compliance with the law. Access to an accountable justice system is key for people pursuing remedies for harm resulting from border governance policies and practices, or from corruption or organized-crime ties. Meaningful justice includes a robust complaint system, independent investigation, fair adjudication, and effective remedy. An effective remedy is responsive, timely, and meaningful. It provides reparation to the victim, guards against repetition, and applies the appropriate sanctions commensurate with the offense including a criminal conviction and/or administrative discipline.



## CONCLUSION

A New Border Vision for responsible border management leads with our values, addresses our needs, and adheres to good governance to generate well-functioning borders for the 21st century.

This vision was developed by the Southern Border Communities Coalition (SBCC), a coalition of community organizations spanning the length of the southern border, in collaboration with the Northern Border Coalition (NBC) and in consultation with academics, human rights experts, and law enforcement leaders. This vision draws on national and global perspectives on border governance to create a path forward at a divisive and chaotic time in the United States.

A New Border Vision is intended to set a new tone for dialogue about the border, to offer a template for new policy development, and to encourage us to turn the page to move forward together with common purpose and shared humanity. Let this vision be a guide to fulfill our nation's moral and legal obligations.

*“The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are written, as with a sun beam in the whole volume of human nature, by the hand of the divinity itself; and can never be erased or obscured by mortal power.”*

Alexander Hamilton, 1775  
American Statesman, Founding Father, and Immigrant

### **SBCC would like to thank the following for contributing their perspective:**

#### **Global perspective:**

Global Justice Clinic, New York University Law School  
Inter American Commission for Human Rights, Office of the Rapporteur on the Rights of Migrants  
United Nations Former Vice Chair on the Committee on Migrant Workers  
United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions  
United Nations Special Rapporteur on Racism, Racial Discrimination, Xenophobia and Related Intolerance  
United Nations High Commissioner for Refugees  
Regional Office for the USA and the Caribbean  
United Nations Committee on Migrant Workers  
University of California Berkeley's International Human Rights Law Clinic

#### **National perspective:**

American Civil Liberties Union (ACLU)  
Church World Service  
National Network for Immigrant and Refugee Rights  
Washington Office on Latin America

#### **Southern border perspective:**

Alliance San Diego (CA)  
American Friends Service Committee - US-Mexico Border Program (CA)  
California Immigrant Policy Center (CA)  
San Diego Immigrant Rights Consortium (CA)  
SEIU United Service Workers West (CA)  
Colibrí Center (AZ)  
Frontera de Cristo (AZ)  
Good Shepherd United Church of Christ (AZ)  
ACLU New Mexico (NM)  
New Mexico Comunidades en Acción y de Fe (NM)  
ACLU Border Rights Center (TX)  
La Unión Del Pueblo Entero (TX)  
Rio Grande Valley Equal Voice Network (TX)  
South Texas Human Rights Center (TX)

#### **Northern border perspective:**

New York Immigration Coalition  
Northern Borders Coalition





*Produced by Alliance San Diego on behalf of the Southern Border Communities Coalition.*

*For more information about SBCC, visit [www.southernborder.org](http://www.southernborder.org).*





A New Border Vision is a framework for responsible border governance. It leads with our values, addresses our needs, and adheres to good governance principles to generate humane and well-functioning borders for the 21st century. It is driven by border communities who are calling for the following action in a New Border Vision:

### EXPAND PUBLIC SAFETY.

Public safety depends on public trust, but there can be no trust when the administration treats migrants as criminals and border residents as second-class citizens. We must decriminalize migration, hold border authorities accountable, and treat everyone with dignity and respect.

- ◆ Focus border authorities and resources on true threats at the border, not migration.
- ◆ Employ best practices for effective, professional and accountable policing.
- ◆ End unreasonable searches, seizures, surveillance and detention.

### PROTECT HUMAN LIFE.

Our borders should be a model to the world on how to protect and uphold human rights. Instead, we have threatened people with policies and tactics that endanger life. We must preserve life above all else and support humanitarian acts that proactively save people.

- ◆ Prioritize human rights, allowing people to seek protection or safe return.
- ◆ Provide immediate aid, rescue, and recovery to people in distress.
- ◆ Protect children and other vulnerable individuals, keeping families together.

### WELCOME PEOPLE AT THE BORDER.

Our welcoming system must respond to border residents, migrants, merchants and visitors in an effective, efficient, and humane way — one that takes a whole-of-government and whole-of-society approach. This means border authorities should play a limited role to identify and clear people, or they refer them as needed, including migrants and asylum seekers, to other governmental or nongovernmental entities for assistance and processing.

- ◆ Expand channels to welcome people at ports of entry, eliminating long wait lines.
- ◆ Expedite entry interviews to identify and clear people or refer them for help as needed.
- ◆ In a whole of government approach, provide access to interpretation, information, and assistance.



Learn more about a New Border Vision and the Southern Border Communities Coalition at [southernborder.org](https://southernborder.org). July 2019.





Una Nueva Visión Fronteriza es un marco de gobernanza fronteriza responsable que lidera con nuestros valores, aborda nuestras necesidades y se adhiere a los principios de la buena gobernanza para crear fronteras para el siglo XXI que funcionen bien. Es una visión impulsada por comunidades fronterizas que buscan lo siguiente a través de una Nueva Visión Fronteriza:

## AMPLIAR LA SEGURIDAD PÚBLICA.

La seguridad pública depende de la confianza pública, pero no puede existir la confianza cuando la administración trata a migrantes como criminales y a los residentes fronterizos como ciudadanos de segunda clase. Debemos despenalizar la migración, hacer que las autoridades fronterizas rindan cuentas y tratar a todas las personas con dignidad y respeto.

- ◆ Enfocar a las autoridades y a los recursos en las verdaderas amenazas en la frontera, no en la migración.
- ◆ Emplear las mejores prácticas para una vigilancia policial efectiva y profesional que rinda cuentas.
- ◆ Poner fin a las irrazonables búsquedas, confiscaciones, vigilancia y detención.

## PROTEGER LA VIDA HUMANA.

Nuestras fronteras deben ser un modelo para el mundo sobre cómo proteger y elevar los derechos humanos. En lugar de hacer eso, hemos amenazado a la población con políticas y tácticas que ponen en riesgo la vida. Debemos preservar la vida antes que nada, y apoyar los actos humanitarios proactivos que salvan a la gente.

- ◆ Priorizar los derechos humanos para que las personas pidan protección o sean retornadas de forma segura.
- ◆ Proveer asistencia, rescate o recuperación inmediata a personas que se encuentran en peligro.
- ◆ Proteger a niños y niñas y a otras personas vulnerables, así como mantener a las familias unidas.

## DAR LA BIENVENIDA A LAS PERSONAS EN LA FRONTERA.

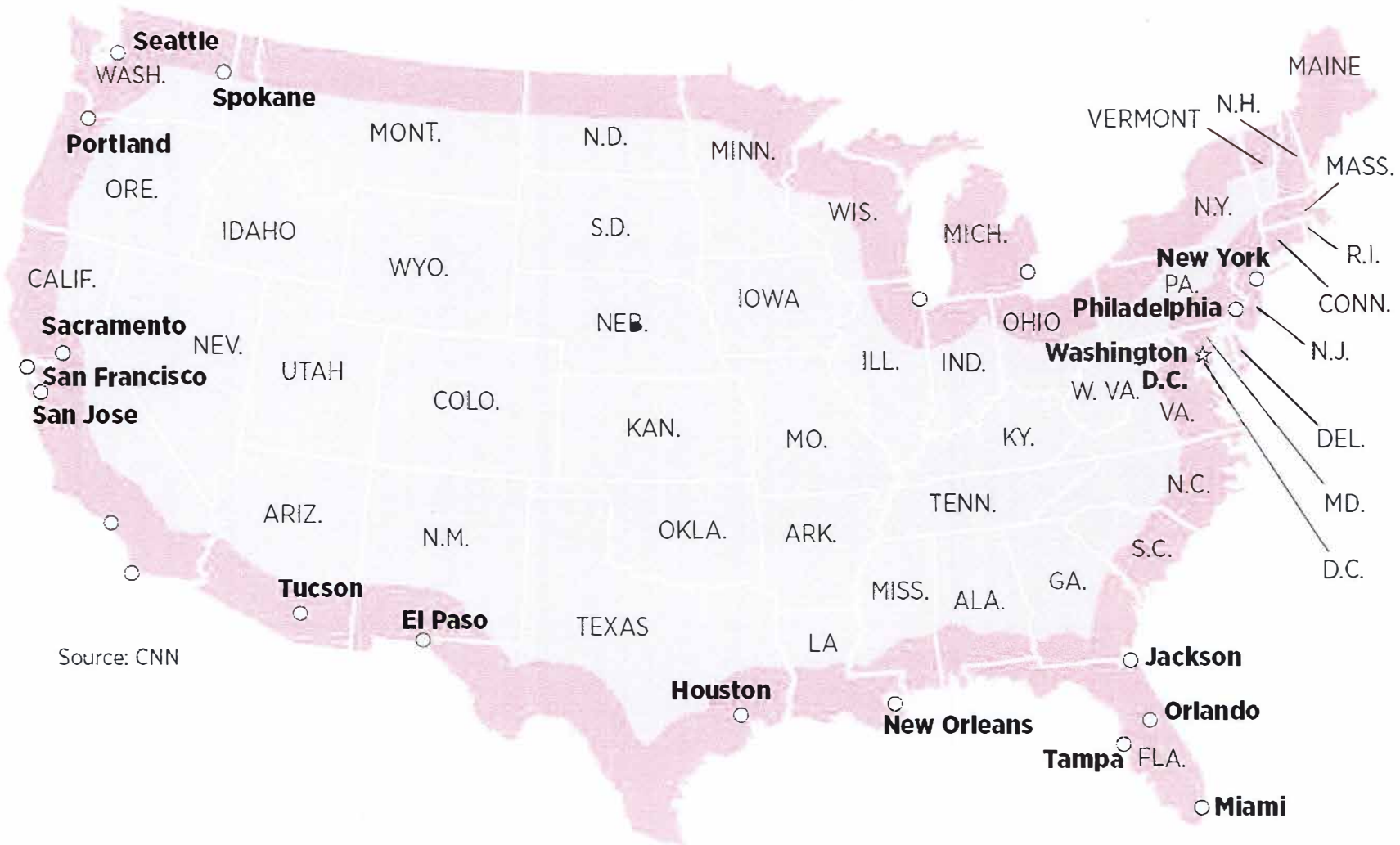
Nuestro sistema acogedor debe responder a residentes fronterizos, migrantes, comerciantes y visitantes de una forma efectiva, eficiente y humana que incluya un enfoque de todo el gobierno y de toda la sociedad. Las autoridades fronterizas deben limitarse a identificar y autorizar, y de ser necesario, referir a migrantes y solicitantes de asilo a entidades gubernamentales o NGOs para recibir asistencia o ser procesados.

- ◆ Expandir los canales para darle la bienvenida a la gente a los puertos de entrada y eliminar las filas largas
- ◆ Acelerar entrevistas de entrada para identificar y autorizar o referir para recibir asistencia.
- ◆ Proveer acceso a interpretación, información y asistencia como parte de un enfoque de todo el gobierno.



# United States border enforcement zone

Immigration checks by Border Patrol agents may be made without a warrant up to 100 miles from U.S. borders and coastlines. The area in orange is the enforcement zone including some of the the major cities within that zone.



MOLLY QUINN/THE SPOKESMAN-REVIEW



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
January 28, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Cheryl Davila  
Subject: Dorothy Day House First Annual Fundraiser: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

#### RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$150 from Councilmember Cheryl Davila, to Dorothy Day House for their First Annual Fundraiser on February 7, 2020 with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute.

#### BACKGROUND

Dorothy Day House is a community based 501(c)3 organization non-profit organization that for over 30 years has provided meals, shelter, and employment for low income residents and people who experience homelessness in Berkeley. Dorothy Day House is open every night in the basement of the Veterans Memorial Building at 1931 Center Street from 6:00 PM to 7:30 AM. Additionally, DDH offers a community breakfast and lunch that is open to the public.

Dorothy Day House will hold their First Annual Fundraiser on Thursday, February 7, 2020 at 6 PM at SPATS, 1974 Shattuck Avenue. The event features a short tour of the facility at 5 PM at 1931 Center Street. Then the fundraiser will kick off at 6 PM at SPATS, featuring distinguished list of bartenders, keynote speakers, art and talent from the community.

#### FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact. \$250 is available from Councilmember Cheryl Davila's Council Office Budget discretionary account (011-11-102-000-0000-000-411).

#### ENVIRONMENTAL SUSTAINABILITY

Protecting low income residents and people who experience homelessness is itself an act of environmental sustainability.

#### CONTACT PERSON

Cheryl Davila  
Councilmember District 2  
510.981.7120  
[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

#### ATTACHMENT:

1. Resolution
2. Email regarding Dorothy Day House Fundraiser on Thursday, February 7, 2020

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEYS 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 011-11-102-000-0000-000-411); and

WHEREAS, Dorothy Day House, a California non-profit tax-exempt corporation, is seeking donations for their First Annual Fundraiser on Thursday, February 7, 2020 at 6 PM at SPATS 1974 Shattuck Ave, Downtown Berkeley; and

WHEREAS, Dorothy Day House is a community based 501(c)3 organization non-profit organization that for over 30 years has provided meals, shelter, and employment for low income residents and people who experience homelessness in Berkeley; 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 Councilmember, including \$150 from Councilmember Cheryl Davila, shall be granted to Dorothy Day House for their First Annual Fundraiser on Thursday, February 7, 2020.



**From:** Robbi Montoya <[r.montoya@dorothydayhouse.org](mailto:r.montoya@dorothydayhouse.org)>

**Sent:** Monday, January 06, 2020 7:02 AM

**Subject:** SAVE THE DATE/DOROTHY DAY FUNDRAISER

Hello!

I am thrilled to announce that the Berkeley Community Resource Center/Dorothy Day House will be hosting their 1st annual fundraiser on FEB 7th at SPATS.

We will be providing a short tour of the facility at 5pm @ 1931 Center St. The event will kick off at 6pm at SPATS. We are honored to have a distinguished list of "celebrity" bartenders and keynote speakers.

We will have art and talent from the community as well as many ways you can show your support.

--

Thank You,

Robbi Montoya, Program Manager  
Berkeley Community Resource Center  
~ a program of Dorothy Day House

Office: 510 333.7521

Cell: 510 253.5792

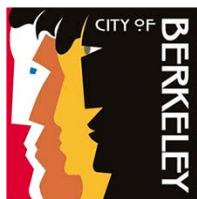
[r.montoya@dorothydayhouse.org](mailto:r.montoya@dorothydayhouse.org)

[robbimontoyaBCRC@gmail.com](mailto:robbimontoyaBCRC@gmail.com)

<https://dorothydayhouseberkeley.org/>

***"small steps lead to large strides"***





CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

11

CONSENT CALENDAR  
 January 28, 2020

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Rigel Robinson and Mayor Jesse Arreguin  
 Subject: Letter in Support of a Dedicated Bus Lane on the Bay Bridge

RECOMMENDATION

Send a letter to the California Department of Transportation (Caltrans), the Metropolitan Transportation Commission (MTC), Assemblymember Buffy Wicks, Assemblymember Rob Bonta, Assemblymember Jim Frazier, State Senator Nancy Skinner, and Senator Jim Beall in support of the reinstatement of a dedicated bus lane on the San Francisco-Oakland Bay Bridge.

BACKGROUND

On January 15, 1961, the State of California established a temporary dedicated bus lane on the Bay Bridge to alleviate rush hour congestion. The bus-only lane enabled buses to remain on schedule and reduced bus travel time across the bridge from 25 minutes to 13 minutes, twice as fast as automobiles during rush hour. Implementation had an immediate effect on AC Transit ridership — Transbay ticket sales increased 12.8 percent in just a year, from \$134,699 in January 1961 to \$153,912 in January 1962.

On January 31, 1963, the San Francisco Division of Bay Toll Crossing under the California Department of Public Works, now renamed the Division of Bay Toll Crossing, announced that it would be removing the bus express lane after only a year of operation. As reported by the San Francisco Chronicle, the chief engineer overseeing the bridge reconstruction project said that “the bus lane [would] be needed for general auto traffic because the upper deck of the bridge [was] going to be repaved.” The lane was converted into a combined bus and carpool lane.

The reconstruction project, which paved the upper deck one lane at a time and opened the bus lane to car traffic, ensured that “motorists would suffer no inconvenience.” However, bus commuters would see their commute times doubled to 25 minutes again. This decision was made despite the fact that during peak hours at that time, half of all East Bay commutes were by bus. An eastbound bus left San Francisco every 14 seconds, and 238 coaches crossed the bridge between 4 and 6 PM.

The Bay Bridge is currently owned and maintained by the California Department of Transportation, or Caltrans. The reconstructed Bay Bridge has a short bus-only lane that allows buses to bypass the FasTrak toll booths. However, on the majority of the bridge, buses share the road with general automobile traffic.

As Bay Area residents are priced out of San Francisco and move to the East Bay and other more affordable regions, Transbay automobile traffic has increased proportionally.

According to the Metropolitan Transportation Commission, weekday congestion-related delays on Bay Area freeways have broken a new record, surging by 80 percent since 2010. Former MTC Chair Jake Mackenzie states that “eight of the top 10 most crowded commutes [in the Bay Area] are routes to or from the Bay Bridge or Silicon Valley.”

At the same time, the rising demand for Transbay bus service is evident. AC Transit Transbay ridership has “undergone substantial ridership growth,” necessitating the staff decision to add additional trips into the schedule and take steps to manage overcrowding. Transbay routes experienced a 20 percent increase from 11,000 daily riders in 2013 to 13,500 in 2015. In 2018, Transbay ridership increased by another 1.8 percent, making up 10 percent of total weekday ridership.

In order to accommodate growing Transbay ridership, improve the efficiency and appeal of Transbay public transit, and reduce automobile congestion, Caltrans should explore reimplementing a dedicated bus lane on the Bay Bridge.

A bus-only lane implemented in a dense, congested area to speed up transit without major capital improvements is also known as a tactical transit lane (TTL). Ideal conditions for a TTL are commuter corridors where transit speeds and headway reliability are of concern, and allowing transit to bypass car traffic yields the greatest benefits. According to a 2019 study by the UCLA Institute of Transportation, TTLs increase bus ridership by “speeding up travel times, improving [the] passenger experience and enhancing overall perceptions of riding the bus.” The Bay Bridge, designated by the MTC as the most congested freeway corridor in the Bay Area at peak commute times, is an excellent candidate for a tactical transit lane.

Cities across the country are beginning to understand the importance of dedicated bus lanes for transit reliability. Permanent bus-only lanes have been implemented in San Francisco, Los Angeles, Santa Monica, Chicago, Baltimore, and right here in Berkeley. Additional pilot programs are underway in cities such as Boston, Cincinnati, Pittsburgh, and Cambridge.

The San Francisco Municipal Transportation Agency (SFMTA) conducted a before-and-after study of the dedicated bus lane on Market Street, and “found that three bus lanes painted onto downtown streets in 2014 improved transit delays (despite increases in car traffic), boosted transit reliability by 25 percent, and cut collisions by 16 percent.”

During peak hours, Market Street accommodates more than 200 buses per hour. Several dedicated bus lanes have been implemented on streets that serve far fewer buses — 4th Street, one of San Francisco’s major transit corridors, services only 40 buses per hour at peak times. There is a great need for a dedicated bus lane in such a congested, public transit-rich corridor.

In order to encourage Transbay commuters to choose public transit over cars, Caltrans must provide the infrastructure needed to make buses the more efficient and reliable



option. Ultimately, a dedicated bus lane on the Bay Bridge would take pollutant-emitting and traffic-congesting cars off the road while improving the public transit experience.

Staff should send the attached letter of support to Caltrans, the MTC, Assemblymember Buffy Wicks, Assemblymember Rob Bonta, Assemblymember Jim Frazier, State Senator Nancy Skinner, and Senator Jim Beall.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

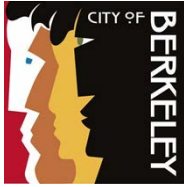
Improved Transbay public transportation will incentivize commuters to take public transit instead of driving, therefore reducing vehicle miles traveled.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Attachments:

- 1: Letter
- 2: San Francisco Chronicle: Fast Bus Lane on Bay Bridge Ups Ticket Sales (February 8, 1962)
- 3: San Francisco Chronicle: Bridge Buses to Lose Special Lane (January 31, 1963)



To: California Department of Transportation

Date: January 28, 2020

Re: In Support of a Dedicated Bus Lane on the Bay Bridge

Dear California Department of Transportation:

The City of Berkeley is committed to reducing our negative environmental impact through innovative transportation solutions. One of our most valuable partners in our effort to reduce vehicle miles traveled, encourage residents to use sustainable modes of transit, and promote transportation equity and accessibility has been AC Transit. However, the reliability, efficiency, and quality of bus service for Bay Area residents and commuters depends on intentional and well-planned infrastructure. Therefore, the City of Berkeley is writing in support of reinstating a dedicated bus lane on the San Francisco-Oakland Bay Bridge.

In 1961, the State of California established a temporary dedicated bus lane on the Bay Bridge to alleviate rush hour congestion. The bus-only lane increased AC Transit Transbay ridership by 12.8 percent, enabled buses to remain on schedule, and reduced bus travel time across the bridge from 25 minutes to 13 minutes. However, after just one year of operation, it was removed in 1963 to make room for general automobile traffic.

Cities across the country, including Berkeley, are beginning to understand the importance of dedicated bus lanes for transit reliability. San Francisco's bus-only lanes improved transit delays, boosted reliability by 25 percent, and cut collisions by 16 percent. Dedicated bus lanes are especially beneficial in dense, congested commuter corridors such as the Bay Bridge.

As Bay Area residents are priced out of San Francisco and move to the East Bay and other more affordable regions, Transbay automobile traffic has increased proportionally. According to the Metropolitan Transportation Commission, weekday congestion-related delays on Bay Area freeways have broken a new record, surging by 80 percent since 2010. The Bay Bridge is the most congested freeway corridor in the Bay Area, and eight of the top 10 most crowded Bay Area commutes are routes to or from the Bay Bridge and Silicon Valley.

At the same time, the rising demand for Transbay bus service, which now makes up 10 percent of AC Transit weekday ridership, is evident. In order to accommodate growing Transbay ridership, improve the efficiency and appeal of Transbay public transit, and reduce automobile congestion, Caltrans should explore reimplementing a dedicated bus lane on the Bay Bridge. If California is committed to meeting its statewide climate goals by incentivizing commuters to choose public transit over cars, Caltrans must provide the infrastructure needed to make buses the more efficient and reliable option.

Sincerely,

The Berkeley City Council

Several suggestions have

## Fast **Bus Lane** On Bay Bridge Ups Ticket Sales

Ticket sales to transbay bus commuters jumped 12.8 per cent in January over the same month a year ago, the Alameda-Contra Costa Transit District announced yesterday.

This was the first indication of the effectiveness of the new exclusive **bus lane** on the Bay Bridge, district officials said.

The **bus lane** was established on January 15 by the State to take some of the pressure off rush hour congestion. Buses can make the bridge crossing in about 12 or 13 minutes, or about twice as fast as autos in rush hour traffic.

As a result, district officials said, to commute book sales for last month totaled \$153,912, an increase of \$19,213 over January, 1961.

Source: <https://twitter.com/chrisarvinsf/status/1182490535778340865>

by  
After  
ery

Commuter Slowdown

# Bridge Buses to Lose Special Lane

ica  
 Bing Crosby has gone another ne operation —  
 ar-old entertainer bed as in "excellent yesterday at Hospital here.  
 erick Schlumberg-atlock Mims said, is removed from ght kidney during te operation Tues-  
 ing is normal and emain in the hos-seven days." they  
 was operated on stones a year ago 1952 and 1955.  
 iting in San Fran- 1961. Crosby was St. Joseph's Hos- ing from severe ians but was re-w hours later.  
 , who has four s by a previous s now married to Kathy Grant, 28. three small chil-  
 Our Correspondent

Buses will lose their exclusive right to a single express lane on the lower deck of the Bay Bridge tomorrow, it was learned last night.

Directors of the San Francisco Division of Bay Toll Crossing rescinded the bus express lane yesterday. It has been in operation for a year.

Norman C. Raab, chief engineer on the bridge reconstruction project, said the bus lane will be needed for general auto traffic because the upper deck of the bridge is going to be repaved.

Raab said the bus lane was only a temporary measure anyway.

Alameda-Contra Costa Transit system directors, obviously dismayed at the loss of the lane, notified commuters that the bridge crossing will take a little longer now.

Raab said the repaving project is scheduled for April. He said engineering studies will have to be made before the project begins, and he did not know how

long the repaving project would take.

"The upper deck of the bridge hasn't been paved since it was built 25 years ago," Raab said, "and it needs it."

He said motorists would suffer no inconvenience. The upper deck will be paved one lane at a time and its use by motorists will be replaced by the lower deck lane formerly reserved for buses.

Alameda-Contra Costa transit directors, however, expected bus commuters would be sorely inconvenienced. Travel time across the bridge for buses was reduced from 25 minutes to 13 minutes by the express lane.

tional  
 vancen  
 The  
 include  
 Aid to  
 Archib  
 Nation  
 tion.

**A&F**  
*Because of  
 inventory our  
 store will  
 close at 3 P.M.  
 today*  
**ABERCROMBIE & FITCH**

Source: <https://twitter.com/chrisarvinsf/status/1182490535778340865>





Office of the City Manager

PUBLIC HEARING

January 28, 2020

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 Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F

RECOMMENDATION

Conduct a public hearing and upon conclusion, provide direction regarding proposed ordinance language alternatives and take the following action:

Adopt the first reading of five ordinances to amend the Berkeley Municipal Code (BMC) Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F which would:

- A. Allow new business types (Delivery-Only Retailers, Consumption Lounges);
- B. Allow Retailers to continue to operate as Microbusinesses;
- C. Clarify cannabis business operational standards and development standards, such as quotas and buffers, for Storefront Retailers;
- D. Allow more opportunities for Commercial Cultivation by expanding location options; and
- E. Protect the health of the general public and youth with additional advertising, signage and sales regulations.

SUMMARY

The proposed cannabis ordinances would revise definitions and establish operating standards for new and existing 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 fully address new uses (Delivery-Only Retailers, Consumption Lounges and Retail Storefront Microbusinesses<sup>1</sup>), and modify development standards and signage requirements for existing uses.

The proposed ordinances were reviewed by the Cannabis Commission (CC) and the Community Health Commission (CHC). The Planning Commission (PC) also reviewed

---

<sup>1</sup> Microbusinesses are businesses that are vertically integrated and comprise at least three of the following four commercial cannabis activities: Cultivation (up to 10,000 square feet); Retailer; Distributor; and Manufacturer (Type 6, non-volatile solvents only).

changes related specifically to the Zoning Ordinance (BMC Title 23). The minutes from those meetings contain the recommendations from the respective commissions and are included as Attachment 7 to this report. Communications from each of the commissions, containing the rationale behind the recommendations, are also included here as Attachment 8. Where commission recommendations differ from staff recommendations, alternative language is provided within each ordinance for Council consideration.

### FISCAL IMPACTS OF RECOMMENDATION

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

#### Costs

City staff would be responsible for reviewing and issuing business licenses and operating permits and responding to community questions and concerns. Businesses would be subject to at least two inspections per year to determine compliance with local regulations; costs would be covered by permit fees. The department primarily involved in reviewing and issuing operating permits and inspecting businesses would be Health, Housing and Community Services (Environmental Health Division). Indirect costs may be incurred by the Public Health Division if staff develop cannabis-related public health impact assessments and/or public health campaigns.

#### Revenue

In FY 2019, cannabis businesses generated \$1,809,820 in business license taxes, comprising \$641,019 from medical cannabis receipts and \$1,168,800 from adult-use cannabis receipts. Additional cannabis businesses could result in additional revenue.

### CURRENT SITUATION AND ITS EFFECTS

The proposed ordinance would modify regulations and address uses which are not in the current ordinance, including Delivery-Only Retailers and Lounges. Amendments to Title 12 (Health and Safety) of the Berkeley Municipal Code would add definitions for new uses, add new operational standards for Retailers, and specify consumption regulations. Amendments to the Zoning Ordinance would adopt development standards for Delivery-Only Retailers and Lounges, modify development standards for Retailers, and establish buffers and locations for Cultivators, per Council direction.

The following are synopses of each proposed change to Berkeley's cannabis ordinances. The ordinance language reflects staff recommendations developed by a working group which included representatives from Planning, Police, Finance, Public Health, Environmental Health, and Economic Development. The group attempted to balance the issues from each unique perspective to reach recommendations which best serve the interests of the residents of Berkeley. In cases where a commission's recommendation differs from that of staff, alternatives are provided. Refer to

attachments noted in the text below to review specific ordinance language and alternatives. *In cases where a commission's recommendation differs from that of staff, alternatives are provided. Refer to attachments noted in the text below to review specific ordinance language and alternatives.*

**A. Amendments to Title 12 (Health & Safety) of the Berkeley Municipal Code to modify general regulations and specific operating standards for cannabis businesses and activities** (see Attachment 1)

The proposed ordinance would:

- Modify the existing Chapter 12.21 (Cannabis Businesses: General Regulations) to add definitions to the BMC related to Consumption Lounges (Lounges) and Retail Storefront Microbusinesses.
- Modify the existing BMC Chapter 12.22 (Cannabis Business Operating Standards) to specify where commercial on-site consumption could occur and the signage regulations for Retail Storefront Microbusinesses.

The following subsections include options based on recommendations by one or more Commissions (see Attachments 7 and 8 for more details):

12.22.035 – Prohibition of Products Attractive to Children and Youth

*Description:* The Community Health Commission recommended additional provisions on the prohibition of the production or sale of products in Berkeley that could appeal to youth (see 12.22.035 in Attachment 1).

- ***Staff Recommendation (Alternative A): Staff did not include additional provisions because State regulations already prohibit packaging and labelling attractive to children, as well as advertising that appeals to children. The State regulations include prohibiting the use of cartoons, images, characters or phrases that are popularly used to advertise to children, and the terms “candy”, “candies” or variants in spelling such as “kandy” or kandeex”.<sup>2</sup> Cannabis businesses that violate state regulations are subject to fines, suspension and/or revocation of the State license.***
- *Alternative Recommendation (Alternative B):* The CHC recommended alternative language in order to protect youth.

---

<sup>2</sup> For more detailed information, see Section 5303(a)(1)(D) in the Bureau of Cannabis Control (BCC) regulations (<https://cannabis.ca.gov/wp-content/uploads/sites/13/2019/01/Order-of-Adoption-Clean-Version-of-Text.pdf>) and Sections 40300(k) and (m) and 40410(b) in the CA Department of Public Health regulations ([https://www.cdph.ca.gov/Programs/CEH/DFDCS/MCSB/CDPH%20Document%20Library/DPH17010\\_FinalClean.pdf](https://www.cdph.ca.gov/Programs/CEH/DFDCS/MCSB/CDPH%20Document%20Library/DPH17010_FinalClean.pdf)).

12.22.040.E – Retailer Signage

*Description:* The Community Health Commission recommended adding additional requirements for flyers and signage to be displayed in Storefront Retailers and distributed to delivery customers warning of possible health and legal implications of cannabis use for the general public, immigrants, parolees, and persons under the age of 21 (see 12.22.040.E in Attachment 1). Signage is already required to explain: 1) Dangers of operating heavy machinery while using cannabis; 2) Lack of testing for health, safety or efficacy and potential for health risks; 3) Provision of medical cannabis only to Qualified Patients and their Primary Caregivers; 4) Illegality of diversion of medicinal cannabis for non-medical purposes; and 5) Illegality of diversion of cannabis to persons under the age of 21 (see 12.22.040.E in Attachment 1).

- ***Staff Recommendation (Alternative A): Staff did not include these restrictions because the City already requires five warning notices designed to address health and safety risks.***
- *Alternative Recommendation (Alternative B): The CHC recommended additional signage to address health issues and legal issues not currently covered.<sup>3</sup>*

12.22.040.F.2 – Consumption of Cannabis<sup>4</sup>

*Description:* Allow consumption of cannabis at a Lounge, located within a Storefront Retailer. Smoking and vaping would only be permitted at Lounges equipped with a ventilation system capable of removing all detectable odors, smoke, and by-products of combustion (see 12.22.040.F.2 in Attachment 1).

- ***Staff Recommendation (Alternative A): Staff recommended allowing consumption of cannabis at Lounges because 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. The Police Department enforces driving under the influence by watching for impaired drivers city-wide (e.g., due to consumption of alcohol, cannabis, prescription drugs, etc.). The City's Public Health staff expressed concern that allowing smoking or vaping in a commercial store will expose workers to second-hand smoke and conflicts with the City's smoke free workplace ordinance (BMC Section 12.70.040).***

---

<sup>3</sup> If required, additional warnings would need to be vetted by the City's Public Health Division to ensure they reflect current scientific understanding.

<sup>4</sup> The Council should note that the Berkeley Health Code prohibits smoking and vaping in public places, including retail stores, restaurants, bars and recreation areas (BMC Chapter 12.70). Per State law, cannabis smoking and vaping is prohibited where tobacco smoking and vaping is prohibited. If the Council adopts regulations allowing cannabis smoking or vaping in public areas, including cannabis Lounges, the Health Code will need to be amended before that portion of the ordinance can take effect.



- *Alternative Recommendation (Alternative B):* The CHC did not recommend allowing cannabis consumption at a place of business because of the risk of secondary exposure to cannabis smoke and vapor and the risk of impaired driving. The CHC believes that public consumption would undermine City policies that promote smoke-free air and reduce social normalization of smoking.

#### 12.22.040.J – Restrictions on Products at Retailers

*Description:* The Community Health Commission recommended prohibiting the sale of flavored smoking and vaping products, flavored cannabis-infused beverages, and non-cannabis merchandise branded with cannabis businesses or products (see 12.22.040.J in Attachment 1).

- ***Staff Recommendation (Alternative A): Staff did not recommend expanding State restrictions on products that may be sold by a Retailer because additional restrictions would only apply to Berkeley businesses, requiring special monitoring and putting them at a competitive disadvantage to businesses located in other jurisdictions.***
- *Alternative Recommendation (Alternative B):* The CHC recommended this additional restriction to limit the promotion and normalization of cannabis in the community, which has a direct impact on youth.

#### **B. Amendments to Chapter 20.40 of the BMC to establish cannabis business signs and cannabis product advertising regulations (see Attachment 2)**

The proposed ordinance would add regulations for Delivery-Only Retail signage and prohibit logos depicting cannabis or cannabis products on business signage.

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

#### 20.40.130.D – Logos on Signage

*Description:* Prohibit new depictions of cannabis or cannabis products (such as leaves, joints, green crosses) on business signage. Existing businesses whose current logos incorporate cannabis or cannabis products and that was based in Berkeley prior to 2020 will be allowed to use their logo on signage (see 20.40.130.D in Attachment 2).

- ***Staff Recommendation (Alternative A): This prohibition would reduce the visual presence of cannabis advertisements in order to reduce the normalization of cannabis which has a direct effect upon youth.***
- *Alternative Recommendation (Alternative B):* The CC recommended treating cannabis businesses like other businesses and not placing additional restrictions on signage.

**C. Amendments to Chapter 23C.25 of the BMC to clarify and modify the cannabis land use ordinance (see Attachment 3)**

The ordinance would rescind the current Chapter 23C.25 and readopt it to:

1. Modify Section .010 to add regulations for Retailer locations, add discretion and buffers for Storefront Retailers, and add regulations for Lounges and Storefront Retailers.<sup>5</sup>
2. Add Subsection C to provide development standards for Delivery-Only Retailers. See paragraph below for discussion of limitations on the number of Delivery-Only Retailers.<sup>6</sup>
3. Modify Section .020 to allow Cultivation uses outside the Manufacturing (M) District.<sup>7</sup>
4. Reformat the Chapter to make it easier to understand. These changes reword or re-order regulations, but do not change policy direction.

Limitations on the Number of Delivery-Only Retailers. Subsection C contains two Sections (23C.25.010.C.1 and 23C.25.010.C.4), which relate to quotas and location restrictions for Delivery-Only Retailers. These regulations are designed to limit the number of these businesses, either citywide or in manufacturing districts. In order to ensure regulations in these two sections are not in conflict, advantages and disadvantages of each are presented here in one place. The specific staff and commission recommendations for these issues will be addressed under the specific ordinance section.

The initial decision points are 1) whether a limit on the number of Delivery-Only Retailers is desired, and 2) whether that limit should be applied citywide or only in manufacturing districts. Staff has identified the following advantages and disadvantages to consider.

| Advantages of Limitations                                                                                                                                                                                                                                                                     | Disadvantages of Limitations                                                                                                                                                                                                                                                                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Prevents impacts from too many businesses locating in the city or in a particular district.</li> <li>• Limits competition of well-funded cannabis businesses with artists and manufacturers for tenant spaces in manufacturing districts.</li> </ul> | <ul style="list-style-type: none"> <li>• Limits tax revenue by restricting potential businesses.</li> <li>• Often requires a selection process to determine which businesses can operate in the city/district.</li> <li>• Conflicts with current practice of removing quotas on businesses.</li> </ul> |

<sup>5, 6, 7</sup> Policy changes shown in **BOLD** in the Ordinance (Attachment 3)

|  |                                                                                                                                                                                                                                                                                                                  |
|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <ul style="list-style-type: none"> <li>• Limits opportunities for microbusinesses by limiting areas where three cannabis business types can operate.</li> <li>• Further constrains location options for Delivery-Only Retailers, as many property owners do not want to lease to cannabis businesses.</li> </ul> |
|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

If the Council decides that a limit is necessary, then a method for achieving that limit needs to be determined. Staff has identified three general methods that could be used to limit businesses within Berkeley: Numeric limits (quotas); Concentration limits (buffers); and Operator limits (ownership restrictions). These methods can be used separately or together, based on the intention of the limit. See the table below for the advantages and disadvantages of each method.

| <b>Limiting method</b>         | <b>Examples of method</b>                                                                                                                                            | <b>Advantages</b>                                                                                                                                  | <b>Disadvantages</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Numeric limit (quota)          | <ul style="list-style-type: none"> <li>• Create citywide cap on number of businesses</li> <li>• Create district specific cap on number of business</li> </ul>        | <ul style="list-style-type: none"> <li>• Public will know exactly how many businesses are permitted</li> <li>• Easy to describe</li> </ul>         | <ul style="list-style-type: none"> <li>• Artificially limits businesses, regardless of demand.</li> <li>• Requires staff time to monitor the number of businesses.</li> </ul>                                                                                                                                                                                                                                                                                                               |
| Concentration limits (buffers) | <ul style="list-style-type: none"> <li>• Require businesses to be a certain distance from uses or sites, such as schools, parks, similar businesses, etc.</li> </ul> | <ul style="list-style-type: none"> <li>• Keeps businesses away from sensitive uses</li> <li>• Prevents over-concentration of businesses</li> </ul> | <ul style="list-style-type: none"> <li>• Limits businesses locating in areas that otherwise would be deemed appropriate.</li> <li>• Potentially pushes businesses into less desirable areas (i.e. closer to schools) when more appropriate locations are taken.</li> <li>• Requires staff time to track business locations.</li> <li>• Is more difficult for applicants to find locations.</li> <li>• Significantly limits the ability of microbusinesses to locate in Berkeley.</li> </ul> |

| Limiting method                          | Examples of method                                                                                                                             | Advantages                                                                                                                     | Disadvantages                                                                                                                                                                  |
|------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Operator limits (ownership restrictions) | <ul style="list-style-type: none"> <li>Restrict businesses to those meeting a particular criteria (small business, equity business)</li> </ul> | <ul style="list-style-type: none"> <li>Gives additional business opportunities to owners deemed in need of support.</li> </ul> | <ul style="list-style-type: none"> <li>Potentially exceeds the number of candidates expected.</li> <li>Reasoning for the restriction needs to meet legal standards.</li> </ul> |

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

23C.25.010.A.3 – Cannabis Retailer Location Changes

*Description:* Require Retailers to be in good standing with State and local laws in order to be considered for a change in location (see 23C.25.010.3 in Attachment 3).

- **Staff Recommendation (Alternative A): Staff will confirm compliance with safety and operational standards prior to considering locational changes.**
- *Alternative Recommendation (Alternative B):* The CC did not recommend staff check compliance prior to considering locational changes.

23C.25.010.B.6 – Cannabis Storefront Retailer Buffers

*Description:* Require buffers between Storefront 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

See Attachment 6 for maps depicting the staff recommendation and other options.

- **Staff Recommendation (Alternative A): This provision incorporates input received from the City Council at the October 2018 Work Session. This recommendation is intended to protect youth while providing opportunities for cannabis businesses to locate within the city.**
- *Alternative Recommendation (Alternative B):* The CC did not recommend this requirement. The CC believes the current Storefront Retailer buffer from schools, which is that Storefront Retailers may not be located within 600 feet of another

Storefront Retailer or school – paired with the 21 and older age limit -- are adequate to protect youth from entering a Storefront Retailer.

- *Alternative Recommendation (Alternative C):* The CHC recommended a 1,000-foot buffer from all schools, including junior colleges, colleges, and universities, as well as buffers around parks and libraries. Those additional restrictions are intended to limit cannabis availability in places that children, youth and young adults frequent.
- *Alternative Recommendation (Alternative D):* The PC recommended adopting the staff recommendation (Alternative A), but maintaining the current buffer (Alternative B) until after the proposed Equity Candidate (the seventh Cannabis Storefront Retailer) has selected a location, for the sake of equity.

#### 23C.25.010.C.1 – Delivery-Only Retailers Quota

*Description:* Determine whether a numeric limit (“quota”) should be established for Delivery-Only Retailers, and if so, what the quota should be.

- ***Staff recommends a quota of seven Delivery-Only Retailers, and setting aside all of the permits for Equity Businesses, subject to a selection process. This quota would result in a ratio of one Delivery-Only Retailer per 17,475 residents. This quota is based on the City of Davis’s regulations (4 businesses, or 1 business/17,322 residents), and also matches the averaged business/resident ratios in Oakland and San Francisco (1 business/18,060 residents). The quota could be revisited after three years to determine if the number should be modified or if permits should be made available to non-Equity Businesses.***
- *Alternative Recommendation (Alternative A):* The CC recommended no quota for Delivery-Only Retailers because these businesses should be treated like other businesses and not subject to an arbitrary limit.
- *Alternative Recommendation (Alternative B):* The PC recommended a quota of 10 Delivery-Only Retailers, and setting aside at least half for Equity Businesses.
- *Alternative Recommendation (Alternative C):* The CHC recommended a quota of two Delivery-Only Retailers, both Equity Businesses.

#### 23C.25.010.C.4 – Delivery-Only Retailers in M, MM and MU-LI Districts

*Description:* Permit Delivery-Only Retailers in Manufacturing (M), Mixed Manufacturing (MM) and Mixed-Use Light Industrial (MU-LI) Districts subject to the standards for Warehouse-Based Non-Store Retailers (WBNSR) (i.e. Wine.com, Amazon fulfillment centers, etc.).

- ***Staff Recommendation (Alternative A): Staff recommends that Delivery-Only Retailers be allowed to locate in M, MM and MU-LI, due to similar operational needs and functions as WBNSR. They would be subject to***



**buffers and a recommended citywide quota of seven. This recommendation will also allow opportunities for Microbusinesses to establish in Berkeley. Other cannabis businesses (manufacturers, distributors and testing labs) already locate in these districts without quota restrictions and have not resulted in significant changes to the variety of businesses located in these areas. Delivery-Only Retailers would also be allowed in all commercial districts except the Neighborhood Commercial (C-N), subject to the regulations outlined in Sub-Section 23C.25.010.C.**

- *Alternative Recommendation (Alternative B):* The PC recommended allowing Delivery-Only Retailers in all C-prefixed districts except C-N, but limiting them to the M District in order to protect manufacturers and artists in the MM and MU-LI Districts from being displaced by cannabis businesses.

#### 23C.25.010.D – Lounges

*Description:* Allow public consumption at Lounges. Smoking and vaping could only occur at Lounges equipped with a ventilation system capable of removing all detectable odors, smoke and by-products of consumption (see 23C.25.010.D in Attachment 3).

- ***Staff Recommendation (Alternative A): Cannabis consumption is prohibited in public, in most businesses, and in many apartments. Staff recommends this language because providing a place to consume cannabis legally is important for patients who have no other options.***
- *Alternate Recommendation (Alternative B):* The CC agreed with staff and recommended adding language to reference State law.
- *Alternate Recommendation (Alternative C):* The CHC did not recommend language that allows cannabis consumption at Lounges because of the risk of secondhand smoke and vapor exposure, and the risk of impaired driving. The CHC believes that public consumption would undermine City policies that promote smoke-free air and reduce social normalization of smoking.

#### 23C.25.020 – Cultivation Locations

*Description:* Allow Cultivation businesses to locate in the MM and MU-LI Districts (see 23C.25.020 in Attachment 3).

- ***Staff Recommendation (Alternate A): Staff recommends this expansion of cultivation areas. Commercial cannabis cultivation is currently only allowed in the M District, has a citywide cap of 180,000 square feet, and is prohibited outside of a building. According to research conducted by the CC in 2014, the M District has limited rental space, a low vacancy rate, and few property owners willing to rent to cannabis businesses. No cultivation businesses have located in Berkeley since they were approved by Council***

***in 2016; expansion to the MM and MU-LI Districts could create an opportunity for these businesses to find viable locations in Berkeley. Cultivation businesses are not considered warehouse or manufacturing uses and will not be able to replace protected uses, such as manufacturers and artists.***

- *Alternative Recommendation (Alternative B):* The CC agreed with the staff recommendation, but also recommended allowing outdoor commercial cultivation, as indoor cultivation is very expensive and energy intensive.
- *Alternative Recommendation (Alternative C):* The PC and CHC recommended maintaining the current location restrictions. The PC expressed concerns about manufacturers and artist in the MM and MU-LI Districts competing with cannabis businesses for tenant spaces. The CHC expressed concern about odors from cultivation businesses.

#### **D. Amending BMC Sub-Title 23E (Provisions Applicable in All Non-Residential Districts) (see Attachment 4)**

The ordinance would add references to Delivery-Only Retailers to the use tables of commercial and manufacturing chapters. This reflects the provisions in Chapter 23C.25 regarding the location of businesses and the level of discretion required.

There were no differences between the staff and commission recommendations regarding the use tables. The tables will be amended as necessary to reflect the final Council decision on Delivery-Only Retailers identified above.

#### **E. Amending BMC Sub-Title 23F (Definitions) (see Attachment 5)**

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

The following subsection includes options based on recommendations by one or more of the Commissions:

##### 23E.04.010 Definitions

*Description:* Treat Delivery-Only Retail like Warehouse Based Non-Store Retail (WBNSR) in the M, MM and MU-LI Districts.

- ***Staff Recommendation (Alternative A): Staff recommended this language because Delivery-Only Retailers often operate like a fulfillment center, similar to Amazon.com or Wine.com.***
- *Alternative Recommendation (Alternative B):* The PC recommended limiting Delivery-only Retailers to the M District due to concerns about the ability of

manufacturing and arts and crafts businesses to compete for space with cannabis businesses.

### 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. Through a combination of ballot measures and ordinances, all of the business types permitted by the State are allowed to operate in Berkeley:

- 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 at commercial storefronts and dispensaries, and including Delivery-Only Retailers which deliver products to people at their homes and are not open to the public);
- Distributors (transport product between businesses and collect State taxes); and
- Microbusinesses (combination of at least three of the other business types except testing labs).

In order to address the State's new regulations, 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 Unit in the City Manager's Office. The Cannabis, Planning, and Community Health Commissions started policy discussions in early 2018.

Based on direction from the October 9, 2018 City Council Work Session, the draft regulations were divided into two rounds. Round 1 considered most of the draft regulations, including inconsistencies with State regulations, operational standards, policy changes such as advertising regulations, and regulations for Retail Nursery Microbusiness and temporary cannabis events. These ordinance amendments were adopted at the April 2, 2019 Council meeting. The items included in this report were continued to a second round to allow further research and discussion. Multiple Commission meetings were again conducted to review these Round 2 amendments. Minutes of those meetings are provided in Attachment 7 to this report.

### 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 and allowing Berkeley to benefit from increased business activity in this expanding industry. 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. The environmental 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 and clarify 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 within the body of this report.

#### CONTACT PERSON

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 Amending the Berkeley Municipal Code Chapter 20.40 (Cannabis Business Signs and Cannabis Product Advertising)
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. Maps of Buffer Options for Cannabis Storefront Retailers
7. Minutes from Cannabis, Community Health and Planning Commissions
8. Communications from Cannabis, Community Health and Planning Commissions providing reasoning for recommendations
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; AMENDING CHAPTERS 12.21 AND 12.22

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

Section 1. That Berkeley Municipal Code Section 12.21.020 is amended to read as follows:

**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 Contaminants 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 ""9-THC" means "9-tetrahydrocannabinol, (")-(6aR,10aR)-6,6,9-trimethyl-3-pentyl-6a,7,8,10a- tetrahydro-6H-benzo[c]chromen-1-ol.

2. "THCA" or ""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.

"Minor Cannabis Cultivation Facility" means a facility that is less than 10,000 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.

DDL. Cannabis Retailer

1. "Retailer" means both Storefront 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. "Cannabis 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.

LM. "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.

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

NO. "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.

OP. "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.

PQ. "Cultivate" and "Commercial Cultivation" mean any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis requiring a license pursuant to MAUCRSA, as amended from time to time.

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

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

SI. "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.

U. “Designated Cannabis Smoking Room” means a designated area on the premises of a Cannabis Business where customers may smoke cannabis.

V. “Designated Cannabis Smoking Room Ventilation System” means a ventilation system capable of removing all detectable odors, smoke and by-products of combustion.

FW. "Distributor" means an individual or entity required to be licensed as a distributor pursuant to MAUCRSA, as amended from time to time.

UX. "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.

Y. “Lounge” is a Storefront Retailer that has a Designated Cannabis Smoking Room or a room for consuming edibles that meets State requirements.

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

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

XBB. "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.

YCC. "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.

ZDD. "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.

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

BBFF. "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.

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

~~DD. 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.~~

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

II. "Storefront Retailer" is a Retailer with a location to which Customers, Qualified Patients or Primary Caregivers may come to acquire Cannabis or any other good or service.

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

**GGKK.** "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.

Section 2. That Berkeley Municipal Code Section 12.22.035 is added to read as follows:

**ALTERNATIVE A: STAFF RECOMMENDATION** – [Omitted]

**ALTERNATIVE B: CHC RECOMMENDATION** – 12.22.035 PROHIBITION OF PRODUCTS ATTRACTIVE TO CHILDREN AND YOUTH

No cannabis products which are designed to be attractive to individuals under the age of 21 shall be manufactured, packaged or sold in Berkeley. This includes, but is not limited to: 1. Cartoon likenesses; 2. Any likeness to images, characters or phrases that are popularly used to advertise to children; 3. Any imitation of candy packaging or labeling; 4. The terms "candy" or "candies"; 5. Any cannabis product or packaging the City determines, on a case-by-case basis, is attractive to children.

Section 3. That Berkeley Municipal Code Section 12.22.040 is amended to read as follows:

### 12.22.040 Retailers

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. 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.

E. 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 3 feet by 3 feet in size, shall be printed in no smaller than a 28-point font, displayed prominently behind the main dispensing counter at eye-level (i.e., with mid-point five feet above the floor).

2. All Retailers must prominently display a notice as set forth in subsection 12.22.040.E 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.E.

3. All Retailers must prominently display a notice as set forth in subsection 12.22.040.E 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.E.

4. Any M-Retailer that allows Customer visits must prominently display a notice as set forth in subsection 12.22.040.E 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.E.

5. All M-Retailers must prominently display a notice as set forth in subsection 12.22.040.E 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.E.

6. Any A-Retailer that allows Customer visits must prominently display a notice as set forth in subsection 12.22.040.E 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.E.

**7. ALTERNATIVE A: STAFF RECOMMENDATION** – [Omitted]

**7. ALTERNATIVE B: CHC RECOMMENDATION** - All Retailers must prominently display a notice as set forth in subsection 12.22.040.E that contains the following language:

**1. Attention pregnant and breastfeeding mothers** – According to the U.S. Centers for Disease Control and Prevention (CDC), cannabis 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** – Cannabis use increases your risk of motor vehicle crashes.

**3. Teen and Youth Brain Development** – Starting marijuana use young or using frequently may lead to problem use and, according to the CDC, may harm the developing brain as late as age 25.

**4. Cannabis use may be associated with greater risk of developing schizophrenia or other psychoses.** Risk is highest for frequent users.

**5. Smoking cannabis long-term** may make breathing problems worse.

**THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY."**

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.E.

**8. ALTERNATIVE A: STAFF RECOMMENDATION** – [Omitted]

**8. ALTERNATIVE B: CHC RECOMMENDATION** - All Retailers must prominently display three notices as set forth below:

a. The signs must be at least 2 feet wide by 1 foot tall, posted at eye height (i.e., with mid-point 5 feet above the floor) and 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.

b. The signs must contain the following language in both English and Spanish:

i. "ARE YOU AN IMMIGRANT? Using or possessing marijuana or working in the marijuana industry is legally risky for a noncitizen, even in California. This includes lawful permanent residents, undocumented persons, students with visa, 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."

ii. "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."

iii. "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."

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.E.

**9. ALTERNATIVE A: STAFF RECOMMENDATION** – [Omitted]

**9. ALTERNATIVE B: CHC RECOMMENDATION** - All Retailers must display health advisory flyers provided by the City's Public Health Department. The flyer will be developed in conjunction with the Community Health Commission and will be updated periodically as needed based on current scientific evidence, or at least every three years.

a. The advisory must be on a printed sheet of at least 8"x10.5" or equivalent print area (e.g. double-sided half-sheet) with minimum size 16 print.

b. The advisory shall be visible to customers and available for distribution at each dispensing/sales counter.

c. The Public Health Division, in consultation with the Community Health Commission, should review and update the health advisory periodically as needed based on current scientific evidence, or at least every three years.

All Retailers that provide delivery services, including Delivery-Only Retailers, must provide this notice to each Customer.

#### F. 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.F.1, the consumption of Cannabis and Cannabis Products is permitted at a Lounge. The consumption permitted at a Lounge will be based on whether the Lounge is equipped with a Designated Cannabis Smoking Room outfitted with a Designated Cannabis Smoking Room Ventilation System.

**2. ALTERNATIVE B: CHC RECOMMENDATION** - Notwithstanding subsection 12.22.040.F.1, the consumption of Cannabis and Cannabis Products is permitted at a Lounge. The consumption permitted at a Lounge will be based on whether the Lounge is equipped with a Designated Cannabis Smoking Room outfitted with a Designated Cannabis Smoking Room Ventilation System.

G. Delivery Requirements

1. Medicinal and Adult Use 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.

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. 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.

H. 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 of 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.

l. 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.H.

**J. ALTERNATIVE A: STAFF RECOMMENDATION – [Omitted]**

**J. ALTERNATIVE B: CHC RECOMMENDATION – Retailers may not sell, give away, barter, exchange or otherwise deal in the following items:**

- a. Flavored cannabis products designed for smoking or vaping.
- b. Cannabis-infused flavored beverages that mimic "alco-pops".
- c. Non-cannabis merchandise that is branded with cannabis-related products or businesses.

Section 4. That Berkeley Municipal Code Section 12.22.090 is amended to read as follows:

**12.22.090 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 and Retail Storefront 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.

Section 5: Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be

filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



## ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE TITLE 20 TO ESTABLISH GENERAL REGULATIONS AND SPECIFIC OPERATING STANDARDS FOR CANNABIS BUSINESSES; AMENDING CHAPTER 20.40

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

Section 1. That Berkeley Municipal Code Section 20.40.110 is amended to read as follows:

**Section 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-~~o~~Only Retailers in C-prefixed districts are allowed business complex signs as set forth in BMC Section 20.16.070.

C. Delivery-Only Retailers in M-prefixed districts and Non-retailers are allowed on-premises signs as set forth in BMC Chapter 20.32.

Section 2. That Berkeley Municipal Code Section 20.40.120 is amended to read as follows:

**Section 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 and Delivery-Only Retailers in M-prefixed districts are limited to BMC Section 20.32.030.

Section 3. That Berkeley Municipal Code Section 20.40.130 is amended to read as follows:

**Section 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-~~o~~Only Retailers in C-prefixed districts are subject to BMC Section 20.16.070.

C. The sign area for all signs of Delivery-Only Retailers in M-prefixed districts and non-Retailers shall not exceed twelve (12) square feet.

D.

**ALTERNATIVE A: STAFF RECOMMENDATION** – Signage may not include depictions of cannabis or cannabis products. Logos with such depictions are also prohibited on signs. A Cannabis Business that used a logo depicting cannabis or a cannabis product prior to the adoption of this ordinance, and was based in Berkeley prior

to 2020, is not subject to the requirements of this subsection and may continue to use the logo.

**D. ALTERNATIVE B: CC RECOMMENDATION –** ~~Signage may not include depictions of cannabis or cannabis products. Logos with such depictions are also prohibited on signs. A Cannabis Business that used a logo depicting cannabis or a cannabis product prior to the adoption of this ordinance, and was based in Berkeley prior to 2020, is not subject to the requirements of this subsection and may continue to use the logo.~~

Section 4: Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. -N.S.

REPEALING AND READOPTING 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 repealed and readopted to read as follows:

**Chapter 23C.25**

**Cannabis Uses**

**Sections:**

**23C.25.010 Retail Uses**

**23C.25.020 Cannabis Cultivation**

**23C.25.030 Cannabis Manufacturing, Testing Labs and Distribution**

**23C.25.040 Microbusinesses**

**Section 23C.25.010 Cannabis Retail**

A. General

1. Cannabis Retailer, including Storefront Retailer, Delivery-Only Retailer, A-Retailer, and M-Retailer, is defined in Section 12.21.020.
2. 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 as 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 onto an adjacent parcel.
3. **ALTERNATIVE A: STAFF RECOMMENDATION - Cannabis Retailers in good standing with State and local regulations, including obtaining all necessary licenses and full payment of all fees and with no outstanding violations, may seek approval for a change in location. Applications for a change of location shall be evaluated based on the requirements to operate a Cannabis Business effective at the time of the proposed change.**
3. **ALTERNATIVE B: CC RECOMMENDATION - ~~Cannabis Retailers in good standing with State and local regulations, including obtaining all necessary licenses and full payment of all fees and with no outstanding violations, may seek approval for a change in location.~~**

~~Applications for a change of location shall be evaluated based on the requirements to operate a Cannabis Business effective at the time of the proposed change.~~

B. Storefront Retailers

1. Storefront Retailers are permitted in C-prefixed Districts with **either a Use Permit, or a Zoning Certificate if an Equity Candidate**, and must maintain compliance with Chapters 12.21 and 12.22 and security regulations that may be promulgated by the Chief of Police.
2. Storefront Retailers are subject to approval through the selection process set forth in Section 12.22.020.
3. Up to seven Storefront Retail permits may be issued, one of which is reserved for an Equity Candidate as defined in Section 12.21.020. This limit to the number of Storefront Retailers shall not be reconsidered for a period of three years from the effective date of this ordinance.
4. Expansion of an approved Storefront Retailer must comply with the development standards for the Zoning District in which it is located.
5. **Storefront Retailers may operate as a Retail Storefront Microbusiness as defined in Chapter 12.21 subject to obtaining all required State and local licenses.**
6. **ALTERNATIVE A: STAFF RECOMMENDATION - Storefront Retailers may not be located within 600 feet of another Storefront Retailer or a public or private elementary school, 1,000 feet of a public or private middle school or high school, or 600 feet of a City-operated community center or skate park.**
6. **ALTERNATIVE B: CC RECOMMENDATION - Storefront Retailers may not be located within 600 feet of another Storefront Retailer or School.**
6. **ALTERNATIVE C: CHC RECOMMENDATION - Storefront Retailers may not be located within 1,000 feet of any School, junior college, university, daycare center, park, youth center or library.**
6. **ALTERNATIVE D: PC RECOMMENDATION - Buffers**
  - a. **Storefront Retailers may not be located within 600 feet of another Storefront Retailer or a public or private elementary school, 1,000 feet of a public or private middle school or high school, or 600 feet of a City-operated community center or skate park.**
  - b. **Notwithstanding Subsection 23C.25.010.B.6.a, a seventh Storefront Retailer, to be operated by an equity business, may not be located within 600 feet of another Storefront Retailer or School.**

C. Delivery-Only Retailers

1. **ALTERNATIVE A: STAFF RECOMMENDATION** – Seven Delivery-Only Retailers are permitted citywide. All shall be operated by Equity Businesses.
  1. **ALTERNATIVE B: CC RECOMMENDATION** - Delivery-Only Retailers shall not be subject to a numeric limit.
  1. **ALTERNATIVE C: PC RECOMMENDATION** - 10 Delivery-Only Retailers are permitted citywide, and at least half of the businesses should be operated by Equity Businesses.
  1. **ALTERNATIVE D: CHC RECOMMENDATION** – Two Delivery-Only Retailers are permitted citywide. Both shall be operated by Equity Businesses.
  2. Delivery-Only Retailers are subject to approval through the selection process set forth in Section 12.22.020.
  3. Delivery-Only Retailers are permitted with a Zoning Certificate in C-prefixed Districts other than the C-N District.
  4. **ALTERNATIVE A: STAFF RECOMMENDATION** - Delivery-Only Retailers in M-prefixed Districts shall be evaluated and regulated for Zoning purposes in the same way as Warehouse-Based Non-Store Retailers, and shall be subject to the numeric and buffer requirements set forth in this Section for Delivery-Only Retailers.
  4. **ALTERNATIVE B: PC RECOMMENDATION** - Delivery-Only Retailers are permitted in the M District, shall be evaluated and regulated for Zoning purposes in the same way as Warehouse-Based Non-Store Retailers, and shall be subject to the numeric and buffer requirements set forth in this Section for Delivery-Only Retailers.
  5. Delivery-Only Retailers may not be located within 300 feet of any School or City-operated community center or skate park.
  6. Delivery-Only Retailers may not be located in a street-fronting tenant space in C-prefixed Districts.
- D. ALTERNATIVE A: STAFF RECOMMENDATION** - Lounges
1. A Lounge, as defined in Section 12.21.020, may be permitted at an approved Retailer subject to approval of a Use Permit.
  2. Lounges must comply with the operational standards established by the City’s Department of Health, Housing and Community Services.
- D. ALTERNATIVE B: CC RECOMMENDATION** – Lounges
1. A Lounge, as defined in Section 12.21.020, may be permitted at an approved Retailer subject to approval of a Use Permit or as otherwise permitted under state law.
  2. Lounges must comply with the operational standards established by



the City’s Department of Health, Housing and Community Services.

**D. ALTERNATIVE C: CHC RECOMMENDATION - Lounges**

- 1. Lounges, as defined in Section 12.21.020, are prohibited.

**Section 23C.25.020 Commercial Cannabis Cultivation**

A. Commercial Cannabis Cultivation is defined in Chapter 12.21.

**B. ALTERNATIVE A: STAFF RECOMMENDATION -** Commercial Cannabis Cultivation is permitted with a Zoning Certificate in the M, **MM and MU-LI** Districts, subject to the following limitations:

**B. ALTERNATIVE B: PC and CHC RECOMMENDATION -** Commercial Cannabis Cultivation is permitted with a Zoning Certificate in the M District, subject to the following limitations:

- 1. Commercial Cannabis Cultivation shall only occur at licensed Cannabis Businesses.
- 2. Cannabis may not be dispensed and client, patient or member services and retail sales are prohibited at Cannabis Cultivation Facilities.

C. The total citywide canopy area of Cannabis Cultivation Facilities is limited to 180,000 square feet.

- a. No more than six Major Cannabis Cultivation Facilities are permitted.
- b. The total canopy area of all Minor Cannabis Cultivation Facilities shall not exceed 48,000 sf plus any area not used by a Major Cannabis Cultivation Facility.
- c. Separate spaces used by different licensees may be aggregated at the same location.
- d. Commercial Cannabis Cultivation is prohibited outside of a building.

D. Cannabis Nurseries, as defined in Chapter 12.21, are subject to the same regulations as Cannabis Cultivation Facilities.

E. Cannabis Cultivation Facilities shall comply with all regulations in Chapter 12.22, security regulations promulgated by the Chief of Police, and the requirements of this Chapter, and may include testing, processing, manufacturing and food preparation only to the extent expressly permitted by MAUCRSA.

**F. Cannabis Cultivation Facilities may not be located within the distances from sensitive uses listed in the table below:**

| District | Sensitive Uses | Buffer |
|----------|----------------|--------|
|----------|----------------|--------|

|       |                                                                  |                                                    |
|-------|------------------------------------------------------------------|----------------------------------------------------|
| M     | Schools or City-operated community centers or skate parks        | 300 feet                                           |
| MM    | <b>Schools or City-operated community centers or skate parks</b> | <b>600 feet</b>                                    |
|       | <b>R-prefixed district</b>                                       | <b>300 feet (may be reduced with a Use Permit)</b> |
| MU-LI | <b>Schools or City-operated community centers or skate parks</b> | <b>600 feet</b>                                    |
|       | <b>R-prefixed district</b>                                       | <b>300 feet (may be reduced with a Use Permit)</b> |

- G. No Major Cannabis Cultivation Facilities may be approved 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.

**Section 23C.25.030 Cannabis Manufacturing, Testing Labs and Distribution**

- A. Cannabis Manufacturers, Testing Labs and Distributors shall be evaluated and regulated for Zoning purposes in the same way as comparable non-Cannabis uses, as follows:

| <b>Cannabis Use</b>                         | <b>Equivalent Non-Cannabis Use</b> |
|---------------------------------------------|------------------------------------|
| Manufacturing, processing, food Preparation | Light Manufacturing                |
| Testing labs                                | Testing Labs                       |
| Distribution                                | Wholesale Uses                     |

- B. Cannabis Manufacturers, Testing Labs and Distributors may not be located within 300 feet of a School.

**Section 23C.25.040 Microbusinesses**

- A. Microbusinesses are defined in Chapter 12.21.
- B. Microbusinesses are subject to the development standards set forth in this Chapter for each use conducted on the premises, with the following exceptions:
- C. In cases where development standards and permit thresholds apply for different uses conducted on the premises differ, the more restrictive standards apply.
- D. Retail Nursery Microbusinesses
  - 1. For purposes of this Section, “Existing Nursery” means a legally established plant nursery in the City of Berkeley as of the adoption of this ordinance.
  - 2. Up to two Existing Nurseries may convert to Retail Nursery Microbusiness, either: 1) with a Zoning Certificate in C- and M-prefixed Districts if an Existing Nursery complies with the development standards set forth in the Zoning Ordinance and in this Chapter for each use conducted on the premises; or 2) subject to a Use Permit for the substantial expansion or change in character to non-conforming uses in R-prefixed Districts. Retail Nursery Microbusinesses are not subject to the numeric or canopy limitations of other Retailers or Cannabis Cultivators.
  - 3. Zoning Certificates and/or Use Permits shall be issued to Existing Nurseries on a first-come, first-served basis. The right to retain one of the allocated Zoning Certificates shall be determined based on the date of issuance of a concurrent Business License and establishing and continuously operating the business or, if a Use Permit is required, on the date the application for the Use Permit is deemed complete so long as the Use Permit is implemented with a Businesses License within 30 days of approval and establishing and continuously operating the business.
  - 4. The 600-foot buffer required between Cannabis Retailers shall not apply between Storefront Cannabis 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 the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

## ORDINANCE NO. -N.S.

## AMENDING BERKELEY MUNICIPAL CODE SUB-TITLE 23E TO MODIFY USE TABLES RELATED TO CANNABIS USES

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

Section 1. That the “Retail Sales” section of Table 23E.36.030 in Chapter 23E.36 Section 23E.36.030 of the Berkeley Municipal Code 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<br>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                                                                                                                                      |

| Use                           | Classification | Special Requirements (if any)                                                                                                                                                                                                               |
|-------------------------------|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Cannabis Retailer             | ZC             | ZC shall only be issued after business is approved through the selection process Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a>                                             |
| <u>Delivery-Only Retailer</u> | <u>ZC</u>      | <p><u>ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020.</u></p> <p><u>Subject to restrictions on the ground floor; see Section 23C.25.010.</u></p> |



Section 2. That the "Retail Sales" section of Table 23E.44.030 in Chapter 23E.44 Section 23E.44.030 of the Berkeley Municipal Code is amended to read as follows:

**Table 23E.44.030 C-E Elmwood Commercial District Provisions: Uses Permitted**

| Use                                                                     | Classification    | Special Requirements (if any)                                                                                                                                                                                                                                                                                                                                                                       |
|-------------------------------------------------------------------------|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Retail Sales</b>                                                     |                   |                                                                                                                                                                                                                                                                                                                                                                                                     |
| 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<br>Over 3,000 s.f.                                    | ZC*<br>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                                                                                                                                                                                                                                                                                                                                                                |

| Use                           | Classification | Special Requirements (if any)                                                                                                                                                                                                        |
|-------------------------------|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Smoke Shops                   | UP(PH)         | Prohibited if within 1,400 feet of a school or public park                                                                                                                                                                           |
| Cannabis Retailer             | ZC             | ZC shall only be issued after business is approved through the selection process<br>Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a>                                   |
| <u>Delivery-Only Retailer</u> | <u>ZC</u>      | <u>ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020.</u><br><br><u>Subject to restrictions on the ground floor; see Section 23C.25.010.</u> |

Section 3. That the “Retail Sales” section of Table 23E.48.030 in Chapter 23E.48 Section 23E.48.030 of the Berkeley Municipal Code 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<br>Over 3,000 s.f.                                    | ZC*<br>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                             | UP(PH)            |                                                                                                                                                                                                                                                                                                                                                                                                     |

| Use                           | Classification | Special Requirements (if any)                                                                                                                                                                                                        |
|-------------------------------|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Animals (but not Boarding)    |                |                                                                                                                                                                                                                                      |
| Smoke Shops                   | UP(PH)         | Prohibited if within 1,400 feet of a school or public park                                                                                                                                                                           |
| Cannabis Retailer             | ZC             | ZC shall only be issued after business is approved through the selection process<br>Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a>                                   |
| <u>Delivery-Only Retailer</u> | <u>ZC</u>      | <u>ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020.</u><br><br><u>Subject to restrictions on the ground floor; see Section 23C.25.010.</u> |

Section 4. That the “Retail Sales” section of Table 23E.52.030 in Chapter 23E.52 Section 23E.52.030 of the Berkeley Municipal Code 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<br>No sales of distilled alcoholic beverages are allowed along Adeline Street south of Ashby Avenue                                          |
| Department Stores<br>Over 3,000 s.f.                                    | ZC*<br>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                                                                                                                                         |
| Cannabis Retailer                                                       | ZC             | ZC shall only be issued after business is approved through the selection process<br>Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a> |
| <u>Delivery-Only Retailer</u>                                           | <u>ZC</u>      | <u>ZC shall only be considered after business is approved through a selection process</u>                                                                                                          |



| Use | Classification | Special Requirements (if any)                                                                                                                            |
|-----|----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |                | <p><u>approved by the City Council per BMC Section 12.22.020.</u></p> <p><u>Subject to restrictions on the ground floor; see Section 23C.25.010.</u></p> |

Section 5. That the “Retail Sales” section of Table 23E.56.030 in Chapter 23E.56 Section 23E.56.030 of the Berkeley Municipal Code 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 <a href="#">23F</a> , 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<br>UP(PH)       |                                                                                                                                                                                                 |
| Drug Paraphernalia (any use involving the sale or distribution thereof) | Prohibited         | As defined in California Health and Safety Code Section <a href="#">11364.5(d)</a>                                                                                                              |
| 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                                                                                                                                      |
| Cannabis Retailer                                                       | ZC                 | ZC shall only be issued after business is approved through the selection process Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a> |
| <a href="#">Delivery-Only Retailer</a>                                  | <a href="#">ZC</a> | <a href="#">ZC shall only be considered after business is approved through a selection process</a>                                                                                              |

| Use | Classification | Special Requirements (if any)                                                                                                                                       |
|-----|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |                | <a href="#">approved by the City Council per BMC Section 12.22.020.</a><br><br><a href="#">Subject to restrictions on the ground floor; see Section 23C.25.010.</a> |

Section 6. That the “Retail Sales” section of Table 23E.60.030 in Chapter 23E.60 Section 23E.60.030 of the Berkeley Municipal Code 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<br>Over 3,000 s.f.                                    | ZC*<br>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. |

| Use                                                                   | Classification | Special Requirements (if any)                                                                                                                                                                                                        |
|-----------------------------------------------------------------------|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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                                                                                                                                                                           |
| Cannabis Retailer                                                     | ZC             | ZC shall only be issued after business is approved through the selection process<br>Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a>                                   |
| <u>Delivery-Only Retailer</u>                                         | <u>ZC</u>      | <u>ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020.</u><br><br><u>Subject to restrictions on the ground floor; see Section 23C.25.010.</u> |

Section 7. That the “Retail Sales” section of Table 23E.64.030 in Chapter 23E.64 Section 23E.64.030 of the Berkeley Municipal Code 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 <a href="#">23F</a> , 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                                                                                                   |
| 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                                                                                                                                         |
| Cannabis Retailer                                                                  | ZC                                                            |             |               | ZC shall only be issued after business is approved through the selection process<br>Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a> |



| Use                           | Permits Required to Establish, Expand or Change Use (sq. ft.) | Special Requirements (if any)                                                                                                                                                                                                               |
|-------------------------------|---------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>Delivery-Only Retailer</u> | <u>ZC</u>                                                     | <p><u>ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020.</u></p> <p><u>Subject to restrictions on the ground floor; see Section 23C.25.010.</u></p> |

Section 8. That the “Retail Sales” section of Table 23E.68.030 in Chapter 23E.68 Section 23E.68.030 of the Berkeley Municipal Code is amended to read as follows:

**Table 23E.68.030 C-DMU Downtown Mixed Use District Provisions: Uses Permitted**

| Use                                                                     | Classification | Special Requirements                                                                                                                                                                            |
|-------------------------------------------------------------------------|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Retail Sales                                                            |                |                                                                                                                                                                                                 |
| All Retail Sales Uses, except those listed below                        | ZC             | As defined in Sub-title <a href="#">23F</a> , 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<br>Under 10,000 s.f.                                  | AUP<br>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     |                                                                                                                                                                                                 |
| Cannabis Retailer                                                       | ZC             | ZC shall only be issued after business is approved through the selection process Subject to the requirements of Chapter <a href="#">23C.25</a> and BMC Chapters 12.21 and <a href="#">12.22</a> |
| <u>Delivery-Only Retailer</u>                                           | <u>ZC</u>      | <u>ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020.</u>                                               |

| Use | Classification | Special Requirements                                                        |
|-----|----------------|-----------------------------------------------------------------------------|
|     |                | <u>Subject to restrictions on the ground floor; see Section 23C.25.010.</u> |

Section 9: Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

## ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE SUB-TITLE 23F TO ADD AND MODIFY  
RELATED TO CANNABIS USES; AMENDING CHAPTER 23F.04

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 definitions of “Microbusiness” and “Warehouse Based Non-Store Retail” as follows:

**Chapter 23F.04**  
**Definitions**

**Sections:**

**23F.04.010 Definitions**

**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 Storefront Microbusiness:** A microbusiness that is restricted to a Storefront Retailer with limited manufacturing and distribution activities. See BMC Chapter 12.21 for definition and limitations.

**ALTERNATIVE A: STAFF RECOMMENDATION - Warehouse Based Non-Store Retail:** Retail activity that is based on sales without on-site customer visits. Such activity includes, but is not limited to, catalog sales, internet web sites, and phone orders. Goods are both stored and distributed from site. This use includes Delivery-Only Retailers located in M-prefixed districts.

**ALTERNATIVE B: PC RECOMMENDATION - Warehouse Based Non-Store Retail:** Retail activity that is based on sales without on-site customer visits. Such activity includes, but is not limited to, catalog sales, internet web sites, and phone orders. Goods are both stored and distributed from site. This use includes Delivery-Only Retailers located in the Manufacturing (M) District.

Section 2: Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



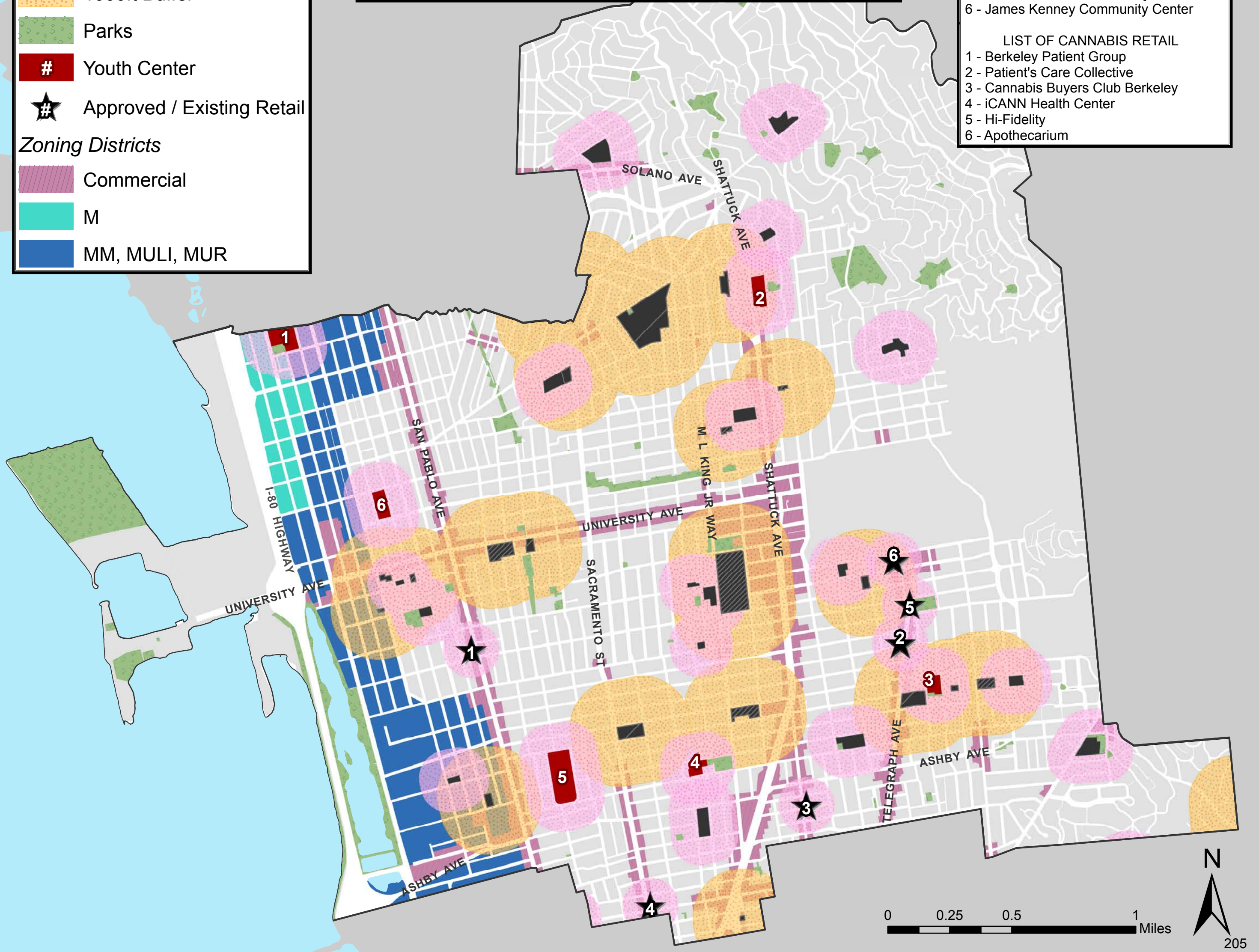
### Alternative A: 1000ft Buffer of Middle and High Schools 600ft Buffer of K-6 Schools, Retail, and Youth Centers

- School Parcels
- 600ft Buffer
- 1000ft Buffer
- Parks
- # Youth Center
- ★ Approved / Existing Retail

**Zoning Districts**

- Commercial
- M
- MM, MULI, MUR


- LIST OF YOUTH CENTERS**
- 1 - Berkeley Skate Park
  - 2 - A World of Peace After School Program
  - 3 - Willard School/Park
  - 4 - MLK Jr. Youth Services Center
  - 5 - Frances Albrier Community Center
  - 6 - James Kenney Community Center
- LIST OF CANNABIS RETAIL**
- 1 - Berkeley Patient Group
  - 2 - Patient's Care Collective
  - 3 - Cannabis Buyers Club Berkeley
  - 4 - iCANN Health Center
  - 5 - Hi-Fidelity
  - 6 - Apothecarium





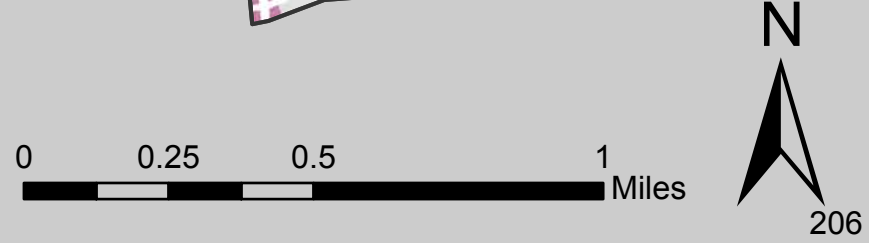
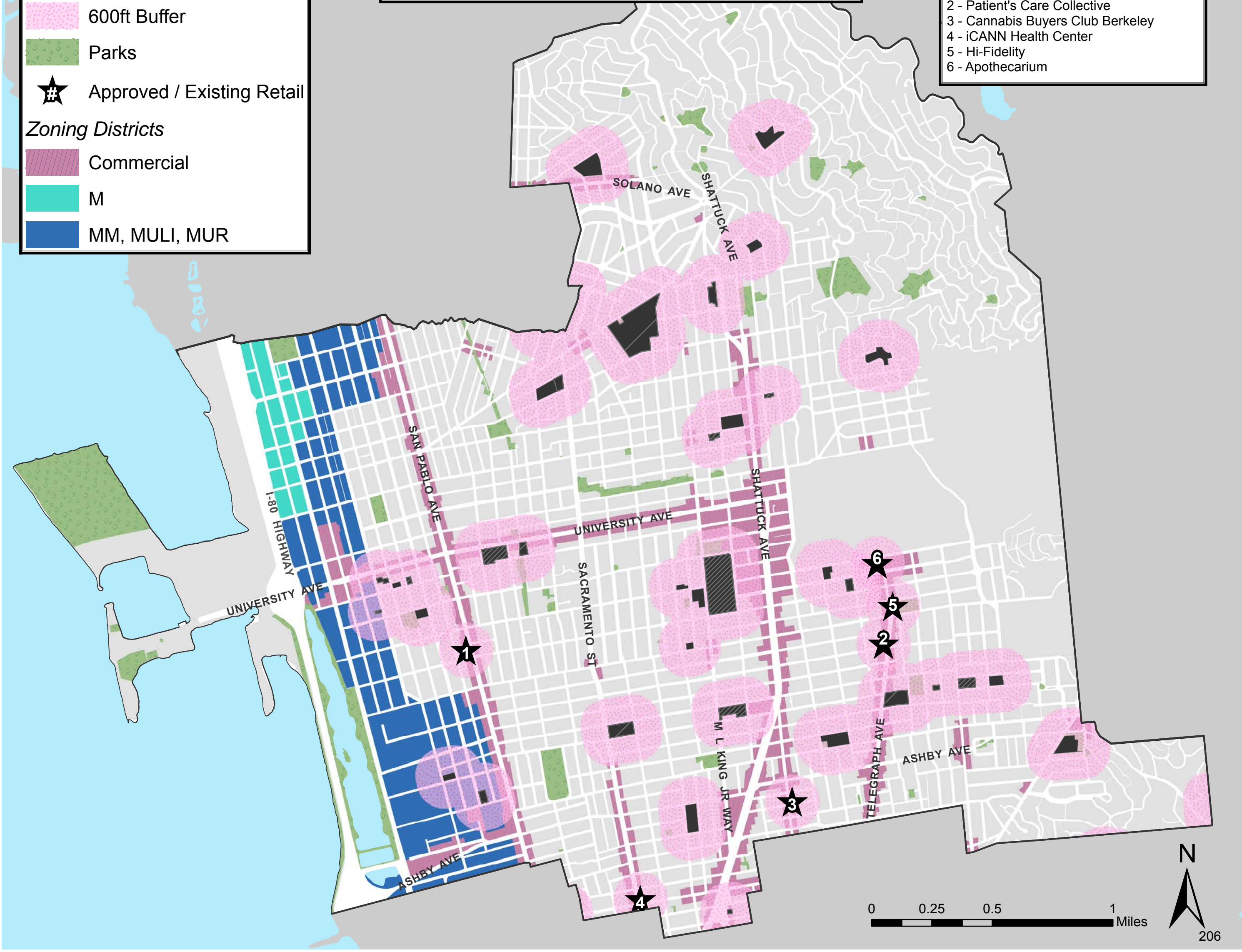
# Alternative B: 600ft Buffer from all Schools and Retail

- LIST OF CANNABIS RETAIL
- 1 - Berkeley Patient Group
  - 2 - Patient's Care Collective
  - 3 - Cannabis Buyers Club Berkeley
  - 4 - iCANN Health Center
  - 5 - Hi-Fidelity
  - 6 - Apothecarium

-  School Parcels
-  600ft Buffer
-  Parks
-  Approved / Existing Retail

*Zoning Districts*








-  Commercial
-  M
-  MM, MULI, MUR








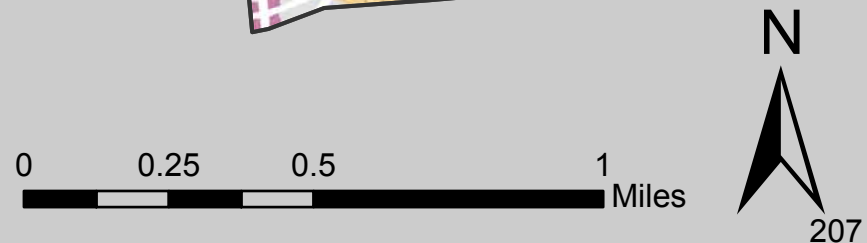
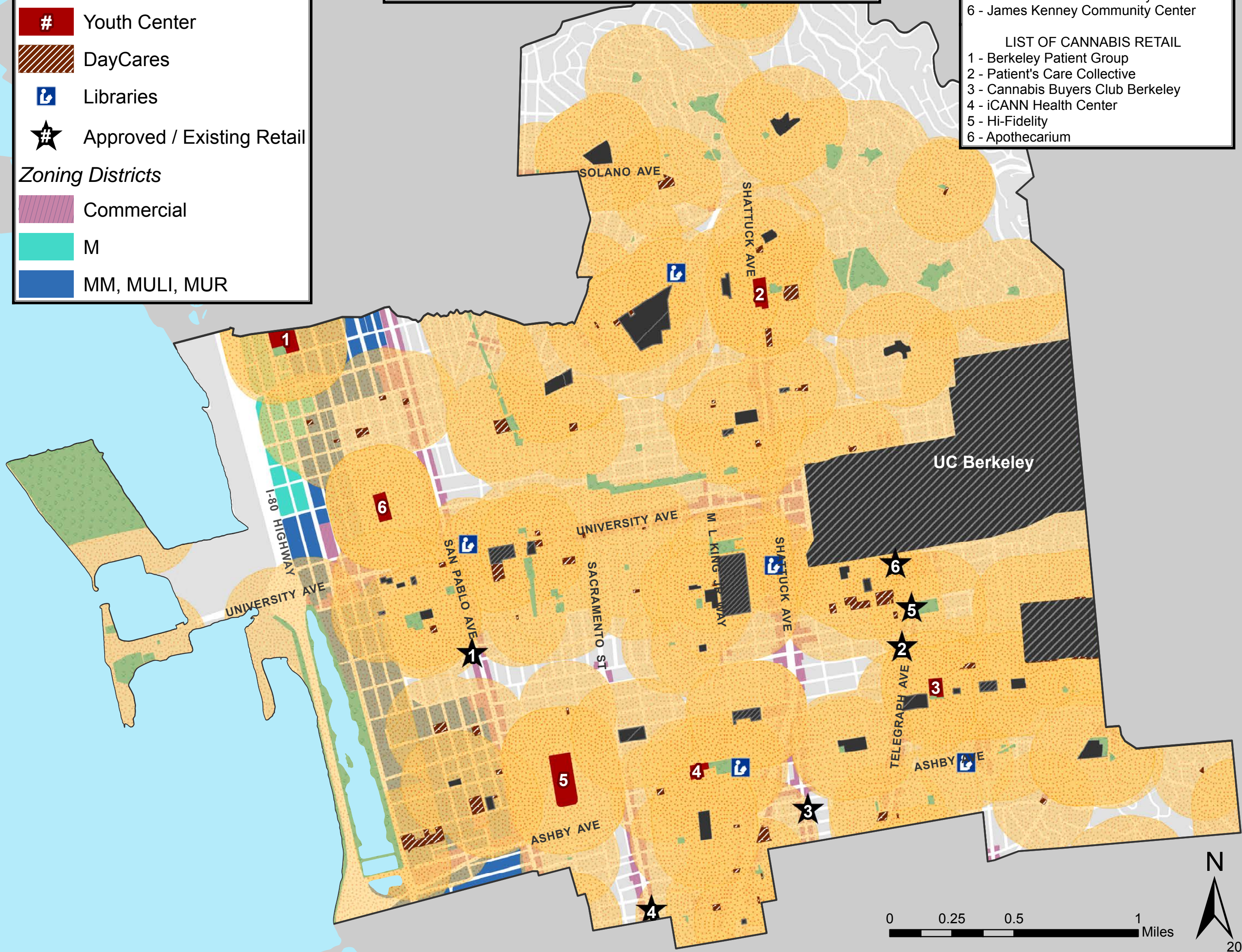
# Alternative C: 1000ft Buffer of Schools, Youth Centers, Parks, Libraries, and Daycares

- LIST OF YOUTH CENTERS**
- 1 - Berkeley Skate Park
  - 2 - A World of Peace After School Program
  - 3 - Willard School/Park
  - 4 - MLK Jr. Youth Services Center
  - 5 - Frances Albrier Community Center
  - 6 - James Kenney Community Center
- LIST OF CANNABIS RETAIL**
- 1 - Berkeley Patient Group
  - 2 - Patient's Care Collective
  - 3 - Cannabis Buyers Club Berkeley
  - 4 - iCANN Health Center
  - 5 - Hi-Fidelity
  - 6 - Apothecarium

-  School & UCB Parcels
-  1000 Foot Buffer
-  Parks
-  Youth Center
-  DayCares
-  Libraries
-  Approved / Existing Retail

**Zoning Districts**

-  Commercial
-  M
-  MM, MULI, MUR





**MINUTES FROM THE CANNABIS, COMMUNITY HEALTH AND  
PLANNING COMMISSION RELATED TO PROPOSED CANNABIS  
ORDINANCES**

**CANNABIS COMMISSION**

**APPROVED MINUTES OF THE CANNABIS COMMISSION MEETING  
JUNE 6, 2019  
(Partial)**

**A. Work Program**

Public Comment: None

The Commission briefly discussed the proposed work plan, generally, and specifically discussed how the unregulated market could be accurately studied (Strategic Area 3) and what the proposed public education program would include (Strategic Area 4)

Motion/second to approve the Work Program (Poindexter/Malmuth). The motion carried 4-0-0-4. (Ayes: Cooper, Lardner, Poindexter, Malmuth. Noes: None. Abstain: None. Absent: Rice, Svec Burdick, Cable, Brewster.)

**B. Cannabis Ordinance Changes**

Public Comment: One comment requesting the status of the five Ordinance elements voted on by Council. Staff informed speaker that they were all adopted.

Commissioners Poindexter and Lardner led a discussion of proposed changes to the Cannabis Ordinance recommended to the Commission at the May 23, 2019 Ordinance Review Subcommittee meeting. Individual items were discussed as outlined below:

Item 8. Microbusinesses

The Commission discussed the restrictions on Retail Storefront Microbusinesses, and concerns from one retail to allow more manufacturing options. Staff explained that the currently proposal restricting the manufacturing component to repackaging will not be permitted by the State. Other options were discussed, including permitting Retailers to have incidental manufacturing with a Zoning Certificate rather than an Administrative Use Permit. Staff will study the options for manufacturing and distribution and bring options to the July meeting.

Item 1. Delivery-Only Retailers

Commissioners discussed in what zoning districts Delivery-Only Retailers would be permitted, what type of land use approvals would be required for their operation, and whether there should be a limit on the total number of Delivery-Only Retailers in the City of Berkeley. The Commission decided to permit Delivery-Only Retailers in C-prefixed districts, except the C-N, and in M-prefixed districts. They decided against recommending a quota of Delivery-Only Retailers.

Motion/second to amend Alternative #1 to read “Cannabis Delivery-Only Retailers as defined in Section 12.21.020 shall be permitted as of right with a Zoning Certificate in C-prefixed zones, except for C-N, and in M-prefixed zones if they comply with the parking requirements and any security requirements promulgated by the Chief of Police.” (Lardner/Poindexter). The motion carried 4-0-0-4. (Ayes: Cooper, Lardner, Poindexter, Malmuth. Noes: None. Abstain: None. Absent: Rice, Svec Burdick, Cable, Brewster.)

#### Item 2: Consumption Lounges

Commissioners discussed how to permit consumption lounges not connected to dispensary/sales. State law appears to currently prohibit that arrangement but may permit such an arrangement in the future

Motion/second to permit Lounges in retailers with a Use Permit “or as otherwise authorized under state law.” (Cooper/Malmuth) The motion carried 4-0-0-4. (Ayes: Cooper, Lardner, Poindexter, Malmuth. Noes: None. Abstain: None. Absent: Rice, Svec Burdick, Cable, Brewster.)

#### Item 3: Retail Buffers

Commissioners briefly discussed proposals for buffers between Retailers, parks and K-12 schools, ranging from 600 feet to 1,000 feet.

Motion/second to adopt proposed Alternative A “Retailers may not be located within 600 feet of another Retailer or public or private elementary school, middle school or High School.” (Cooper/Poindexter) 4-0-0-4. (Ayes: Cooper, Lardner, Poindexter, Malmuth. Noes: None. Abstain: None. Absent: Rice, Svec Burdick, Cable, Brewster.)

#### Item 4: Discretion for Businesses:

Commissioners briefly discussed the proposed number of total dispensaries. Commission expressed that there should be more than one equity applicant.

Motion/second to accept proposed language of a cap of seven Cannabis Retailers. (Lardner/Poindexter) 4-0-0-4. (Ayes: Cooper, Lardner, Poindexter, Malmuth. Noes: None. Abstain: None. Absent: Rice, Svec Burdick, Cable, Brewster.)

Item 5: Cultivation Beyond the M District

Commissioners discussed whether to permit cultivation in the MM and MU-LI zoning districts. Commissioners also discussed proposed buffers between Cannabis Nurseries and schools or residential districts. Commissioners discussed whether to add outdoor cultivation.

Motion/second to expand cultivation to the MM and MU-LI zoning district, strike the prohibition of outdoor cultivation in 23C.25.020(A)(6) and accept buffer language as proposed. (Lardner/Cooper) 4-0-0-4. (Ayes: Cooper, Lardner, Poindexter, Malmuth. Noes: None. Abstain: None. Absent: Rice, Svec Burdick, Cable, Brewster.)

Item 6: Signage

Commissioners discussed limitations on cannabis-related imagery in store signage.

Commissioners postponed deliberation of Items 6 – 10 of the Ordinance Review Subcommittee report to the next meeting of the Cannabis Commission.

Secretary Greene requested that Commissioners review the recommendations of the Community Health Commission and come to the next meeting prepared to offer general policy direction.



**APPROVED MINUTES OF THE CANNABIS COMMISSION MEETING  
JULY 11, 2019  
(Partial)**

**IV. Discussion and Action Items**

**A. Discuss proposed changes by staff to the Cannabis Ordinance**

City staff provided commission members with a series of topics to facilitate discussion regarding the proposed cannabis ordinance. Secretary Greene reviewed of changes made since the last Cannabis Commission meeting. Language throughout the Zoning Ordinance was changed to make it easier to use, and most did not change policy direction. The only changes to policy direction relate to Delivery-Only Retailers and Storefront Microbusinesses. Staff recommended changing the recommendation for Delivery-only Retailers in M-prefixed districts to match Warehouse based Non-Store Retailers, since it would be a very similar use.

In regards to Storefront Microbusiness, staff recommends changing the manufacturing component from repackaging only (Type P License) to repackaging and infusions (Type N) to align with state regulations.

Overall, staff reported that new definitions presented to the committee add clarification to allow people to more easily distinguish between business types.

**Public Comment:**

Four comments. The draft language references BMC sections that don't exist – staff clarified that City Council approved language for the municipal code in May, but the information has not been updated on the City's website. The public expressed concerns that manufacturers would not be able to add delivery-only retail to their business by right, and concern that restrictions on ground floor delivery-only Retailers would conflict with ADA regulations. There should not be a finite number of dispensaries because it will limit retailers, and signage restrictions may leave a select number of retailers at a disadvantage. Finally, there was a question about the possibility of getting a microbusiness license but not operating as one.

*Delivery-only Retailers (D-oRs)*

Quotas: Commission members discussed whether quotas should exist for D-oRs. There was discussion around setting a quota to give people something to react to. However, commissioners determined that quotas are restrictive and would prefer to let the market decide the number of D-oRs in

Berkeley. The need to allow D-oRs to locate within Berkeley was also emphasized during the discussion.

Motion/second to agree that no quota will be set by the committee for D-oRs (Cooper/Poindexter). The motion carried 4-0-1-2. (Ayes: Cooper, Poindexter, An, Lardner. Noes: None. Abstain: Cable. Absent: Svec-Burdick, Malmuth.)

Buffers and ground floor restrictions: Agreed with staff recommendations.

D-oRs in Manufacturing districts: The commission agreed with current staff recommendation.

*Discretion for Businesses*

Non-Equity Storefront Retailers

Staff explained that the updates to this sections would allow the selection process to be moved forward through a Use Permit instead of going through council. The commissioners agreed with staff recommendation.

*Signage*

Signage for D-oRs in Manufacturing districts: The commission agreed with staff recommendation to treat D-oR signage in M areas like manufacturing uses.

Depictions of cannabis: The commission expressed that since the public has approved the legalization of cannabis, then depictions of cannabis should not be prohibited on business signs.

*Change in Location*

Good standing requirement: The Commission recommended removing 23C.25.010.A from the ordinance.

*Retail Storefront Microbusiness*

Should these be different from other Microbusinesses: Staff explained that updates made to this section are geared towards treating these retail types similar to other existing retailers with similar business practices. Overall, the commission agreed that the updates seem to allow more flexibility to microbusinesses, but within limits. The commission agreed with staff recommendation.

*CHC Recommendations*

The Cannabis Commission did not agree with recommendations from CHC and would like to add an agenda item to the next Cannabis Commission

meeting to write a memo to Council addressing reasoning behind opposition.

- It
- Motion/second to agree with the 7-11-19 staff recommendations with the following exceptions:
1. No quota for D-oRs (23C.25.010.C.1);
  2. No restrictions on depictions of cannabis on signs, including logos (20.40.110);
  3. Remove restriction on changing locations (23C.25.130);
  4. Allow D-oRs in C districts (except C-N) with a ZC (23C.25.010.3, Alternative A);
  5. Allow Lounges with Storefront Retailers with a Use Permit “or as otherwise permitted under state law” (23C.25.010.D);
  6. Maintain the current buffers for Storefront Retailers (23C.25.010.C.3, Alternative A); and
  7. Expand Cultivation into the MM and MU-LI and strike the prohibition on outdoor commercial cultivation (23.25.020) (Poindexter/Lardner). The motion carried 5-0-0-2. (Ayes: Cooper, Cable, Poindexter, An, Lardner. Noes: None. Abstain: None. Absent: Svec-Burdick, Malmuth.)

## COMMUNITY HEALTH COMMISSION

### APPROVED MINUTES OF THE COMMUNITY HEALTH COMMISSION MEETING JULY 25, 2019 (Partial)

2. M/S/C (Rojas-Cheatham/Rosales): Motion to support the ban of cannabis consumption lounges and elimination of paragraph 2 (City Council recommendation clause if item were to pass) in the City of Berkeley.

**Ayes:** Commissioners Speich, Gilman, Rojas-Cheatham, Simpson, Rosales, Le, Katz.

**Noes:** Commissioners Futoran, Webber.

**Abstain:** Commissioners Smart, Spigner.

**Absent from vote:** None.

**Excused:** Commissioners Engelman, Speich, Carter, Imai.

**Motion Passed.**

3. M/S/C (Gilman/Rosales): Motion to support the ban of branded cannabis merchandise with recommended amendments (technical edit [678f.sup.2d512](#) after U.S. common law in 4<sup>th</sup> paragraph) in the City of Berkeley.

**Ayes:** Commissioners Webber, Futoran, Smart, Gilman, Spigner, Simpson, Rosales, Le, Katz.

**Noes:** None

**Abstain:** None

**Absent from vote:** Commissioner Rojas-Cheatham.

**Excused:** Commissioners Engelman, Speich, Carter, Imai.

**Motion Passed.**

4. M/S/C (Simpson/Spigner): Motion to extend the Community Health Commission meeting to 9:10PM.

**Ayes:** Commissioners Webber, Futoran, Smart, Gilman, Spigner, Simpson, Rosales, Le, Katz.

**Noes:** None

**Abstain:** None

**Absent from vote:** Commissioner Rojas-Cheatham. Community Health Commission

**Excused:** Commissioners Engelman, Speich, Carter, Imai.

**Motion Passed.**

5. M/S/C (Gilman/Futoran): Motion to support the sales ban of flavored cannabis products for smoking or vaping, and the sales of cannabis infused beverages that mimic alcopops in the City of Berkeley.

**Ayes:** Commissioners Webber, Futoran, Smart, Gilman, Spigner, Simpson, Rosales, Le.

**Noes:** None

**Abstain:** None

**Absent from vote:** Commissioner Rojas-Cheatham, Katz.

**Excused:** Commissioners Engelman, Speich, Carter, Imai.

**Motion Passed.**

6. M/S/C (Rosales/Smart): Motion to ban the expansion of cannabis cultivation outside the M district in the City of Berkeley.

**Ayes:** Commissioners Webber, Smart, Gilman, Simpson, Rosales, Le.

**Noes:** None

**Abstain:** Futoran, Spigner.

**Absent from vote:** Commissioner Rojas-Cheatham, Katz.

**Excused:** Commissioners Engelman, Speich, Carter, Imai.

**Motion Passed.**



**APPROVED MINUTES OF THE COMMUNITY HEALTH COMMISSION  
MEETING  
SEPTEMBER 26, 2019  
(Partial)**

1. M/S/C (Rojas-Cheatham/Webber): Motion to prohibit cannabis products that are attractive to youth. A cannabis product that are, or are manufactured or packaged and designed to be, attractive to individuals under the age of 21, including but not limited to: 1. Cartoon likeness; 2. Any likeness to images, characters, or phrases that are popularly used to advertise to children; 3. Any imitation of candy packaging or labeling; 4. The terms “candy” or “candies”. 5. Any cannabis product or packaging the City determines, on a case-by-case basis, is attractive to children.

**Ayes:** Commissioners Webber, Speich, Carter, Smart, Gilman, Spigner, Rojas-Cheatham, Simpson, Imai, Rosales, Le, Katz, Narahari

**Noes:** None

**Abstain:** None

**Absent from vote:** None

**Excused:** Commissioners Engelman, Rojas-Cheatham, Imai, Rosales

**Motion Passed.**

2. M/S/C (Smart/Rosales): Motion to recommend that City Council have a quota of 2 candidates for the delivery-only retailer quote, both equity candidates.

**Ayes:** Commissioners Speich, Carter, Smart, Gilman, Rojas-Cheatham, Simpson, Imai, Rosales, Le, Katz, Narahari

**Noes:** Commissioner Webber

**Abstain:** Commissioner Spigner

**Absent from vote:** None

**Excused:** Commissioners Engelman, Futoran

**Motion Passed.**

3. M/S/C (Speich/Webber): Motion to recommend the prohibition of signage that includes depiction of cannabis or cannabis products or logos.

**Ayes:** Commissioners Webber, Speich, Carter, Smart, Gilman, Spigner, Rojas-Cheatham, Simpson, Imai, Rosales, Le, Katz, Narahari

**Noes:** None

**Abstain:** None

**Absent from vote:** None

**Excused:** Commissioners Engelman, Futoran

**Motion Passed.**

4. M/S/C (Webber/Speich): Motion recommending that retail store fronts may not be located within 1000 feet of a school, junior college, university, daycare center, park, youth center, or library.

**Ayes:** Commissioners Webber, Speich, Carter, Smart, Gilman, Spigner, Rojas-Cheatham, Simpson, Imai, Rosales, Le, Katz, Narahari

**Noes:** None

**Abstain:** None

**Absent from vote:** None

**Excused:** Commissioners Engelman, Futoran

**Motion Passed.**

5. M/S/C (Speich/Katz): Motion extending meeting to 9:30PM.

**Ayes:** Commissioners Webber, Speich, Carter, Smart, Gilman, Spigner, Simpson, Rosales, Le, Katz, Narahari

**Noes:** None

**Abstain:** Commissioners Rojas-Cheatham, Imai

**Absent from vote:** None

**Excused:** Commissioners Engelman, Futoran

**Motion Passed.**

6. M/S/C (Speich/Rosales): Motion extending meeting to 9:45PM.

**Ayes:** Commissioners Webber, Speich, Carter, Smart, Gilman, Spigner, Rojas-Cheatham, Simpson, Imai, Rosales, Le, Katz, Narahari

**Noes:** None

**Abstain:** Commissioner Rojas-Cheatham

**Absent from vote:** None

**Excused:** Commissioners Engelman, Futoran

**Motion Passed.**

7. M/S/C (Katz/Gilman): Motion to approve the flyer and warning sign requirement which will incorporate the proposed language and authorize the chair to forward to staff and city council the additional comments from Professor Constantine as an appendix. Including the three warning signs: 1) Are you an immigrant? Are you on probation or parole? 3) Are you a medical cannabis customer?

**Ayes:** Commissioners Webber, Speich, Carter, Smart, Gilman, Simpson, Imai, Rosales, Le, Katz, Narahari

**Noes:** None

**Abstain:** Commissioner Spigner

**Absent from vote:** Commissioner Rojas-Cheatham

**Excused:** Commissioners Engelman, Futoran

**Motion Passed.**

8. M/S/C (Simpson/Katz): Motion to extend meeting to 9:50PM.

**Ayes:** Commissioners Webber, Speich, Carter, Smart, Gilman, Spigner, Simpson, Imai, Rosales, Le, Katz, Narahari

**Noes:** None

**Abstain:** None

**Absent from vote:** Commissioner Rojas-Cheatham

**Excused:** Commissioners Engelman, Futoran

**Motion Passed.**

9. M/S/C (Katz/Webber): Motion to recommend City Council to fund public health campaigns to do cannabis education.

**Ayes:** Commissioners Webber, Speich, Carter, Smart, Gilman, Spigner, Simpson, Rosales, Katz, Narahari

**Noes:** None

**Abstain:** None

**Absent from vote:** Commissioner Rojas-Cheatham, Imai, Le

**Excused:** Commissioners Engelman, Futoran

**Motion Passed.**

10. M/S/C (Katz/Gilman): Motion to approve recommendations as corrected—to substitute or update the word smoking to be replaced with consumption—and to approve recommendations (communication) to the city council regarding cannabis ordinance 2.0.

**Ayes:** Commissioners Carter, Gilman, Spigner, Simpson, Rosales, Katz, Narahari

**Noes:** None

**Abstain:** Commissioners Speich, Webber, Smart

**Absent from vote:** Commissioner Rojas-Cheatham, Imai, Le

**Excused:** Commissioners Engelman, Futoran

**Motion Passed.**

## PLANNING COMMISSION

### FINAL MINUTES OF THE PLANNING COMMISSION MEETING JULY 17, 2019 (Partial)

#### 11. Action: **Public Hearing on Comprehensive Cannabis**

Staff presented on the latest iteration of comprehensive cannabis program options. As part of their presentation, Staff asked the Planning Commission to provide recommendations on zoning amendment considerations that focus on the following: storefront retail buffers, lounges (commercial consumption), the expansion of cultivation beyond the Manufacturing zoning district (M), microbusinesses as storefront retailers, the operation of delivery-only retailers, and other minute definition changes. The Commission discussed aspects of the proposed amendments, but continued the discussion on most aspects of delivery-only services to the September 4, 2019 hearing to allow for more time for community input.

#### Public Comments: 3

Motion/Second/Carried (Sharenko /Kapla) to apply the existing cannabis retail buffer to the new equity candidate and apply staff's recommended buffer (600 feet from elementary schools, community centers and other Storefront Retailers, and 1,000 feet from middle and high schools) to all new cannabis retail business that enter the market thereafter; to support staff's recommendation concerning commercial consumption lounges, microbusinesses, and incidental distribution operations; and to oppose the expansion of cultivation and delivery-only uses into the MM and MU-LI zoning districts. Ayes: Beach, Fong, Illgen, Kapla, Lacey, Schildt, Sharenko, and Wiblin. Noes: None. Abstain: Martinot. Absent: None. (8-0-1-0)

Motion/Second/Carried (Kay/Fong) to re-notice a public hearing on delivery-only retailers, focusing on quotas, discretionary process, location, and buffer size. Ayes: Beach, Fong, Illgen, Kapla, Lacey, Schildt, Sharenko, and Wiblin. Noes: None. Abstain: Martinot. Absent: None. (8-0-1-0)

Motion/Second/Carried (Schildt/Sharenko) to appoint Commissioner Lacey to draft a letter to the City Council on behalf of the Planning Commission, explaining the reasoning of their recommendation to oppose the expansion of cultivation and delivery only uses into the MM and MU-LI zoning districts. Ayes: Beach, Fong,



Illgen, Kapla, Lacey, Schildt, Sharenko, and Wiblin. Noes: None. Abstain: Martinot. Absent: None. (8-0-1-0)

Motion/Second/Carried (Schildt/ Fong) to close the public hearing for item 11. Ayes: Beach, Fong, Illgen, Kapla, Lacey, Martinot, Schildt, Sharenko, and Wiblin. Noes: None. Abstain: Martinot. Absent: None. (8-0-1-0)

**FINAL MINUTES OF THE PLANNING COMMISSION MEETING  
SEPTEMBER 4, 2019  
(Partial)**

**9. Action: Public Hearing: Zoning Ordinance Amendments for Cannabis Uses: Delivery-Only Retailers**

Planning Commission held a public hearing to discuss Zoning Ordinance amendments for cannabis delivery services. Planning Commission considered proposed amendments to establish new land use regulations for cannabis retail delivery services (Delivery-Only Retailers). Planning Commission also considered vertically integrated cannabis businesses (Microbusinesses) that involve Delivery-Only Retail in their recommendation. The Commission discussed the presence of existing similar delivery-only services in Berkeley and the appropriate number, locations (within a building and allowable zoning districts), discretion and criteria for Delivery-Only Retailers.

**Public Comments: 5**

Motion/Second/Carried (Schildt/Wrenn) to recommend that the City Council adopt the staff proposed language, as amended, which includes the following provisions, in Section 23C.25.010 Cannabis Retail:

- Delivery-Only Retailers are subject to approval through the selection process set forth in Section 12.22.020.
- Delivery-Only Retailers are permitted with a Zoning Certificate in the M District and C-prefixed districts other than the C-N District.
- Delivery-Only Retailers may not be located within 300 feet of any School or City-operated community center or skate park.
- Delivery-Only Retailers may not be located on the street fronting portion of the ground floor in a C-prefixed district.
- Implement a city-wide quota of 10 Delivery-Only Retailers, where at least half are equity candidates.
- All delivery-only retailers shall be permitted with a Zoning Certificate in all allowable zoning districts.
- Delivery-Only Retailers in the M District shall be evaluated and regulated for Zoning purposes in the same way as Warehouse-Based Non-Store Retailers, and

shall be subject to the same numeric and buffer requirements as Delivery-Only Retailers in C-prefixed districts.

Ayes: Beach, Lacey, Martinot, Schildt, and Wrenn. Noes: Vincent and Wiblin.  
Abstain: None. Absent: Fong and Kapla. (5-2-0-2)

Motion/Second/Carried (Beach /Wrenn) to close the public hearing at 9:32pm.  
Ayes: Beach, Lacey, Martinot, Schildt, Vincent, Wiblin, and Wrenn. Noes: None.  
Abstain: None. Absent: Fong and Kapla. (7-0-0-2)

To: Honorable Mayor and Members of the City Council

From: Cannabis Commission

Submitted by: Commission Chair Ezra Malmuth

Subject: Berkeley Cannabis Equity Program and Ordinance Changes

This letter is to notify the City Council of the Cannabis Commission recommendations for the Cannabis Equity Program and Cannabis Ordinance changes that are being considered.

The City of Berkeley is known for championing social justice. The city took the unique step of becoming a cannabis sanctuary city, as a declaration that the War on Drugs and its racist legacy have no place here. We are one of a handful of cities and states that made equity a stated goal in our legal cannabis market.

However, to achieve this goal, we need thoughtful followthrough on policy. While Berkeley has provided a safe place for cannabis businesses to exist, it has also created a high barrier to entry. Establishing a cannabis business here can be a herculean task, due to restrictive zoning criteria, scarce available real estate, and the lengthy and costly licensing process.

Since legalization, it's become clear that existing cannabis businesses are struggling to compete against the thriving unregulated market and the restrictions which have been imposed on existing businesses are making it harder for them to see a sustainable path forward.

This provides a discouraging landscape for a cannabis equity programs to flourish and become an integral part of Berkeley's efforts to give back to the communities adversely affected by the War on Drugs, particularly people of color. Building a successful equity program entails both a hard look at the challenges facing all cannabis businesses in Berkeley and the current limited scope of the program.

The Cannabis Commission believes limiting the equity program to a single storefront retailer will seriously hinder our city's ability to have a real impact on ameliorating the harms caused by the War on Drugs -- it may, in fact, only help one person. Berkeley should expand equity opportunities to more license types, and broaden opportunities for people outside of ownership groups to employees and other members of impacted communities.

We share the goals and ideals put forth by the council and have some suggestions that leverage our expertise on how Berkeley can support the first equity retailer and also assist in the development of a new workforce for this emerging industry.

We see the first retail storefront as a small first step, but we also believe there is a much larger community which deserves opportunities it has historically been denied.

### **Proposing a workforce development program for all equity candidates**

While ownership is a critical piece of any equity model, it cannot be the only piece. Incarceration has denied millions of people, not just the opportunity to build generational wealth, but a chance to even gain a foothold in the employment market. Many employers who are sympathetic to the plight of those convicted of crimes under the War on Drugs may be reticent to hire someone with a criminal record and limited work experience. It is imperative we meet the needs of both employers and potential employees through a process that results in the successful employment of an equity candidate.

Therefore, we propose a workforce development program in which the city of Berkeley would reimburse cannabis employers for up to 160 hours at city minimum wages paid to qualified equity employees. This would create a low-risk period in which the employee can earn a living and also receive valuable on the job training. This work experience will make candidates more employable in future jobs.

The program would be affordable, and costs could be contained in any number of ways, such as restricting how many employees or how many hours per year a cannabis business could use this program. For example, allowing each retailer to use this program for three employees for 160 hours at Berkeley's current minimum wage of \$15.59 would cost the city \$7,483.20 per retailer or \$52,382.40 for the seven retailers. For comparison revenue generated by business license tax for Fiscal Year 2019 was \$1,809,820 from cannabis businesses alone.<sup>1</sup> The city should also consider possible expansions of the program to allow equity retailers greater use of the program, and to allow all cannabis businesses, not just retailers, to make use of this program.

We see this as an affordable, easy to administer program that promotes equity and wellbeing in both the short and long term. Furthermore, if successful, it could serve as a model for part of a broader equity program, both for Berkeley and around the nation.

While we also support general job training programs, they often require federal dollars, which are unavailable for cannabis businesses. Even when equity candidates are able to participate in job training, they are forced to compete on the same playing field with other potential employees who have not had their life trajectory upended by the War on Drugs.

### **Cannabis Ordinance Changes**

The Cannabis Commission has reviewed City staff's proposed changes to the cannabis ordinance. While we agree with much of the language suggested, we have some recommendations outlined in the following matrix.

---

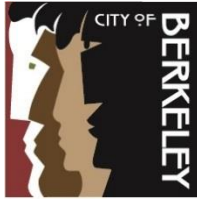
<sup>1</sup> Figure provided by Berkeley Planning Department staff

| Issue                                          | Current Language / City Staff Recommendation                                                                                          | Commission Recommendation                                                                                | Reasoning                                                                                                                                                                                                                                                                                                                                                                                                                            | Relevant portion of code      |
|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| Quotas for Delivery Only Retailers (D-o-Rs)    | The ordinance currently does not have a mandate on the number of D-o-R who can locate in Berkeley                                     | There should be no quota on D-o-Rs                                                                       | <ul style="list-style-type: none"> <li>– A quota would pull business, employment opportunities, and tax dollars out of Berkeley.</li> <li>– DoR have minimal impact in terms of foot traffic, visible presence of cannabis, smell, parking, etc.</li> </ul>                                                                                                                                                                          | (23C.25.010.C.1)              |
| Zoning for Delivery Only Retailers             | City staff's current recommendation is to permit D-o-Rs with a Zoning certificate in C-prefixed Districts other than the C-N District | Allow D-oRs in C districts (except C-N) with a Zoning Certificate                                        | <ul style="list-style-type: none"> <li>– Commission is supportive of D-o-R's requiring a Zoning Certificate.</li> <li>– D-oRs should not be required to go through the arduous process of obtaining an Administrative Use Permit, because these businesses will have little land use impact on the community, are required to be 600 feet away from schools, and are already required to have adequate security measures.</li> </ul> | (23C.25.010.3, Alternative A) |
| Depictions of cannabis on Business front signs | Signage may not include depictions of cannabis or cannabis products. Logos with such depictions are also prohibited on signs.         | There should be no restrictions on depictions of cannabis or cannabis products on signs, including logos | <ul style="list-style-type: none"> <li>– There are long established Berkeley cannabis businesses depicting a cannabis leaf on their logos. They should not have to change their logos now.</li> <li>– Limiting exposure exoticizes cannabis in an unproductive way.</li> </ul>                                                                                                                                                       | (20.40.110)                   |



|                             |                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                |
|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
|                             |                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                      | <ul style="list-style-type: none"> <li>– We are a sanctuary city for cannabis, and we shouldn't restrict the image of cannabis.</li> </ul>                                                                                                                                                                                                                                                                                                              |                |
| Changing locations          | <p>City staff has recommended the following:</p> <p>"Cannabis Retailers in good standing with State and local regulations, including obtaining all necessary licenses and full payment of all fees and with no outstanding violations, may seek approval for a change in location. Applications for a change of location shall be evaluated based on the requirements to operate a Cannabis Business effective at that time.</p> | Remove restriction on changing locations                                                             | <ul style="list-style-type: none"> <li>– The proposed process to relocate is almost starting from scratch when these businesses have already established themselves with the city and are already up to code.</li> <li>– Any other business can move locations subject to zoning requirements.</li> </ul>                                                                                                                                               | (23C.25.010.A) |
| Cannabis Lounges permitting | <p>Currently, the ordinance does not include language on allowing Cannabis Lounges in the city. City staff has recommended the following:</p> <p>A Lounge, as defined in Section 12.21.020 may be permitted at an approved Retailer subject to approval of a Use Permit. Lounges must comply with the operational standards established by the City's Department of Public Health, Housing and Community Services.</p>           | Allow Lounges with Storefront Retailers with a Use Permit "or as otherwise permitted under state law | <ul style="list-style-type: none"> <li>– Many Berkeley residents live in housing situations which restrict their ability to consume cannabis and therefore do not have an accessible space to consume safely. Developing cannabis lounges in our city will allow all Berkeley residents to consume cannabis safely.</li> <li>– Cannabis lounges will also help to reduce public consumption.</li> <li>– Lounges can be a place of community,</li> </ul> | (23C.25.010.D) |

|                                            |                                                                                                                                                                     |                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                  |
|--------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
|                                            |                                                                                                                                                                     |                                                                                                       | safety, and expression for cannabis consumers and patients.                                                                                                                                                                                                                                                                                                                                                                                                              |                                  |
| Buffers on Storefront Retailers            | <p>City staff put forth the following recommendation:</p> <p>Retailers may not locate with 600 feet of another retailer or school</p>                               | Maintain the current buffers for Storefront Retailers                                                 | <p>– The current buffers are not creating issues.</p> <p>– There are already zoning restrictions on cannabis and increasing them will severely limit the already limited space where cannabis businesses are permitted in the city.</p>                                                                                                                                                                                                                                  | (23C.25.010. C.3, Alternative A) |
| Cultivation Zoning and Outdoor Cultivation | <p>City Staff has put forth the following recommendations:</p> <p>"Commercial Cannabis Cultivation with a Zoning Certificate in the M, MM, and MU-LI Districts"</p> | Expand Cultivation into the MM and MU-LI and strike the prohibition on outdoor commercial cultivation | <p>– Restricting cultivation businesses to the M district alone severely limits the space where they can be located, which has resulted in zero business applications.</p> <p>– Concerns within the neighborhood can be addressed on a case by case basis, but a blanket ban on outdoor cultivation does not make sense.</p> <p>– It is much more environmentally sustainable to cultivate outdoors than indoors where businesses must replicate the sun with lamps.</p> | (23.25.020)                      |



Community Health  
Commission

## COMMUNICATION TO COUNCIL

Date: September 26, 2019  
To: Mayor and Members of the City Council  
From: May Simpson, Chair, Community Health Commission  
Subject: A Public Health Approach to Proposed Round 2 Cannabis Ordinances

This letter addresses public health issues related to the Proposed Round 2 Cannabis Ordinance that the City Council is currently considering. Attached to this letter is a copy of a prior letter from the Community Health Commission, entitled “A Public Health Approach to the Proposed Cannabis Ordinances(s)” that was submitted to the Mayor and Members of the City Council, dated September 13, 2018. The concerns raised in that prior letter remain valid. However, the letter submitted at this time will focus on the issues currently before the council.

### **September 26, 2019 Community Health Commission Regular Meeting:**

**Action:** M/S/C (Katz/Gilman) Motion to approve recommendations as corrected—to substitute or update the word smoking to be replaced with consumption—and to approve recommendations (communication) to the city council regarding cannabis ordinance 2.0.

**Vote: Ayes:** Carter, Gilman, Spigner, Simpson, Rosales, Katz, Narahari; **Noes:** None; **Abstain:** Speich, Webber, Smart; **Absent:** Rojas-Cheatham, Imai, Le; **Excused:** Engelman, Futoran

### **1. Regarding Proposals for Public Consumption Lounges:**

Due to 1) the respiratory consequences of inhaling second hand marijuana smoke and the products of marijuana vaporization, 2) the additional public health concerns of intoxicated individuals leaving proposed cannabis lounges, 3) and the undermining of all the progress on smoke-free air and social denormalization of smoking that has been achieved over the past decades with leadership from cities like Berkeley, the CHC does not recommend consumption lounges. The CHC will also like to highlight that these lounges will not resolve the problems of people smoking on the streets.

Exposure to indoor smoke causes and exacerbates serious health conditions, including asthma and cardiovascular disease. Consideration of proposals for public smoking

lounges should follow the public health policies that inform the California Smoke-Free Workplace law, which only allow smoking in an “owner-operated business,” and many jurisdictions either subsequently prohibited or grandparented only existing uses. Labor Code 6404.5 defines an “owner-operated business” to mean “a business having no employees, independent contractors, or volunteers, in which the owner-operator of the business is the only worker.”

Workers and consumers should not be exposed to second-hand smoke. Even though cannabis smoke may not contain the harmful additives of cigarettes, the City Council should not allow public smoking lounges for the reasons referenced in the attached fact sheet regarding secondhand marijuana smoke published by the Berkeley-based Americans for Nonsmokers’ Rights Foundation.

To summarize:

“Smoke is smoke. Both tobacco and marijuana smoke impair blood vessel function similarly.

People should avoid both, and governments who are protecting people against secondhand smoke exposure should include marijuana in those rules.” -Matthew Springer, cardiovascular researcher and Associate Professor of Medicine, University of California, San Francisco

The American Society for Heating, Refrigeration, and Air Conditioning Engineering (ASHRAE) is the organization that develops engineering standards for building ventilation systems.

ASHRAE now bases its ventilation standard for acceptable indoor air quality on an environment that is completely free from secondhand tobacco smoke, secondhand marijuana smoke, and emissions from electronic smoking devices. No ventilation standard exists that renders indoor air safe from the health effects of secondhand smoke. In fact, the ASHRAE 62.01-2004 standard section 6.2.9, Ventilation in Smoking Areas, was unable to conclude any specific safe level, stating, “Smoking areas shall have more ventilation and/or air cleaning than comparable no-smoking areas. Specific ventilation rate requirements cannot be determined until cognizant authorities determine the concentration of smoke that achieves an acceptable level of risk.”

Research indicates that electronic vaping emits measurable contaminants that would be inhaled by workers and consumers, including propanediol and glycerine, and very high concentrations of PM2.5 (mean 197 µg/m<sup>3</sup>; compare with the EPA ambient exposure standard of 35 µg/m<sup>3</sup> and the EU standard of 25 µg/m<sup>3</sup>). The CHC is very concerned about health impacts that could be caused by exposure to toxic air contaminants, particularly involuntary exposure to workers, and urges the City Council to consider precautionary approaches to protect public health.

## 2. Prohibition of Branded Merchandise

The CHC recommends that the sale, distribution or licensing of branded cannabis merchandise as defined in section 5000(b) of the California Code of Regulations Title 16 Division 32 be prohibited in the City of Berkeley.

Branded merchandise such as caps and t-shirts are walking billboards that children are exposed to every day. The existing ban on cannabis advertising to children is meaningless without including a ban on branded merchandise.

According to the American Academy of Pediatrics : In order to fully protect children from marijuana marketing, branded merchandise such as t-shirts and other transportable items must be regulated, as not only are they are not location-specific, but they can also be among the most effective ways to advertise to children and youth.

Such restrictions on branded merchandise exist under federal tobacco law and have been held constitutional by the courts and not a violation of the First Amendment. In *Commonwealth Brands, Inc v. United States*, 678 F. Supp. 2d 512, the court stated:

Moreover, even if such items were distributed to adults only, and retained by adults only, this would not prevent the wearers from becoming walking advertisements that would continue to display the attractive imagery. Because such items penetrate the young persons' world, they are very effective in creating the sense that tobacco use is widely accepted, which is extremely important to children and adolescents.

The court also cited an Institute of Medicine report that found that the "ubiquity of such specialty items conveys the impression that tobacco use is the norm, which in turn fosters experimentation with tobacco and smokeless products by young people."

Accordingly, the Court concluded that the ban on brand-name tobacco product merchandise is not more extensive than necessary to serve Congress' substantial interest in reducing youth tobacco use by reducing youth possession of and exposure to branded merchandise. *Commonwealth Brands, Inc. v. United States*, 678 F. Supp. 2d 512.

The Court's logic applies equally to cannabis related merchandise.

## 3. Signage

Signage should not include depictions of cannabis or cannabis products. Logos with such depictions are also prohibited on signs, such as delivery vehicles.

## 4. Flyers and Warning Signs Language:

\*Phrasing and content with considerations for revisions have been underlined and supplemented with comments from Dr. Constantine/Dr. Levine. The original flyer drafted by the respective doctors are included at the end of the communication. The language



below are drafted and selected based on research and evidence availability. The original flyer contains language that provides directions on what cannabis users/prospective users should do, which, after some considerations, were avoided due to compelled speech concerns.

\*The following draft also only includes language. The CHC would like to emphasize the importance of graphic design and attractiveness of the flyer/warning signs in order to gather the public's attention. The function of flyers/notice is to reach the people and engage in considerations. If notices are created and dispersed without great attention to visual presentation, the public health backbone of advocacy will severely be impeded. Thus it is recommended to emphasis design in the creation of these notices.

Require in-store safety information - Health Advisory Material:

A printed material of at least 8" x 10.5", or equivalent print area (e.g. double-sided half-sheet), and minimum size 16 print should be visible to customers and available for distribution at each dispensing/sales counter. All deliveries, if allowed, should include a copy. The Health Division, in consultation with the Community Health Commission, should review and update the health advisory periodically as needed based on current scientific evidence, or at least every three years. The initial health advisory must state the following language:

**Starting cannabis use young or frequent use** may lead to problem use and, according to the Centers for Disease Control and Prevention (CDC), may harm the developing teen brain as late as age 25. Up to 10-20 percent of cannabis users develop dependence

Consider including/replacing with: Up to 1 out of 5 regular users of cannabis are likely to develop cannabis-use disorder, defined as a problem-causing pattern of cannabis use leading to significant impairment or distress. Most at risk are those starting at a younger age, and those with greater frequency of use.

**Mental health** - Cannabis use may be associated with greater risk of developing schizophrenia or other psychoses, and can result in increased mania symptoms in individuals with bipolar disorder. Individuals experiencing mental health symptom should consult with a provider.

Consider including/replacing with: For people with existing susceptibility to developing serious mental illnesses (psychoses), cannabis use can increase the risk that such a mental illness will develop. This is mainly true for (1) adolescents and young adults, (2) users who start cannabis at a younger age, and (3) frequent users.

**Pregnancy risk** - According to the Centers for Disease Control and Prevention (CDC), cannabis use during pregnancy can be harmful to your baby's health, including causing low birth weight and developmental problems.

**Driving while high is a DUI - Cannabis use increases your risk of motor vehicle crashes.**

Consider including/replacing with: The consumption of cannabis products impairs your ability to drive and operate machinery, and increases your chance of a motor vehicle crash

**Heart disease** - Cannabis smoking may increase short-term risk of triggering a heart attack or stroke for individuals at risk of heart disease.

**Long-term cannabis smoking worsens respiratory symptoms and the frequency of chronic bronchitis.**

Consider including/replacing with: Long-term cannabis smoking might worsen existing breathing problems, and could lead to more frequent chronic bronchitis episodes.

**Edibles** - When consuming edibles, cannabis levels may vary per serving, and the full effects may be delayed up to 2 hours. Starting with smaller doses may allow you to achieve desired effects and avoid intoxication.

Consider including/replacing with: unlike smoked or vaped cannabis, the full effects of cannabis edibles may be delayed up to two hours.

**Consult with physician** - Cannabis users are advised to consult with a physician to evaluate potential health risks.

Consider including/replacing with: a health care provider

**\*Distributing cannabis products** to adolescents under the age 21 is against California State Law.

THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY

-----

**REQUIRED IN-STORE SAFETY INFORMATION – WARNING SIGN**

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).

**1. Attention pregnant and breastfeeding mothers** - According to the U.S. Centers for Disease Control and Prevention (CDC), cannabis 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** - Cannabis use increases your risk of motor vehicle

Crashes.

**3. Teen and Youth Brain Development** - Starting marijuana use young or using frequently may lead to problem use and, according to the CDC, may harm the developing brain as late as age 25.

**4. Cannabis use may be associated with greater risk** of developing schizophrenia or other psychoses. Risk is highest for frequent users.

**5. Smoking cannabis 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.

**5. Flavored products:**

The CHC recommends Berkeley join Contra Costa County and ban the sale of flavored cannabis products for smoking or vaping, and join Pasadena and Mono County and ban the sale of cannabis infused flavored beverages that mimic “alco-pops.” All of the

members of the council are aware of the devastating ways that flavors have been used to promote tobacco use and addiction by youth, particularly youth of color. The council is already considering a ban on flavored tobacco products, including menthol, similar to that recently adopted in San Francisco. This trend has been exacerbated with the advent of flavored Juul and Juul like products for vaping nicotine. The same company invented Pax, one of the early vaping applications for cannabis. Flavors vaping and smoking products and beverages are now being used intensively by the cannabis industry in exactly the same way to attract youth to initiate consumption. Recent qualitative research with vulnerable California youth through the Oakland based FACES to the Future project confirmed that flavored products were considered the most attractive, and also that high potency products which lack the characteristic marijuana odors such as wax pens and vaping kits that are less easily detected by teachers and parents were being extensively used and widely used at school and at home.

#### **6. Expansion of cultivation uses outside of the M District**

Cannabis cultivation is associated with characteristic odors. We do not want kids going to school or growing up in places with cannabis odors. Simply biking through Oakland neighborhoods today you pass blocks saturated with cannabis odors. Cannabis cultivation locations should be at least 1,000 feet from any schools, community centers or residential areas.

#### **7. Delivery**

From the September 13th CHC recommendation proposal:

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. If they are allowed they should only be extended to equity licensees. To monitor the effects of cannabis delivery in order to minimize the negative health outcomes of the residents, we also recommend limiting to only two licensees to properly identify the consequences and plan how to improve the delivery system to cater to better health outcomes.

#### **8. Buffer**

From the September 13th CHC recommendation proposal:

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.

If the recommendation is not favored, CHC urge the council to consider 1,000 feet buffer from middle schools, high schools, youth centers, and parks. As previously discussed in past council meetings, adolescents during grades 7-12 are especially impressionable. Youth centers are also where these populations frequent, and where we would like them to frequent. From the public health standpoint, youth centers are locations which these age groups can build a community and support each other especially for youths who otherwise would spend their time on the streets.

### **9. Further Health Outreach and Promotion**

Currently, much of cannabis health research data and study outcomes is based on the THC levels found few decades ago. Today's THC potency is almost 10 times stronger due to the various types of cannabis processings paved way by legalization and minimum regulations. As a result, what has been brought upon our city is an experiment, and a large component of that experiment involves the health and well-being of the Berkeley residents. Thus, the CHC recommends the city to engage in continuous cannabis health impact assessment (HIA) and for the outcomes to be included in the yearly Berkeley Health Status Report.

The CHC would also like to emphasize the importance of education and outreach. If we are to trust people to make their own decisions, we need to provide them with tools to help them make the best informed decision. This includes standard educational material or programs to better engage people in discussing the health and social impacts of cannabis. Passed with overwhelming majority vote, the CHC recommends the City Council to fund public health campaigns to do cannabis education to promote awareness.

Given what we currently know about recreational use and negative health impacts, there is certainly a subset of the population who are more risk than others. The key is to provide proper, timely aid to prevent further harm, and such intervention will not be possible if these users either cannot identify harm or do not know where to seek help. In a city where we clearly already have a large number of mentally ill, homeless residents, failing to inform youth of these risks, especially those with a family history of schizophrenia, is irresponsible. It is therefore urgent to start including more health into the conversation.

The Community Health Commission thanks you in advance for your direction, management and assistance with our mission.

If you have any questions or comments, please do not hesitate to contact the Community Health Commission Chair, May Simpson through the Commission Secretary, Roberto Terrones at [RTerrones@cityofberkeley.info](mailto:RTerrones@cityofberkeley.info).

**Attachment 1:** "A Public Health Approach to the Proposed Cannabis Ordinance(s)", September 13, 2018.

**Attachment 2:** Secondhand Marijuana Smoke, American Nonsmokers' Rights Foundation.





Community Health Commission

## 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;<sup>1</sup> and use during pregnancy has risen substantially between 2000 and 2014, increasing the risk of low birth weight.<sup>2</sup> 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%.<sup>3</sup>

In 2013-2015, the prevalence of lifetime marijuana use (7 or more times) among 11<sup>th</sup> 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%),<sup>4</sup> indicating that Berkeley youth have not had difficulty obtaining marijuana for recreational use. For BUSD 11<sup>th</sup> 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.<sup>5</sup>

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

---

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> Kidsdata.org. *Marijuana use in lifetime, by grade level*. Accessed 12 March 18.

<sup>5</sup> *Ibid*.

of association of cannabis use with harm in a wide range of areas.<sup>6</sup> The NASEM study found “substantial evidence”<sup>7</sup> 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

---

<sup>6</sup> 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.

<sup>7</sup> **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.<sup>8</sup> 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.<sup>9</sup> 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.

---

<sup>8</sup> 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

<sup>9</sup> United States Census Bureau. Quickfacts: Berkeley city, California.

[www.census.gov/quickfacts/fact/table/berkeleycitycalifornia/PST045216](http://www.census.gov/quickfacts/fact/table/berkeleycitycalifornia/PST045216). Accessed 14 March 18.

## Public Health Approach to Cannabis Ordinances

- 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



## Public Health Approach to Cannabis Ordinances

- (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.

## Public Health Approach to Cannabis Ordinances

- (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, 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. <sup>1</sup> 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](http://www.census.gov/quickfacts/fact/table/berkeleycitycalifornia/PST045216). Accessed 14 March 18.



## Secondhand Marijuana Smoke

“Smoke is smoke. Both tobacco and marijuana smoke impair blood vessel function similarly. People should avoid both, and governments who are protecting people against secondhand smoke exposure should include marijuana in those rules.”

*-Matthew Springer, cardiovascular researcher and Associate Professor of Medicine, University of California, San Francisco*

### Facts about secondhand marijuana smoke:

- Marijuana smoke is created by burning components of plants in the genus Cannabis.
- Secondhand marijuana smoke is a complex chemical mixture of smoke emitted from combusted marijuana and the smoke that is exhaled by the user.
- Secondhand marijuana smoke contains fine particulate matter that can be breathed deeply into the lungs.
- Secondhand marijuana smoke contains many of the same cancer-causing substances and toxic chemicals as secondhand tobacco smoke. Some of the known carcinogens or toxins present in marijuana smoke include: acetaldehyde, ammonia, arsenic, benzene, cadmium, chromium, formaldehyde, hydrogen cyanide, isoprene, lead, mercury, nickel, and quinoline.<sup>i</sup>
- Marijuana smoke contains tetrahydrocannabinol (THC), the active chemical in cannabis.

### Health risks of exposure to secondhand marijuana smoke:

Since marijuana is illegal under federal law, there have been a limited number of studies examining health risks associated with marijuana use and exposure in the United States. Health risks from primary and secondhand smoke exposure may also be difficult to determine as marijuana is often used in combination with tobacco.

However, peer-reviewed and published studies do indicate that exposure to secondhand marijuana smoke may have health and safety risks for the general public, especially due to its similar composition to secondhand tobacco smoke.

- Secondhand smoke from combusted marijuana contains fine particulate matter that can be breathed deeply into the lungs,<sup>ii</sup> which can cause lung irritation, asthma attacks, and makes respiratory infections more likely. Exposure to fine particulate matter can exacerbate health problems especially for people with respiratory conditions like asthma, bronchitis, or COPD.<sup>iii</sup>
- Significant amounts of mercury, cadmium, nickel, lead, hydrogen cyanide, and chromium, as well as 3 times the amount of ammonia, are found in mainstream marijuana smoke than is in tobacco smoke.<sup>iv</sup>
- In 2009, the California Office of Environmental Health Hazard Assessment added marijuana smoke to its Proposition 65 list of carcinogens and reproductive toxins, also known as the Safe Drinking Water and Toxic Enforcement Act of 1986. It reported that at least 33 individual constituents present in both marijuana smoke and tobacco smoke are Proposition 65 carcinogens.<sup>v, vi</sup>

- Secondhand smoke from marijuana has many of the same chemicals as smoke from tobacco, including those linked to lung cancer.<sup>vii</sup>
- Secondhand marijuana exposure impairs blood vessel function. Published studies on rats show that thirty minutes of exposure to secondhand marijuana smoke at levels comparable to those found in restaurants that allow cigarette smoking led to substantial impairment of blood vessel function. Marijuana smoke exposure had a greater and longer-lasting effect on blood vessel function than exposure to secondhand tobacco smoke.<sup>viii</sup>
- One minute of exposure to marijuana SHS substantially impairs endothelial function in rats for at least 90 minutes, considerably longer than comparable impairment by tobacco SHS. The findings in rats suggest that SHS can exert similar adverse cardiovascular effects regardless of whether it is from tobacco or marijuana.<sup>ix</sup>
- Secondhand marijuana smoke and secondhand tobacco smoke is similar in many ways. More research is needed, but the current body of science shows that both tobacco and marijuana smoke have similar chemical composition and suggests that they may have harmful cardiovascular health effects, such as atherosclerosis (partially blocked arteries), heart attack, and stroke.<sup>x</sup>
- Particle concentrations from dabbing and vaporizing cannabis can create levels of indoor air pollution similar as those seen in extreme air pollution events like wildfires and severe industrial pollution. Exposure at these concentrations can cause cardiovascular and respiratory disease.<sup>xi</sup>
- People who are exposed to secondhand marijuana smoke can have detectable levels of THC (tetrahydrocannabinol) in their blood and urine.<sup>xii</sup>
- Marijuana also can be contaminated with mold, insecticides or other chemicals that may be released in secondhand smoke.<sup>xiii</sup>

### **Including Marijuana Smoking in Smokefree Public Place and Workplace Laws:**

- Everyone has the right to breathe smokefree air. Smokefree policies are designed to protect the public and all workers from exposure to the health hazards caused by exposure to secondhand tobacco smoke. The same should be true for secondhand marijuana smoke.
- The percent of U.S. adults who use marijuana more than doubled from 4.1% to 9.5% between 2001-2002 and 2012-2013,<sup>xiv</sup> which may also indicate an increase in exposure to secondhand marijuana smoke.
- The American Society for Heating, Refrigeration, and Air Conditioning Engineering (ASHRAE) is the organization that develops engineering standards for building ventilation systems. ASHRAE now bases its ventilation standard for acceptable indoor air quality on an environment that is completely free from secondhand tobacco smoke, secondhand marijuana smoke, and emissions from electronic smoking devices.<sup>xv</sup>
- In order to protect public health, improve consistency, and aid enforcement, smokefree laws for public places and workplaces should include tobacco as well as marijuana, whether it is smoked or aerosolized. Allowing marijuana smoking in places where smoking is now prohibited could undermine laws that protect the public from exposure to secondhand smoke. The Tobacco Control Legal Consortium issued an informative brief on [Lessons from Tobacco Control for Marijuana Regulation](#).<sup>xvi</sup>

- Smokefree policies provide incentives to quit smoking, help denormalize smoking behavior, and are particularly effective among youth and young adults who are vulnerable to visual cues and social norms of smoking. It is likely that smokefree policies for marijuana will have a similar effect.
- As of October 2019, 607 localities and 25 states/territories/commonwealths restrict marijuana use in some or all smokefree spaces.

**In the interest of public health, the use of combustible or aerosolized marijuana should be prohibited wherever tobacco smoking is prohibited.**

### **ANR Foundation’s Position on Exposure to Secondhand Marijuana Smoke:**

Marijuana smoke is a form of indoor air pollution. Therefore, ANR, our lobbying organization, includes marijuana within the definition of smoking, and all of our model laws and policies include a prohibition on smoking marijuana wherever smoking of tobacco products is not allowed. Our organization does not have a position on whether marijuana should be legalized; we are committed to smokefree protections from secondhand smoke from tobacco products, marijuana and aerosol from electronic smoking devices.

**Nobody should have to breathe secondhand marijuana smoke at work, in public, or where they live.** If we want healthy, smokefree air for workers and the public, then products like marijuana and electronic smoking devices (which can be used to “vape” a wide range of substances, including marijuana and hash oil) must not be used in smokefree environments where others are forced to breathe the secondhand emissions.

### **References**

- 
- <sup>i</sup> Moir, D., et al., A comparison of mainstream and sidestream marijuana and tobacco cigarette smoke produced under two machine smoking conditions. *Chem Res Toxicol* 21: 494-502. (2008). <http://www.ncbi.nlm.nih.gov/pubmed/18062674>
- <sup>ii</sup> Hillier, FC.; et al. "Concentration and particle size distribution in smoke from marijuana cigarettes with different  $\Delta^9$ -tetrahydrocannabinol content." *Fundamental and Applied Toxicology*. Volume 4, Issue 3, Part 1, June 1984, Pages 451-454. <http://www.sciencedirect.com/science/article/pii/0272059084902021>
- <sup>iii</sup> "Air and Health: Particulate Matter." National Environmental Public Health Tracking Network, U. S. Environmental Protection Agency. <http://ephtracking.cdc.gov/showAirHealth.action#ParticulateMatter>
- <sup>iv</sup> Moir, D., et al., A comparison of mainstream and sidestream marijuana and tobacco cigarette smoke produced under two machine smoking conditions. *Chem Res Toxicol* 21: 494-502. (2008). <http://www.ncbi.nlm.nih.gov/pubmed/18062674>
- <sup>v</sup> "Evidence on the Carcinogenicity of Marijuana Smoke." Reproductive and Cancer Hazard Assessment Branch, Office of Environmental Health Hazard Assessment, California Environmental Protection Agency. August 2009. [http://oehha.ca.gov/prop65/hazard\\_ident/pdf\\_zip/FinalMJsmokeHID.pdf](http://oehha.ca.gov/prop65/hazard_ident/pdf_zip/FinalMJsmokeHID.pdf)
- <sup>vi</sup> Wang, X., et al., "Brief exposure to marijuana secondhand smoke impairs vascular endothelial function" (conference abstract). *Circulation* 2014; 130: A19538. [http://circ.ahajournals.org/content/130/Suppl\\_2/A19538.abstract](http://circ.ahajournals.org/content/130/Suppl_2/A19538.abstract)
- <sup>vii</sup> "Evidence on the Carcinogenicity of Marijuana Smoke." Reproductive and Cancer Hazard Assessment Branch, Office of Environmental Health Hazard Assessment, California Environmental Protection Agency. August 2009. [http://oehha.ca.gov/prop65/hazard\\_ident/pdf\\_zip/FinalMJsmokeHID.pdf](http://oehha.ca.gov/prop65/hazard_ident/pdf_zip/FinalMJsmokeHID.pdf)
- <sup>viii</sup> Wang, X., et al., "Brief exposure to marijuana secondhand smoke impairs vascular endothelial function" (conference abstract). *Circulation* 2014; 130: A19538. [http://circ.ahajournals.org/content/130/Suppl\\_2/A19538.abstract](http://circ.ahajournals.org/content/130/Suppl_2/A19538.abstract)
- <sup>ix</sup> Wang, X.; Derakhshandeh, R.; Liu, J.; Narayan, S.; Nabavizadeh, P.; Le, S.; Danforth, O.M.; Pinnamaneni, K.; Rodriguez, H.J.; Luu, E.; Sievers, R.E.; Schick, S.F.; Glantz, S.A.; Springer, M.L., "One minute of marijuana secondhand smoke exposure substantially impairs vascular endothelial function," *Journal of the American Heart Association* 5(8): e003858, August 2016. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5015303/>



---

<sup>x</sup> Springer, M.L.; Glantz, S.A. "Marijuana Use and Heart Disease: Potential Effects of Public Exposure to Smoke," University of California at San Francisco. April 13, 2015.

<https://tobacco.ucsf.edu/sites/tobacco.ucsf.edu/files/u9/MSHS%20fact%20sheet%20for%20CA%204-13-15.pdf>

<sup>xi</sup> Jaques, P, Zalay, M, Huang, A, Jee, K, Schick, SF "Measuring Aerosol Particle Emissions from Cannabis Vaporization and Dabbing", Proceedings of the 15th Meeting of the International Society for Indoor Air Quality and Climate. July 22-27, 2018. Philadelphia, PA.

<sup>xii</sup> Herrmann ES, et al., "Non-smoker exposure to secondhand cannabis smoke II: Effect of room ventilation on the physiological, subjective, and behavioral/cognitive effects." *Drug and Alcohol Dependence*. 2015 Jun 1;151:194-202. <http://www.ncbi.nlm.nih.gov/pubmed/25957157>

<sup>xiii</sup> [UCDavis Researchers, research letter published online in the journal of Clinical Microbiology and Infection](#), "A microbiome assessment of medical marijuana" April 2017 Volume 23, Issue 4, Pages 269–270

[https://www.clinicalmicrobiologyandinfection.com/article/S1198-743X\(16\)30605-X/pdf](https://www.clinicalmicrobiologyandinfection.com/article/S1198-743X(16)30605-X/pdf)

<sup>xiv</sup> Hasin DS, et al. "Prevalence of Marijuana Use Disorders in the United States Between 2001-2002 and 2012-2013." *JAMA Psychiatry*. Published online October 21, 2015. <http://archpsyc.jamanetwork.com/article.aspx?articleid=2464591>

<sup>xv</sup> ANSI/ASHRAE Standard 62.1-2016 – Ventilation for Acceptable Indoor Air Quality. Atlanta, GA: American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc.

<https://www.ashrae.org/technical-resources/standards-and-guidelines/read-only-versions-of-ashrae-standards>

<sup>xvi</sup> Cork, Kerry. "Toking, Smoking & Public Health: Lessons from Tobacco Control for Marijuana Regulation." Tobacco Control Legal Consortium. June 2015. [http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-synopsis-marijuana-tobacco-2015\\_0.pdf](http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-synopsis-marijuana-tobacco-2015_0.pdf)

**For more information, visit <https://nonsmokersrights.org/marijuana-smoke> or call us at 510-841-3032.**

*May be reprinted with appropriate attribution to Americans for Nonsmokers' Rights, © 2019 1908 [FS-45]*



Planning Commission

October 15, 2019

To: Honorable Mayor and Members of the City Council

From: Planning Commission

Submitted by: Chris Schildt, Chairperson, Planning Commission and Mary Kay Lacey, Commissioner, Planning Commission

Subject: Planning Commission statement of opposition to expansion of cultivation and delivery-only cannabis uses to MM, MU-LI and MUR districts

We are writing to provide information regarding action taken by the Planning Commission regarding the City's comprehensive cannabis program during meetings before the Commission on July 17, 2019 and September 4, 2019. Generally, the Commission agreed with the Planning Department staff's recommendations, however, we opposed the expansion of cultivation for cannabis in the MM and MU-LI districts, and opposed delivery-only uses for cannabis in the MM, MU-LI and MUR districts. This letter explains the reasoning behind our votes.

During the July 17th and September 4th meetings, the Planning Commission heard public comment from members of the West Berkeley Artisans and Industrial Companies (WEBAIC). Those members expressed concern that if the MM, MU-LI and MUR districts are zoned to allow cultivation and delivery-only uses of cannabis, that critical goals of the City's existing West Berkeley Plan will be adversely impacted. As the Council is aware, current zoning in the M-prefixed districts is designed to prevent displacement of artists, as well as to preserve light industrial and manufacturing uses in the City. As members of WEBAIC emphasized during our meetings, without this protection, such uses will be "out competed" by more highly capitalized uses. Specifically, under the West Berkeley Plan (Land Use Goal, Policy A), it is a City priority to retain, through planning, zoning and land use, policies which shield manufactures from economic incompatibility with other uses. Without these protections, the City is at risk of losing our art and light-industrial "mixed-use" community, and the economic diversity that it brings.

The Planning Commission shares WEBAIC's concerns. We believe that if cultivation is expanded into the MM and MU-LI districts; and delivery-only retail for cannabis is allowed in the MM, MU-LI and MUR districts, the existing businesses in these districts will be unable to compete economically and will be priced out. In particular, the Planning Commission is aware that this is precisely what has happened in other communities (including Oakland and throughout Colorado) where artists, makers, and manufacturers have been displaced by competition for space from the evolving cannabis industry—which, as we understand it, typically pays two to four times the going rate for art and industrial space. Whether these newly created cannabis businesses will remain viable is an open question, and already many have not.

As a result, and with these considerations in mind, the Planning Commission believes we should exercise caution as we move forward to implement a comprehensive cannabis program.

Cannabis can be part of West Berkeley's economy, but having already demonstrated the potential to disrupt existing viable economies, we urge the City Council to carefully consider, and hopefully follow, the Commission's recommendation to oppose the expansion of cannabis cultivation and delivery only uses in the MM, MU-LI and MUR zoning districts — thereby ensuring that we continue to honor the West Berkeley Plan by protecting artists and light industrial and manufacturing uses, and the good jobs and vibrant culture they provide.

**NOTICE OF PUBLIC HEARING-BERKELEY CITY COUNCIL  
SCHOOL DISTRICT BOARD ROOM, 1231 ADDISON STREET**

**CONSIDERATION OF CANNABIS ORDINANCE REVISIONS AND  
EQUITY PROGRAM**

Notice is hereby given by the City Council of the City of Berkeley that on **JANUARY 28, 2020 at 6:00 PM** a public hearing will be conducted to provide direction regarding proposed ordinance language alternatives, adopt a resolution and take the following actions:

Adopt the first reading of five ordinances amending the Berkeley Municipal Code (BMC) which will:

- A. Create a path to allow new business types (Delivery-Only Retailers, Consumption Lounges);
- B. Create a path to allow Retailers to continue to operate as Microbusinesses;
- C. Clarify cannabis business operational standards and development standards, such as quotas and buffers, for Storefront Retailers;
- D. Allow more opportunities for Commercial Cultivation by expanding location options; and
- E. Protect health of the general public and youth with additional advertising, signage and sales regulations.

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 **January 16, 2020**.

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.

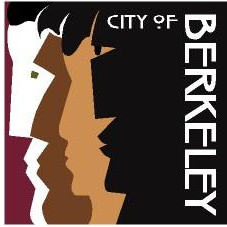
Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication 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](mailto:clerk@cityofberkeley.info) for further information.

**Published:** January 17, 2020 – The Berkeley Voice,  
Published pursuant to California Code Sections 65856(a) and 65090.

~~~~~

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 January 16, 2020.

Mark Numainville, City Clerk



Office of the City Manager

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: November 12, 2019

Item Number: 30

Item Description: Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras

Submitted by: Dee Williams-Ridley, City Manager

Attached is the originally published staff report with updated attachments. The staff report that was published did not include the surveillance technology reports. The following has been incorporated into the attachments:

- Surveillance Technology Report for Body Worn Cameras incorporated into Attachment 2.
- Surveillance Technology Report for Global Positioning System Tracking Devices incorporated into Attachment 3.
- Surveillance Technology Report for Automated License Plate Readers incorporated into Attachment 4.



Office of the City Manager

ACTION CALENDAR
November 12, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Andrew Greenwood, Chief of Police
David White, Deputy City Manager

Subject: Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras

RECOMMENDATION

Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.

FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts associated with adopting the attached resolution.

CURRENT SITUATION AND ITS EFFECTS

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance (“Ordinance”). The purpose of the Ordinance is to provide transparency surrounding the use of surveillance technology, as defined by Section 2.99.020 in the Ordinance, and to ensure that decisions surrounding the acquisition and use of surveillance technology consider the impacts that such technology may have on civil rights and civil liberties. Further, the Ordinance requires that the City evaluate all costs associated with the acquisition of surveillance technology and regularly report on their use.

The Ordinance imposes various reporting requirements on the City Manager and staff. The purpose of this staff report and attached resolution is to satisfy annual reporting requirements as outlined in sections 2.99.050 and 2.99.070. The attached Surveillance Technology Reports, Surveillance Acquisition Reports and Surveillance Use Policies for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras are for technologies that were acquired by the City prior to the adoption of the Ordinance.

Section 2.99.050 of the Ordinance required the City Manager to submit a Surveillance Acquisition Report and Surveillance Use Policy for each surveillance technology that has been possessed or used prior to the effective date of the Ordinance. The requirements of this section were not satisfied due to a multitude of factors, and the Police Department opted to submit the attached acquisition reports and use policies to the Police Review Commission prior to their review by the City Council. The Police Review Commission underwent an extensive engagement process and the full Commission discussed the attached use policies and reports at scheduled meetings from May to October 2019. In all cases, the Police Review Commission approved the attached acquisition reports and use policies and conveyed any concerns or suggested modifications to the Police Chief. In addition to the technologies covered by the attached resolution, City staff continues to evaluate whether or not there is any other technology that is used or possessed that is subject to the Ordinance.

Finally, Section 2.99.040 of the Ordinance allows the City Manager to borrow, acquire, or temporarily use surveillance technology in exigent circumstances without having to obtain the approval of City Council. Since the adoption of the ordinance, the City is reporting two instances in which the City Manager has made use of Section 2.99.040. In preparation for the potentially violent August 5, 2018 demonstration in downtown Berkeley, the City borrowed remote accessible cameras from the Northern California Regional Intelligence Center (NCRIC) in order to have the ability to remotely monitor intersections in real time. The cameras did not have face recognition technology. Signage was posted in the areas of the cameras, informing people that the area may be under video surveillance. Using cameras to monitor intersections is at times preferable to physically placing officers in those locations. In addition, as a mutual aid resource, the Police Department requested the Alameda County Sheriff's Office Small Unmanned Aerial System (sUAS) team as a mutual aid resource. The purpose of the request was to support the identification and apprehension of any felony suspects, should a felony occur. Following the felony vandalism of over ten City of Berkeley vehicles, the sUAS team deployed a drone, but no suspects were apprehended.

BACKGROUND

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance. The Ordinance contains various reporting requirements including the following:

- Section 2.99.050, which requires that the City Manager shall submit a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each technology governed by the Ordinance that had been possessed or used by the City prior to the effective date of the Ordinance; and

- Section 2.99.070 of the Ordinance, which requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November.

For each of the three technologies, the Surveillance Technology Report, Surveillance Acquisition Report and Surveillance Use Policies were prepared to satisfy the specific, section-by-section requirements of the Ordinance, and are attached to this report. It should be noted that substantial policies already existed for Body Worn Cameras and License Plate Readers. Those policies—also reviewed by the Police Review Commission for purposes of this report—are also attached. The existing policies will continue to remain in effect upon Council’s approval. Henceforth, all new Surveillance Use Policies and Surveillance Acquisition Reports will be listed in Chapter 13 of the Berkeley Police Department Policy Manual, which is being created to provide easy access to all policies relating to BMC 2.99. All BPD policies are available to the public on BPD’s website.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

City Council is being asked to adopt the attached resolution for the City to be in compliance with the Ordinance.

ALTERNATIVE ACTIONS CONSIDERED

City Council could decide not to adopt the resolution or could direct staff to revise the attached policies.

CONTACT PERSON

Andrew Greenwood, Chief of Police, (510) 981-7017
David White, Deputy City Manager, (510) 981-7012

ATTACHMENTS

1. Proposed Resolution

2. Body Worn Cameras

Surveillance Technology Report: Body Worn Cameras

Policy 1300 Body Worn Camera Use Policy

Policy 1300(a) Appendix: Body Worn Camera Acquisition Report

Policy 425 Body Worn Camera Policy (Existing Policy)

3. Global Positioning System Tracking Devices

Surveillance Technology Report

Policy 1301 Global Positioning System Tracking Devices Use Policy

Policy 1301(a) Appendix: Global Positioning System Tracking Devices Acquisition Report

4. Automated License Plate Readers

Surveillance Technology Report: Automated License Plate Readers

Policy 1302 Automated License Plate Reader Use Policy

Policy 1302(a) Appendix: Automated License Plate Reader Acquisition Report

Policy 422 Automated License Plate Reader (Latest version of existing Policy)

5. Police Review Commission Memorandum Regarding Automatic License Plate Readers

i:\surveillance ordinance\city council meeting -- 11-12-19\11-12-2019_surveillance ordinance staff report and resolution (04).docx

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

A RESOLUTION ACCEPTING THE SURVEILLANCE TECHNOLOGY REPORT, SURVEILLANCE ACQUISITION REPORT, AND SURVEILLANCE USE POLICY FOR AUTOMATIC LICENSE PLATE READERS, GPS TRACKERS, AND BODY WORN CAMERAS

WHEREAS, on March 27, 2018, the City Council adopted Ordinance 7,592-N.S., which is known as the Surveillance Technology Use and Community Safety Ordinance (“Ordinance”); and

WHEREAS, Section 2.99.050 of the Ordinance requires that the City Manager shall submit a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each piece of technology governed by the Ordinance that had been possessed or used by the City prior to the effective date of the Ordinance; and

WHEREAS, Section 2.99.070 of the Ordinance requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November; and

WHEREAS, the Surveillance Acquisition Reports and Surveillance Use Policies for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras satisfy the requirements of the Ordinance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley:

Section 1. Pursuant to Section 2.99.060, as it pertains to the use of Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras, the City Council hereby finds and determines the following:

- a. The benefits of using the technologies outweigh the costs;
- b. The policies attached to this resolution safeguard civil liberties; and
- c. No feasible alternatives exist with similar utility that will have a lesser impact on civil rights or liberties.

Section 2. The City Council hereby accepts the Surveillance Technology Reports, Surveillance Acquisition Reports, and Surveillance Use Policies for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras.

ATTACHMENT 2:
BODY WORN CAMERAS

Surveillance Technology Report: Body Worn Cameras

March 1, 2018 – Sept. 30, 2019

| <p>Description</p> | <p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Body Worn Cameras are used to capture video recordings of contacts between department personnel and the public, to provide an objective record of these events. These recording are used in support of criminal prosecutions, to limit civil liability, increase transparency and enhance professionalism and accountability in the delivery of police services to the community.</p> <p>Body Worn Camera files are shared with the Alameda County District Attorney’s office in support of prosecution for crime, and may be shared with other law enforcement agencies to support criminal investigations.</p> <p style="text-align: center;">Summary of Body Worn Camera Videos Uploaded March 1, 2018 to Sept. 30, 2019</p> <table style="margin-left: auto; margin-right: auto;"> <tr> <td>Total Number of Videos</td> <td style="text-align: right;">42,677</td> </tr> <tr> <td>Total Hours of Videos</td> <td style="text-align: right;">10,681.93</td> </tr> <tr> <td>Total GB of Videos</td> <td style="text-align: right;">20,669.11</td> </tr> </table> <p style="text-align: center;">Summary of All Evidence Created March 1, 2018 to Sept. 30, 2019</p> <table style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th><u>Type</u></th> <th>Count of files</th> <th>Size (in Mb)</th> <th>GBs Storage</th> </tr> </thead> <tbody> <tr> <td>Audio</td> <td style="text-align: right;">2,315</td> <td style="text-align: right;">23,855.82</td> <td style="text-align: right;">23.86</td> </tr> <tr> <td>Document</td> <td style="text-align: right;">125</td> <td style="text-align: right;">17.56</td> <td style="text-align: right;">0.02</td> </tr> <tr> <td>Image</td> <td style="text-align: right;">64,931</td> <td style="text-align: right;">270,329.62</td> <td style="text-align: right;">270.33</td> </tr> <tr> <td>Other</td> <td style="text-align: right;">896</td> <td style="text-align: right;">118,080.19</td> <td style="text-align: right;">118.08</td> </tr> <tr> <td>Videos*</td> <td style="text-align: right;">70,670</td> <td style="text-align: right;">32,489,190.50</td> <td style="text-align: right;">32,489.19</td> </tr> <tr> <td>Grand Totals</td> <td style="text-align: right;">138,937</td> <td style="text-align: right;">32,901,473.69</td> <td style="text-align: right;">32,901.47</td> </tr> </tbody> </table> <p>* Includes all uploaded BWC videos <i>and</i> all other videos booked into the evidence management system. Other videos include iPhone videos uploaded, security camera video, copies of BWC videos (for redaction, etc.), and any other videos.</p> | Total Number of Videos | 42,677 | Total Hours of Videos | 10,681.93 | Total GB of Videos | 20,669.11 | <u>Type</u> | Count of files | Size (in Mb) | GBs Storage | Audio | 2,315 | 23,855.82 | 23.86 | Document | 125 | 17.56 | 0.02 | Image | 64,931 | 270,329.62 | 270.33 | Other | 896 | 118,080.19 | 118.08 | Videos* | 70,670 | 32,489,190.50 | 32,489.19 | Grand Totals | 138,937 | 32,901,473.69 | 32,901.47 |
|-------------------------------------|---|------------------------|------------------|-----------------------|-----------|--------------------|-----------|-------------|----------------|--------------|-------------|-------|-------|-----------|-------|----------|-----|-------|------|-------|--------|------------|--------|-------|-----|------------|--------|---------|--------|---------------|-----------|---------------------|----------------|----------------------|------------------|
| Total Number of Videos | 42,677 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Total Hours of Videos | 10,681.93 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Total GB of Videos | 20,669.11 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <u>Type</u> | Count of files | Size (in Mb) | GBs Storage | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Audio | 2,315 | 23,855.82 | 23.86 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Document | 125 | 17.56 | 0.02 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Image | 64,931 | 270,329.62 | 270.33 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Other | 896 | 118,080.19 | 118.08 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Videos* | 70,670 | 32,489,190.50 | 32,489.19 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Grand Totals | 138,937 | 32,901,473.69 | 32,901.47 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>Geographic Deployment</p> | <p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>Body Worn Cameras are worn by all BPD uniformed officers city-wide at all times; BWCs are not deployed based on geographic considerations.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>Complaints</p> | <p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There have been no complaints about the deployment and use of Body Worn Cameras.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

| | |
|-------------------------------------|---|
| <p>Audits and Violations</p> | <p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>File meta-data are routinely reviewed by our BWC manager, to ensure required meta-data fields are completed. There have been no complaints with regards to violations of the Surveillance Use Policy.</p> |
| <p>Data Breaches</p> | <p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There have been no known data breaches or other unauthorized access to BWC data.</p> |
| <p>Effectiveness</p> | <p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>Body Worn Cameras have proven effective in supporting criminal prosecutions, as video footage is available for all criminal prosecutions.</p> <p>Body Worn Cameras have been effective for training purposes, as footage can be reviewed in incident de-briefs.</p> <p>Body Worn Cameras have been extremely effective in support of Internal Affairs investigations and Use of Force Review.</p> |
| <p>Costs</p> | <p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual cost for the Body Worn Cameras, including cameras, replacement cameras, software, and Axon's secure digital evidence management system is approx. \$204,000 per year over a five-year, \$1,218,000 contract. The systems cost for the 19 month period of this initial report was \$385,700.</p> <p>There is one full-time employee assigned to the BWC program, an Applications Programmer Analyst II, at a cost of \$168,940 per year, including benefits.</p> |

Surveillance Use Policy - Body Worn Cameras

1300.1 PURPOSE

This Surveillance Use Policy is issued in compliance with BMC 2.99, and incorporates by reference language from the Berkeley Police Department Body Worn Camera Policy #425 and adds elements as required by BMC 2.99.

The Berkeley Police Department recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel. (Ref. policy 425.2)

1300.2 AUTHORIZED USE

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

- (a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (c) Self-initiated field contacts in which a member would normally notify the Communications Center.
- (d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.
- (e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is a member expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated by members in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the member can do so safely.

Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Members shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation. (Ref. policy 425.7)

1300.2.1 PROHIBITED USE

Members are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are prohibited from retaining BWC recordings. Members shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule. (Ref. policy 425.13)

1300.3 DATA COLLECTION

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited. (Ref. policy 425.3)

1300.4 DATA ACCESS

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 1300.4.1 below. Members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report. (Ref. policy 425.17)

1300.4.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH

- (a) In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s) shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary. The involved member(s) shall not access or obtain their footage of the incident until such time as the criminal investigator(s) have reviewed the video files.

It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.

- (b) Personnel uploading secured BWC video files shall not view the files unless authorized.
- (c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.
- (d) Prior to the conclusion of the criminal interview process, the involved member and/ or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording.
- (e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officers(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

Officers who are involved in any critical incident where video recordings exist depicting the involved officer, either as a subject officer or witness, shall be provided the following admonishment to the initial interview or submission of the initial written report:

"In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your statement explains your state of mind at the time of the incident." (Ref. policy 425.17.1)

1300.4.2 SUPERVISORY REVIEW

With the exception of section 1300.4.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates. (Ref. policy 425.17.2)

1300.4.3 INVESTIGATORY REVIEW

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct, or whenever such recordings support review of the member's performance. (Ref. policy 425.17.3)

- (a) Recorded files may also be reviewed:
 - 1. Upon approval by a supervisor, by any member of the Department who is participating

in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.

2. Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
3. By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.
4. Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.

(b) Investigators conducting criminal or internal investigations shall:

1. Advise the coordinator to restrict access to the BWC file in criminal or internal investigations, as necessary.
2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

1300.4.4 TEACHING OR LEARNING TOOL

BWC files may also be reviewed by training staff regarding specific incidents where such files may serve as an internal learning or teaching tool. In the event that videos are intended to be used for training purposes, the involved officer(s) will first be consulted. If he/she objects to the use of the video, such objection shall be submitted to the person in charge of training who shall weigh the value of the video for training against the officer(s) objections and basis for the objection. Should the person in charge of training refuse to grant the request of the involved officer(s), the matter shall be heard by the Chief of Police, or his/her designee, prior to utilizing the video. (Ref. policy 425.17.4)

1300.4.5 COB CIVIL CLAIMS AND LAWSUITS

BWC recordings may be reviewed and used by City of Berkeley defense counsel for the purposes of defending the city in civil claims and lawsuits, with the authorization of the Chief of Police, or his/her designee. (Ref. policy 425.17.5)

1300.5 DATA PROTECTION

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for uploading the data. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. (Ref. policy 425.14)

1300.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of BWC data. These policies will ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

1300.7 DATA RETENTION

The Department shall retain all recordings for a minimum of 60 days. Incidents involving consensual contacts, and aid to citizens will be retained for six months, and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days. (Ref. policy 425.15)

1300.8 PUBLIC ACCESS

Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted under Government Code § 6254(f) and BPD General Order R-23 (Release of Public Records and Information). General Order R-23 does not authorize release of investigative files or documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy."

Access to recorded files will be granted for the purposes of review to media personnel or the general public with permission of the Chief of Police, or his/her designee, subject to General Order R-23 and privacy protections indicated in this policy. (Ref. policy 425.18)

1300.9 THIRD-PARTY DATA-SHARING

1300.9.1 CITY ATTORNEY

All recordings should be reviewed by the Custodian of Records and the City Attorney's Office prior to public release, see General Order R-23 (Release of Public Records and Information).

In the event that the Police Department or City Department intends to release or publish for any purpose video recordings where officers are captured on video or the video depicts actions taken by them in the course of the performance of their official duties, those officers shall be given written notice of the intention to release or publish said video at least 48 hours prior to such release.

BPD may, without prior notice to involved officers, share video footage with law enforcement, national security, military, or other government agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur. (Ref. policy 425.18)

1300.9.2 POLICE REVIEW COMMISSION (PRC)

Access to recorded files will be granted for the purposes of review to the Police Review Commission Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation. (Ref. policy 425.18.1)

- (a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.
- (b) The PRC Officer and PRC investigator shall not make or create a copy of any evidence file, nor make or allow to be made any audio or video recording of any evidence file while it is being streamed and viewed from the evidence management system.
- (c) The PRC Officer and PRC Investigator shall not allow any unauthorized individuals to view or access evidence files.
- (d) The evidence management system associates an audit trail record with each evidence file, thereby logging the date, time, user, activity, and client IP address occurring during each evidence file access.
- (e) The evidence management system shall only be accessed on City premises.
- (f) The Department retains custody and control of the recordings, and content of the video will be subject to applicable legal standards including, but not limited to the confidentiality requirements of the Public Safety Officers' Procedural Bill of Rights, (Government Code § 3300, et seq., Penal Code § 832.7, and the California Public Records Act; Government Code § 6250, et seq.)

1300.10 TRAINING

Training for the operation of BWC's shall be provided by BPD personnel. All BPD personnel who use BWC's shall be provided a copy of this Surveillance Use Policy.

1300.11 AUDITING AND OVERSIGHT

Division Captains for divisions utilizing BWC's shall ensure compliance with this Surveillance Use Policy.

1300.12 MAINTENANCE

The BWC system will be maintained by the Applications Programmer Analyst and assigned

Department of Information and Technology (IT) staff.

The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code § 832.18) (Ref policy 425.4):

- (a) Establishing a system for uploading, storing and security of recordings.
- (b) Designating persons responsible for uploading recorded data.
- (c) Establishing a maintenance system to ensure availability of BWCs.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.
- (h) All recordings made by members acting in their official capacity shall remain the property of the Department. Subject to the provisions of this Policy, members shall have no expectation of privacy or ownership interest in the content of these recordings.

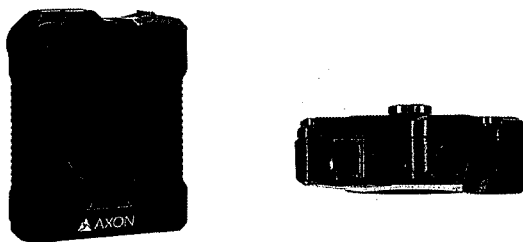
1300 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS

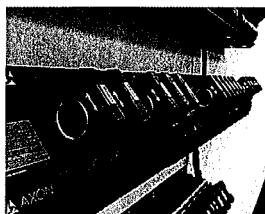
BODY WORN CAMERAS (BWCs)**A. DESCRIPTION**

The BWC system consists of four main components: The camera, the docking station, and the Digital Information Management System (DIMS) and smartphone applications.

The first component, the Axon camera, is a system which incorporates an audio and video recording device. It is designed to record events in real time for secure storage, retrieval, and analysis. The camera is to be attached to an officer's uniform and is powered by an internal rechargeable battery. The camera features low-light performance, full-shift battery life, a capture rate of 30 frames per second with no dropped frames, HD video, pre-event buffering, multi-camera playback, and the ability to automatically categorize video using the police department's computer aided dispatch system. An officer can start and stop recording by pressing a button on the front of the camera. The camera does not contain a screen for footage review.



The second component of the system is the docking station. Once the Axon camera is placed in the docking station it recharges the camera's battery. The dock also triggers the uploading of data from the camera to a cloud based Digital Information Management System (DIMS) called Evidence.com. The dock does not directly provide functionality to view, modify or delete video data stored on Axon cameras.



The third component is the Digital Information Management System called Evidence.com. Evidence.com streamlines data management and sharing on one secure platform. The evidence management system is comprehensive, secure, and intuitive to use. The DIMS is located in a cloud-based data center for security, scalability, and ease of administration. Users can add

1300 APPENDIX A**BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS**

metadata to existing videos such as associated case numbers, incident type, incident dispositions, etc. to make the videos easier to find. However, the videos themselves cannot be altered by the user.

The fourth component of the system to be utilized are two Axon mobile applications, which allow officers to collect and review evidence in the field and more effectively use their BWCs. The applications use secure Bluetooth and Wi-Fi technology to access the BWC systems and footage. These applications are compliant with US Department of Justice evidentiary standards, meaning that they are both secure and are set up in a way that prohibits the altering or destruction of evidence. The applications are called Axon View and Axon Capture. Axon View allows users to change their camera settings, view live video, and review and tag recorded videos while they are stored on the BWC. Recorded videos remain in the BWC's memory, and cannot be manipulated or deleted. Axon Capture allows officers to use their city-issued smartphone's camera and microphone to take photographs, and record audio and video, and to upload this data directly to Evidence.com. These applications do not allow users to alter, manipulate, or edit any of the footage recorded by the BWC. These applications use secure technology to add value and efficiency to the BWC program.

B. PURPOSE

The primary objective of the BWC system is to document officer contacts, arrests, and critical incidents. Video footage collected by the BWCs will be used as evidence in both criminal and administrative investigations. Video footage not relevant to any investigation will be discarded after a defined retention period.

In instances where the officer might be expected to take law enforcement action of any kind, the officer is expected to record the encounter for the benefit of both the officer and the member of the public.

1. The BWC shall be activated in any of the following situations:
 - i. All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
 - ii. Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
 - iii. Self-initiated field contacts in which a member would normally notify the Communications Center.
 - iv. Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.

1300 APPENDIX A**BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS**

- v. Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- vi. Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is an officer expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the user can do so safely.

Officers should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Officers shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation.

2. Prohibited uses of the BWC system include:

- i. Officers shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police, or his/her designee.
- ii. Officers are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.
- iii. Officers are prohibited from retaining BWC recordings.
- iv. Officers shall not duplicate or distribute such recordings, except for department business purposes.

C. LOCATION

Officers may use BWCs anywhere where officers have jurisdiction to operate as sworn officers, in accordance with BPD policy #425.

D. IMPACT

With the introduction of BWCs, officers record all enforcement contacts with the public. To that end, an officer could find themselves engaged in their lawful duties in both public and private areas. Additionally, due to the nature of law enforcement work, an officer may be required to engage in sensitive conversations with individuals of all ages, including children.

The right to maintain someone's anonymity versus the need to gain information to maintain public safety is of paramount concern. The Department recognizes that all people have a right to privacy and is committed to protecting and safeguarding civil rights by adhering to the

1300 APPENDIX A**BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS**

strictest requirements of both state and federal law concerning release of audio/video recordings.

E. MITIGATION

In order to minimize violations of privacy, BWC policy provides that:

1. Officers should record any incident they feel would be appropriate or valuable to document. The BWC policy shall require officers to activate the BWC under the criteria listed above.
2. Officers should not activate the BWC and/or use caution when entering a public locker room, changing room, restroom, doctor's or attorney's office, or other place where individuals unrelated to the investigation are present and would have a heightened expectation of privacy unless the officer is investigating criminal activity or responding to a call for service.
3. BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy.
4. BWC footage will be retained or released in accordance with applicable state and federal law. Criminal defendants will have access to relevant BWC footage via the court discovery process.
5. Officers are prohibited from retaining BWC recordings, Officers shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.
6. Officers are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. Officers may request restriction and subsequent deletion of an accidental recording according to the BWC policy.
7. Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted by law and department policy. Department policy does not authorize release of investigative files or documents that would constitute an unwarranted invasions of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy"

F. DATA TYPES AND SOURCES

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigations, and other proceedings protected by confidentiality laws and department policy.

1300 APPENDIX A**BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS**

The BWC collects video and audio recordings of events occurring in the user's presence. As each video is created, the system automatically stamps the video with the current date/time and the camera user's identity. The user has the option to add metadata manually to existing recordings after they are created. Such metadata may include but is not limited to:

1. Category of contact (from Department's defined list)
2. Disposition of contact (arrest, citation, etc.)
3. Associated case number

G. DATA SECURITY

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for transferring the data into the digital evidence management system. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings.

Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited. The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code Section 832.18) (Ref. policy 425.14):

1. Establishing a system for uploading, storing and security of recordings.
2. Designating persons responsible for uploading recorded data.
3. Establishing a maintenance system to ensure availability of BWCs.
4. Establishing a system for tagging and categorizing data according to the type of incident captured.
5. Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
6. Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
7. Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file,

1300 APPENDIX A**BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS**

thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

H. FISCAL COST

In 2017, the Berkeley City Council approved a resolution authorizing a contract between BPD and Axon. Axon was chosen after a competitive Request for Proposal (RFP) process. The contract will not exceed \$1,218,103 and includes the cost of 200 body worn cameras, charging stations, accessories, software licenses, training and unlimited storage for five years. The purchase also includes replacement cameras and charging stations during the third and fifth year of the contract.

There will be an annual cost of approximately \$250,000 to the police department's budget for a staff person to administer the body worn camera program beginning in FY 2019.

I. THIRD PARTY DEPENDENCE AND ACCESS

All BWC data will be uploaded and stored on Axon Cloud Services, Evidence.com. Axon complies with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information transferred from the European Union and Switzerland to the United States (collectively, "Privacy Shield"). Axon has certified to the U.S. Department of Commerce that it adheres to the Privacy Shield Principles.

J. ALTERNATIVES

Officers rely primarily on traditional policing techniques to gather evidence related to criminal investigations such as speaking to witnesses and suspects, gathering information from observations, and using standard data aggregation systems. These methods will continue to be employed as primary investigative tools that will be supplemented by use of BWCs to document police activity.

BWC technology provides video and audio documentation of policing activity in addition to the oral and written statements of officers, victims, and witnesses. Alternatives to the use of BWCs would be vehicle-based cameras and/or not utilizing BWCs. However, BPD sees the use of BWCs as an integral strategy to strengthen police transparency, prevent and resolve complaints against the police by civilians, document police-public interaction, and promote the perceived legitimacy and sense of procedural justice that communities have about their departments. There is a broad consensus – among community leaders, the ACLU, the Department of Justice, the Berkeley Police Department, and elected officials – that body-worn cameras can be an important tool for improving the high-quality public service expected of police officers.

1300 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS

K. EXPERIENCE OF OTHER ENTITIES

Numerous police agencies have adopted BWCs as a tool to help combat crime, to reduce citizen complaints and to reduce use of force situations. Many departments have developed their own usage policies which may include standards for required officer use, supervisory review, storage and data retention standards, and internal and public access.

A report for the U.S. Bureau of Justice Administration, https://www.bja.gov/bwc/pdfs/14-005_Report_BODY_WORN_CAMERAS.pdf - pages 6-8, cites a 2013 Rialto, CA study that showed that the use of BWCs led to a 59 percent decrease in UOF and an 87.5 percent decrease in citizen complaints. Likewise, the Mesa, AZ report noted in "Impact" Section above also points to large decreases in UOF and citizen complaints.

The 2017 Police Body Worn Cameras: A Policy Scorecard, <https://www.bwccscorecard.org/>, provides an analysis of how scores of different police agencies have employed BWCs through a defined list of metrics.

Body Worn Cameras

425.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable Body Worn Cameras (BWCs) by members of this department while in the performance of their duties.

This policy does not apply to non-BWC evidence, including other methods of audio or video recordings, interviews or interrogations conducted at any Berkeley Police Department facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

425.2 POLICY

The Berkeley Police Department recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel.

While recordings obtained from BWCs provide an objective record of events, it is understood that video recordings do not necessarily capture all events, activities and information, or reflect the full experience of the individual member(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events as perceived and recalled by the involved member. Specifically, it is understood that the BWC will capture information that may not have been seen and/or heard by the involved member and that the involved member may see and hear information that may not have been captured by the BWC.

425.3 CONFIDENTIALITY AND PROPER USE OF RECORDINGS

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited.

425.4 COORDINATOR

The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code § 832.18):

- (a) Establishing a system for uploading, storing and security of recordings.
- (b) Designating persons responsible for uploading recorded data.

Berkeley Police Department

Law Enforcement Services Manual

Body Worn Cameras

- (c) Establishing a maintenance system to ensure availability of BWCs.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

All recordings made by members acting in their official capacity shall remain the property of the Department. Subject to the provisions of this Policy, members shall have no expectation of privacy or ownership interest in the content of these recordings.

425.5 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member who is assigned to wear a BWC will be responsible for making sure that he or she is equipped with a BWC issued by the Department, and that the BWC is in good working order. If the BWC is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/her supervisor to permit the supervisor or other department employee to provide the member with a functioning BWC as soon as practicable. Uniformed members should wear the recorder in a conspicuous manner as prescribed by the Department, to provide a generally unobstructed camera view of contacts between members of the public and department members.

Members lawfully engaged in their duties as a police officer are not required to obtain consent from, or give notice to, members of the public, prior to recording with their BWC.

Upon the approval of the Chief of Police, or his/her designee, non-uniformed members lawfully engaged in their duties as a police officer may use an approved BWC.

Members are required to document the existence of a recording in any report or other official record of the contact, such as a CAD entry, including any instance where the member is aware that the BWC malfunctioned or the member deactivated the recording. In the event activity outlined in section 425.7 is not captured in whole or in part the member shall document this and explain in their report their understanding, if any, of why the footage was not captured in the recording.

425.6 SUPERVISOR RESPONSIBILITIES

At such time as the scene is considered secure and safe, the on-scene supervisor shall take immediate physical custody of involved officer's/officers' BWC when the device may have captured an incident involving an officer-involved shooting or use of force resulting in death or great bodily injury, and shall ensure the data is uploaded in a timely manner as prescribed by BPD policy

Berkeley Police Department

Law Enforcement Services Manual

Body Worn Cameras

(Penal Code § 832.18). Supervisors may review relevant BWC video and audio files in the field in furtherance of their duties and responsibilities.

Supervisors shall also review relevant BWC recordings prior to submitting any administrative reports.

425.7 ACTIVATION OF THE BODY WORN CAMERA

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

- (a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (c) Self-initiated field contacts in which a member would normally notify the Communications Center.
- (d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.
- (e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is a member expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated by members in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the member can do so safely.

Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Members shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation.

Berkeley Police Department

Law Enforcement Services Manual

Body Worn Cameras

425.8 VICTIMS AND WITNESSES OF CRIMES; INFORMANTS

In the event that an officer has the opportunity to record interviews of victims and witnesses of crimes, they shall consider the following:

- (a) **Witnesses:** In the event a crime witness or a member of the community wishes to report or discuss criminal activity anonymously, officers have the discretion to not record. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the witness's recorded statement. In cases where a witness requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.
- (b) **Victims:** Upon request by the victim, officers have the discretion to not record the interview. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the victim's recorded statement. In cases where a victim requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.
 - 1. **Domestic Violence Victims:** Members should attempt to record interviews of domestic violence victims to facilitate future prosecution efforts and discourage later recanting of statements. Members should also record interviews with children who witness domestic violence, when the child is willing.
 - 2. **Child Abuse and Sexual Assault Victims:** Members shall have the discretion to record, absent any request to not record the interview by victims, witnesses, or non-suspect parents of victims, during child abuse and/or sexual assault investigations.
- (c) **Informants:** Members shall not activate their recorders when conducting an interview or engaging in a conversation with a confidential informant, unless needed as evidence.

Members have no obligation to advise a victim or witness that he or she is being recorded, but may do so at their discretion. When a victim or witness requests they not be recorded, members may consider their request (See Penal Code 632).

Members shall remain sensitive to the dignity of all individuals being recorded and exercise discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy concerns may outweigh any legitimate law enforcement interest in recording. Recording should resume when privacy concerns are no longer at issue unless the member determines that the circumstances no longer fit the criteria for recording.

Informal community interactions differ from "consensual encounters" in which members make an effort to develop reasonable suspicion to detain or probable cause to arrest. To strengthen relationships between police and citizens, members may use discretion regarding the recording of informal, non-enforcement related interactions with members of the community.

Berkeley Police Department

Law Enforcement Services Manual

Body Worn Cameras

425.9 ACTIVATION IN CROWD CONTROL SITUATIONS

During crowd control, protest or mass arrest incidents, members shall use their BWCs consistent with this policy, or when directed by the Incident Commander. The Incident Commander shall document his or her orders to activate in an appropriate report (e.g. Operations Plan or After Action Report).

The limitations outlined in the Intelligence Procedures for First Amendment Activities Policy governing intelligence-gathering procedures for First Amendment activities, apply to the use of BWCs and other recording devices.

Video recording of individuals who are picketing or engaged in peaceful protest will be avoided unless the officer believes a violation of criminal law is occurring, may occur, or if the officer interacts with a participant or third party to the event, or a participant or third party initiates contact with the member.

425.10 SURREPTITIOUS USE OF THE BWC

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation.

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police, or his/her designee.

Members are prohibited from using department-issued BWCs for non-work related personal activity. BWCs will not be activated in places where members have a reasonable expectation of privacy, such as workplace locker rooms, dressing rooms, members' private vehicles or restrooms.

425.11 CESSATION OF RECORDING

Once activated, the member may mute or deactivate their BWC at any time based on their discretion, in the following circumstances:

- (a) Discussion of tactical or confidential information with other law enforcement personnel.
- (b) Where members are on a perimeter or assigned to a static post where the member's direct participation in the incident is complete and they are not actively part of an investigation.
- (c) If it is necessary to discuss issues or concerns with an employee, supervisor, doctor, nurse, or paramedic in private.
- (d) In the member's judgment, a recording would interfere with his or her ability to conduct an investigation.

Decisions regarding the reason for muting or BWC deactivation shall be noted on the recording, or otherwise documented.

Berkeley Police Department

Law Enforcement Services Manual

Body Worn Cameras

Members shall cease audio/video recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation. This does not apply to conversations with paramedics or EMTs during their response at a scene, and during transport.

425.12 EXPLOSIVE DEVICE

Many portable recorders, including BWCs and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

Members believing that the use of a BWC may detonate an explosive device may deactivate their BWC in such cases.

425.13 PROHIBITED USE OF BODY WORN CAMERAS

Members are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are prohibited from retaining BWC recordings. Members shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.

Members may not use personally owned recorders (e.g. personal cell phone) to document contacts unless exigent circumstances exist to warrant the use of personally owned recording devices. Regardless, if a member is using a department-issued BWC, and/or another recording device, members shall comply with the provisions of this policy, including retention and release requirements. In every event where members use any recording device aside from or in addition to their department-issued BWC, the member shall document and explain the use and the exigent circumstance in their police report (e.g. the BWC failed and evidence needed to be captured at that moment in time).

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

425.14 PROCESSING AND HANDLING OF RECORDINGS

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for uploading the data. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

Berkeley Police Department

Law Enforcement Services Manual

Body Worn Cameras

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. Members may request restriction and subsequent deletion of an accidental recording as described under section 425.16 below.

425.15 RETENTION REQUIREMENTS

The Department shall retain all recordings for a minimum of 60 days. Incidents involving consensual contacts, and aid to citizens will be retained for six months, and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days.

425.16 ACCIDENTAL RECORDING - REQUEST FOR RESTRICTION

In the event of an accidental or sensitive personal recording of non-departmental business activity, where the resulting recording is of no investigative or evidentiary value, the recording employee may request that the file be restricted pending 60-day deletion by submitting an email request via their chain of command to the Professional Standards Division Captain. The Professional Standards Division Captain will approve or deny the restriction request. In cases where the request is denied, an appeal may be submitted to the Chief of Police, or his/her designee, for restriction authorization. In all cases of restriction requests, a determination should be made within seven calendar days.

425.17 REVIEW OF RECORDINGS BY A MEMBER

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 425.17.1 below. Members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report.

425.17.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH

- (a) In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s) shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary. The involved member(s) shall not access or obtain their footage of the incident until such time as the criminal investigator(s) have reviewed

Berkeley Police Department

Law Enforcement Services Manual

Body Worn Cameras

the video files. It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.

- (b) Personnel uploading secured BWC video files shall not view the files unless authorized.
- (c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.
- (d) Prior to the conclusion of the criminal interview process, the involved member and/or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording.
- (e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officer(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

Officers who are involved in any critical incident where video recordings exist depicting the involved officer, either as a subject officer or witness, shall be provided the following admonishment to the initial interview or submission of the initial written report:

"In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your statement explains your state of mind at the time of the incident."

425.17.2 SUPERVISORY REVIEW

With the exception of section 425.17.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates.

Berkeley Police Department

Law Enforcement Services Manual

Body Worn Cameras

425.17.3 INVESTIGATORY REVIEW

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct, or whenever such recordings support review of the member's performance.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.
- (b) Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
- (c) By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.
- (d) Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.

Investigators conducting criminal or internal investigations shall:

1. Advise the coordinator to restrict access to the BWC file in criminal or internal investigations, as necessary.
2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

425.17.4 TEACHING OR LEARNING TOOL

BWC files may also be reviewed by training staff regarding specific incidents where such files may serve as an internal learning or teaching tool. In the event that videos are intended to be used for training purposes, the involved officer(s) will first be consulted. If he/she objects to the use of the video, such objection shall be submitted to the person in charge of training who shall weigh the value of the video for training against the officer(s) objections and basis for the objection. Should the person in charge of training refuse to grant the request of the involved officer(s), the matter shall be heard by the Chief of Police, or his/her designee, prior to utilizing the video.

425.17.5 COB CIVIL CLAIMS AND LAWSUITS

BWC recordings may be reviewed and used by City of Berkeley defense counsel for the purposes of defending the city in civil claims and lawsuits, with the authorization of the Chief of Police, or his/her designee.

425.18 RELEASE OF RECORDINGS

All recordings should be reviewed by the Custodian of Records and the City Attorney's Office prior to public release, see General Order R-23 (Release of Public Records and Information).

Berkeley Police Department

Law Enforcement Services Manual

Body Worn Cameras

In the event that the Police Department or City Department intends to release or publish for any purpose video recordings where officers are captured on video or the video depicts actions taken by them in the course of the performance of their official duties, those officers shall be given written notice of the intention to release or publish said video at least 48 hours prior to such release.

BPD may, without prior notice to involved officers, share video footage with law enforcement, national security, military, or other government agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur.

425.18.1 POLICE REVIEW COMMISSION (PRC)

Access to recorded files will be granted for the purposes of review to the Police Review Commission Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation.

- (a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.
- (b) The PRC Officer and PRC investigator shall not make or create a copy of any evidence file, nor make or allow to be made any audio or video recording of any evidence file while it is being streamed and viewed from the evidence management system.
- (c) The PRC Officer and PRC Investigator shall not allow any unauthorized individuals to view or access evidence files.
- (d) The evidence management system associates an audit trail record with each evidence file, thereby logging the date, time, user, activity, and client IP address occurring during each evidence file access.
- (e) The evidence management system shall only be accessed on City premises.
- (f) The Department retains custody and control of the recordings, and content of the video will be subject to applicable legal standards including, but not limited to the confidentiality requirements of the Public Safety Officers' Procedural Bill of Rights, (Government Code § 3300, et seq., Penal Code § 832.7, and the California Public Records Act; Government Code § 6250, et seq.)

425.18.2 PUBLIC RECORDS ACT (PRA) REQUEST

Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted under Government Code § 6254(f) and BPD General Order R-23 (Release of Public Records and Information). General Order R-23 does not authorize release of investigative files or documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy."

Berkeley Police Department

Law Enforcement Services Manual

Body Worn Cameras

425.18.3 MEDIA

Access to recorded files will be granted for the purposes of review to media personnel or the general public with permission of the Chief of Police, or his/her designee, subject to General Order R-23 and privacy protections indicated in this policy.

425.19 COMPLIANCE WITH BMC 2.99 ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY

This policy shall comply at all times with the requirement of BMC 2.99 Acquisition and Use of Surveillance Technology.

425.20 TRAINING REQUIRED

Officers who are assigned BWCs must complete department-approved training in the proper use and maintenance of the devices before deploying to the field.

As part of a continual improvement process, regular review should be conducted by BPD staff of the training on this policy and the related use of BWCs under this policy. Information resulting from the outcomes of this review shall be incorporated into the City Manager's annual "Surveillance Technology Report" as required under BMC 2.99 Acquisition and Use of Surveillance Technology.

The Department, Police Review Commission and other City Departments shall maintain the confidentiality of Department sworn employee personnel records as required by state and local law. Failure to maintain the confidentiality of Department sworn employee personnel records, whether or not intentional, may subject individuals to civil penalties and discipline, up to and including termination of employment.

ATTACHMENT 3:
Global Positioning System Tracking Devices

Surveillance Technology Report: Global Positioning System Tracking Devices

March 1, 2018 – Sept. 30, 2019

| | |
|-----------------------|--|
| Description | <p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Global Positioning System Trackers are used to track the movements of vehicles, bicycles, other items, and/or individuals for the purpose of investigating criminal activity.</p> <p>Global Positioning System (GPS) “Electronic Stake Out” (ESO) devices were deployed on “bait” bicycles eighty-five (85) times during this reporting period, resulting in forty-nine (49) arrests.</p> <p>GPS “Slap-N-Track” (SNT) devices were used in two investigations during this reporting period: (1) a robbery and laptop snatch series involving multiple cases and suspects in Berkeley and in the region, with all suspects ultimately arrested; and (2) a currently-active case involving a series of auto burglaries in Berkeley and in the region.</p> <p>Data may be shared with the District Attorney’s Office for use as evidence to aid in prosecution, in accordance with laws governing evidence; other law enforcement personnel as a part of an active criminal investigations; and other third parties, pursuant to a court order.</p> |
| Geographic Deployment | <p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>GPS ESO-equipped bikes were deployed primarily in commercial districts across the city where bikes are frequently stolen.</p> <p>GPS SNT devices are deployed with judicial pre-approval, based on suspect location, rather than geographical consideration.</p> |
| Complaints | <p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There were no complaints made regarding GPS Trackers.</p> |
| Audits and Violations | <p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>There were no audits and no known violations relating to GPS Trackers.</p> |
| Data Breaches | <p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There were no known data breaches relating to GPS Trackers.</p> |

| | |
|----------------------|---|
| <p>Effectiveness</p> | <p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>GPS Trackers continue to be very effective in apprehending bicycle thieves, many of whom are repeat offenders who've committed not only bike thefts, but other crimes as well. SNT trackers are effective in that they provide invaluable information on suspect vehicle location during the investigation of complex cases where suspects may be moving around the Bay Area and beyond.</p> <p>GPS Trackers greatly reduce costs associated with surveillance operations. A bike may be left for days. Surveillance operations generally involve four or more officers for the entire duration of an operation. A moving surveillance is extremely resource-intensive, requiring multiple officers in multiple vehicles for extended periods of time. Using both types of GPS trackers eliminates the need for officers' immediate presence until officers are ready to apprehend the suspect(s).</p> |
| <p>Costs</p> | <p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual cost for the GPS Trackers' data service is \$1,920; the total cost for the 19 month period of this initial report was \$3,040. Further information regarding costs is contained in Policy 1301a, the Surveillance Acquisition Report.</p> <p>There are staff time costs associated with preparing and placing SNT trackers. The investigator must prepare a search warrant and obtain a judge's approval, and a small number of officers must place the tracker on the suspect's car. The total number of hours is a fraction of the time it would take to do a full surveillance operation involving numerous officers.</p> <p>There are staff time costs associated with preparing ESO trackers and placing ESO tracker-equipped bikes for bait bike operations. These are on the order of two-four hours per operation. The total number of hours is extremely small, given the large number of operations, and resulting arrests.</p> |

Surveillance Use Policy - GPS Tracking Devices

1301.1 PURPOSE

Global Positioning System (GPS) tracking devices track the movements of vehicles, bicycles, cargo, machinery, other items, and/or individuals. GPS trackers electronically relay their precise location in real time, and thereby assist BPD in the recovery of evidence and arrest of suspects.

1301.2 AUTHORIZED USE

GPS trackers shall only be used during active criminal investigations. GPS trackers shall only be used pursuant to a lawfully issued search warrant, or with consent of the owner of the object to which the GPS tracker is attached.

GPS trackers shall only be utilized for law enforcement purposes.

1301.3 DATA COLLECTION

Location data may be obtained through the use of a GPS Tracker.

1301.4 DATA ACCESS

Access to GPS tracker data shall be limited to Berkeley Police Department (BPD) personnel utilizing the GPS Tracker(s) for active criminal investigations. Information may be shared in accordance with 1301.9 below.

In support of active criminal investigations, BPD personnel may receive GPS tracker data from probation or parole agencies which utilize GPS trackers (e.g. ankle monitors) as a condition of probation or parole.

1301.5 DATA PROTECTION

The data from the GPS tracker is encrypted by the vendor. The data is only accessible through a secure website to BPD personnel who have been granted security access.

1301.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. Provisions of this policy, including 1301.4 Data Access, 1301.5 Data Protection, 1301.7 Data Retention, 1301.8 Public Access and 1301.9 Third Party Data Sharing serve to protect against any unauthorized use of GPS tracker data. These procedures ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

1301.7 DATA RETENTION

A GPS Tracker data record consists of date, time, latitude, longitude, map address, and tracker

identification label. This data is stored indefinitely by the vendor. The data does not contain any images, names of subjects, vehicle information, etc.

Tracker data received from the vendor shall be kept in accordance with applicable laws, BPD policies that do not conflict with applicable law or court order, and/or as specified in a search warrant.

1301.8 PUBLIC ACCESS

Data collected and used in a police report shall be made available to the public in accordance with department policy and applicable state or federal law.

1301.9 THIRD-PARTY DATA-SHARING

Data collected from the GPS trackers may be shared with the following:

- (a) The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;
- (b) Other law enforcement personnel as part of an active criminal investigation;
- (c) Other third parties, pursuant to a Court Order.

1301.10 TRAINING

Training for the operation of the GPS trackers shall be provided by BPD personnel. All BPD personnel shall be provided with this Surveillance Use Policy.

1301.11 AUDITING AND OVERSIGHT

Division Captains or their designee shall ensure compliance with this Surveillance Use Policy.

1301.12 MAINTENANCE

GPS trackers shall only be obtained with the permission of the Investigations Division Captain or his/her designee. The Investigations Division Captain or his/her designee will ensure the trackers are returned when the mission/investigation is completed.

1301 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - GPS TRACKING DEVICES

GPS TRACKING DEVICES

A. DESCRIPTION

Global Positioning System (GPS) tracking devices track the movements of vehicles, bicycles, cargo, machinery, other items, and/or individuals.

The Berkeley Police Department currently uses two types of GPS Tracking Devices to track the movements of vehicles, bicycles, or other kinds of property. The manufacturer, 3SI Security Systems, describes them as follows:

1. The "Slap-n-Track" (SNT) tracker tracks vehicles, cargo, and other large assets for long deployments. Offers extended battery life, rugged and weatherproof housing, and optional magnets.
2. The "Electronic Stake Out" (ESO) tracker offers Law Enforcement miniaturized and covertly packaged GPS Tracking Solutions to target property crimes, especially pattern crimes, in their local jurisdictions.

B. PURPOSE

Global Positioning System (GPS) tracking devices provide precise, real-time location information during the conduct of active criminal investigations. GPS trackers are only used pursuant to a lawfully issued search warrant, or with consent of the owner of the object to which the GPS tracker is attached.

C. LOCATION

GPS tracking devices shall be deployed in locations consistent with the authority granted by consent or a lawfully issued search warrant or court order.

D. IMPACT

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. GPS Trackers are used in place of expensive, resource-intensive surveillance operations which typically involve multiple officers, often over long periods of time. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures utilized with GPS trackers help to ensure no unauthorized use of of GPS tracker data occurs. BPD Policy 1301 Surveillance Use Policy – GPS Tracking Devices ensure the use of GPS trackers and the resulting data are not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

1301 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - GPS TRACKING DEVICES

E. MITIGATION

Data from a GPS tracker is encrypted from the vendor. Data shall be maintained in a secure, non-public location, such as locations requiring security access or badge access, thereby safeguarding the public from any impacts identified in subsection (D).

F. DATA TYPES AND SOURCES

A GPS tracker data record consists of date, time, latitude, longitude, map address (derived by using latitude, longitude and Google maps), and tracker identification label. The data does not contain any images, names of subjects, vehicle information, etc.

G. DATA SECURITY

Data from a GPS tracker is encrypted by the vendor on secure servers. The data is only accessible through a secure website to BPD personnel who have been granted security access. Captains whose Divisions utilize GPS trackers are responsible for ensuring compliance with the procedures for utilizing GPS Trackers.

H. FISCAL COST

The initial cost of the GPS trackers totaled \$4,335.

- Between 2015-present BPD purchased 5 GPS "ESO" trackers for \$2,250 (\$450 each).
- In 2017 BPD purchased 3 GPS "SNT" trackers for \$2,085 (\$695 each).

The annual cost for the GPS data service totals \$1,920.

- The annual data service for the five ESO trackers is \$1,020 (\$204 each).
- The annual data service for the three SNT trackers is \$900 (\$300 each).

Personnel costs are minimal in that the GPS trackers are used as a resource during normal working hours.

GPS trackers are funded through the Investigations Division's general budget.

I. THIRD PARTY DEPENDENCE AND ACCESS

Data collected from the GPS trackers may be shared with the following:

- a. The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;
- b. Other law enforcement offices as part of a criminal investigation;
- c. Other third parties, pursuant to a Court Order.

1301 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - GPS TRACKING DEVICES

J. ALTERNATIVES

An alternative to the use of GPS trackers is to conduct resource-intensive surveillance operations utilizing numerous personnel over extended periods of time.

K. EXPERIENCE OF OTHER ENTITIES

The use of GPS tracker technology is common amongst law enforcement agencies throughout the country.

ATTACHMENT 4:
Automated License Plate Readers

Surveillance Technology Report: Automated License Plate Readers

March 1, 2018 – Sept. 30, 2019

| | |
|--------------------|--|
| <p>Description</p> | <p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Automated License Plate Readers (ALPRs) are used by Parking Enforcement Bureau vehicles for time zone parking and scofflaw enforcement. The City’s Transportation Division uses anonymized information for purposes of supporting the City’s GoBerkeley parking management program. ALPR use replaced the practice of physically “chalking” tires.</p> <p style="text-align: center;">Summary of ALPR Time Zone Enforcement Data</p> <p style="text-align: center;">Read Data</p> <p style="text-align: center;">There were an average of 9,075 “Reads” per working day (Based on one month’s data: 9/9/19-10/9/19)</p> <p style="text-align: center;">Hit Data</p> <p style="text-align: center;">There were 69,738 “Hits” 18,410 “Enforced Hits” resulted in citation issuance. 51,328 “Not Enforced” Hits resulted in no citation issuance. (Based on one year’s data: 10/9/18-10/9/19)</p> <p>Genetec is the vendor for the ALPR Time Zone enforcement system. A “read” indicates the ALPR system successfully read a license plate. A “hit” indicates the ALPR system detected a possible violation, which prompts the Parking Enforcement Officer to further assess the vehicle. In many cases, hits are “rejected” or “not enforced” because the Parking Enforcement Officer determines the vehicle has an appropriate placard or permit, or there is other information which precludes citation.</p> <p style="text-align: center;">Summary of ALPR Booting Scofflaw Enforcement Data</p> <p style="text-align: center;">255 vehicles booted from 9/1/18-6/30/19</p> <p>Paylock is the vendor for the ALPR Booting Scofflaw Enforcement Program. A single parking enforcement vehicle is equipped with the Paylock system ALPR. The Paylock ALPR system provides the operator a “hit” when a plate is recognized as having five or more unpaid parking tickets. The operator then further assesses the vehicle, confirms the citation data, and, if confirmed, creates a boot entry in Paylock, and boots the car.</p> <p>Paylock uploads and retains information to their secure server solely on <i>confirmed</i> boots or tows. Hits and reads are not retained in the Paylock server. Booting Scofflaw enforcement has been temporarily suspended due to the transition to a different citation management vendor.</p> |
|--------------------|--|

| | |
|-----------------------|---|
| | <p>All BPD ALPR data may only be shared with other law enforcement or prosecutorial agencies for official law enforcement purposes, or as otherwise permitted by law. All ALPR data is subject to the provisions of BPD Policy 415 - Immigration Law, and therefore may not be shared with federal immigration enforcement officials.</p> |
| Geographic Deployment | <p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>Only Parking Enforcement Vehicles are equipped with ALPRs. ALPRs are deployed based on areas where there are parking time restrictions. ALPRs are not deployed based on geographic considerations not related to parking and scofflaw enforcement.</p> |
| Complaints | <p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There have been no complaints about the deployment and use of Automated License Plate Readers.</p> |
| Audits and Violations | <p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>There have been no complaints of violations of the ALPR Surveillance Use Policy.</p> |
| Data Breaches | <p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There have been no known data breaches or other unauthorized access to Automated License Plate Reader data.</p> |
| Effectiveness | <p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>ALPRs have proven effective in parking enforcement for time zone enforcement.</p> <p>ALPRs have proven effective in supporting enforcement upon vehicles which have five or more unpaid citations. The ALPR's ability to read and check license plates while being driven greatly increases efficiency, allowing an operator to cover larger areas more quickly without having to stop except to confirm a hit.</p> |
| Costs | <p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual system maintenance cost for Genetec is \$47,000. This cost is borne by the Transportation Division, which also purchased the ALPR units used in Time Zone Enforcement.</p> <p>No Genetec LPR units were purchased during the period covered by this report.</p> <p>Genetec ALPR units are in use on 20 Parking Enforcement vehicles. Parking Enforcement personnel perform a variety of parking enforcement activities, and are not limited solely to time zone enforcement. Therefore, personnel costs specifically attributable to time zone enforcement are not tracked.</p> |

The cost of Paylock is \$140 per boot.

One Parking Enforcement Officer is assigned to scofflaw enforcement and abandoned auto enforcement on a full time basis. Assuming the Officer works approximately half their day on scofflaw enforcement, the annual personnel cost would be approximately one half a fulltime Parking Enforcement Officer's pay with benefits, or \$65,000.

Surveillance Use Policy - ALPR

1302.1 PURPOSE

This Surveillance Use Policy is issued in compliance with BMC 2.99, and incorporates by reference language from the Berkeley Police Department ALPR Policy #422 and adds elements as required by BMC 2.99.

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review. (Ref. policy 422.2)

1302.2 AUTHORIZED AND PROHIBITED USES USE

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53). (Ref. policy 422.4)

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used to support a patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped cars to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

1302.3 DATA COLLECTION

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law. (Ref. policy 422.5)

1302.4 DATA ACCESS

- (a) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (b) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.
- (c) If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

1302.5 DATA PROTECTION

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref. policy 422.6):

- (a) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (b) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action and parking enforcement.
- (c) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (d) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.

1302.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of ALPR data. These policies ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

1302.7 DATA RETENTION

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT) department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence. (Ref. policy 422.5)

- (a) Collected images and metadata of hits will not be stored for more than 365 days. Metadata of reads will not be stored for more than 30 days. Images of reads will not be transferred to the server.

1302.8 PUBLIC ACCESS

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. (Ref. policy 422.6 (a))
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question. (Ref. policy 422.6 (b))

1302.9 THIRD-PARTY DATA-SHARING

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law. ALPR data is subject to the provisions of BPD Policy 415, and hence may not be shared with federal immigration enforcement officials.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager. (Ref. policy 422.6 (e))

1302.10 TRAINING

Training for the operation of ALPR Technology shall be provided by BPD personnel. All BPD employees who utilize ALPR Technology shall be provided a copy of this Surveillance Use Policy.

1302.11 AUDITING AND OVERSIGHT

ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually. (Ref. policy 422.6 (g))

1302.12 MAINTENANCE

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data. (Ref. policy 422.3)

1302.12.1 ALPR ADMINISTRATOR

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref.

policy 422.3.1):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

AUTOMATED LICENSE PLATE READER (ALPR) DEVICES**A. DESCRIPTION**

Automated License Plate Readers (ALPRs) are high-speed, computer controlled camera systems that are typically mounted on Berkeley Police Department Parking Enforcement Vehicles.

ALPRs capture license plate numbers which come into view, along with the location, date and time. The data, which includes a photo of the front or the back of the car displaying the license plate, is then uploaded to a central server.

B. PURPOSE

The Berkeley Police Department's Parking Enforcement Unit utilizes vehicles equipped with ALPRs to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's also access information in the California Law Enforcement Telecommunications System's (CLETS) Stolen Vehicle System (SVS) database, which provides information on matches for stolen and wanted vehicles.

The Berkeley Police Department's Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates, and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding parking citation fees.

C. LOCATION

Parking Enforcement vehicles travel throughout the city; using the ALPRs as described above.

D. IMPACT

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures utilized with ALPR Units will help to ensure unauthorized use of its data. The procedures will ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

1302 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES

E. MITIGATION

All saved data will be safeguarded and protected by both procedural and technological means which are implemented to safeguard the public from any impacts identified in subsection (D). See subsection (G) for further.

F. DATA TYPES AND SOURCES

Photographs of license plates and location data may be obtained through the use of ALPR Units.

G. DATA SECURITY

The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

1. All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
2. Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action and parking enforcement.
3. Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
4. Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.

H. FISCAL COST

In 2015, Public Works brought an ALPR Contract to City Council. Council approved a contract for Public Works to buy five Genetec ALPR Units with PCS Mobile communication, for a pilot program for \$450,000.

In 2017, after success with the program, City Council approved an amendment to the contract, allowing Public Works to purchase 15 more ALPR Units for Parking Enforcement vehicles, and to continue its use of PCS Mobile, for 1,200,000. The money was allocated from the goBerkeley/Federal Highway Administration Parking Meter Fund.

Yearly service for the ALPR Units includes warranties, hosting services, cellular connection, mobile computing, and training which varies. The costs through fiscal year 2022 are currently estimated at \$1,175,000.

1302 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES

Personnel costs are minimal in that the ALPR Units are used as a resource during normal working hours.

I. THIRD PARTY DEPENDENCE AND ACCESS

1. Vendor Access-Scofflaw Enforcement: The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:
 - a. All data captured by the ALPR is stored on the booting vehicle's laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.
 - b. When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.
2. Vendor Access-General Parking Enforcement and goBerkeley Program: The contracted vendor for the City's Parking Enforcement ALPR is currently Genetec. The city uses Genetec ALPRs to support efficient enforcement of posted time limit parking and Residential Preferential Parking permits.
 - a. In addition, Genetec periodically provides reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that the City's program can analyze data about parking demand. These reports do not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports consist of completely anonymized information, using identification numbers that are not associated with a particular license plate or registered owner.
 - b. The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and Residential Permit Pass (RPP) area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.
3. Department of Information Technology Access: Technical support and assistance for ALPR's is provided by the City of Berkeley's Department of Information Technology (IT) and associated ALPR system providers/vendors as identified herein. IT staff who

1302 APPENDIX A**BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES**

do not have the proper clearance and training do not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT provides initial infrastructure set-up, and continued systems support as needed to ensure efficient and accurate performance of the ALPR hardware and software. Only IT staff members who have successfully undergone DOJ background checks and training are authorized by the Chief of Police to view specific ALPR records.

4. Other Law Enforcement Agency Access: ALPR data may only be shared with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law. Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55). Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
5. Member Access: No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training. No ALPR operator may access CLETS data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through CLETS before taking enforcement action that is based solely on an ALPR alert.
6. Public Access: Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.

J. ALTERNATIVES

None.

K. EXPERIENCE OF OTHER ENTITIES

The use of ALPR technology is common amongst law enforcement agencies throughout the country, in support of parking enforcement, and law enforcement criminal investigations.

Automated License Plate Readers (ALPRs)

422.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

422.2 POLICY

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

422.3 ADMINISTRATION

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

422.3.1 ALPR ADMINISTRATOR

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

422.4 USE OF THE ALPR

An ALPR shall only be used for official law enforcement business.

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use,

or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

- (a) An ALPR may be used by Berkeley Police Department Parking Enforcement for parking and scofflaw enforcement.
- (b) An ALPR may be used to support criminal investigations. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped vehicles to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.

No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert

422.5 .DATA COLLECTION AND RETENTION

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review.

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data.

Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT Department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

- (a) Collected images and metadata of reads showing violations will not be stored for more than 365 days.
- (b) Metadata of reads showing violations will be stored for up to 30 days. Images of reads not

showing violations will not be transferred to the server.

422.6 ACCOUNTABILITY

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law.
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.
- (c) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (d) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action or parking enforcement.
- (e) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (f) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.
- (g) ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually.

For security or data breaches, see the Records Release and Maintenance Policy.

422.7 RELEASING ALPR DATA

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:
 - 1. The name of the agency.
 - 2. The name of the person requesting.
 - 3. The intended purpose of obtaining the information.

-
4. The related case number.
 - (b) The request is reviewed by the Investigations Division Captain, or his/her designee, and approved before the request is fulfilled.
 - (c) The approved request is retained on file.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

ALPR data is subject to the provisions of the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

422.8 SCOFFLAW ENFORCEMENT

The Berkeley Police Department uses ALPR technology in the Parking Enforcement Unit for parking and scofflaw enforcement.

The Parking Enforcement Unit will utilize vehicles equipped with ALPR units to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's will also access information in the DMV's Stolen Vehicle System (SVS) database for wanted and stolen vehicles.

The Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding citation fees.

The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website.

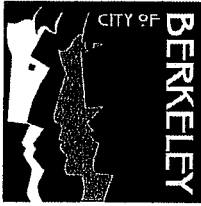
When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.

The City's Parking Enforcement ALPR vendor (currently Genetec) will periodically provide reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that it can analyze data about parking demand. These reports will not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner.

The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and RPP area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking

enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.

ATTACHMENT 5:
Police Review Commission Communication



Police Review Commission (PRC)

September 11, 2019

To: Honorable Mayor and Members of the City Council
From: George Perezvelez, ^{PRC 0449} Chairperson, Police Review Commission
Re: Proposed Berkeley Police Department Policy 422, Automated License Plate Readers

Summary: This memo is to inform you of the Police Review Commission's qualified approval of the BPD's proposed policy for the use of Automated License Plate Readers (ALPRs).

Background: The BPD submitted the ALPR policy, Policy 422, to the PRC for review, along with the Surveillance Use Policy and the Surveillance Acquisition Report (Policy 1302 and Appendix A) for these devices. This process was undertaken in advance of BPD submitting these items to the City Council as required by the Surveillance Technology Use and Community Safety Ordinance (B.M.C. Ch. 2.99).

These policies were first considered by the full Commission, which then referred them to its Lexipol Policies Subcommittee. In response to feedback from the PRC and the Subcommittee, the BPD revised the proposed policy, which was reviewed by both bodies. At various stages, the PRC and the subcommittee had the opportunity to hear from and ask questions of Police Chief Greenwood and other members of the BPD, and Deputy City Attorney Chris Jensen. The PRC also heard input from representatives of Media Alliance and Oakland Privacy.

Final action: At its September 4, 2019 meeting, the PRC voted to approve for submission to the City Council for your review and discussion the version of Policy 422 that is attached here, with two caveats. First, there was concern among some commissioners that the ALPR was originally acquired for the purpose of parking enforcement and that this policy represents an expansion of that function. If this is not what the Council had in mind, then this policy should be modified accordingly. Second, Section 422.4(c) of the policy does not adequately define what constitutes a "crime scene."

Finally, the Commission wishes to remind the Council that they will see actual use of the ALPR technology under the reporting mechanism in place in the Surveillance Technology Use and Community Safety Ordinance.

Honorable Mayor and Members of the City Council
Proposed Berkeley Police Department Policy 422, Automated License Plate Readers
September 11, 2019
p. 2

The above action was approved by the following vote: Moved/Seconded
(Perezvelez/Mikiten) -- Ayes: Calavita, Chang, Leftwich, Mikiten, Perezvelez,
Ramsey; Noes: Earnest, Mizell; Abstain: Allamby; Absent: None.

Attachment: Revised Policy 422

cc: Dee Williams-Ridley, City Manager
Andrew Greenwood, Chief of Police
David White, Deputy City Manager
PRC Commissioners

Automated License Plate Readers (ALPRs)

422.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

422.2 POLICY

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

422.3 ADMINISTRATION

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

422.3.1 ALPR ADMINISTRATOR

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

422.4 USE OF THE ALPR

An ALPR shall only be used for official law enforcement business.

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use,

or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

- (a) An ALPR may be used by Berkeley Police Department Parking Enforcement for parking and scofflaw enforcement.
- (b) An ALPR may be used to support criminal investigations. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped vehicles to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.

No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

422.5 DATA COLLECTION AND RETENTION

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ~~ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law.~~

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data.

Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT Department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

- (a) Collected images and metadata of reads showing violations will not be stored for more than 365 days.

-
- (b) Metadata of reads showing violations will be stored for up to 30 days. Images of reads not showing violations will not be transferred to the server.

422.6 ACCOUNTABILITY

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law.
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.
- (c) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (d) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action or parking enforcement.
- (e) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (f) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.
- (g) ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually.

For security or data breaches, see the Records Release and Maintenance Policy.

422.7 RELEASING ALPR DATA

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:
 1. The name of the agency.

-
2. The name of the person requesting.
 3. The intended purpose of obtaining the information.
 4. The related case number.
- (b) The request is reviewed by the Investigations Division Captain, or his/her designee, and approved before the request is fulfilled.
- (c) The approved request is retained on file.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

ALPR data is subject to the provisions of the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

422.8 SCOFFLAW ENFORCEMENT

The Berkeley Police Department uses ALPR technology in the Parking Enforcement Unit for parking and scofflaw enforcement.

The Parking Enforcement Unit will utilize vehicles equipped with ALPR units to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's will also access information in the DMV's Stolen Vehicle System (SVS) database for wanted and stolen vehicles.

The Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding citation fees.

The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:

- (a) All data captured by the ALPR is stored on the laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.

When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.

The City's Parking Enforcement ALPR vendor (currently Genetec) will periodically provide reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that it can analyze data about parking demand. These reports will not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated

with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner.

The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and RPP area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.



Office of the City Manager

ACTION CALENDAR

January 28, 2020

(Continued from December 3, 2019)

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Andrew Greenwood, Chief of Police
David White, Deputy City Manager

Subject: Surveillance Technology Report, Surveillance Acquisition Report, and
Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers,
and Body Worn Cameras

RECOMMENDATION

Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.

FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts associated with adopting the attached resolution.

CURRENT SITUATION AND ITS EFFECTS

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance (“Ordinance”). The purpose of the Ordinance is to provide transparency surrounding the use of surveillance technology, as defined by Section 2.99.020 in the Ordinance, and to ensure that decisions surrounding the acquisition and use of surveillance technology consider the impacts that such technology may have on civil rights and civil liberties. Further, the Ordinance requires that the City evaluate all costs associated with the acquisition of surveillance technology and regularly report on their use.

The Ordinance imposes various reporting requirements on the City Manager and staff. The purpose of this staff report and attached resolution is to satisfy annual reporting requirements as outlined in sections 2.99.050 and 2.99.070. The attached Surveillance Technology Reports, Surveillance Acquisition Reports and Surveillance Use Policies for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras are for technologies that were acquired by the City prior to the adoption of the Ordinance.

Section 2.99.050 of the Ordinance required the City Manager to submit a Surveillance Acquisition Report and Surveillance Use Policy for each surveillance technology that has been possessed or used prior to the effective date of the Ordinance. The requirements of this section were not satisfied due to a multitude of factors, and the Police Department opted to submit the attached acquisition reports and use policies to the Police Review Commission prior to their review by the City Council. The Police Review Commission underwent an extensive engagement process and the full Commission discussed the attached use policies and reports at scheduled meetings from May to October 2019. In all cases, the Police Review Commission approved the attached acquisition reports and use policies and conveyed any concerns or suggested modifications to the Police Chief. In addition to the technologies covered by the attached resolution, City staff continues to evaluate whether or not there is any other technology that is used or possessed that is subject to the Ordinance.

Finally, Section 2.99.040 of the Ordinance allows the City Manager to borrow, acquire, or temporarily use surveillance technology in exigent circumstances without having to obtain the approval of City Council. Since the adoption of the ordinance, the City is reporting two instances in which the City Manager has made use of Section 2.99.040. In preparation for the potentially violent August 5, 2018 demonstration in downtown Berkeley, the City borrowed remote accessible cameras from the Northern California Regional Intelligence Center (NCRIC) in order to have the ability to remotely monitor intersections in real time. The cameras did not have face recognition technology. Signage was posted in the areas of the cameras, informing people that the area may be under video surveillance. Using cameras to monitor intersections is at times preferable to physically placing officers in those locations. In addition, as a mutual aid resource, the Police Department requested the Alameda County Sheriff's Office Small Unmanned Aerial System (sUAS) team as a mutual aid resource. The purpose of the request was to support the identification and apprehension of any felony suspects, should a felony occur. Following the felony vandalism of over ten City of Berkeley vehicles, the sUAS team deployed a drone, but no suspects were apprehended.

BACKGROUND

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance. The Ordinance contains various reporting requirements including the following:

- Section 2.99.050, which requires that the City Manager shall submit a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each technology governed by the Ordinance that had been possessed or used by the City prior to the effective date of the Ordinance; and

- Section 2.99.070 of the Ordinance, which requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November.

For each of the three technologies, the Surveillance Technology Report, Surveillance Acquisition Report and Surveillance Use Policies were prepared to satisfy the specific, section-by-section requirements of the Ordinance, and are attached to this report. It should be noted that substantial policies already existed for Body Worn Cameras and License Plate Readers. Those policies—also reviewed by the Police Review Commission for purposes of this report—are also attached. The existing policies will continue to remain in effect upon Council’s approval. Henceforth, all new Surveillance Use Policies and Surveillance Acquisition Reports will be listed in Chapter 13 of the Berkeley Police Department Policy Manual, which is being created to provide easy access to all policies relating to BMC 2.99. All BPD policies are available to the public on BPD’s website.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

City Council is being asked to adopt the attached resolution for the City to be in compliance with the Ordinance.

ALTERNATIVE ACTIONS CONSIDERED

City Council could decide not to adopt the resolution or could direct staff to revise the attached policies.

CONTACT PERSON

Andrew Greenwood, Chief of Police, (510) 981-7017
David White, Deputy City Manager, (510) 981-7012

ATTACHMENTS

1. Proposed Resolution

2. Body Worn Cameras

Surveillance Technology Report: Body Worn Cameras

Policy 1300 Body Worn Camera Use Policy

Policy 1300(a) Appendix: Body Worn Camera Acquisition Report

Policy 425 Body Worn Camera Policy (Existing Policy)

3. Global Positioning System Tracking Devices

Surveillance Technology Report

Policy 1301 Global Positioning System Tracking Devices Use Policy

Policy 1301(a) Appendix: Global Positioning System Tracking Devices Acquisition Report

4. Automated License Plate Readers

Surveillance Technology Report: Automated License Plate Readers

Policy 1302 Automated License Plate Reader Use Policy

Policy 1302(a) Appendix: Automated License Plate Reader Acquisition Report

Policy 422 Automated License Plate Reader (Latest version of existing Policy)

5. Police Review Commission Memorandum Regarding Automatic License Plate Readers

i:\surveillance ordinance\city council meeting -- 11-12-19\11-12-2019_surveillance ordinance staff report and resolution (04).docx

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

A RESOLUTION ACCEPTING THE SURVEILLANCE TECHNOLOGY REPORT, SURVEILLANCE ACQUISITION REPORT, AND SURVEILLANCE USE POLICY FOR AUTOMATIC LICENSE PLATE READERS, GPS TRACKERS, AND BODY WORN CAMERAS

WHEREAS, on March 27, 2018, the City Council adopted Ordinance 7,592-N.S., which is known as the Surveillance Technology Use and Community Safety Ordinance (“Ordinance”); and

WHEREAS, Section 2.99.050 of the Ordinance requires that the City Manager shall submit a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each piece of technology governed by the Ordinance that had been possessed or used by the City prior to the effective date of the Ordinance; and

WHEREAS, Section 2.99.070 of the Ordinance requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November; and

WHEREAS, the Surveillance Acquisition Reports and Surveillance Use Policies for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras satisfy the requirements of the Ordinance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley:

Section 1. Pursuant to Section 2.99.060, as it pertains to the use of Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras, the City Council hereby finds and determines the following:

- a. The benefits of using the technologies outweigh the costs;
- b. The policies attached to this resolution safeguard civil liberties; and
- c. No feasible alternatives exist with similar utility that will have a lesser impact on civil rights or liberties.

Section 2. The City Council hereby accepts the Surveillance Technology Reports, Surveillance Acquisition Reports, and Surveillance Use Policies for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras.

ATTACHMENT 2:
BODY WORN CAMERAS

Surveillance Technology Report Body Worn Cameras
To be provided as part of supplemental communications

Surveillance Use Policy - Body Worn Cameras

1300.1 PURPOSE

This Surveillance Use Policy is issued in compliance with BMC 2.99, and incorporates by reference language from the Berkeley Police Department Body Worn Camera Policy #425 and adds elements as required by BMC 2.99.

The Berkeley Police Department recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel. (Ref. policy 425.2)

1300.2 AUTHORIZED USE

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

- (a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (c) Self-initiated field contacts in which a member would normally notify the Communications Center.
- (d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.
- (e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is a member expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated by members in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the member can do so safely.

Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Members shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation. (Ref. policy 425.7)

1300.2.1 PROHIBITED USE

Members are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are prohibited from retaining BWC recordings. Members shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule. (Ref. policy 425.13)

1300.3 DATA COLLECTION

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited. (Ref. policy 425.3)

1300.4 DATA ACCESS

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 1300.4.1 below. Members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report. (Ref. policy 425.17)

1300.4.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH

- (a) In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s) shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary. The involved member(s) shall not access or obtain their footage of the incident until such time as the criminal investigator(s) have reviewed the video files.

It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.

- (b) Personnel uploading secured BWC video files shall not view the files unless authorized.
- (c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.
- (d) Prior to the conclusion of the criminal interview process, the involved member and/ or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording.
- (e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officers(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

Officers who are involved in any critical incident where video recordings exist depicting the involved officer, either as a subject officer or witness, shall be provided the following admonishment to the initial interview or submission of the initial written report:

"In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your statement explains your state of mind at the time of the incident." (Ref. policy 425.17.1)

1300.4.2 SUPERVISORY REVIEW

With the exception of section 1300.4.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates. (Ref. policy 425.17.2)

1300.4.3 INVESTIGATORY REVIEW

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct, or whenever such recordings support review of the member's performance. (Ref. policy 425.17.3)

- (a) Recorded files may also be reviewed:
 1. Upon approval by a supervisor, by any member of the Department who is participating

in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.

2. Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
3. By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.
4. Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.

(b) Investigators conducting criminal or internal investigations shall:

1. Advise the coordinator to restrict access to the BWC file in criminal or internal investigations, as necessary.
2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

1300.4.4 TEACHING OR LEARNING TOOL

BWC files may also be reviewed by training staff regarding specific incidents where such files may serve as an internal learning or teaching tool. In the event that videos are intended to be used for training purposes, the involved officer(s) will first be consulted. If he/she objects to the use of the video, such objection shall be submitted to the person in charge of training who shall weigh the value of the video for training against the officer(s) objections and basis for the objection. Should the person in charge of training refuse to grant the request of the involved officer(s), the matter shall be heard by the Chief of Police, or his/her designee, prior to utilizing the video. (Ref. policy 425.17.4)

1300.4.5 COB CIVIL CLAIMS AND LAWSUITS

BWC recordings may be reviewed and used by City of Berkeley defense counsel for the purposes of defending the city in civil claims and lawsuits, with the authorization of the Chief of Police, or his/her designee. (Ref. policy 425.17.5)

1300.5 DATA PROTECTION

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for uploading the data. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. (Ref. policy 425.14)

1300.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of BWC data. These policies will ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

1300.7 DATA RETENTION

The Department shall retain all recordings for a minimum of 60 days. Incidents involving consensual contacts, and aid to citizens will be retained for six months, and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days. (Ref. policy 425.15)

1300.8 PUBLIC ACCESS

Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted under Government Code § 6254(f) and BPD General Order R-23 (Release of Public Records and Information). General Order R-23 does not authorize release of investigative files or documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy."

Access to recorded files will be granted for the purposes of review to media personnel or the general public with permission of the Chief of Police, or his/her designee, subject to General Order R-23 and privacy protections indicated in this policy. (Ref. policy 425.18)

1300.9 THIRD-PARTY DATA-SHARING

1300.9.1 CITY ATTORNEY

All recordings should be reviewed by the Custodian of Records and the City Attorney's Office prior to public release, see General Order R-23 (Release of Public Records and Information).

In the event that the Police Department or City Department intends to release or publish for any purpose video recordings where officers are captured on video or the video depicts actions taken by them in the course of the performance of their official duties, those officers shall be given written notice of the intention to release or publish said video at least 48 hours prior to such release.

BPD may, without prior notice to involved officers, share video footage with law enforcement, national security, military, or other government agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur. (Ref. policy 425.18)

1300.9.2 POLICE REVIEW COMMISSION (PRC)

Access to recorded files will be granted for the purposes of review to the Police Review Commission Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation. (Ref. policy 425.18.1)

- (a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.
- (b) The PRC Officer and PRC investigator shall not make or create a copy of any evidence file, nor make or allow to be made any audio or video recording of any evidence file while it is being streamed and viewed from the evidence management system.
- (c) The PRC Officer and PRC Investigator shall not allow any unauthorized individuals to view or access evidence files.
- (d) The evidence management system associates an audit trail record with each evidence file, thereby logging the date, time, user, activity, and client IP address occurring during each evidence file access.
- (e) The evidence management system shall only be accessed on City premises.
- (f) The Department retains custody and control of the recordings, and content of the video will be subject to applicable legal standards including, but not limited to the confidentiality requirements of the Public Safety Officers' Procedural Bill of Rights, (Government Code § 3300, et seq., Penal Code § 832.7, and the California Public Records Act; Government Code § 6250, et seq.)

1300.10 TRAINING

Training for the operation of BWC's shall be provided by BPD personnel. All BPD personnel who use BWC's shall be provided a copy of this Surveillance Use Policy.

1300.11 AUDITING AND OVERSIGHT

Division Captains for divisions utilizing BWC's shall ensure compliance with this Surveillance Use Policy.

1300.12 MAINTENANCE

The BWC system will be maintained by the Applications Programmer Analyst and assigned

Department of Information and Technology (IT) staff.

The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code § 832.18) (Ref policy 425.4):

- (a) Establishing a system for uploading, storing and security of recordings.
- (b) Designating persons responsible for uploading recorded data.
- (c) Establishing a maintenance system to ensure availability of BWCs.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.
- (h) All recordings made by members acting in their official capacity shall remain the property of the Department. Subject to the provisions of this Policy, members shall have no expectation of privacy or ownership interest in the content of these recordings.

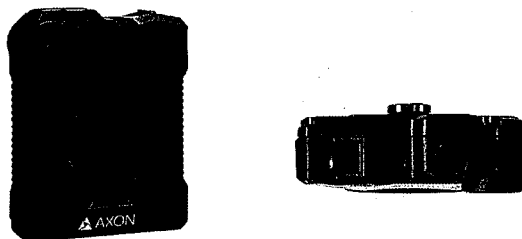
1300 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS

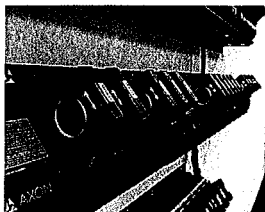
BODY WORN CAMERAS (BWCs)**A. DESCRIPTION**

The BWC system consists of four main components: The camera, the docking station, and the Digital Information Management System (DIMS) and smartphone applications.

The first component, the Axon camera, is a system which incorporates an audio and video recording device. It is designed to record events in real time for secure storage, retrieval, and analysis. The camera is to be attached to an officer's uniform and is powered by an internal rechargeable battery. The camera features low-light performance, full-shift battery life, a capture rate of 30 frames per second with no dropped frames, HD video, pre-event buffering, multi-camera playback, and the ability to automatically categorize video using the police department's computer aided dispatch system. An officer can start and stop recording by pressing a button on the front of the camera. The camera does not contain a screen for footage review.



The second component of the system is the docking station. Once the Axon camera is placed in the docking station it recharges the camera's battery. The dock also triggers the uploading of data from the camera to a cloud based Digital Information Management System (DIMS) called Evidence.com. The dock does not directly provide functionality to view, modify or delete video data stored on Axon cameras.



The third component is the Digital Information Management System called Evidence.com. Evidence.com streamlines data management and sharing on one secure platform. The evidence management system is comprehensive, secure, and intuitive to use. The DIMS is located in a cloud-based data center for security, scalability, and ease of administration. Users can add

1300 APPENDIX A**BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS**

metadata to existing videos such as associated case numbers, incident type, incident dispositions, etc. to make the videos easier to find. However, the videos themselves cannot be altered by the user.

The fourth component of the system to be utilized are two Axon mobile applications, which allow officers to collect and review evidence in the field and more effectively use their BWCs. The applications use secure Bluetooth and Wi-Fi technology to access the BWC systems and footage. These applications are compliant with US Department of Justice evidentiary standards, meaning that they are both secure and are set up in a way that prohibits the altering or destruction of evidence. The applications are called Axon View and Axon Capture. Axon View allows users to change their camera settings, view live video, and review and tag recorded videos while they are stored on the BWC. Recorded videos remain in the BWC's memory, and cannot be manipulated or deleted. Axon Capture allows officers to use their city-issued smartphone's camera and microphone to take photographs, and record audio and video, and to upload this data directly to Evidence.com. These applications do not allow users to alter, manipulate, or edit any of the footage recorded by the BWC. These applications use secure technology to add value and efficiency to the BWC program.

B. PURPOSE

The primary objective of the BWC system is to document officer contacts, arrests, and critical incidents. Video footage collected by the BWCs will be used as evidence in both criminal and administrative investigations. Video footage not relevant to any investigation will be discarded after a defined retention period.

In instances where the officer might be expected to take law enforcement action of any kind, the officer is expected to record the encounter for the benefit of both the officer and the member of the public.

1. The BWC shall be activated in any of the following situations:
 - i. All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
 - ii. Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
 - iii. Self-initiated field contacts in which a member would normally notify the Communications Center.
 - iv. Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.

1300 APPENDIX A**BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS**

- v. Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- vi. Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is an officer expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the user can do so safely.

Officers should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Officers shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation.

2. Prohibited uses of the BWC system include:

- i. Officers shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police, or his/her designee.
- ii. Officers are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.
- iii. Officers are prohibited from retaining BWC recordings.
- iv. Officers shall not duplicate or distribute such recordings, except for department business purposes.

C. LOCATION

Officers may use BWCs anywhere where officers have jurisdiction to operate as sworn officers, in accordance with BPD policy #425.

D. IMPACT

With the introduction of BWCs, officers record all enforcement contacts with the public. To that end, an officer could find themselves engaged in their lawful duties in both public and private areas. Additionally, due to the nature of law enforcement work, an officer may be required to engage in sensitive conversations with individuals of all ages, including children.

The right to maintain someone's anonymity versus the need to gain information to maintain public safety is of paramount concern. The Department recognizes that all people have a right to privacy and is committed to protecting and safeguarding civil rights by adhering to the

1300 APPENDIX A**BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS**

strictest requirements of both state and federal law concerning release of audio/video recordings.

E. MITIGATION

In order to minimize violations of privacy, BWC policy provides that:

1. Officers should record any incident they feel would be appropriate or valuable to document. The BWC policy shall require officers to activate the BWC under the criteria listed above.
2. Officers should not activate the BWC and/or use caution when entering a public locker room, changing room, restroom, doctor's or attorney's office, or other place where individuals unrelated to the investigation are present and would have a heightened expectation of privacy unless the officer is investigating criminal activity or responding to a call for service.
3. BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy.
4. BWC footage will be retained or released in accordance with applicable state and federal law. Criminal defendants will have access to relevant BWC footage via the court discovery process.
5. Officers are prohibited from retaining BWC recordings, Officers shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.
6. Officers are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. Officers may request restriction and subsequent deletion of an accidental recording according to the BWC policy.
7. Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted by law and department policy. Department policy does not authorize release of investigative files or documents that would constitute an unwarranted invasions of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy"

F. DATA TYPES AND SOURCES

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigations, and other proceedings protected by confidentiality laws and department policy.

1300 APPENDIX A**BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS**

The BWC collects video and audio recordings of events occurring in the user's presence. As each video is created, the system automatically stamps the video with the current date/time and the camera user's identity. The user has the option to add metadata manually to existing recordings after they are created. Such metadata may include but is not limited to:

1. Category of contact (from Department's defined list)
2. Disposition of contact (arrest, citation, etc.)
3. Associated case number

G. DATA SECURITY

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for transferring the data into the digital evidence management system. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings.

Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited. The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code Section 832.18) (Ref. policy 425.14):

1. Establishing a system for uploading, storing and security of recordings.
2. Designating persons responsible for uploading recorded data.
3. Establishing a maintenance system to ensure availability of BWCs.
4. Establishing a system for tagging and categorizing data according to the type of incident captured.
5. Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
6. Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
7. Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file,

1300 APPENDIX A**BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS**

thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

H. FISCAL COST

In 2017, the Berkeley City Council approved a resolution authorizing a contract between BPD and Axon. Axon was chosen after a competitive Request for Proposal (RFP) process. The contract will not exceed \$1,218,103 and includes the cost of 200 body worn cameras, charging stations, accessories, software licenses, training and unlimited storage for five years. The purchase also includes replacement cameras and charging stations during the third and fifth year of the contract.

There will be an annual cost of approximately \$250,000 to the police department's budget for a staff person to administer the body worn camera program beginning in FY 2019.

I. THIRD PARTY DEPENDENCE AND ACCESS

All BWC data will be uploaded and stored on Axon Cloud Services, Evidence.com. Axon complies with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information transferred from the European Union and Switzerland to the United States (collectively, "Privacy Shield"). Axon has certified to the U.S. Department of Commerce that it adheres to the Privacy Shield Principles.

J. ALTERNATIVES

Officers rely primarily on traditional policing techniques to gather evidence related to criminal investigations such as speaking to witnesses and suspects, gathering information from observations, and using standard data aggregation systems. These methods will continue to be employed as primary investigative tools that will be supplemented by use of BWCs to document police activity.

BWC technology provides video and audio documentation of policing activity in addition to the oral and written statements of officers, victims, and witnesses. Alternatives to the use of BWCs would be vehicle-based cameras and/or not utilizing BWCs. However, BPD sees the use of BWCs as an integral strategy to strengthen police transparency, prevent and resolve complaints against the police by civilians, document police-public interaction, and promote the perceived legitimacy and sense of procedural justice that communities have about their departments. There is a broad consensus – among community leaders, the ACLU, the Department of Justice, the Berkeley Police Department, and elected officials – that body-worn cameras can be an important tool for improving the high-quality public service expected of police officers.

1300 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS

K. EXPERIENCE OF OTHER ENTITIES

Numerous police agencies have adopted BWCs as a tool to help combat crime, to reduce citizen complaints and to reduce use of force situations. Many departments have developed their own usage policies which may include standards for required officer use, supervisory review, storage and data retention standards, and internal and public access.

A report for the U.S. Bureau of Justice Administration, https://www.bja.gov/bwc/pdfs/14-005_Report_BODY_WORN_CAMERAS.pdf - pages 6-8, cites a 2013 Rialto, CA study that showed that the use of BWCs led to a 59 percent decrease in UOF and an 87.5 percent decrease in citizen complaints. Likewise, the Mesa, AZ report noted in "Impact" Section above also points to large decreases in UOF and citizen complaints.

The 2017 Police Body Worn Cameras: A Policy Scorecard, <https://www.bwcscorecard.org/>, provides an analysis of how scores of different police agencies have employed BWCs through a defined list of metrics.

Body Worn Cameras

425.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable Body Worn Cameras (BWCs) by members of this department while in the performance of their duties.

This policy does not apply to non-BWC evidence, including other methods of audio or video recordings, interviews or interrogations conducted at any Berkeley Police Department facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

425.2 POLICY

The Berkeley Police Department recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel.

While recordings obtained from BWCs provide an objective record of events, it is understood that video recordings do not necessarily capture all events, activities and information, or reflect the full experience of the individual member(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events as perceived and recalled by the involved member. Specifically, it is understood that the BWC will capture information that may not have been seen and/or heard by the involved member and that the involved member may see and hear information that may not have been captured by the BWC.

425.3 CONFIDENTIALITY AND PROPER USE OF RECORDINGS

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited.

425.4 COORDINATOR

The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code § 832.18):

- (a) Establishing a system for uploading, storing and security of recordings.
- (b) Designating persons responsible for uploading recorded data.

Berkeley Police Department

Law Enforcement Services Manual

Body Worn Cameras

- (c) Establishing a maintenance system to ensure availability of BWCs.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

All recordings made by members acting in their official capacity shall remain the property of the Department. Subject to the provisions of this Policy, members shall have no expectation of privacy or ownership interest in the content of these recordings.

425.5 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member who is assigned to wear a BWC will be responsible for making sure that he or she is equipped with a BWC issued by the Department, and that the BWC is in good working order. If the BWC is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/her supervisor to permit the supervisor or other department employee to provide the member with a functioning BWC as soon as practicable. Uniformed members should wear the recorder in a conspicuous manner as prescribed by the Department, to provide a generally unobstructed camera view of contacts between members of the public and department members.

Members lawfully engaged in their duties as a police officer are not required to obtain consent from, or give notice to, members of the public, prior to recording with their BWC.

Upon the approval of the Chief of Police, or his/her designee, non-uniformed members lawfully engaged in their duties as a police officer may use an approved BWC.

Members are required to document the existence of a recording in any report or other official record of the contact, such as a CAD entry, including any instance where the member is aware that the BWC malfunctioned or the member deactivated the recording. In the event activity outlined in section 425.7 is not captured in whole or in part the member shall document this and explain in their report their understanding, if any, of why the footage was not captured in the recording.

425.6 SUPERVISOR RESPONSIBILITIES

At such time as the scene is considered secure and safe, the on-scene supervisor shall take immediate physical custody of involved officer's/officers' BWC when the device may have captured an incident involving an officer-involved shooting or use of force resulting in death or great bodily injury, and shall ensure the data is uploaded in a timely manner as prescribed by BPD policy

Berkeley Police Department

Law Enforcement Services Manual

Body Worn Cameras

(Penal Code § 832.18). Supervisors may review relevant BWC video and audio files in the field in furtherance of their duties and responsibilities.

Supervisors shall also review relevant BWC recordings prior to submitting any administrative reports.

425.7 ACTIVATION OF THE BODY WORN CAMERA

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

- (a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (c) Self-initiated field contacts in which a member would normally notify the Communications Center.
- (d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.
- (e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is a member expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated by members in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the member can do so safely.

Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Members shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation.

Berkeley Police Department

Law Enforcement Services Manual

Body Worn Cameras**425.8 VICTIMS AND WITNESSES OF CRIMES; INFORMANTS**

In the event that an officer has the opportunity to record interviews of victims and witnesses of crimes, they shall consider the following:

- (a) **Witnesses:** In the event a crime witness or a member of the community wishes to report or discuss criminal activity anonymously, officers have the discretion to not record. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the witness's recorded statement. In cases where a witness requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.
- (b) **Victims:** Upon request by the victim, officers have the discretion to not record the interview. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the victim's recorded statement. In cases where a victim requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.
 - 1. **Domestic Violence Victims:** Members should attempt to record interviews of domestic violence victims to facilitate future prosecution efforts and discourage later recanting of statements. Members should also record interviews with children who witness domestic violence, when the child is willing.
 - 2. **Child Abuse and Sexual Assault Victims:** Members shall have the discretion to record, absent any request to not record the interview by victims, witnesses, or non-suspect parents of victims, during child abuse and/or sexual assault investigations.
- (c) **Informants:** Members shall not activate their recorders when conducting an interview or engaging in a conversation with a confidential informant, unless needed as evidence.

Members have no obligation to advise a victim or witness that he or she is being recorded, but may do so at their discretion. When a victim or witness requests they not be recorded, members may consider their request (See Penal Code 632).

Members shall remain sensitive to the dignity of all individuals being recorded and exercise discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy concerns may outweigh any legitimate law enforcement interest in recording. Recording should resume when privacy concerns are no longer at issue unless the member determines that the circumstances no longer fit the criteria for recording.

Informal community interactions differ from "consensual encounters" in which members make an effort to develop reasonable suspicion to detain or probable cause to arrest. To strengthen relationships between police and citizens, members may use discretion regarding the recording of informal, non-enforcement related interactions with members of the community.

Berkeley Police Department

Law Enforcement Services Manual

Body Worn Cameras

425.9 ACTIVATION IN CROWD CONTROL SITUATIONS

During crowd control, protest or mass arrest incidents, members shall use their BWCs consistent with this policy, or when directed by the Incident Commander. The Incident Commander shall document his or her orders to activate in an appropriate report (e.g. Operations Plan or After Action Report).

The limitations outlined in the Intelligence Procedures for First Amendment Activities Policy governing intelligence-gathering procedures for First Amendment activities, apply to the use of BWCs and other recording devices.

Video recording of individuals who are picketing or engaged in peaceful protest will be avoided unless the officer believes a violation of criminal law is occurring, may occur, or if the officer interacts with a participant or third party to the event, or a participant or third party initiates contact with the member.

425.10 SURREPTITIOUS USE OF THE BWC

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation.

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police, or his/her designee.

Members are prohibited from using department-issued BWCs for non-work related personal activity. BWCs will not be activated in places where members have a reasonable expectation of privacy, such as workplace locker rooms, dressing rooms, members' private vehicles or restrooms.

425.11 CESSATION OF RECORDING

Once activated, the member may mute or deactivate their BWC at any time based on their discretion, in the following circumstances:

- (a) Discussion of tactical or confidential information with other law enforcement personnel.
- (b) Where members are on a perimeter or assigned to a static post where the member's direct participation in the incident is complete and they are not actively part of an investigation.
- (c) If it is necessary to discuss issues or concerns with an employee, supervisor, doctor, nurse, or paramedic in private.
- (d) In the member's judgment, a recording would interfere with his or her ability to conduct an investigation.

Decisions regarding the reason for muting or BWC deactivation shall be noted on the recording, or otherwise documented.

Berkeley Police Department

Law Enforcement Services Manual

Body Worn Cameras

Members shall cease audio/video recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation. This does not apply to conversations with paramedics or EMTs during their response at a scene, and during transport.

425.12 EXPLOSIVE DEVICE

Many portable recorders, including BWCs and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

Members believing that the use of a BWC may detonate an explosive device may deactivate their BWC in such cases.

425.13 PROHIBITED USE OF BODY WORN CAMERAS

Members are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are prohibited from retaining BWC recordings. Members shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.

Members may not use personally owned recorders (e.g. personal cell phone) to document contacts unless exigent circumstances exist to warrant the use of personally owned recording devices. Regardless, if a member is using a department-issued BWC, and/or another recording device, members shall comply with the provisions of this policy, including retention and release requirements. In every event where members use any recording device aside from or in addition to their department-issued BWC, the member shall document and explain the use and the exigent circumstance in their police report (e.g. the BWC failed and evidence needed to be captured at that moment in time).

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

425.14 PROCESSING AND HANDLING OF RECORDINGS

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for uploading the data. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

Berkeley Police Department

Law Enforcement Services Manual

Body Worn Cameras

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. Members may request restriction and subsequent deletion of an accidental recording as described under section 425.16 below.

425.15 RETENTION REQUIREMENTS

The Department shall retain all recordings for a minimum of 60 days. Incidents involving consensual contacts, and aid to citizens will be retained for six months, and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days.

425.16 ACCIDENTAL RECORDING - REQUEST FOR RESTRICTION

In the event of an accidental or sensitive personal recording of non-departmental business activity, where the resulting recording is of no investigative or evidentiary value, the recording employee may request that the file be restricted pending 60-day deletion by submitting an email request via their chain of command to the Professional Standards Division Captain. The Professional Standards Division Captain will approve or deny the restriction request. In cases where the request is denied, an appeal may be submitted to the Chief of Police, or his/her designee, for restriction authorization. In all cases of restriction requests, a determination should be made within seven calendar days.

425.17 REVIEW OF RECORDINGS BY A MEMBER

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 425.17.1 below. Members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report.

425.17.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH

- (a) In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s) shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary. The involved member(s) shall not access or obtain their footage of the incident until such time as the criminal investigator(s) have reviewed

Berkeley Police Department

Law Enforcement Services Manual

Body Worn Cameras

the video files. It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.

- (b) Personnel uploading secured BWC video files shall not view the files unless authorized.
- (c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.
- (d) Prior to the conclusion of the criminal interview process, the involved member and/or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording.
- (e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officers(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

Officers who are involved in any critical incident where video recordings exist depicting the involved officer, either as a subject officer or witness, shall be provided the following admonishment to the initial interview or submission of the initial written report:

"In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your statement explains your state of mind at the time of the incident."

425.17.2 SUPERVISORY REVIEW

With the exception of section 425.17.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates.

Berkeley Police Department

Law Enforcement Services Manual

Body Worn Cameras

425.17.3 INVESTIGATORY REVIEW

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct, or whenever such recordings support review of the member's performance.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.
- (b) Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
- (c) By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.
- (d) Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.

Investigators conducting criminal or internal investigations shall:

1. Advise the coordinator to restrict access to the BWC file in criminal or internal investigations, as necessary.
2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

425.17.4 TEACHING OR LEARNING TOOL

BWC files may also be reviewed by training staff regarding specific incidents where such files may serve as an internal learning or teaching tool. In the event that videos are intended to be used for training purposes, the involved officer(s) will first be consulted. If he/she objects to the use of the video, such objection shall be submitted to the person in charge of training who shall weigh the value of the video for training against the officer(s) objections and basis for the objection. Should the person in charge of training refuse to grant the request of the involved officer(s), the matter shall be heard by the Chief of Police, or his/her designee, prior to utilizing the video.

425.17.5 COB CIVIL CLAIMS AND LAWSUITS

BWC recordings may be reviewed and used by City of Berkeley defense counsel for the purposes of defending the city in civil claims and lawsuits, with the authorization of the Chief of Police, or his/her designee.

425.18 RELEASE OF RECORDINGS

All recordings should be reviewed by the Custodian of Records and the City Attorney's Office prior to public release, see General Order R-23 (Release of Public Records and Information).

Berkeley Police Department

Law Enforcement Services Manual

Body Worn Cameras

In the event that the Police Department or City Department intends to release or publish for any purpose video recordings where officers are captured on video or the video depicts actions taken by them in the course of the performance of their official duties, those officers shall be given written notice of the intention to release or publish said video at least 48 hours prior to such release.

BPD may, without prior notice to involved officers, share video footage with law enforcement, national security, military, or other government agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur.

425.18.1 POLICE REVIEW COMMISSION (PRC)

Access to recorded files will be granted for the purposes of review to the Police Review Commission Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation.

- (a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.
- (b) The PRC Officer and PRC investigator shall not make or create a copy of any evidence file, nor make or allow to be made any audio or video recording of any evidence file while it is being streamed and viewed from the evidence management system.
- (c) The PRC Officer and PRC Investigator shall not allow any unauthorized individuals to view or access evidence files.
- (d) The evidence management system associates an audit trail record with each evidence file, thereby logging the date, time, user, activity, and client IP address occurring during each evidence file access.
- (e) The evidence management system shall only be accessed on City premises.
- (f) The Department retains custody and control of the recordings, and content of the video will be subject to applicable legal standards including, but not limited to the confidentiality requirements of the Public Safety Officers' Procedural Bill of Rights, (Government Code § 3300, et seq., Penal Code § 832.7, and the California Public Records Act; Government Code § 6250, et seq.)

425.18.2 PUBLIC RECORDS ACT (PRA) REQUEST

Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted under Government Code § 6254(f) and BPD General Order R-23 (Release of Public Records and Information). General Order R-23 does not authorize release of investigative files or documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy."

Berkeley Police Department

Law Enforcement Services Manual

Body Worn Cameras

425.18.3 MEDIA

Access to recorded files will be granted for the purposes of review to media personnel or the general public with permission of the Chief of Police, or his/her designee, subject to General Order R-23 and privacy protections indicated in this policy.

425.19 COMPLIANCE WITH BMC 2.99 ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY

This policy shall comply at all times with the requirement of BMC 2.99 Acquisition and Use of Surveillance Technology.

425.20 TRAINING REQUIRED

Officers who are assigned BWCs must complete department-approved training in the proper use and maintenance of the devices before deploying to the field.

As part of a continual improvement process, regular review should be conducted by BPD staff of the training on this policy and the related use of BWCs under this policy. Information resulting from the outcomes of this review shall be incorporated into the City Manager's annual "Surveillance Technology Report" as required under BMC 2.99 Acquisition and Use of Surveillance Technology.

The Department, Police Review Commission and other City Departments shall maintain the confidentiality of Department sworn employee personnel records as required by state and local law. Failure to maintain the confidentiality of Department sworn employee personnel records, whether or not intentional, may subject individuals to civil penalties and discipline, up to and including termination of employment.

ATTACHMENT 3:
Global Positioning System Tracking Devices

Surveillance Technology Report GPS Tracker
To be provided as part of supplemental communications

Surveillance Use Policy - GPS Tracking Devices

1301.1 PURPOSE

Global Positioning System (GPS) tracking devices track the movements of vehicles, bicycles, cargo, machinery, other items, and/or individuals. GPS trackers electronically relay their precise location in real time, and thereby assist BPD in the recovery of evidence and arrest of suspects.

1301.2 AUTHORIZED USE

GPS trackers shall only be used during active criminal investigations. GPS trackers shall only be used pursuant to a lawfully issued search warrant, or with consent of the owner of the object to which the GPS tracker is attached.

GPS trackers shall only be utilized for law enforcement purposes.

1301.3 DATA COLLECTION

Location data may be obtained through the use of a GPS Tracker.

1301.4 DATA ACCESS

Access to GPS tracker data shall be limited to Berkeley Police Department (BPD) personnel utilizing the GPS Tracker(s) for active criminal investigations. Information may be shared in accordance with 1301.9 below.

In support of active criminal investigations, BPD personnel may receive GPS tracker data from probation or parole agencies which utilize GPS trackers (e.g. ankle monitors) as a condition of probation or parole.

1301.5 DATA PROTECTION

The data from the GPS tracker is encrypted by the vendor. The data is only accessible through a secure website to BPD personnel who have been granted security access.

1301.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. Provisions of this policy, including 1301.4 Data Access, 1301.5 Data Protection, 1301.7 Data Retention, 1301.8 Public Access and 1301.9 Third Party Data Sharing serve to protect against any unauthorized use of GPS tracker data. These procedures ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

1301.7 DATA RETENTION

A GPS Tracker data record consists of date, time, latitude, longitude, map address, and tracker

identification label. This data is stored indefinitely by the vendor. The data does not contain any images, names of subjects, vehicle information, etc.

Tracker data received from the vendor shall be kept in accordance with applicable laws, BPD policies that do not conflict with applicable law or court order, and/or as specified in a search warrant.

1301.8 PUBLIC ACCESS

Data collected and used in a police report shall be made available to the public in accordance with department policy and applicable state or federal law.

1301.9 THIRD-PARTY DATA-SHARING

Data collected from the GPS trackers may be shared with the following:

- (a) The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;
- (b) Other law enforcement personnel as part of an active criminal investigation;
- (c) Other third parties, pursuant to a Court Order.

1301.10 TRAINING

Training for the operation of the GPS trackers shall be provided by BPD personnel. All BPD personnel shall be provided with this Surveillance Use Policy.

1301.11 AUDITING AND OVERSIGHT

Division Captains or their designee shall ensure compliance with this Surveillance Use Policy.

1301.12 MAINTENANCE

GPS trackers shall only be obtained with the permission of the Investigations Division Captain or his/her designee. The Investigations Division Captain or his/her designee will ensure the trackers are returned when the mission/investigation is completed.

1301 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - GPS TRACKING DEVICES

GPS TRACKING DEVICES**A. DESCRIPTION**

Global Positioning System (GPS) tracking devices track the movements of vehicles, bicycles, cargo, machinery, other items, and/or individuals.

The Berkeley Police Department currently uses two types of GPS Tracking Devices to track the movements of vehicles, bicycles, or other kinds of property. The manufacturer, 3SI Security Systems, describes them as follows:

1. The "Slap-n-Track" (SNT) tracker tracks vehicles, cargo, and other large assets for long deployments. Offers extended battery life, rugged and weatherproof housing, and optional magnets.
2. The "Electronic Stake Out" (ESO) tracker offers Law Enforcement miniaturized and covertly packaged GPS Tracking Solutions to target property crimes, especially pattern crimes, in their local jurisdictions.

B. PURPOSE

Global Positioning System (GPS) tracking devices provide precise, real-time location information during the conduct of active criminal investigations. GPS trackers are only used pursuant to a lawfully issued search warrant, or with consent of the owner of the object to which the GPS tracker is attached.

C. LOCATION

GPS tracking devices shall be deployed in locations consistent with the authority granted by consent or a lawfully issued search warrant or court order.

D. IMPACT

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. GPS Trackers are used in place of expensive, resource-intensive surveillance operations which typically involve multiple officers, often over long periods of time. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures utilized with GPS trackers help to ensure no unauthorized use of of GPS tracker data occurs. BPD Policy 1301 Surveillance Use Policy – GPS Tracking Devices ensure the use of GPS trackers and the resulting data are not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

1301 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - GPS TRACKING DEVICES

E. MITIGATION

Data from a GPS tracker is encrypted from the vendor. Data shall be maintained in a secure, non-public location, such as locations requiring security access or badge access, thereby safeguarding the public from any impacts identified in subsection (D).

F. DATA TYPES AND SOURCES

A GPS tracker data record consists of date, time, latitude, longitude, map address (derived by using latitude, longitude and Google maps), and tracker identification label. The data does not contain any images, names of subjects, vehicle information, etc.

G. DATA SECURITY

Data from a GPS tracker is encrypted by the vendor on secure servers. The data is only accessible through a secure website to BPD personnel who have been granted security access. Captains whose Divisions utilize GPS trackers are responsible for ensuring compliance with the procedures for utilizing GPS Trackers.

H. FISCAL COST

The initial cost of the GPS trackers totaled \$4,335.

- Between 2015-present BPD purchased 5 GPS "ESO" trackers for \$2,250 (\$450 each).
- In 2017 BPD purchased 3 GPS "SNT" trackers for \$2,085 (\$695 each).

The annual cost for the GPS data service totals \$1,920.

- The annual data service for the five ESO trackers is \$1,020 (\$204 each).
- The annual data service for the three SNT trackers is \$900 (\$300 each).

Personnel costs are minimal in that the GPS trackers are used as a resource during normal working hours.

GPS trackers are funded through the Investigations Division's general budget.

I. THIRD PARTY DEPENDENCE AND ACCESS

Data collected from the GPS trackers may be shared with the following:

- a. The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;
- b. Other law enforcement offices as part of a criminal investigation;
- c. Other third parties, pursuant to a Court Order.

1301 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - GPS TRACKING DEVICES

J. ALTERNATIVES

An alternative to the use of GPS trackers is to conduct resource-intensive surveillance operations utilizing numerous personnel over extended periods of time.

K. EXPERIENCE OF OTHER ENTITIES

The use of GPS tracker technology is common amongst law enforcement agencies throughout the country.

ATTACHMENT 4:
Automated License Plate Readers

Surveillance Technology Report Automated License Plate Reader
To be provided as part of supplemental communications

Surveillance Use Policy - ALPR

1302.1 PURPOSE

This Surveillance Use Policy is issued in compliance with BMC 2.99, and incorporates by reference language from the Berkeley Police Department ALPR Policy #422 and adds elements as required by BMC 2.99.

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review. (Ref. policy 422.2)

1302.2 AUTHORIZED AND PROHIBITED USES USE

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53). (Ref. policy 422.4)

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used to support a patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped cars to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

1302.3 DATA COLLECTION

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law. (Ref. policy 422.5)

1302.4 DATA ACCESS

- (a) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (b) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.
- (c) If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

1302.5 DATA PROTECTION

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref. policy 422.6):

- (a) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (b) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action and parking enforcement.
- (c) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (d) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.

1302.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of ALPR data. These policies ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

1302.7 DATA RETENTION

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT) department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence. (Ref. policy 422.5)

-
- (a) Collected images and metadata of hits will not be stored for more than 365 days. Metadata of reads will not be stored for more than 30 days. Images of reads will not be transferred to the server.

1302.8 PUBLIC ACCESS

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. (Ref. policy 422.6 (a))
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question. (Ref. policy 422.6 (b))

1302.9 THIRD-PARTY DATA-SHARING

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law. ALPR data is subject to the provisions of BPD Policy 415, and hence may not be shared with federal immigration enforcement officials.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager. (Ref. policy 422.6 (e))

1302.10 TRAINING

Training for the operation of ALPR Technology shall be provided by BPD personnel. All BPD employees who utilize ALPR Technology shall be provided a copy of this Surveillance Use Policy.

1302.11 AUDITING AND OVERSIGHT

ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually. (Ref. policy 422.6 (g))

1302.12 MAINTENANCE

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data. (Ref. policy 422.3)

1302.12.1 ALPR ADMINISTRATOR

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref.

policy 422.3.1):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

AUTOMATED LICENSE PLATE READER (ALPR) DEVICES

A. DESCRIPTION

Automated License Plate Readers (ALPRs) are high-speed, computer controlled camera systems that are typically mounted on Berkeley Police Department Parking Enforcement Vehicles.

ALPRs capture license plate numbers which come into view, along with the location, date and time. The data, which includes a photo of the front or the back of the car displaying the license plate, is then uploaded to a central server.

B. PURPOSE

The Berkeley Police Department's Parking Enforcement Unit utilizes vehicles equipped with ALPRs to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's also access information in the California Law Enforcement Telecommunications System's (CLETS) Stolen Vehicle System (SVS) database, which provides information on matches for stolen and wanted vehicles.

The Berkeley Police Department's Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates, and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding parking citation fees.

C. LOCATION

Parking Enforcement vehicles travel throughout the city; using the ALPRs as described above.

D. IMPACT

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures utilized with ALPR Units will help to ensure unauthorized use of its data. The procedures will ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

1302 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES

E. MITIGATION

All saved data will be safeguarded and protected by both procedural and technological means which are implemented to safeguard the public from any impacts identified in subsection (D). See subsection (G) for further.

F. DATA TYPES AND SOURCES

Photographs of license plates and location data may be obtained through the use of ALPR Units.

G. DATA SECURITY

The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

1. All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
2. Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action and parking enforcement.
3. Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
4. Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.

H. FISCAL COST

In 2015, Public Works brought an ALPR Contract to City Council. Council approved a contract for Public Works to buy five Genetec ALPR Units with PCS Mobile communication, for a pilot program for \$450,000.

In 2017, after success with the program, City Council approved an amendment to the contract, allowing Public Works to purchase 15 more ALPR Units for Parking Enforcement vehicles, and to continue its use of PCS Mobile, for 1,200,000. The money was allocated from the goBerkeley/Federal Highway Administration Parking Meter Fund.

Yearly service for the ALPR Units includes warranties, hosting services, cellular connection, mobile computing, and training which varies. The costs through fiscal year 2022 are currently estimated at \$1,175,000.

1302 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES

Personnel costs are minimal in that the ALPR Units are used as a resource during normal working hours.

I. THIRD PARTY DEPENDENCE AND ACCESS

1. Vendor Access-Scofflaw Enforcement: The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:
 - a. All data captured by the ALPR is stored on the booting vehicle's laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.
 - b. When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.
2. Vendor Access-General Parking Enforcement and goBerkeley Program: The contracted vendor for the City's Parking Enforcement ALPR is currently Genetec. The city uses Genetec ALPRs to support efficient enforcement of posted time limit parking and Residential Preferential Parking permits.
 - a. In addition, Genetec periodically provides reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that the City's program can analyze data about parking demand. These reports do not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports consist of completely anonymized information, using identification numbers that are not associated with a particular license plate or registered owner.
 - b. The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and Residential Permit Pass (RPP) area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.
3. Department of Information Technology Access: Technical support and assistance for ALPR's is provided by the City of Berkeley's Department of Information Technology (IT) and associated ALPR system providers/vendors as identified herein. IT staff who

1302 APPENDIX A**BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES**

do not have the proper clearance and training do not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT provides initial infrastructure set-up, and continued systems support as needed to ensure efficient and accurate performance of the ALPR hardware and software. Only IT staff members who have successfully undergone DOJ background checks and training are authorized by the Chief of Police to view specific ALPR records.

4. Other Law Enforcement Agency Access: ALPR data may only be shared with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law. Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55). Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
5. Member Access: No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training. No ALPR operator may access CLETS data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through CLETS before taking enforcement action that is based solely on an ALPR alert.
6. Public Access: Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.

J. ALTERNATIVES

None.

K. EXPERIENCE OF OTHER ENTITIES

The use of ALPR technology is common amongst law enforcement agencies throughout the country, in support of parking enforcement, and law enforcement criminal investigations.

Automated License Plate Readers (ALPRs)

422.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

422.2 POLICY

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

422.3 ADMINISTRATION

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

422.3.1 ALPR ADMINISTRATOR

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

422.4 USE OF THE ALPR

An ALPR shall only be used for official law enforcement business.

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use,

or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

- (a) An ALPR may be used by Berkeley Police Department Parking Enforcement for parking and scofflaw enforcement.
- (b) An ALPR may be used to support criminal investigations. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped vehicles to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.

No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert

422.5 .DATA COLLECTION AND RETENTION

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review.

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data.

Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT Department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

- (a) Collected images and metadata of reads showing violations will not be stored for more than 365 days.
- (b) Metadata of reads showing violations will be stored for up to 30 days. Images of reads not

showing violations will not be transferred to the server.

422.6 ACCOUNTABILITY

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law.
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.
- (c) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (d) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action or parking enforcement.
- (e) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (f) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.
- (g) ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually.

For security or data breaches, see the Records Release and Maintenance Policy.

422.7 RELEASING ALPR DATA

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:
 - 1. The name of the agency.
 - 2. The name of the person requesting.
 - 3. The intended purpose of obtaining the information.

4. The related case number.
- (b) The request is reviewed by the Investigations Division Captain, or his/her designee, and approved before the request is fulfilled.
- (c) The approved request is retained on file.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

ALPR data is subject to the provisions of the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

422.8 SCOFFLAW ENFORCEMENT

The Berkeley Police Department uses ALPR technology in the Parking Enforcement Unit for parking and scofflaw enforcement.

The Parking Enforcement Unit will utilize vehicles equipped with ALPR units to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's will also access information in the DMV's Stolen Vehicle System (SVS) database for wanted and stolen vehicles.

The Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding citation fees.

The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website.

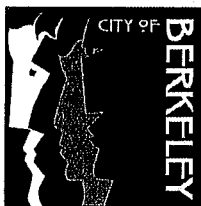
When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.

The City's Parking Enforcement ALPR vendor (currently Genetec) will periodically provide reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that it can analyze data about parking demand. These reports will not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner.

The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and RPP area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking

enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.

ATTACHMENT 5:
Police Review Commission Communication



Police Review Commission (PRC)

September 11, 2019

To: Honorable Mayor and Members of the City Council
From: George Perezvelez, ^{PRC Chair} Chairperson, Police Review Commission
Re: Proposed Berkeley Police Department Policy 422, Automated License Plate Readers

Summary: This memo is to inform you of the Police Review Commission's qualified approval of the BPD's proposed policy for the use of Automated License Plate Readers (ALPRs).

Background: The BPD submitted the ALPR policy, Policy 422, to the PRC for review, along with the Surveillance Use Policy and the Surveillance Acquisition Report (Policy 1302 and Appendix A) for these devices. This process was undertaken in advance of BPD submitting these items to the City Council as required by the Surveillance Technology Use and Community Safety Ordinance (B.M.C. Ch. 2.99).

These policies were first considered by the full Commission, which then referred them to its Lexipol Policies Subcommittee. In response to feedback from the PRC and the Subcommittee, the BPD revised the proposed policy, which was reviewed by both bodies. At various stages, the PRC and the subcommittee had the opportunity to hear from and ask questions of Police Chief Greenwood and other members of the BPD, and Deputy City Attorney Chris Jensen. The PRC also heard input from representatives of Media Alliance and Oakland Privacy.

Final action: At its September 4, 2019 meeting, the PRC voted to approve for submission to the City Council for your review and discussion the version of Policy 422 that is attached here, with two caveats. First, there was concern among some commissioners that the ALPR was originally acquired for the purpose of parking enforcement and that this policy represents an expansion of that function. If this is not what the Council had in mind, then this policy should be modified accordingly. Second, Section 422.4(c) of the policy does not adequately define what constitutes a "crime scene."

Finally, the Commission wishes to remind the Council that they will see actual use of the ALPR technology under the reporting mechanism in place in the Surveillance Technology Use and Community Safety Ordinance.

Honorable Mayor and Members of the City Council
Proposed Berkeley Police Department Policy 422, Automated License Plate Readers
September 11, 2019
p. 2

The above action was approved by the following vote: Moved/Seconded
(Perezvelez/Mikiten) -- Ayes: Calavita, Chang, Leftwich, Mikiten, Perezvelez,
Ramsey; Noes: Earnest, Mizell; Abstain: Allamby; Absent: None.

Attachment: Revised Policy 422

cc: Dee Williams-Ridley, City Manager
Andrew Greenwood, Chief of Police
David White, Deputy City Manager
PRC Commissioners

Automated License Plate Readers (ALPRs)

422.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

422.2 POLICY

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

422.3 ADMINISTRATION

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

422.3.1 ALPR ADMINISTRATOR

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

422.4 USE OF THE ALPR

An ALPR shall only be used for official law enforcement business.

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use,

or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

- (a) An ALPR may be used by Berkeley Police Department Parking Enforcement for parking and scofflaw enforcement.
- (b) An ALPR may be used to support criminal investigations. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped vehicles to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.

No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

422.5 DATA COLLECTION AND RETENTION

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ~~ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law.~~

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data.

Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT Department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

- (a) Collected images and metadata of reads showing violations will not be stored for more than 365 days.

-
- (b) Metadata of reads showing violations will be stored for up to 30 days. Images of reads not showing violations will not be transferred to the server.

422.6 ACCOUNTABILITY

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law.
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.
- (c) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (d) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action or parking enforcement.
- (e) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (f) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.
- (g) ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually.

For security or data breaches, see the Records Release and Maintenance Policy.

422.7 RELEASING ALPR DATA

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:
 1. The name of the agency.

2. The name of the person requesting.
 3. The intended purpose of obtaining the information.
 4. The related case number.
- (b) The request is reviewed by the Investigations Division Captain, or his/her designee, and approved before the request is fulfilled.
- (c) The approved request is retained on file.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

ALPR data is subject to the provisions of the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

422.8 SCOFFLAW ENFORCEMENT

The Berkeley Police Department uses ALPR technology in the Parking Enforcement Unit for parking and scofflaw enforcement.

The Parking Enforcement Unit will utilize vehicles equipped with ALPR units to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's will also access information in the DMV's Stolen Vehicle System (SVS) database for wanted and stolen vehicles.

The Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding citation fees.

The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:

- (a) All data captured by the ALPR is stored on the laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.

When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.

The City's Parking Enforcement ALPR vendor (currently Genetec) will periodically provide reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that it can analyze data about parking demand. These reports will not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated

with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner.

The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and RPP area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.



Office of the City Manager

ACTION CALENDAR
January 28, 2020
(Continued from January 14, 2020)

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Phillip L. Harrington, Director, Public Works
Subject: goBerkeley Program Update – January 2020

INTRODUCTION

goBerkeley is a baseline program comprising parking management strategies and projects that support economic vitality and reduce greenhouse gas emissions in the City of Berkeley. This report provides an update on current and future goBerkeley activities and initiatives, including the grant-funded Residential Shared Parking Pilot project.

CURRENT SITUATION AND ITS EFFECTS

Operationally, goBerkeley's primary tool is demand-responsive parking pricing. Staff periodically analyze parking activity to verify that there are at least 1-2 open spaces (or 65-85% occupied) on most block faces¹ in an area. If this target is reached, then no price adjustments are needed. If blocks are too full, then prices need to be increased; if blocks are too empty, then prices need to be lowered. As a secondary tool, time limits are used to reinforce turnover in some areas or entice a shift of demand to areas with longer time limits.

As of January 2020, goBerkeley activities include initiating the grant-funded Residential Shared Parking Pilot project, expanding the existing demand-responsive parking program to other commercial districts, and evaluating evening and special event pricing to address high parking demand after 6 p.m.

goBerkeley Residential Shared Parking Pilot

The goBerkeley Residential Shared Parking Pilot (RSPP) is a grant-funded pilot project with goals of increasing parking availability, reducing greenhouse gas emissions, and improving travel and mobility in the Elmwood and Southside/Telegraph neighborhoods.² Inspired by feedback received during the initial goBerkeley pilot, the project is designed to support several groups of people currently sharing residential parking during the day, including residents, local employees, business owners, and visitors. While existing Residential Preferential Parking (RPP) restrictions may work well for residents, the two-

¹ Block face - one side of one block, e.g., the north side of Center Street between Milvia Street and Shattuck Avenue.

² February 23, 2016 Council Meeting: <http://bit.ly/2me6EHN>

hour time limits are challenging for people who need to stay longer, and some non-permitted users move their car every two hours to avoid a citation. This practice causes traffic congestion in neighborhoods, frustration and lost productivity for employees and their employers, and increased pollution from circling for parking, even in areas that have adequate parking availability.

The RSPB project is currently in its information gathering stage, with a consultant team supporting data collection, public outreach, and communication efforts.³ In fall 2019, staff held the first meeting of a Technical Advisory Committee (TAC), which provides feedback on the operational feasibility of the project. The City has also created a brand identity for the project, *goBerkeley SmartSpace*, and a project website is now available at <http://smartspace.goberkeley.info>. In January 2020, staff will convene a Community Advisory Group (CAG), providing opportunities for local neighborhood groups and other representatives to help shape and evaluate the pilot project. Staff will also use a range of public outreach tools to ensure that all voices are heard so the pilot best responds to community needs.

Broader community outreach will occur this spring. With assistance from the CAG, staff will develop a set of pilot recommendations for Council approval this summer and implementation in fall 2020.

Managing goBerkeley in Existing Areas

goBerkeley currently manages public parking resources in the Downtown Berkeley, Southside/Telegraph, Northside (Euclid/Hearst), North Shattuck, and Elmwood commercial districts, including three City-owned parking garages and two off-street parking lots. The expansion to Northside in fall 2018 was the first since the pilot program was made permanent in 2015. On January 1, 2020, the North Shattuck parking meter district joined the goBerkeley program.

The next set of price and time limit adjustments, resulting from data collected in fall 2019, will go into effect February 1, 2020.⁴

Expanding Demand-Responsive Parking Management

Staff are currently working to expand demand-responsive pricing under the goBerkeley program to the Fourth Street and University/San Pablo commercial areas. Each expansion effort includes an analysis of parking occupancy rates to determine where price adjustments may be needed, coupled with in-depth outreach to the local business community to ensure that goBerkeley policies reflect the unique needs of each district. Ultimately, staff are prepared to expand goBerkeley to all metered commercial districts in the City where merchants express interest in better parking demand management.

³ July 24, 2018 Council Meeting: <http://bit.ly/2me7og3>

October 2, 2018 Council Meeting: <http://bit.ly/2lOz4bf>

⁴ December 10, 2019 Council Meeting: <http://bit.ly/37rnogQ>

Evaluating Parking Management for Evenings and Special Events

On-street parking meters in both goBerkeley and non-goBerkeley areas operate from 9 a.m. to 6 p.m., Monday through Saturday. Parking occupancy studies for recent goBerkeley program adjustments have consistently shown that demand in Downtown Berkeley, Southside/Telegraph, and Elmwood is very high after 6 p.m., particularly on Saturdays, as restaurants, event venues, and other attractions continue to generate demand well after meters are no longer enforced. With off-street parking facilities continuing to charge for parking until midnight or later, drivers are incentivized to circle to find free parking on-street. This is the opposite of the goBerkeley model, which strategically prices public parking garages and lots lower than on-street rates to reduce circling for a spot. Recognizing the need for parking management in the evening, other cities in the Bay Area charge for on-street parking after 6 p.m., including Santa Cruz, Santa Rosa, and Walnut Creek (until 8 p.m.); and certain areas of Sacramento and San Francisco (until 10 p.m.).

Likewise, during evening special events such as UC Berkeley concerts and sporting events, parking in localized areas near event venues becomes difficult to find and may also lead to circling for a spot, which increases greenhouse gas emissions. Several cities in the region have instituted special event pricing at on-street parking meters, including Sacramento, San Francisco, and San Jose.

In 2014, staff conducted a survey to better understand evening parking needs in goBerkeley areas, and concluded that in some cases, employees were parking in front of businesses after 6 p.m. This information was shared with merchants, which generated interest in an evening metering pilot in Downtown Berkeley and the Elmwood but a pilot was not pursued at that time. However, the demand for parking after 6 p.m. in certain areas remains. Staff will evaluate the need for and merchant interest in evening and special event pricing at on-street meters and expect to bring a proposal to Council in 2020.

Finally, expanding the goBerkeley Program is a Strategic Plan Priority Project, advancing our goals to:

- Provide state-of-the-art, well-maintained infrastructure, amenities, and facilities;
- Foster a dynamic, sustainable, and locally-based economy;
- Be a global leader in addressing climate change, advancing environmental justice, and protecting the environment; and
- Be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

BACKGROUND

In 2015, the City was awarded a \$950,000 grant from the Metropolitan Transportation Commission (MTC) for the goBerkeley Residential Shared Parking Pilot (Resolution No. 67,382–N.S.). The pilot will test policies to increase parking availability for residents, employees, and visitors; reduce circling for parking; and expand access to non-

motorized means of transportation within Residential Preferential Parking (RPP) areas in the Southside and Elmwood neighborhoods.

The goBerkeley program comprises a suite of strategies and initiatives designed to improve economic vitality and reduce greenhouse gas emissions. goBerkeley features improved parking availability that in turn improves pedestrian and bicyclist safety by reducing the likelihood of incidents of distracted driving as drivers search for parking. Clearer signage and longer on-street parking time limits also provide better customer service.

ENVIRONMENTAL SUSTAINABILITY

According to the State of California Legislative Analyst's Office, transportation was the largest source of greenhouse gas emissions in California in 2016, with 69% of these emissions generated by passenger vehicles.⁵ Reducing greenhouse gas emissions produced by vehicular traffic is one of the City's 2009 Climate Action Plan goals. Parking management based on user demand should ultimately improve parking availability in commercial and residential areas, and lessen traffic congestion and vehicle emissions as drivers are anticipated to spend less time searching for available parking spaces.

POSSIBLE FUTURE ACTION

Staff will manage the goBerkeley Program, including the Residential Shared Parking Pilot project, as described above and will return to Council for input, updates, and/or approval of new programs and initiatives as needed.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Precise fiscal impacts depend on the nature and scope of future goBerkeley expansions and/or new programs. In most cases, these actions will require their own Council Reports to implement, and fiscal impacts will be presented to Council as part of these efforts. In general, however, fiscal impacts are difficult to forecast as demand-responsive parking pricing may result in increased or decreased parking rates in different areas, and parking behaviors resulting from these price adjustments may vary.

CONTACT PERSON

Farid Javandel, Transportation Manager, Public Works, 981-7061

Danette Perry, Parking Services Manager, Public Works, 981-7057

Gordon Hansen, Senior Planner, Public Works, 981-7064

⁵ Legislative Analyst's Office Report, December 21, 2018 *Assessing California's Climate Policies—Transportation*: <http://bit.ly/2kKfcFN>



Office of the City Manager

ACTION CALENDAR

January 28, 2020

(Continued from December 3, 2019)

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Phillip L. Harrington, Director, Public Works
Subject: goBerkeley Residential Shared Parking Pilot Project Update

RECOMMENDATION

Receive a presentation providing an update on the Residential Shared Parking Pilot project, and offer any comments to staff on the implementation of the project.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The Residential Shared Parking Pilot (RSPP) is a grant-funded pilot project with goals of increasing parking availability, reducing greenhouse gas emissions, and improving travel and mobility in the Elmwood and Southside/Telegraph neighborhoods.¹ Inspired by feedback received during the initial goBerkeley pilot, the project is designed to support several groups of people currently sharing residential parking during the day, including residents, local employees, business owners, and visitors. While existing Residential Preferential Parking (RPP) restrictions may work well for residents, the two-hour time limits are challenging for people who need to stay longer, and some non-permitted users move their car every two hours to avoid a citation. This practice causes traffic congestion in neighborhoods, frustration and lost productivity for employees and their employers, and increased pollution from circling for parking, even in areas that have adequate parking availability.

The RSPP project is currently in its information gathering stage, with a consultant team supporting data collection, public outreach, and communication efforts.² As of September 2019, staff are convening a Technical Advisory Committee (TAC), which will provide feedback on the operational feasibility of pilot recommendations, and a Community Advisory Group (CAG), which will provide opportunities for local neighborhood groups and other representatives to help shape and evaluate the pilot

¹ February 23, 2016 Council Meeting: <http://bit.ly/2me6EHN>

² July 24, 2018 Council Meeting: <http://bit.ly/2me7og3>

October 2, 2018 Council Meeting: <http://bit.ly/2IOz4bf>

project. Staff will also use a range of public outreach tools to ensure that all voices are heard so the pilot best responds to community needs.

Staff expect to finalize a summary of existing conditions by the end of 2019, and to develop recommendations for a pilot project that would go into effect in fall 2020.

The Residential Shared Parking Pilot project is a Strategic Plan Priority Project, advancing our goals to:

- Provide state-of-the-art, well-maintained infrastructure, amenities, and facilities;
- Foster a dynamic, sustainable, and locally-based economy;
- Be a global leader in addressing climate change, advancing environmental justice, and protecting the environment; and
- Be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

BACKGROUND

In 2015, the City was awarded a \$950,000 grant from the Metropolitan Transportation Commission (MTC) for the goBerkeley Residential Shared Parking Pilot (Resolution No. 67,382–N.S.). The pilot will test policies to increase parking availability for residents, employees, and visitors; reduce circling for parking; and expand access to non-motorized means of transportation within Residential Preferential Parking (RPP) areas in the Southside and Elmwood neighborhoods.

ENVIRONMENTAL SUSTAINABILITY

According to the State of California Legislative Analyst's Office, transportation was the largest source of greenhouse gas emissions in California in 2016, with 69% of these emissions generated by passenger vehicles.³ Reducing greenhouse gas emissions produced by vehicular traffic is one of the City's 2009 Climate Action Plan goals. Parking management based on user demand should ultimately improve parking availability in commercial and residential areas, and lessen traffic congestion and vehicle emissions as drivers are anticipated to spend less time searching for available parking spaces.

RATIONALE FOR RECOMMENDATION

The RSPD seeks to improve parking availability, air quality, and ease of travel for a variety of stakeholders in its two study areas. Moreover, Council has long supported the goals of the RSPD, authorizing staff to submit a grant application to the MTC (Resolution No. 67,216-N.S.) and subsequently accepting the grant funding to complete the project (Resolution No. 67,382-N.S.).

³ Legislative Analyst's Office Report, December 21, 2018 *Assessing California's Climate Policies—Transportation*: <http://bit.ly/2kKfcFN>

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Farid Javandel, Transportation Manager, Public Works, 981-7061

Danette Perry, Parking Services Manager, Public Works, 981-7057

Gordon Hansen, Senior Planner, Public Works, 981-7064



Rashi Kesarwani
Councilmember District 1

ACTION CALENDAR
January 28, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Rashi Kesarwani, Mayor Jesse Arreguin, and Councilmember Kate Harrison

Subject: Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours

RECOMMENDATION

Adopt a resolution to allow recipients of a three-month “Grace Period” permit for safe RV parking to park overnight during non-business hours in designated City-owned parking lots pursuant to California Vehicle Code Section 21107.8(a)(1).

The resolution authorizes the City Manager to determine appropriate City-owned parking lots, with consideration for safe ingress and egress, accessibility of restroom facilities, and other health and safety considerations.

FINANCIAL IMPLICATIONS

Staff time to determine appropriate City-owned parking lots for safe RV parking, prepare parking lots for use, and to allocate an initial 25 permits for safe RV parking under the three-month Grace Period Permit Program.

CURRENT SITUATION AND ITS EFFECTS

The number of people residing in RVs on the public right-of-way for extended periods of time has grown, according to the 2019 Homelessness Point-in-Time Count for Alameda County. In Berkeley, there is a high concentration of RVs located west of San Pablo Avenue, particularly in the commercial Gilman District and adjacent residential neighborhoods. The existence of RVs on the public right-of-way for extended periods of time without sewer, water, and electrical connections presents health and safety concerns for RV dwellers and other members of the community.

The City has received a wide range of health and safety complaints related to the high concentration of RVs, including, for example, improper disposal of human waste into storm drains, blocked sight lines on streets, and reduced availability of employee parking within a reasonable proximity to businesses during early morning and late-night hours creating concerns about personal safety. Further, the high concentration of RVs in the Gilman District for extended periods of time has prevented our Public Works Department from doing street sweeping in the area.

City of Berkeley staff have spent considerable time and energy over the better part of 2019 investigating options for a 24-hour off-street safe RV parking site for specified priority populations. Staff investigated numerous public and private options and enlisted the services of a real property specialist with a goal of identifying a suitable parking lot. To date, no viable site has been identified within city limits for 24-hour use due to a variety of issues such as expense, limited size, or being legally infeasible. In light of these challenges as well as the need to ensure the health and safety of our community in a manner that is sensitive to priority populations, this resolution is put forward as a means of addressing the urgent need for a viable solution. The resolution—required pursuant to California Vehicle Code Section 21107.8(a)(1)—would authorize the City Manager to (1) determine appropriate City-owned parking lots for the three-month Grace Period Permit for safe RV parking, with consideration for safe ingress and egress, accessibility of restroom facilities, and other health and safety considerations and (2) to determine appropriate hours of availability during overnight non-business hours.

Allowing overnight parking in City-owned parking lots during overnight non-business hours aligns with our Strategic Plan Priority Project of advancing our goal to create housing support services for our most vulnerable community members. It also helps us maintain our infrastructure and facilities by helping to keep our streets and storm drains clean and clear of hazardous material.

BACKGROUND

Homelessness in the Bay Area continues to rise with an increase in Alameda County of 43% from 2017 to 2019. As a result of this increase in homelessness, there has been an increase in the number of RVs parking for extended periods of time within the City of Berkeley without access to sewer, water, and electrical connections, creating a health and safety risk. In December 2018, City staff had identified 193 RVs and oversized vehicles parked on the public right-of-way, with 100 oversized vehicles concentrated in West Berkeley. Additionally, City staff had been contacted more than 1,500 times in calendar year 2018 with requests by community members to address the health and safety impact of RVs in residential and commercial areas, according to the February 26, 2019 referral response staff report.

The City has sought to balance the preservation of health and safety for all with our obligation to do as much as we can to help our most vulnerable. On February 28, 2019, the City Council approved the first reading of Ordinance No. 7,643- N.S. amending Berkeley Municipal Code Chapter 14.40.120 to add oversized RVs and campers to the list of vehicles not allowed to park overnight on the public right-of-way between the hours of 2 a.m. to 5 a.m. for more than one hour. The Council's motion specified that the enforcement of the ordinance would be preceded by notice, outreach, providing flexible funding and service referrals.

On March 26, 2019, the City Council adopted a second reading of Ordinance No. 7,643- N.S. with additional recommendations and guidelines to ensure that enforcement would not commence until outreach is conducted and a permit system is developed. Council also allocated \$50,000 in state Homeless Emergency Aid Program dollars for flexible funding to

assist RV dwellers, and authorized targeted outreach to RV dwellers in order to identify needs and determine if they meet the criteria for priority populations eligible for the three-month "Grace Period" Permit Program (with the possibility of renewal). The Council specified priority populations to include families with children, people who work or study in Berkeley, and persons who had a Berkeley home address within the past 10 years as well as consideration of health status, disability and self-care needs, age and household size (including the presence of children).

Further, on December 3, 2019, the City Council allocated \$100,000 for the current fiscal year (FY19-20) and \$100,000 for the next fiscal year (FY20-21) for funding such services as portable bathrooms and trash pick-up related to a safe RV parking program. We note that safe parking for individuals sheltering in vehicles is a model being used in other communities, including Santa Barbara, Los Angeles, East Palo Alto, Oakland, and San Francisco.

ENVIRONMENTAL SUSTAINABILITY

Providing access to designated City-owned parking lots for overnight use during non-business hours helps to address improper disposal of human waste and debris as the parking areas will be chosen with consideration for restroom facilities and trash service.

CONTACT PERSON

Councilmember Rashi Kesarwani, Council District 1
510-981-7110

Attachments:

1: Resolution

Exhibit A: Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours

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

Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours

WHEREAS, the Berkeley City Council adopted Ordinance No. 7,643- N.S. on March 26, 2019 amending Berkeley Municipal Code section 14.40.120 to add oversized RVs and campers to the list of vehicles not allowed to park overnight on the public right-of-way between the hours of two a.m. and five a.m. for a greater length of time than one hour; and

WHEREAS, the City Council also adopted “Implementation Guidelines for Managing RV Parking” on March 26, 2019 in order to ensure that enforcement of Ordinance No. 7,643-N.S. would not commence until outreach is conducted and a program is developed to enable specified priority populations to receive a three-month “Grace Period” Permit to park in a designated safe location with a possibility of renewal; and

WHEREAS, the population of individuals and families living in RVs and campers on the public right-of-way for extended periods of time is diverse, with some vehicles housing populations that the City Council has deemed priority populations including families with children, people who work or study in Berkeley, and persons who previously had a Berkeley home address within the last 10 years; and

WHEREAS, the proliferation of RV dwellers reflects the regional shortage of affordable homes and related homelessness crisis, with a need to prioritize supportive services based on consideration of health status, disability and self-care needs, age and household size (including the presence of children); and

WHEREAS, the City of Berkeley has contracted with a homeless services provider to conduct outreach to people living in RVs; and

WHEREAS, the City of Berkeley has conducted an exhaustive search for a 24-hour safe RV parking location within city limits, including discussions with numerous public and private entities, with no locations to date found to be viable due to a variety of issues such as expense, limited size, or being legally infeasible.

WHEREAS, the California Vehicle Code Section 21107.8(a)(1) establishes that a city may, by resolution, find and declare that there are off-street parking facilities that are available for a public vehicular parking use; and

WHEREAS, the City of Berkeley seeks to implement all laws and ordinances in a fair and humane manner.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that designated City-owned parking lots with appropriate ingress and egress shall be made

available overnight during non-business hours for individuals in receipt of a three-month Grace Period Permit for safe RV parking.

BE IT FURTHER RESOLVED that the City Manager is authorized to determine appropriate City-owned parking lots for the three-month Grace Period Permit for safe RV parking, with consideration for safe ingress and egress, accessibility of restroom facilities, and other health and safety considerations and to determine appropriate hours of availability during overnight non-business hours.



INFORMATION CALENDAR

January 28, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

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

Subject: Public Health Division's Recommendations on Cannabis

INTRODUCTION

The City of Berkeley's Public Health Division (PH) collaborates with community members and partners to achieve health equity and optimal health for all people in Berkeley through policy, institutional systems change and service provision. The City of Berkeley's Public Health Division believes it is imperative that cannabis ordinance amendments reflect and support ongoing efforts to ensure safe adult use of cannabis while reducing youth access and assuring safeguards to support air absent of carcinogenic secondhand smoke. The Public Health Division works to ensure the health and wellbeing of all Berkeley residents and believes that every person in Berkeley has the right to good health. To that end, PH has been an active participant in the ongoing staff working group in the City of Berkeley, and is pleased to have many of our concerns addressed in the proposed ordinances. Public Health Division staff also recognize that there are many competing interests in topics such as these, and is providing the attached report focused strictly on public health goals.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley's Public Health Division has a responsibility to make recommendations that protect the health of Berkeley residents in regard to Proposition 64. PH recommendations have informed the City's current and proposed cannabis ordinances to date. This report is an opportunity for PH to identify some additional recommendations, some of which go beyond what other jurisdictions have adopted and that may face implementation challenges, but PH is committed to continued efforts to protect vulnerable populations. The following recommendations are safeguards: 1) Requiring Berkeley cannabis retailers to prominently display health warnings onsite to help inform cannabis consumers of the short and long term health effects, 2) Requiring enhanced health warning labeling in addition to the required state labeling for all flavored cannabis and cannabis products and include a safe consumption of cannabis fact sheet for all purchases of edible cannabis products due to their appeal to youth, 3) Prohibiting lounges for smoking and vaping cannabis and/ or cannabis products, and 4) Requiring authentication of legal age to purchase cannabis products at point of registration for all delivery purchases as well as in-person verification of buyer's identity and legal age to purchase at the time of delivery.

Recommendations containing the Public Health perspective is a Strategic Plan Priority Project, advancing our goal to:

- Create a resilient, safe, connected, and prepared city and
- Champion and demonstrate social and racial equity.

It also reaffirms the Public Health Division's concerns about the health impacts of cannabis shared with Council through a memo from the City Health Officer to Kelly from September 2018 and included in the agenda packet for the October 9, 2018 worksession on the Options for Cannabis Regulations and Cannabis Business Selection Process.

BACKGROUND

In November of 2016, the state of California passed Proposition 64 which gave California the right to control, regulate and tax adult use cannabis. Proposition 64 allows local city and county jurisdictions to adopt regulations in addition to state law.

The National Academies of Sciences, Engineering and Medicine (NASEM) study¹ released in January of 2017 reported on the health effects of cannabis and cannabis-derived products. This review of the available scientific evidence found “substantial evidence” 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 California Department of Public Health's California Cannabis Health Information Initiative² also highlights the following negative health effects of cannabis:

¹ National Academies of Sciences, Engineering, and Medicine. 2017. *The health effects of cannabis and cannabinoids: The current state of evidence and recommendations for research*. Washington, DC: The National Academies Press. doi: 10.17226/24625

² <https://www.cdph.ca.gov/Programs/DO/letstalkcannabis/Pages/responsibleuse.aspx>

- Driving under the influence of cannabis is illegal and increases the risk of getting into a car crash.
- Edibles may have higher concentrations of tetrahydrocannabinol (THC, the active ingredient in cannabis) and may take between 30 minutes and two hours to feel the effect, increasing the risk of consuming greater concentrations of THC in shorter time period, therefore placing individuals at higher risk for poisoning. Cannabis affects children more strongly than adults. Children are also at higher risk for poisoning from cannabis, especially with edibles.
- Smoke from cannabis contains many of the same toxins and chemicals found in tobacco smoke and inhaling it can increase your risk of developing lung problems.
- Young people who use cannabis regularly can harm their memory and ability to learn. There is also a greater risk for depression, anxiety, and schizophrenia.
- The way cannabis plants are grown has changed over the past few decades. Many plants now contain higher amounts of THC. The higher the THC content, the stronger the effects on your brain and behavior.

ENVIRONMENTAL SUSTAINABILITY

Educational materials will need to be produced to build awareness of the dangers of consuming cannabis among customers. Paper products and signage will be required to facilitate these educational activities.

POSSIBLE FUTURE ACTION

The Public Health Division will continue to partner with the multidepartmental working group as well as provide information and recommendations to the City Council when appropriate as to the risks and health concerns around the consumption of cannabis and cannabis products. It is hoped that the City Council will consider these health risks and impacts on the Berkeley community in the development of ordinances that involve the sale and use of cannabis.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

In order to offset the adverse health impacts and risks of consuming cannabis and cannabis products, funding for prevention education, particularly for youth, must be considered.

CONTACT PERSON

Lisa B. Hernandez, MD, MPH Health Officer, HHCS, (510) 981-5308
Janice Chin, Public Health Division Manager, HHCS, (510) 981-5121

Attachments:

- 1: City of Berkeley's Public Health Division Cannabis Ordinance Amendment Recommendations



Health, Housing & Community Services Department
Public Health Division
Cannabis Ordinance Amendment Recommendations

November 5, 2019

*Kelly Wallace,
Interim Health, Housing, Community Services (HHCS) Director*

Table of Contents

| | |
|--|---|
| Introduction | 1 |
| Cannabis Ordinance Amendment Recommendations | 2 |
| Resources: Sample Legislation | 5 |
| Cannabis Retailer’s Signage and Cannabis Consumption | 5 |
| Contra Costa County | 5 |
| Mono County: | 5 |
| City of Pasadena: | 6 |
| City of Sacramento: | 6 |
| Prohibit Lounges for Smoking and Vaping Cannabis | 6 |
| Contra Costa County: | 6 |
| City of Hayward: | 6 |
| City of Los Angeles:..... | 6 |
| Mono County: | 7 |
| Cannabis Delivery | 7 |
| San Francisco County: | 7 |
| Oakland: | 7 |
| References | 7 |

Introduction

The Public Health Division works to ensure the health and wellbeing of everyone in Berkeley and believes that every person in Berkeley has the right to good health. We collaborate with community members and partners to achieve health equity and optimal health for all people in Berkeley through policy, institutional systems change and service provision. The Public Health Division believes it is imperative that cannabis ordinance amendments reflect and support ongoing safeguards to ensure safe adult use of cannabis while reducing the risk of youth access and continuing to support current safeguards that ensures air absent of carcinogenic second hand smoke exposure.

In November of 2016, the state of California passed Proposition 64 which gave California the right to control, regulate, and tax adult use cannabis. Proposition 64 allows local city and county jurisdictions to adopt regulations in addition to state law. The City of Berkeley's Public Health Division has a responsibility to make recommendations that protect the health of Berkeley residents in regards to Proposition 64. The following recommendations are safeguards: 1) Requiring Berkeley cannabis retailers to prominently display health warnings onsite to help inform cannabis consumers of the short and long term health effects, 2) Requiring health warning labeling for all flavored cannabis and cannabis products and include a safe consumption of cannabis fact sheet for all purchases of edible cannabis products due to their appeal to youth, 3) Prohibiting lounges for smoking and vaping cannabis and/ or cannabis products, and 4) Requiring authentication of legal age to purchase cannabis products at point of registration for all delivery purchases as well as in-person verification of buyer's identity and legal age to purchase at the time of delivery.

City of Berkeley's Public Health Division

Cannabis Ordinance Amendment Recommendations

1. Require Berkeley cannabis retailers to prominently display health warnings onsite to help inform cannabis consumers of the short and long term health effects of cannabis consumption.

It is important to provide accurate, science-based, up to date information about cannabis consumption to Berkeley residents. The City of Berkeley's Public Health Division has the responsibility of disseminating accurate health information and safeguards on cannabis consumption. The cultural norms of cannabis consumption is evolving and it is important to provide relevant and factual health information on cannabis consumption to Berkeley residents. The City of Berkeley's Public Health Division recommends requiring cannabis retailers to display prominent signs at the entrance of the retail space and at the every point-of-sale counter that include government warnings with safety precautions to:

- 1) Keep cannabis products out of reach from youth, children and animals,
- 2) Emphasize adult use 21 years of age or older unless the person is a qualified patient,
- 3) Highlight the effects of edible cannabis products,
- 4) State the harm of using cannabis products while pregnant and or breastfeeding, and
- 5) Stress how the use of cannabis products can impair one's ability to drive and operate machinery.

Other public health jurisdictions require similar signage including Contra Costa County, Mono County, City of Pasadena and City of Sacramento.¹

2. Require health warning labeling for all flavored cannabis and cannabis products including edibles and include a safe consumption of cannabis fact sheet for all purchases of edible cannabis products due to their appeal to youth.

Despite the State's efforts to limit access to cannabis to youth, youth are still able to obtain cannabis and cannabis products. In 2018, the City of Berkeley's Health Status Report noted "the initiation of substance use early in life contributes to higher levels of use and abuse later in life. Early onset is also associated with a host of negative health, social, and behavioral outcomes."² Limiting the availability of flavored cannabis products, including THC vaping products, will reduce youth appeal and access, reduce/prevent underage use, and reduce the risk of accidental exposure to /overdoses in children. The U.S Surgeon General August 2019 Advisory emphasized "*the importance*

of protecting our Nation from the health risks of marijuana use in adolescence and during pregnancy. Recent increases in access to marijuana and in its potency, along with misperceptions of safety of marijuana endanger our most precious resource, our nation's youth.”³

The increased potency of cannabis products combined with a decreased perceived risk in marijuana, can increase the risk of toxicity. Prior to the 1990s, THC content in products was less than 2%, but “between 1995 and 2015 there was a 212% increase in THC content in the marijuana flower.”⁵ In addition to the increased potency, cannabis products also vary in potency depending on the marijuana flower used and the manufacturer of the product. The increased potency in marijuana products and the varied potency depending on the product can potentially place individuals at an increased risk of adverse drug effects in which individuals may not be aware.

The 2014 Monitoring the Future Study found that the perceived risk of marijuana has steadily declined since the mid-2000s and the perceived availability has increased as 81% of 12th graders claimed it was easily or fairly easy to get marijuana.⁴ The 2017 Health Impact Assessment on cannabis legalization in San Francisco reported an increase in cannabis-related hospitalizations and emergency room visits from cannabis use disorder and poisoning.⁶ According to Illinois’ Department of Public Health, edibles are the most popular form of cannabis-infused products and most likely to result in overconsumption.⁷ Similarly, L.A. County stated that edibles are a common cause of cannabis poisoning especially for youth who can confuse them with food or candy. The County also reported that “after legalization [of cannabis], poison control centers experienced an increase in cannabis-related calls (with a high percentage of cannabis exposures being via edibles), particularly involving children ages 0-9 years old.”⁸

An added risk of cannabis poisoning is the delayed effects of edible cannabis products which can lead to overconsumption and result in adverse health effects. A 2016 publication examining research on edibles states that the oral ingestion of cannabis compared with the inhalation of cannabis is associated with a delayed onset of the drug’s effect.⁹ Edibles introduce cannabinoids through the gastrointestinal tract which are then metabolized in the liver into more potent metabolites. These metabolites produce a stronger and longer-lasting effect vis-à-vis similar doses of inhaled cannabis.

In light of this, ideally the sale of all flavored cannabis and cannabis products, including smoking, vaping and edible products, would be prohibited since they are appealing to youth and can cause cannabis toxicity. Since it would be near impossible to regulate, monitor, and enforce a ban of this nature, the Public Health Division recommends at a minimum, that labels clearly stating health warnings associated with the consumption of cannabis are placed on every flavored cannabis product and edible cannabis product including:

- 1) Keep cannabis products out of reach from youth, children and animals,
- 2) State the harm of using cannabis products while pregnant and or breastfeeding, and

- 3) Stress how the use of cannabis products can impair one's ability to drive and operate machinery.

Also, retailers must include a safe consumption of cannabis fact sheet, specifically addressing the risks of edible cannabis products, for every purchase (including delivery purchases) that includes an edible cannabis product.

3. Prohibit lounges for smoking and vaping cannabis and/or cannabis products

It is important to protect the right of all employees who work in Berkeley, as it supports equity in smoke free workplaces for all. In securing the right for a smoke free workplace, the City of Berkeley Municipal Code 12.70.040 states: "It shall be the responsibility of employers to provide a smoke-free workplace for all employees. Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities."¹⁰ The City of Berkeley defines smoke or smoking as "either (1) inhaling or exhaling upon, burning, or carrying any lighted smoking equipment for tobacco, nicotine or any other plant or product used for personal habit commonly known as smoking or (2) inhaling or exhaling upon, vaporizing, or otherwise using any electronic smoking device."¹⁰ When California passed Proposition 64, the Health & Safety Code, Section 11362.1, does not permit any person to "Smoke cannabis or cannabis products in a location where smoking tobacco is prohibited".¹¹ This applies to all smoke free laws established prior to June 2017 including 12.70.040. Due to this state law stipulation, local laws cannot create exceptions beyond those explicitly authorized by state law (e.g., on-site consumption lounges).

In alignment to the City of Berkeley's smoke free workplace ordinance (Municipal Code: 12.70.040) ensuring equity in smoke free workplaces for employees in Berkeley, the City of Berkeley's Public Health Division recommends prohibiting cannabis lounges to ensure a smoke and vape free workplace for all employees in Berkeley.

4. Require authentication of legal age to purchase cannabis products at point of registration for all delivery purchases as well as in-person verification of buyer's identity and legal age to purchase at the time of delivery.

When offering guidance on cannabis product delivery, it is important to require safeguards that will ensure delivery to cannabis customers who are 21 years of age or older and reduce access to underage consumers. The City of Berkeley's Public Health Division recommends that the delivery of all cannabis or cannabis products to customers within Berkeley require photo ID verification that matches the customer who ordered the product(s). All deliveries of cannabis or cannabis products must be to an address associated with a residential, street address (no P.O. Boxes).

All individuals that seek delivery service for cannabis products must actively attest to being of legal age to purchase cannabis or cannabis products prior to any making any

purchase for delivery. All cannabis retailers must ensure proof of identity and legal age to purchase via a valid photo identification and signature of recipient at the time of delivery. All delivered sales of cannabis to registered customers may only be made during the regular business hours of 8AM – 10PM.

Resources: Sample Legislation

Cannabis Retailer's Signage and Cannabis Consumption

Contra Costa County

A permittee that sells cannabis or cannabis products must comply with specific retail sale standards that includes:

- Within each building in which cannabis or cannabis products are sold, the permittee shall prominently display a sign including the following statement in bold print: displayed prominently in bold print (and all CAPS): "Government warning: Cannabis is a Schedule I Controlled Substance. Keep out of reach of children and animals. Cannabis may only be possessed or consumed by persons 21 years of age or older unless the person is a qualified patient. The intoxicating effects of cannabis may be delayed up to two hours. Cannabis use while pregnant or breastfeeding may be harmful. Consumption of cannabis impairs your ability to drive and operate machinery. Please use extreme caution." (413-4.608(a)) ¹²
- "The sale of any flavored cannabis product for which the primary use is human inhalation of the gases, particles, vapors, or byproducts released as a result of combustion, electrical ignition, or vaporization of the flavored cannabis product, is prohibited." (413-4.608(g)) ¹²

Mono County:

- Retailers must display a warning sign in a prominent location within the premises with letters of not less than one-half-inch in height, and must clearly state the following information: (5.60.140(P)).¹³
 - Are you pregnant or breastfeeding? According to the U.S. Centers for Disease Control (CDC), marijuana use during pregnancy can be harmful to your baby's health, including causing low birth weight and developmental problems.
 - Driving while high is a DUI. Marijuana use increases your risk of motor vehicle crashes.
 - 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.

- Defines “attractive to youth and children” under their regulations for commercial cannabis activities.
 - "Attractive to children or youth" refers to products, packaging or labeling or advertising that may especially encourage persons under age twenty-one to initiate cannabis consumption or otherwise to consume (accidentally or purposely) cannabis or cannabis products (Ch.5.60.030(9)).¹³

City of Pasadena:

- The City’s required in-store safety information for cannabis retail explains that “permitted retail cannabis facility shall display a health warning sign in a conspicuous location at eye height at the point-of-sale counter. The sign shall be approved by the department and in a font that it is easily readable to customers.” (8.11.050) ¹⁴
- Per the City’s regulations for commercial cannabis health permits: "Attractive to children or youth" refers to products, packaging, labeling, or advertising that may especially encourage persons under age 21 to initiate cannabis consumption or otherwise consume (accidentally or purposely) cannabis or cannabis products. The term includes: (Ch.8.10.020(D)).¹⁴

City of Sacramento:

- Per the city’s storefront cannabis dispensary regulations, each storefront cannabis dispensary must have a sign stating, “Smoking, ingesting, or consuming cannabis or cannabis products on this site or in a public place is prohibited” (Ch.5.150.480(A)).¹⁵

Prohibit Lounges for Smoking and Vaping Cannabis

Contra Costa County:

The County’s commercial cannabis activity standards state that a permittee engaged in commercial cannabis activity must comply with a given set of standards including “No Consumption on Premises. No cannabis or cannabis product may be smoked, ingested, or otherwise consumed on the premises” (413-4.604(c)).¹³

City of Hayward:

The “on-site consumption of cannabis and cannabis products by customers or employees is prohibited. Qualified patients are not allowed to consume medical cannabis at dispensary sites except as permitted in accordance with Chapter 5, Article 6 (Smoking Pollution Control) of the Hayward Municipal Code and state law and as approved by a conditional use permit” (10.1.3607(E)).¹⁶

City of Los Angeles:

Per the operational requirements and violations regulation no. 10 fir cannabis procedures, “A Licensee shall not allow the consumption of cannabis or the sale or consumption of alcohol on the Business Premises. No employee or agent of the

Licensee shall solicit or accept any cannabis or alcohol products from any customer or vendor while on the Business Premises” (Reg. 10(A)(18)).¹⁷

Mono County:

“No cannabis shall be smoked, ingested or otherwise consumed on the premises of any cannabis business” (Ch. 5.60.120(G)).¹³

Cannabis Delivery

San Francisco County:

Permitted Cannabis Businesses that receive authorization from the Director to engage in Deliveries must comply with such Delivery Standards as may be adopted by the Director, including but not limited to the following:

- (5) Delivery may only be made to the individual who placed the Bona Fide Order, and to individuals who are 21 years of age or older, unless the Customer provides verification that the Customer, or a patient for whom he or she is a Primary Caregiver, qualifies under California Health and Safety Code Section 11362.7 et seq. to use Medicinal Cannabis. (6) Upon Delivery, the employee performing the Delivery must: (A) Personally review the Bona Fide Proof of Age and Identity of the Customer to confirm that he or she is the same individual who submitted the Bona Fide Order, and is not underage, as set forth in Section 1619 of this Article 16;¹⁸
- (5) A Delivery-Only Cannabis Retailer must provide to all Delivery personnel a remote electronic age verification device to determine the age of any individual attempting to purchase Cannabis or Cannabis Products, which device shall be used upon the Delivery of the Cannabis or Cannabis Products to the Customer. The device shall be maintained in operational condition and all employees shall be instructed in its use. Cannabis and Cannabis products shall not be delivered to a Customer if the electronic age verification device is not functioning.¹⁸

Oakland:

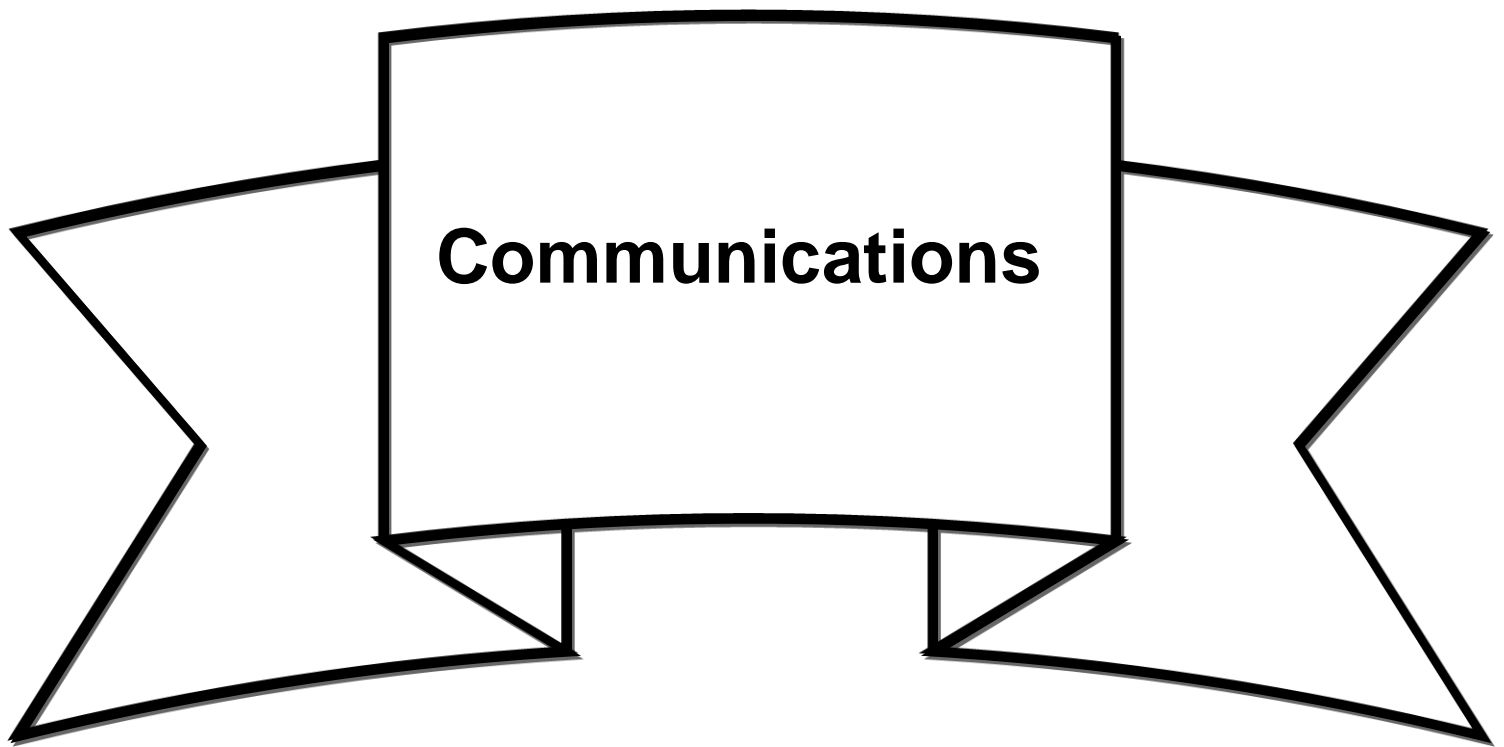
A plan of operations that will describe how the dispensary or delivery only dispensary will operate consistent with State law and the provisions of this chapter, including but not limited to:

- Controls to ensure cannabis will be dispensed only to adults over 21 years of age, qualified patients and/or primary caregivers.¹⁹
- Controls to acquire, possess, transport and distribute cannabis to and from State licensed cannabis entities.¹⁹

References

- ¹ Model Ordinance Regulating Local Cannabis Retail Sales and Marketing in California, Getting It Right From the Start, Public Health Institute.
<http://www.phi.org/resources/?resource=model-ordinance-regulating-local-cannabis-retail-sales-and-marketing-in-california>.
- ² City of Berkeley. (2018). Health Status Report.
https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Level_3_-_Public_Health/2018-health-status-report-berkeley.pdf
- ³ U.S. Department of Health and Human Services (2019). Surgeon General's Advisory: Marijuana Use & the Developing Brain.
<https://www.hhs.gov/surgeongeneral/reports-and-publications/addiction-and-substance-misuse/advisory-on-marijuana-use-and-developing-brain/index.html>
- ⁴ National Institute on Drug Abuse. (2014). Monitoring the Future National Survey on Drug Use: 2014 Overview – Key Findings on Adolescent Drug Use.
<http://www.monitoringthefuture.org/pubs/monographs/mtf-overview2014.pdf>.
- ⁵ Stuyt E. (2018). The Problem with the Current High Potency THC Marijuana from the Perspective of an Addiction Psychiatrist. *Missouri medicine*, 115(6), 482–486.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6312155/>
- ⁶ Office of Policy Planning: San Francisco Department of Public Health. (2017). *Cannabis Legalization in San Francisco: A Health Impact Assessment*. Fall 2017.
http://64.166.146.245/docs/2018/BOS/20180724_1121/34324_Ordinance%20No.%202018-23%20Commercial%20Cannabis%20Health%20Permits.pdf
- ⁷ Illinois Department of Public Health: Division of Medical Cannabis. *Medical Cannabis Infused Products*.
http://www.dph.illinois.gov/sites/default/files/publications/publicationsohpmmedic_alcannabis-infusedproducts-brochure.pdf
- ⁸ Gonzales et al. (2018). Cannabis Toxicity. *Rx for Prevention*, 8(5).
<http://rx.ph.lacounty.gov/RxToxicityCannabis0918>
- ⁹ Barrus, D. G., Capogrossi, K. L., Cates, S. C., Gourdet, C. K., Peiper, N. C., Novak, S. P., ... Wiley, J. L. (2016). Tasty THC: Promises and Challenges of Cannabis Edibles. *Methods report (RTI Press)*, 2016, 10.3768/rtipress.2016.op.0035.1611. doi:10.3768/rtipress.2016.op.0035.1611
- ¹⁰ Berkeley Municipal Code. Title 12: Health and Safety – 12.70 Smoking Pollution Control. <https://www.codepublishing.com/CA/Berkeley/html/Berkeley12/Berkeley1270/Berkeley1270.html>

- ¹¹ California Legislative Information. California Law: Health and Safety Code.
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=11362.3.&lawCode=HSC
- ¹² Division 413 – Public Health Licenses and Fees | Ordinance Code | Contra Costa County, CA | Municode Library.
https://library.municode.com/ca/contra_costa_county/codes/ordinance_code?nodeId=TIT4HESA_DIV413PUHELIFE_CH413-4COCAHEPE_ART413-4.6COCAACHEST_413-4.604COCAACST
- ¹³ Chapter 5.60 – Cannabis Operations | Code of Ordinances | Mono County, CA | Municode Library.
https://library.municode.com/ca/mono_county/codes/code_of_ordinances?nodeId=TIT5BULIRE_CH5.60CAOP_5.60.140ADRECARE
- ¹⁴ Chapter 8.10 – Commercial Cannabis Public Health Permit | Code of Ordinances | Pasadena, CA | Municode Library.
https://library.municode.com/ca/pasadena/codes/code_of_ordinances?nodeId=TIT8HESA_CH8.10COCAPUHEPE_8.10.020DE
- ¹⁵ Sacramento City Code (Sacramento, California).
https://www.qcode.us/codes/sacramento/?view=desktop&topic=5-5_150-iii-5_150_480
- ¹⁶ Sec. 10-1.3600 - Cannabis | Municipal Code | Hayward, CA | Municode Library.
https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1Zoor_S10-1.3600CA_S10-1.3607COCAREDIDE
- ¹⁷ L.A. City Rules and Regulations for Cannabis Procedures. (2018).
https://cannabis.lacity.org/sites/g/files/wph1081/f/Amendments%20to%20Cannabis%20Regulations.CLEAN_7.23.18.pdf
- ¹⁸ Section 1622 – San Francisco City and County Office of Cannabis | Various Codes - Regulation of Cannabis Businesses
<https://sfgov.legistar.com/View.ashx?M=F&ID=5629556&GUID=B90DF6A5-A99A-4662-8CB0-C7C753DE463F>
- ¹⁹ Sec. 5.80.020 - Business permit and application required Page 8 – City of Oakland | Ordinance 13504
<https://cao-94612.s3.amazonaws.com/documents/Ordinance-changes-100418-13504-CMS.pdf>



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