

PROCLAMATION CALLING A SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

In accordance with the authority in me vested, I do hereby call the Berkeley City Council in special session as follows:

Tuesday, July 21, 2020

4:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/89031983199>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial **1-669-900-9128** and enter Meeting ID: **890 3198 3199**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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

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

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call:

Public Comment - Limited to items on this agenda only

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 use the "raise hand" function 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.

1. Placing Charter Amendment Measure on the November 3, 2020 Ballot Related to Full-Time Status and Salaries for the Mayor and Councilmembers

(Continued from June 30, 2020)

From: City Manager

Recommendation:

1. Adopt a Resolution submitting an Amendment to Article V of the City Charter regarding the full-time status and salaries for the Mayor and City Council to a vote of the electors at the November 3, 2020 General Municipal Election.

2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

Financial Implications: See report

Contact: Mark Numainville, City Clerk, (510) 981-6900

2a. Placing Charter Amendment Measure on the November 3, 2020 Ballot to Amend Multiple Administrative Provisions

From: City Manager

Recommendation:

1. Adopt a Resolution placing charter amendment measure on the November 3, 2020 Ballot to repeal the residency requirement for sworn members of the Berkeley Fire Department, conform the eligibility requirements of the Redistricting Commission with state law, and change to gender-neutral language through the text.

2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

Financial Implications: See report

Contact: Mark Numainville, City Clerk, (510) 981-6900

Action Calendar

2b. Placing Charter Amendment Measure on the November 3, 2020 Ballot to Repeal the Residency Requirement for Sworn Members of the Berkeley Fire Department *(Continued from June 30, 2020)*

From: City Manager

Recommendation:

1. Adopt a Resolution submitting an Amendment to Article VII of the City Charter regarding the residency requirement for sworn members of the Fire Department to a vote of the electors at the November 3, 2020 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

Financial Implications: See report

Contact: Mark Numainville, City Clerk, (510) 981-6900

3. Placing a Special Tax Measure on the November 3, 2020 Ballot to Fund Firefighting, Emergency Medical Response and Communications and Wildfire Prevention and Preparedness

From: City Manager

Recommendation:

1. Adopt a Resolution submitting a ballot measure to fund firefighting, emergency medical response and communications, and wildfire prevention and preparedness to a vote of the electors at the November 3, 2020 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

Financial Implications: See report

Contact: Mark Numainville, City Clerk, (510) 981-6900

4. Placing a Tax Measure on the November 3, 2020 Ballot to Adopt a Tax on Transportation Network Companies

From: City Manager

Recommendation:

1. Adopt a Resolution submitting a ballot measure to adopt a tax on Transportation Network Companies to a vote of the electors at the November 3, 2020 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

Financial Implications: See report

Contact: Mark Numainville, City Clerk, (510) 981-6900

Action Calendar

5. **Placing a Tax Measure on the November 3, 2020 Ballot to Increase the Utility Users Tax to Pay for General Municipal Services and Establish a Climate Equity Action Fund to Support Measures to Reduce Local Greenhouse Gas Emissions and Air Pollution**

From: City Manager

Recommendation:

1. Adopt a Resolution submitting a ballot measure to increase the Utility Users Tax to pay for general municipal services and to establish a Climate Equity Action Fund to support measures to reduce local greenhouse gas emissions and air pollution to a vote of the electors at the November 3, 2020 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

Financial Implications: See report

Contact: Mark Numainville, City Clerk, (510) 981-6900

6. **Recommendation to Prepare a City Ballot Measure to Create a Climate Action Fund, in response to the Fossil Fuel Free Berkeley referral** *(Continued from June 30, 2020) (Item contains supplemental material.)*

From: Energy Commission

Recommendation: The Commission recommends that the City Council develop a referendum and seek approval for it on the 2020 ballot to create a Climate Action Fund, which would support actions to achieve the Berkeley Climate Action Plan, to become Fossil Fuel Free, and to respond to the Climate Emergency.

Financial Implications: See report

Contact: Billi Romain, Commission Secretary, (510) 981-7400

Adjournment

I hereby request that the City Clerk of the City of Berkeley cause personal notice to be given to each member of the Berkeley City Council on the time and place of said meeting, forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the City of Berkeley to be affixed on this 17th day of July, 2020.



Jesse Arreguin, Mayor

Public Notice – this Proclamation serves as the official agenda for this meeting.

ATTEST:



Date: July 17, 2020

Mark Numainville, City Clerk

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6 and Government Code Section 65009(c)(1)(E), no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed and served on the City 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 Zoning Adjustments Board decision, 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 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 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>

COMMUNICATION ACCESS INFORMATION:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.



Captioning services are provided at the meeting, on B-TV, and on the Internet.



Office of the City Manager

ACTION CALENDAR
July 21, 2020
(Continued from June 30, 2020)

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Placing Charter Amendment Measure on the November 3, 2020 Ballot
 Related to Full-Time Status and Salaries for the Mayor and
 Councilmembers

RECOMMENDATION

1. Adopt a Resolution submitting an Amendment to Article V of the City Charter regarding the full-time status and salaries for the Mayor and City Council to a vote of the electors at the November 3, 2020 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

FISCAL IMPACTS OF RECOMMENDATION

The table below shows the year-by-year costs for elections since 2012. Significant cost increases occurred in 2012 and 2014 due primarily to general year-over-year increases, and the addition of two more required languages (Vietnamese and Tagalog). The cost increase in 2016 is due to a new, permanent surcharge from the Registrar of Voters to fund the County's voting equipment replacement account.

Date	Election				
	Nov. 2012	Nov. 2014	Nov. 2016	Mar. 2017	Nov. 2018
No. of Measures	10	7	11	0	4
No. of Candidates	26	23	29	2	30
General Costs	\$367,884	\$392,331	\$706,901	-	\$385,246
RCV Costs	\$101,041	\$189,148	\$181,954	-	\$185,578
Total Costs	\$468,925	\$581,479	\$888,855	\$85,628	\$570,824

CURRENT SITUATION AND ITS EFFECTS

At the May 29, 2018 City Council meeting, the council discussed the results of a second community survey and proposed language for an amendment to the City Charter regarding the salary and full-time status of the City Council. The Council directed the City Manager to return with draft ballot measure language for the November 6, 2018 General Election. The Council elected not to place this measure on the November 2018 ballot.

On February 4, 2020, during a City Council work session on potential ballot measures, a majority of the Council expressed interest in placing a measure on the ballot to amend the City Charter to make the office of Mayor and City Councilmember full-time positions, with remuneration set at a level reflecting full-time employment. The proposed Charter Amendment would provide that the office of Mayor and Councilmember are full-time positions, and that the Personnel Board shall set the salary of the Mayor and Councilmembers initially after adoption and every five years thereafter based on a salary survey of other full-time Mayors and City Councils in California and it shall consider the Consumer Price Index (CPI).

Remuneration may be reduced in defined instances, including unexcused absences from Council meetings or negotiated salary reductions for City employees. If adopted, the attached resolution will request that the Registrar of Voters place the matter on the ballot for consideration by Berkeley voters.

Additionally, according to California Elections Code 9282(b), for measures placed on the ballot by the legislative body, the legislative body, or a member or members of the legislative body authorized by that body, or an individual voter who is eligible to vote on the measure, or bona fide association of citizens, or a combination of voters and associations, may file a written argument for or against any city measure.

BACKGROUND

The current Charter provisions do not designate the offices of Mayor and Councilmember as full-time positions. This amendment would designate the offices as full-time and task the Personnel Board with setting the salaries of Mayor and Council based on surveys of other full-time Mayors and City Councils.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

The City Clerk is presenting this action in accordance with the direction given by Council.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Mark Numainville, City Clerk, (510) 981-6900

Attachments:

1: Resolution

Exhibit A: Text of Measure

RESOLUTION NO. -N.S.

SUBMITTING TO THE BERKELEY ELECTORATE AN AMENDMENT TO THE SALARY PROVISIONS IN ARTICLE V OF THE BERKELEY CITY CHARTER ON THE NOVEMBER 3, 2020 BALLOT

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 3, 2020 General Municipal Election, a measure to amend Article V of the Berkeley Charter related to the salary for Mayor and City Council; and

WHEREAS, in accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Statewide General Election to be held November 3, 2020; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services,

printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that the City will reimburse the Registrar of Voters for the costs associated with placing the measure on the ballot.

BE IT FURTHER RESOLVED that said proposed Charter Amendment measure shall appear and be printed upon the ballots to be used at said election as follows:

CITY OF BERKELEY CHARTER AMENDMENT	
Shall the measure amending the City Charter to provide that the offices of Mayor and Councilmember are full-time positions and shall receive a salary for performance of their official duties set by the Personnel Board based on salaries of other full-time California Mayors and Councils, but which may be lowered in defined instances, including for unexcused absences from Council meetings or negotiated salary reductions for City employees, be adopted?	YES
	NO

BE IT FURTHER RESOLVED that the text of the Charter Amendment be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits

A: Text of Charter Amendment

AMENDMENTS TO ARTICLE V OF THE BERKELEY CITY CHARTER RELATED TO FULL-TIME STATUS AND SALARIES FOR THE MAYOR AND CITY COUNCIL

The People of the City of Berkeley hereby amend Section 19 of the Charter of the City of Berkeley to read as follows:

Section 1. Section 19 of Article V of the Charter of the City of Berkeley is amended to read as follows:

Section 19. Salaries.

The Mayor and Councilmembers shall receive remuneration for the performance of their official duties. at the rate of up to \$1,800 per month, and the Mayor shall receive up to \$2,850 per month, effective the Council term beginning in December 1998. Such amount shall be adjusted upward by the increase in the cost of living for the San Francisco Bay Area as verified by official United States economic reports. The office of Mayor and Councilmember are full-time positions. The Personnel Board shall set the salary of the Mayor and Councilmembers initially after the effective date of this Charter Amendment and every five years based on a salary survey of other full-time California Mayors and City Councils and it shall consider the Consumer Price Index (CPI).

The Personnel Board shall establish dates for an appropriate five-year cycle for making the determinations required by this Section, in order to efficiently coordinate with City budget processes and related procedures. In order to institute this five-year cycle, the initial determination may be for less than a five-year period, as determined by the Personnel Board.

If the City and employee organizations agree to amend the compensation provisions of existing memoranda of understanding to reduce costs, the Personnel Board shall review and amend the Mayor and Councilmembers' salary as necessary to achieve comparable cost savings in the affected fiscal year or years.

Either the Mayor or any Councilmember may, at his or her sole discretion, reduce the remuneration paid himself or herself. In any such case, the difference between the reduced amount actually paid to such Mayor or Councilmember and the amount of remuneration authorized by this Article shall be appropriated as part of the budget of the Mayor or Councilmember taking the voluntary reduction in remuneration and such differential may be expended for any purpose otherwise authorized for the expenditure of sums so budgeted. ~~If the Mayor or any member of the Council is absent from one or more regular meetings of the Council during any calendar month, unless excused by the Council in order to attend to official business of the City, or unless excused by the Council as a result of illness from attending no more than two regular meetings in any~~

~~calendar year, he or she shall be paid for each regular meeting attended during such months in an amount equal to the monthly remuneration divided by the number of regular meetings held during such month.~~

For each member of the Council and the Mayor, a sum, as established by the Personnel Board, shall be deducted from the salary of such member for each regular or special meeting of the full Council, which they fail to attend in each such calendar month; provided, however, that such deduction shall not be made for their failure to attend any meeting during which they are away on authorized City business, or from which they are absent because of their own illness or the illness or death of a "close family member" as defined in the City's bereavement leave policy.



Office of the City Manager

02a
Special Meeting Item

ACTION CALENDAR
July 21, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Mark Numainville, City Clerk
 Subject: Placing Charter Amendment Measure on the November 3, 2020 Ballot to Amend Multiple Administrative Provisions

RECOMMENDATION

1. Adopt a Resolution placing charter amendment measure on the November 3, 2020 Ballot to repeal the residency requirement for sworn members of the Berkeley Fire Department, conform the eligibility requirements of the Redistricting Commission with state law, and change to gender-neutral language through the text.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

FISCAL IMPACTS OF RECOMMENDATION

The table below shows the year-by-year costs for elections since 2012. Significant cost increases occurred in 2012 and 2014 due primarily to general year-over-year increases, and the addition of two more required languages (Vietnamese and Tagalog). The cost increase in 2016 is due to a new, permanent surcharge from the Registrar of Voters to fund the County's voting equipment replacement account.

Date	Election				
	Nov. 2012	Nov. 2014	Nov. 2016	Mar. 2017	Nov. 2018
No. of Measures	10	7	11	0	4
No. of Candidates	26	23	29	2	30
General Costs	\$367,884	\$392,331	\$706,901	-	\$385,246
RCV Costs	\$101,041	\$189,148	\$181,954	-	\$185,578
Total Costs	\$468,925	\$581,479	\$888,855	\$85,628	\$570,824

CURRENT SITUATION AND ITS EFFECTS

The item to place a measure on the ballot to remove the outdated residency requirement for firefighters from the City Charter originally appeared on the Council agenda on June 16, 2020. Since that time, a new issue has arisen regarding the need for additional amendments to the City Charter.

The state of California recently passed a law, Senate Bill 225, which extends the right to serve on any appointed board or commission to non-citizens. The current Charter provisions require that a member of the Redistricting Commission be a registered voter in Berkeley and have voted in the past two elections. Since a person must be a U.S. Citizen to register to vote, this requirement is contrary to the new state law. As a result, the City Attorney has advised that the City not enforce the voter registration and voting history requirements for any applicant when considering applications for participation in the Redistricting Commission. Please see the attached memo from the City Attorney for additional analysis. Due to the citizenship requirement change, the measure also amends the Charter to allow for a change in the redistricting ordinance based on the Charter amendment.

In addition, the Council had previously directed staff to forgo the Charter amendments related to gender neutral language in order to reduce the length of the ballot and potential elections costs borne by the City. However, since the need for the firefighter and redistricting amendments are urgent for the 2020 ballot, adding the gender neutral amendments at this time will save the city the cost of placing the gender neutral measure on the ballot in 2022. In the City Charter, there are currently 77 instances of gendered language – “his or her” (40), “he or she” (26), “him or her” (7), “himself or herself” (2), “workman” (1), and “chairman” (1).

The City may place a Charter amendment on the ballot that addresses more than one subject. The single subject rule, which requires that components of an initiative cannot relate to more than one subject, does not apply to Charter amendments placed on the ballot by the City Council. In contrast, the single subject rule does apply to Charter amendments and other measures placed on the ballot through the citizens’ initiative petition process. This was affirmed by the courts in *Hernandez v. County of Los Angeles* in 2008 (167 Cal.App.4th 12, 22-23). The case explicitly states that “Charter cities are also able to group multiple technical amendments into one ballot measure.”

This resolution provides the Council with a revised resolution to place a measure on the ballot for an administrative cleanup Charter Amendment for all three subjects – firefighter residency, Redistricting Commission qualifications, and gender neutral language.

Additionally, according to California Elections Code 9282 (b), measures placed on the ballot by the legislative body, or a member or members of the legislative body authorized by that body, or an individual voter who is eligible to vote on the measure, or

bona fide association of citizens, or a combination of voters and associations, may file a written argument for or against any city measure.

BACKGROUND

See above.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects associated with the recommendation in this report.

RATIONALE FOR RECOMMENDATION

To achieve efficiency and cost savings by combining multiple charter amendments into a single measure to respond to changes in state law and implement the direction of the city council.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Mark Numainville, City Clerk, (510) 981-6900

Attachments:

- 1: City Attorney Opinion on Voter Registration Requirements for City Redistricting Commission
- 2: Proposed Resolution Placing a Charter Amendment on the Ballot



Office of the City Attorney

June 16, 2020

To: Honorable Mayor, Members of the City Council, and City Manager

From: Farimah Faiz Brown, City Attorney
Samuel Harvey, Deputy City Attorney

Re: **Voter Registration Requirements for City Redistricting Commission**

The City Attorney has determined that the requirements in the City Charter that a person be a registered voter and have participated in the last two City elections in order to serve on the City's Redistricting Commission are unenforceable because they are preempted by state law.

The City Charter provides that in order to be eligible to serve on the City's Redistricting Commission, a person must be a registered voter in the City of Berkeley and must have voted in the last two City general elections. (City Charter § 9.5(b)(1), (3).) The City Attorney has determined that these requirements are unenforceable because they are preempted by state law governing the eligibility of all persons regardless of citizenship or immigration status to serve on appointed boards and commissions.

Specifically, California Government Code section 1020 was amended in 2019 to provide that "a person, regardless of citizenship or immigration status, is eligible to hold an appointed civil office if the person is 18 years of age and a resident of the state." Because a person must be a citizen of the United States in order to be a registered voter, the voter registration requirement in Charter section 9.5 effectively functions as a citizenship requirement. (See Cal. Elec. Code § 321.) Such a requirement is impermissible under Government Code section 1020.

While the manner and method of appointing city officers such as members of the Redistricting Commission is a "municipal affair" in which a charter city such as Berkeley has plenary authority to act, California courts have determined that the legal treatment of immigrants is a matter of statewide concern in which state law will preempt provisions of local law in the event of a conflict. (Cal. Const., art. XI, § 5(b); *City of Huntington Beach v. Becerra* (2020) 44 Cal.App.5th 243, 275.) As a result, the City Attorney has advised

that the City not enforce the voter registration and voting history requirements for any applicant when considering applications for participation in the Redistricting Commission.

This determination is consistent with the values of the City of Berkeley as a community that welcomes immigrants, refugees and those in exile, and encourages participation in local governance by all residents regardless of national origin or immigration status. It also enhances the City's goals as a Sanctuary City committed to supporting our undocumented community members.

CC: City Clerk

RESOLUTION NO. -N.S.

SUBMITTING TO THE BERKELEY ELECTORATE AN AMENDMENT TO THE BERKELEY CITY CHARTER TO ELIMINATE THE RESIDENCY REQUIREMENT FOR SWORN MEMBERS OF THE FIRE DEPARTMENT, CONFORM THE PROVISIONS OF ARTICLE V, SECTION 9.5, AND SECTION 10 REGARDING REDISTRICTING TO STATE LAW, AND REMOVE GENDER-SPECIFIC LANGUAGE THROUGHOUT THE CHARTER ON THE NOVEMBER 3, 2020 BALLOT

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 3, 2020 General Municipal Election, a measure to amend certain administrative provisions of the City Charter; and

WHEREAS, in accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Statewide General Election to be held November 3, 2020; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above Charter amendment requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that the City will reimburse the Registrar of Voters for the costs associated with placing the measure on the ballot.

BE IT FURTHER RESOLVED that said proposed Charter Amendment measure shall appear and be printed upon the ballots to be used at said election as follows:

CITY OF BERKELEY CHARTER AMENDMENT	
Shall the measure amending the City Charter to eliminate the residency requirement for sworn members of the fire department, conform the provisions of Article V, Section 9.5 and Section 10 regarding the eligibility requirements for the Redistricting Commission to state law, allow for amendments to the redistricting ordinance due to changes in the Charter, and remove gender-specific language be adopted?	YES
	NO

BE IT FURTHER RESOLVED that the text of the Charter Amendment be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits

A: Text of Charter Amendment

AMENDMENT TO THE BERKELEY CITY CHARTER TO ELIMINATE THE RESIDENCY REQUIREMENT FOR SWORN MEMBERS OF THE FIRE DEPARTMENT, CONFORM THE PROVISIONS OF ARTICLE V, SECTION 9.5 AND SECTION 10 REGARDING REDISTRICTING TO STATE LAW, AND REMOVE GENDER-SPECIFIC LANGUAGE

The People of the City of Berkeley hereby amend the Charter of the City of Berkeley as follows:

Section 1. Section 37a of Article VII of the Charter of the City of Berkeley is amended as follows:

Section 37a. ~~Repealed. Residency requirement for sworn members of the fire department.~~

~~Any sworn member of the fire department who is hired subsequent to January 1, 1995, may not reside greater than a radius of forty (40) air miles from the boundaries of the City of Berkeley.~~

Section 2. Article V, Section 9.5 and Article V, Section 10 of the Charter of the City of Berkeley are amended throughout to change all instances of the name of the commission from the “Citizens Redistricting Commission” to the “Independent Redistricting Commission.”

Section 3. Article V, Section 9.5(a)(4) of the Charter of the City of Berkeley is amended as follows:

(4) The City Council, by a two-thirds vote, shall adopt an ordinance establishing procedures to implement this Charter section. An implementation ordinance cannot be modified by the Council for a period of five years after initial adoption, and without a two-thirds vote of the Council, unless adoption of an amendment to the Charter, a change in applicable state or federal statute, or court decision necessitates an earlier modification.

Section 4. Article V, Section 9.5(b)(1) of the Charter of the City of Berkeley is amended as follows:

(1) Membership. The Commission shall consist of thirteen members, each of whom is a ~~registered voter~~ resident of the City of Berkeley. The application and selection process set forth below and by ordinance is intended to produce an Independent Citizens Redistricting Commission that is independent from legislative and political influence, and reasonably representative of the City’s population.

Section 5. The first paragraph of Article V, Section 9.5(b)(3) of the Charter of the City of Berkeley is amended as follows:

(3) Qualifications and eligibility. All ~~registered~~ Berkeley residents who are 18 years of age or older at the time their application is submitted, who have voted in the last two General Municipal elections, unless ineligible to do so by reason of age, are eligible for membership on the ~~Citizens-Independent~~ Redistricting Commission, subject to the following limitations.

Section 6. Article V, Section 9.5(b)(3)(i) of the Charter of the City of Berkeley is amended as follows:

(i) The following individuals are prohibited from serving on the ~~Citizens-Independent~~ Redistricting Commission:

(A) any individual who currently holds, has held, or who has been a qualified candidate for the office of Mayor or City Councilmember within the two -years preceding the date of application;

(B) any other individual who holds or has held any City of Berkeley elective office identified in this Charter within the two years preceding the date of application;

(C) the immediate family of the Mayor or any Councilmember, as well as immediate family of staff to the Mayor or Councilmember;

(D) any employee of the City of Berkeley;

(E) any person performing paid services under a contract with the City of Berkeley, including employees of subcontractors;

(F) any individual who has served as an officer, paid staff, or paid consultant of a campaign committee of a candidate for Mayor or City Council within the two years preceding the date of the application;

(G) any individual who is currently, or within the two years preceding the date of application, has been a paid staff member or unpaid intern to the Mayor or any Councilmember;

(H) any individual ineligible to serve in public office under Government Code sections 1021, 1021.5, 1770, or the Constitution and laws of the State of California, except for those laws requiring citizenship status.

Section 7. Article V, Section 9.5(b)(5) of the Charter of the City of Berkeley is amended as follows:

(5) Application process. The City Clerk shall initiate and advertise a 30-day nomination period for appointment to the ~~Citizens Independent~~ Redistricting Commission. The nomination process shall be open to ~~all registered~~ Berkeley residents voters who are 18 years of age or older at the time their application is submitted, and be conducted in a manner that promotes a diverse and qualified applicant pool.

Section 8. Article V, Section 9.5(e)(2) of the Charter of the City of Berkeley is amended as follows:

(2) In the event of substantial neglect of duty, gross misconduct in office or inability to discharge the duties of office, or if it is determined that a commissioner is ineligible under subdivision ~~(d)~~(b)(3), a Commissioner may be removed by a two-thirds vote of the ~~Independent Citizens~~ Redistricting Commission, after having been served written notice and provided with an opportunity to respond.

Section 9. Article XVI, Section 109.5 is hereby added to the Charter of the City of Berkeley as follows:

Section 109.5 Gender-neutral language.

The Charter of the City of Berkeley is amended throughout to remove all gender-specific language such as “he,” “she,” “him,” “her,” or “his” and any other gendered pronouns or nouns. Gendered language shall be replaced with appropriate gender-neutral pronouns such as “they,” “their,” or “them” or with gender neutral nouns such as “the candidate,” “the voter,” “the Clerk,” or “the officer” as grammatically appropriate and in a manner that does not change the legal meaning of any provision of the Charter. Gendered language will be preserved if legally required due to the specific gendered intent of the provision.

- (a) The gender neutral pronoun includes the feminine and masculine genders.
- (b) “They/them/their” shall indicate a singular individual, unless the context indicates the contrary. In most cases, the singular number includes the plural and the plural number includes the singular.



Office of the City Manager

02b
Special Meeting Item

ACTION CALENDAR
July 21, 2020
(Continued from June 30, 2020)

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Placing Charter Amendment Measure on the November 3, 2020 Ballot to Repeal the Residency Requirement for Sworn Members of the Berkeley Fire Department

RECOMMENDATION

1. Adopt a Resolution submitting an Amendment to Article VII of the City Charter regarding the residency requirement for sworn members of the Fire Department to a vote of the electors at the November 3, 2020 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

FISCAL IMPACTS OF RECOMMENDATION

Amending the Charter to remove the residency requirement would not have a significant fiscal impact on the budget of the Fire Department or the General Fund.

The table below shows the year-by-year costs for elections since 2012. Significant cost increases occurred in 2012 and 2014 due primarily to general year-over-year increases, and the addition of two more required languages (Vietnamese and Tagalog). The cost increase in 2016 is due to a new, permanent surcharge from the Registrar of Voters to fund the County's voting equipment replacement account.

Date	Election				
	Nov. 2012	Nov. 2014	Nov. 2016	Mar. 2017	Nov. 2018
No. of Measures	10	7	11	0	4
No. of Candidates	26	23	29	2	30
General Costs	\$367,884	\$392,331	\$706,901	-	\$385,246
RCV Costs	\$101,041	\$189,148	\$181,954	-	\$185,578
Total Costs	\$468,925	\$581,479	\$888,855	\$85,628	\$570,824

CURRENT SITUATION AND ITS EFFECTS

The Berkeley Fire Department (Department), as well as fire departments across California, face an increasing challenge in recruiting and retaining qualified paramedics and Emergency Medical Technicians (EMTs). The Department engages actively in career development through Berkeley High School, the Berkeley Adult School, and college recruitment programs such as Ignite Academy. Even so, applications are at an historic low. This is partially attributed to the residency requirement and to the high cost of living in the Bay Area.

All City employees are Disaster Service Workers who need to respond in emergencies, however, sworn members of the Department are the only positions singled out in the residency requirement in the Charter. Removing the residency requirement will treat all employees equally and support recruitment and retention efforts.

BACKGROUND

In the wake of the 1991 Tunnel Fire, Berkeley developed a number of plans to help in future disasters. One of them was adding a residency requirement to the 1994 ballot for firefighters. At the time, urban fire departments were less familiar with state-wide mutual aid and California's emergency management system was in its infancy. The measure passed and the following language was added to the Charter:

“Any sworn member of the fire department who is hired subsequent to January 1, 1995, may not reside greater than a radius of forty (40) air miles from the boundaries of the City of Berkeley.”

Since then, Berkeley has dramatically increased its participation in and understanding of the mutual aid system. Also, in 2018 the California fire service began pre-positioning firefighters and apparatus in areas forecast to have high fire danger weather. This has dramatically reduced the need for firefighters to live within forty (40) miles for emergency callback. In other disasters such as earthquakes or even on normal days in the Bay Area, recall time to the City will be dependent on traffic conditions and damaged infrastructure more than miles traveled.

ENVIRONMENTAL SUSTAINABILITY

While it is a requirement of all sworn members of the Department to have a valid California driver's license, removing the residency requirement in the Charter will expand the area in which sworn members of the Department can reside thereby increasing fuel consumption and emissions due to commuting.

RATIONALE FOR RECOMMENDATION

Berkeley's 133 firefighters are required to live in a city whose limits are within 40 air miles of Berkeley's city limit. The limitation imposed on sworn members of the Department concentrates them in an area where property values and the cost of living has dramatically outpaced wages, which makes it difficult to recruit and retain a

qualified workforce. Further, by repealing the residency requirement, sworn members of the Department will likely reside in a broader geographic area, which reduces the impacts of a regional disaster such as a fire or earthquake on the Department's workforce.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Mark Numainville, City Clerk, (510) 981-6900

Attachments:

1: Resolution

Exhibit A: Text of Measure

RESOLUTION NO. -N.S.

SUBMITTING TO THE BERKELEY ELECTORATE AN AMENDMENT TO THE RESIDENCY REQUIREMENTS FOR SWORN MEMBERS OF THE BERKELEY FIRE DEPARTMENT IN ARTICLE VII OF THE BERKELEY CITY CHARTER ON THE NOVEMBER 3, 2020 BALLOT

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 3, 2020 General Municipal Election, a measure to amend Article VII of the Berkeley Charter related to the residency requirement for sworn members of the Berkeley Fire Department; and

WHEREAS, in accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Statewide General Election to be held November 3, 2020; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above charter amendment requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that the City will reimburse the Registrar of Voters for the costs associated with placing the measure on the ballot.

BE IT FURTHER RESOLVED that said proposed Charter Amendment measure shall appear and be printed upon the ballots to be used at said election as follows:

CITY OF BERKELEY CHARTER AMENDMENT	
Shall the measure amending the City Charter to repeal the requirement that firefighters hired after January 1, 1995 must live within a radius of forty air miles of the City of Berkeley be adopted?	YES
	NO

BE IT FURTHER RESOLVED that the text of the Charter Amendment be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits

A: Text of Charter Amendment

**AMENDMENT TO ARTICLE VII OF THE BERKELEY CITY CHARTER TO ELIMINATE
THE RESIDENCY REQUIREMENT FOR SWORN MEMBERS OF THE FIRE
DEPARTMENT**

The People of the City of Berkeley hereby amend Section 37a of the Charter of the City of Berkeley as follows:

Section 1. Section 37a of Article VII of the Charter of the City of Berkeley is amended as follows:

Section 37a. Repealed.Residency requirement for sworn members of the fire department.

~~Any sworn member of the fire department who is hired subsequent to January 1, 1995, may not reside greater than a radius of forty (40) air miles from the boundaries of the City of Berkeley.~~



Office of the City Manager

ACTION CALENDAR
July 21, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Placing a Special Tax Measure on the November 3, 2020 Ballot to Fund Firefighting, Emergency Medical Response and Communications and Wildfire Prevention and Preparedness

RECOMMENDATION

1. Adopt a Resolution submitting a ballot measure to fund firefighting, emergency medical response and communications, and wildfire prevention and preparedness to a vote of the electors at the November 3, 2020 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

FISCAL IMPACTS OF RECOMMENDATION

If the measure is approved by voters, the City would receive additional funds from increased tax revenues estimated at \$8.5 million annually. This revenue estimate is based on a per square foot parcel tax of \$0.1047 or \$199 per year for a 1,900 square foot home.

The table below shows the year-by-year costs for elections since 2012. Cost increases have occurred year-over-year due to the addition of required languages and a new, permanent surcharge to fund the County's voting equipment replacement account.

Date	Election				
	Nov. 2012	Nov. 2014	Nov. 2016	Mar. 2017	Nov. 2018
No. of Measures	10	7	11	0	4
No. of Candidates	26	23	29	2	30
General Costs	\$367,884	\$392,331	\$706,901	-	\$385,246
RCV Costs	\$101,041	\$189,148	\$181,954	-	\$185,578
Total Costs	\$468,925	\$581,479	\$888,855	\$85,628	\$570,824

CURRENT SITUATION AND ITS EFFECTS

The City Manager is presenting this measure for addition to the November 3, 2020 ballot pursuant to the direction provided by the City Council at the June 16, 2020 regular City Council meeting.

Adoption of the resolution attached to this item will place the measure on the ballot. In addition, with respect to who can author arguments for measures placed on the ballot by the Council, Elections Code Section 9282(b) provides that the legislative body may submit an argument in favor of the measure. The City Council may authorize the Council as a whole, or certain members of the Council, to submit an argument in favor of the measure.

BACKGROUND

At the January 28, 2020 Special Meeting of the City Council, city staff provided an in-depth overview of the Fire Department including both short and long-term needs. Attachment 1 is the staff report that was submitted to City Council, which outlines the following challenges facing the Fire Department:

- Increasing calls for service. Since 1995 the Fire Department has seen an increase in calls-for-service of more than 130%.
- Paramedic Tax Fund Deficits. The Paramedic tax is not keeping pace with rising costs. As a result, the fund is generating deficits and increasingly relies on the General Fund. This is not sustainable, especially in light of the significant loss of revenue in the General Fund due to the COVID-19 pandemic.
- Loss of funding. The Alameda County EMS Agency unilaterally eliminated First Responder Advanced Life Support (FRALS) funding (approximately \$240,000) which helped pay for the City's FRALS program. Also, in FY 20, Alameda County Emergency Medical Services Agency unilaterally eliminated 5150 patient transports for the City of Berkeley.
- Changes in the built environment. The staffing and resource requirements necessary to combat and control a single room fire in a high-rise and to get to a patient, begin care, and transport are much different than the staffing, resources and training required to do the same work in a one- or two-story single-family home. With an increasing number of high-rise buildings being constructed in the City, the Fire Department does not have the staffing needed to adequately respond to calls for service.
- Pending closure of Alta Bates emergency room. When Alta Bates closes its emergency room, the City can expect a significant increase in transport times. In

2018, the Department delivered 4,353 (62%) patients to Alta Bates. When the expected increase in round trip transport time (to Summit or Kaiser Oakland) is applied, the Fire Department anticipates that transport times will increase by approximately 24 minutes round trip. Without additional resources to invest in emergency medical services, the increased transport times will undoubtedly result in longer response times.

In addition to the challenges outlined above, the City's 9-1-1 dispatch system is in dire need of investment. According to the City of Berkeley Auditor's report on the 9-1-1 Communication Center, Berkeley's dispatchers are overworked, understaffed, and morale is low. In addition, the Fire Department is dispatched to every 9-1-1 medical call with advance life support staffed fire engine or truck and an ambulance, all driving code 3 or "lights and sirens". This is inefficient and resource intensive. Revenues from the proposed special tax would enable the Fire Department to transition to emergency medical dispatching, which is the standard in modern fire and EMS dispatching and the City is required by our contracts with Alameda County to explore providing such a service. Doing so would provide better instructions and medical care to 9-1-1 callers while also sorting and triaging 9-1-1 calls to make sure the appropriate resources are dispatched to the right calls, allowing for a more efficient expansion of existing Berkeley EMS resources.

Finally, recent wildfires in California have burned faster and with greater intensity than in the past and the City must improve preparation for a significant wildfire in the hills, which could quickly spread to the flatlands. Revenues from the proposed special tax would enable the Fire Department to implement a number of wildfire prevention programs and services (i.e. vegetation management, Safe Passages, etc.), as well as an emergency alert system.

Based on the needs of the Fire Department, the City Council directed staff to ascertain community interest in a parcel tax to support fire and emergency medical services, as well as the community's support for a parcel tax to generate revenues to address wildfire prevention programs and services. On June 16, 2020, city staff presented the results of the community survey and in response to that presentation, City Council directed staff to prepare a parcel tax for the November 2020 ballot at an amount up to \$199 per year for an average home (1,900 square feet) that would provide the resources necessary to maintain existing staffing levels, fill vacant positions, adequately train firefighters and paramedics, maintain and replace equipment and facilities, prepare and plan for wildfires, and upgrade and modernize its 9-1-1 dispatch system. In light of the City's declared fiscal emergency and budget deficit that resulted in the Fire Department having to maintain 15 positions vacant in order to generate savings of \$3.9 million in FY 21, the Fire Department does not have the resources to maintain service levels and address community need.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

The City Clerk is presenting this action in accordance with the direction given by the City Council at the June 16, 2020 meeting.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Mark Numainville, City Clerk, (510) 981-6900

Attachments:

1: January 28, 2020 Staff Report Regarding Fire and Emergency Services Funding and System Design

2: Resolution

Exhibit A: Text of Measure



Office of the City Manager

ACTION CALENDAR

January 28, 2020

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Dave Brannigan, Fire Chief
Subject: Fire and Emergency Services Funding and System Design

RECOMMENDATION

Receive a presentation on fire and emergency services and various operational and system enhancements and provide direction on funding options including ballot measures, fees, and special studies.

SUMMARY

The Berkeley Fire Department provides fire suppression, emergency medical care and transport, and fire prevention services to the City and UC Berkeley. While the City and department call volume has grown dramatically since 1995, the staffing and response model has remained stagnant, adding only a single ambulance in 2017 and the resources to contract with a third-party to continue to provide 5150 transports. In addition, Berkeley historically experiences a significant wildfire every 30-40 years. Each time the City has rebuilt and added density to the already crowded hills fire zones. Wildfires in California have increased in severity and frequency in recent years and significant enhancements are needed to evacuation and fuel mitigation programs for the City. Finally, over the years, the Fire Department has become increasingly reliant on the General Fund to maintain service levels. Given all the demands being placed on the General Fund, this is not sustainable and the Department needs to diversify its funding streams.

In this report, the Fire Department is asking City Council to provide input and direction on the following:

- Options to address immediate funding needs of the Fire Department;
- Whether or not the City should implement Emergency Medical Dispatch services;
- Enhancing Emergency Medical Services through expanding the current deployment model or establishing a Transport Division that includes, among other things, 5150 transports, increased supervision, and options to improve recruitment and retention to achieve a more diverse workforce;

- Models to enhance fire suppression staffing and deployment;
- A comprehensive wildland urban interface inspection, fuel reduction, evacuation, utility undergrounding, public education, and emergency notification siren system;
- Long-term facility needs; and
- Funding for the City's Above Ground Water System.

Achieving the objectives outlined above will require additional resources. To this end, this staff report outlines what is needed to implement the options above.

STRATEGIC PLAN

Consideration of funding and design of efficient dispatch and emergency medical services, fire department staffing, wildland urban interface safety, and long term facility improvements align with the City's strategic plan, advancing our goals to:

- Provide state-of-the-art, well-maintained infrastructure, amenities, and facilities
- Create a resilient, safe, connected, and prepared city
- Provide an efficient and financially-health City government
- Attract and retain a talented and diverse City government workforce

CURRENT SITUATION AND ITS EFFECTS

Fire Department Overview

The Berkeley Fire Department (Department) protects life, property, and the environment through emergency response, prevention, and community preparedness. The Department consists of 153 full-time equivalent employees that are organized into five divisions:

- Administration and Fiscal Services;
- Professional Standards;
- Fire Prevention;
- Operations; and
- Special Operations, which includes the Office of Emergency Services.

The following is a breakdown – which is not all-inclusive – of services that the Fire Department provides:

- Structural Firefighting
- Wildland Firefighting
- Emergency Medical Response – Advanced Life Support (ALS/Paramedic) Level
- Wildland Urban Interface Inspections and Mitigation
- Hazardous Materials Response (First Responder and Technician Level)
- Water Rescue (Rescue Swimmers and Boat Operators)
- Vehicle Extrication
- Low and High-Angle Rope Rescue (Technical Search & Rescue)
- Confined Space Rescue/Emergencies
- Utility Emergencies (Electrical, Natural Gas, Flooding)
- Terrorism Response (Weapons of Mass Destruction)
- Mental Health Emergencies
- Fire Prevention Inspections, Code Enforcement, Plan Review
- Hydrant Inspections
- Community Emergency Response Training (CERT)
- Public Education – School Visits/Fire Station Visits

The Department occupies 10 facilities located throughout the City including seven (7) fire stations, the Division of Training and EMS, the Above Ground Water System warehouse, and the Fire Administration offices at the Public Safety Building.

In FY 20, the Department's total budget *including* resources allocated to provide 5150 transports is \$45,579,144. The Department's budget is expected to increase to \$47,834,206 in FY 21 due to a number of factors. The primary drivers are increases in personnel costs and the resources needed for 5150 transports.

Challenges

The following section outlines a number of challenges that threaten the Department’s ability to maintain existing service levels.

Increasing reliance on the General Fund to maintain services

The following table provides an overview of the Department’s budget, by fund, from FY 2017 through FY 21.

\$’s in Thousands

	FY 17	FY 18	FY 19	FY 20 Projected	FY 21 Projected
General Fund (1)	\$29,898	\$31,494	\$31,801	\$37,219	\$39,335
Paramedic Tax	3,198	3,561	3,673	3,853	3,955
CFD#1	62	84	111	176	180
Measure GG	4,756	4,666	4,016	4,250	4,281
Other Funds	1,211	524	408	81	83
Total	\$39,125	\$40,329	\$40,008	\$45,579	\$47,834

1. For FY 20 and FY 21, the General Fund has been increased to account for Measure P resources allocated for 51510 transports. For FY 20, this includes \$1.2 M and in FY 21, this includes \$2.4 M.

As depicted in the table above, in FY 17 the General Fund accounted for approximately 76.4% of the total funding for the Department and in FY 21, it is estimated that the General Fund will account for approximately 81.3% of total funding for the Department. The addition of six (6) FTE in FY 18 to staff a fourth ambulance was absorbed entirely by the General Fund with no increase to the Paramedic Tax. In the long-term, given all the city-wide needs that must be funded by the General Fund, this is not sustainable.

Increasing Costs due to Alameda County Funding and Service Reductions

Additional pressure on the Fire Department budget have come from external sources. In FY 19, the Alameda County EMS Agency unilaterally eliminated First Responder Advanced Life Support (FRALS) funding (approximately \$240,000) which helped pay for the City’s FRALS program. Then in FY 20, the Alameda County EMS Agency again unilaterally eliminated a critical service it provided since 2002: 5150 patient transport for the City of Berkeley. The abdication of responsibility for mental health transport by the County forced Berkeley to take over that service at a cost of \$2.4 million. The implications and alternatives that were considered by the City are outlined in Attachment 1, a memo dated March 16, 2019 from the City Manager to the City Council.

Paramedic Tax Fund Deficits are increasing

The Paramedic tax is not keeping pace with rising costs. As a result, the fund is generating deficits and increasingly relies on the General Fund. In FY 19, the General Fund transferred approximately \$612,696 to the Paramedic Tax Fund. For the Paramedic Tax to cover the full cost of the ambulance transport program less the revenues from ambulance user fees, the Paramedic Tax would need to be increased.

Changes in the Built Environment

The type of construction and the built environment are rapidly changing from legacy and horizontal to modern and vertical. These changes present challenges to a fire department that is staffed and trained and experienced in fighting fires and responding to emergency medical calls primarily in single-family homes. The staffing and resource requirements necessary to combat and control a single room fire in a high-rise and to get to a patient, begin care, and transport are much different than the staffing, resources and training required to do the same work in a one- or two-story single-family home.

The City of Berkeley's Bike Plan and Vision Zero policy will also have impacts on fire and EMS response. While safer streets for bikes and pedestrians promise to reduce the number of injuries and therefore calls, the total number of transports annually from auto collisions with pedestrians and bicycles is a very small percentage of total calls for the Fire Department. As new street designs such as the Adeline Corridor plan, the Milvia bikeway, and Bancroft Way west of Telegraph become a reality, the lanes of traffic are reduced and narrowed and at the same time pushed further away from buildings. These designs make it slower for emergency vehicles to respond throughout the City and transport patients to the hospital. They also increase the complexity of responding to buildings along the corridors as it takes more equipment and time to reach nearby structures. Supporting new and creative street design means increasing and adapting fire department response capability throughout the City.

Recruitment and Retention

As the economy booms in California, the labor pool of well qualified, diverse paramedics has declined rapidly. Fire departments and private ambulance companies compete for new recruits. While the Fire Department has competitive wages and benefits, the ever increasing workload for paramedics has resulted in higher turnover and challenges in recruiting. Since October 2019, three (3) journey-level Firefighter/Paramedics and one probationary Firefighter/Paramedic have resigned to take lateral appointments with neighboring departments.

Alta Bates Emergency Department closure will increase transport times

When Alta Bates closes its emergency room, the City can expect a significant increase in transport times. In 2018, the Department delivered 4353 (62%) patients to Alta Bates. When the expected increase in round trip transport time (to Summit or Kaiser Oakland) is applied, the Department anticipates that transport times will increase by approximately 24 minutes round trip. Without additional resources, the Department is concerned that this will result in longer response times.

Increase in Total Call Volume

The Berkeley Fire Department has seen an increase in total calls of more than 130% since 1995. An analysis of the changing call volume and factors that impact it is found in Attachment 2.

Patients Experiencing Homelessness

Another consistent patient group are those experiencing homelessness. The number of homeless patients, if taken in total, account for approximately 14% of all documented patients since 2013. There has been an upswing to almost 18% during the past 16 months in medical calls for this patient group. In addition to responding to medical calls, fire related calls to encampments often pose significant risk due to the rapid burning nature of tents and makeshift construction materials, coupled with a high rate of propane and other fuels used in and around the encampments.

Emergency Medical Dispatch

According to the City of Berkeley Auditor's report on the 9-1-1 Communication Center, Berkeley's dispatchers are overworked, understaffed, and morale is low. The Fire Department is dispatched to every 9-1-1 medical call with advance life support staffed fire engine or truck and an ambulance, all driving code 3 or "lights and sirens". When a medical call is received, resources are dispatched and then the call is transferred to the Alameda County Regional Emergency Communications Center to give pre-arrival medical instructions to the caller. This transfer can result in delays and confusion for the caller, even though in the end they get potentially life-saving instructions from an emergency medical dispatcher. While Berkeley's communication center does not provide emergency medical dispatching, it is the standard in modern fire and EMS dispatching and the City is required by our contracts with Alameda County to explore providing such a service. Doing so would provide better instructions and medical care to 9-1-1 callers while also sorting and triaging 9-1-1 calls to make sure the appropriate resources are dispatched to the right calls, allowing for a more efficient expansion of existing Berkeley EMS resources.

Wildland Urban Interface

Berkeley is vulnerable to a wind-driven fire starting along the city's eastern border. The fire risk facing the people and properties in the eastern hills is compounded by the area's mountainous topography, limited water supply, minimal access and egress routes, and location, overlaid upon the Hayward Fault. Berkeley's flatlands are also exposed to a fire that spreads west from the hills. The flatlands, in addition to the hills, are densely-covered with old wooden buildings housing low-income and vulnerable populations, including isolated seniors, persons with disabilities and students.¹

Without a consistent source of funding such as the fire safety district that existed briefly in the 1990s, the City is reliant on one-time funding for implementation of vegetation management, wildfire evacuation safety and public education, and the Safe Passages program.

¹ 2019 City of Berkeley Local Hazard Mitigation Plan

Facilities

The Fire Department occupies ten (10) facilities including seven (7) fire stations, the Division of Training and EMS, the Above Ground Water System warehouse, and the Fire Administration offices at the Public Safety Building. Most stations were built in the 1950s and 1960s and earthquake retrofitted in the 1990 except Station 7 which opened in 2007. The aging infrastructure is completely filled by our current deployment model and apparatus both in terms of number and size. Any addition of personnel, apparatus, or training grounds will require a long-term investment and construction.

Emergency Water Supply

The Community Facility District 1 – Procurement of Disaster Fire Equipment (CFD1) – Mello Roos (Measure Q) funded the purchase of an Above Ground Water System which provides a mobile system to pump water up to 6 miles when traditional water supplies are compromised. It also funded the land and construction of a warehouse in southwest Berkeley to house the system. This tax repays a 20-year bond and the final installment will be in FY 2022. The multi-vehicle system, its 6 miles of large diameter hose, the personnel and all the equipment necessary to support the maintenance and deployment of the system rely on the Community Facility District for funding. The Fire Department has projected another 4 to 5 years of operating budget before the fund balance reaches zero. Once the fund has been spent down over the projected five years, the annual cost to maintain this system, on-going training, and the warehouse is approximately \$398,081 along with subsequent funds to cover increases in personnel costs for the one (1) employee assigned to oversee this program. There are components of this system that will reach the end of their lifecycle and will need to be replaced over a span of 10 to 25 years. The estimated cost to replace these components over 25 years is nearly \$6 million. These funds would replace a security system, trucks, forklift, pumps, and hoses needed to combat a fire in an emergency. The future of the system and Berkeley's emergency water supply are at risk should another funding source not be identified.

BACKGROUND

In 1904, the population of Berkeley was nearly 15,000 and the need for a full-time professional fire department had become apparent. In September of 1904, the City Hall was destroyed by fire and in October, a paid department was created.

On September 1, 1923, Berkeley suffered its first catastrophic fire that swept into the north end of the city from what is now Tilden Park, destroying over 600 homes and businesses. The ignition source for this terrible fire, a small grass fire, started over three miles from the city limits. On that day, low humidity coupled with high winds and temperatures created conditions of extreme fire danger that rapidly pushed the fire over the ridge tops and into the homes north of the University of California.

By the mid-fifties, the Berkeley Fire Department had an all-time high of 179 sworn firefighters. Although reorganization in 1957 reduced the number of stations from ten to seven, personnel levels remained at this level well into the 1960's.

On September 22, 1970, a major fire occurred in the hills between Berkeley and Oakland. Although the fire was in Oakland, the Berkeley Fire Department was a critical contributor to the battle that eventually required 102 engine companies and resulted in the destruction of 37 homes.

In the early 1980's, engine company staffing was reduced from four firefighters to three, a cost cutting measure that put the department near its present staffing levels. The most significant fire of this decade occurred on December 10, 1980 when a dry northeast wind fanned a fire that destroyed five homes along Wildcat and Woodhaven and nearly crested the ridge at the top of Marin.

The 1990's were overshadowed by the 1991 firestorm, the worst conflagration in modern U.S. history. This fire left 25 people dead, and destroyed more than 3,400 dwellings in Oakland and 63 homes in Berkeley.

Emergency Medical Services and Fire Department Response Model

In 1977, the fire department took over the responsibility for ambulance service from the police department. In 1986, the Department was the first in Alameda County to upgrade to paramedic level transport services. Because the department has been providing dispatch and transport services since 1980 it maintains rights to "the exclusive operating area (EOA)" that is defined by the City's border, as long as the City continues to provide these services without interruption.

Residential Development and the High-rise in the City of Berkeley

In a 2015 presentation from the City's Economic Development Manager, described Berkeley as:

"Currently experiencing a construction boom that is unlike anything the City has seen before. In 2015, the number and total valuation of building permits spiked significantly. Whereas over the past decade the total valuation of building permits typically fell between \$20 and \$40 million per quarter, in the latest quarter that number has spiked to over \$100 million. This is driven by major construction projects (e.g., 740 Heinz) as well as an increase in single-family home renovations.

There are currently 22 multi-unit housing projects totaling 1,414 housing units that are entitled for development or under construction. An additional 5 multi-unit projects totaling 556 units are proposed and seeking entitlement. By comparison, a total of 858 units have been constructed since 2005. The majority of these development projects are clustered along University Ave, San Pablo Ave, and in the Downtown and Telegraph districts" (City of Berkeley, 2015).

As the density increases through the construction of mid and high-rise buildings, the vertical arrangement of housing units will pose additional challenges for fire department

personnel. Mitigating a medical emergency or fighting even a small fire gets progressively more complex, and takes more personnel to mitigate, the higher the incident is from ground level.

While there is Fire Department review and comment on environmental impact reports for development projects, CEQA review is only for that individual project. And while, for example, a project that replaces a single-story commercial building such as a tire shop with a 5 story residence over commercial structure may not have an impact large enough to require additional fire resources or deployment changes, the cumulative effect of these projects around Berkeley necessitates a shift in staffing and response models as well as an increase and flexibility of emergency medical resources.

According to the (U.S. Fire Administration/Technical Report Series, 1996):

“Fires in highrise buildings generally require more complicated operational approaches than most structure fires. Tasks that are normally considered routine for most fire departments, such as locating and attacking the fire, evacuating occupants, and performing ventilation can become very difficult in highrises. Operations are affected by several specific challenges:

- *Access to floor levels that are beyond the reach of aerial apparatus is generally limited to the interior stairways. The use of elevators is usually restricted or prohibited because of safety concerns.*
- *Hundreds or even thousands of occupants may be exposed to the products of combustion [heat rises] while they are evacuating or unable to descend past a fire on a lower floor. Their exits may be limited to two narrow stairways, which are also the only access for firefighters coming up to assist with evacuation and to fight the fire.*
- *The ability to contain and control the fire is increasingly dependent on the construction of the building and the ability of sprinkler and/or standpipe systems to deliver water to the fire area.*
- *Ventilation can be much more complicated and critical in highrises than in other types of structures. Vertical ventilation is often limited to stairways or elevator shafts, both of which may also have to be used to evacuate occupants. Horizontal ventilation, by breaking out windows, presents the risk of falling glass to those outside the building. The stack effect (heat rises) causes smoke to rise rapidly through the vertical passages and accumulate on upper floors.*
- *Reflex time, or the amount of time it takes to react and take action, is usually much higher in highrise buildings than in non-highrise buildings. It often takes longer to travel from the ground floor to the fire floor than it*

takes to respond from the fire station to the building. Firefighters may have to climb dozens of floors before they can even reach the fire floor.

- *Communications, command, and control can be very difficult in a highrise fire. Radio transmissions through a building's concrete and steel infrastructure may be compromised. The size and complexity of these buildings require large forces of firefighters and well-coordinated operations in a very complex tactical environment. Effective coordination and control of strategy and tactics are essential."*

Existing Deployment (Fire Stations and Staffing)

Fire Department deployment, simply stated, is about the **speed** and **weight** of the attack. Speed calls for first-due, multi-hazard intervention units (engines, ladder trucks and specialty companies) strategically located across a City. These units are tasked with controlling everyday, average emergencies without the incident escalating to second alarm or greater size. Weight is about multiple-unit response for significant emergencies like a "room and contents structure fire," a multiple-patient incident, a vehicle accident where extrication is required, or a complex rescue or wildland fire incident. In these situations, departments must assemble enough firefighters in a reasonable period in order to control the emergency safely without it escalating to greater alarms.

While no one city (even a metropolitan one) can stand by itself and handle every type of incident without help, a desirable goal is to field enough of a response force to handle a community's day-to-day responses for primary single-unit response needs equitably to all neighborhoods, as well as be able to provide an effective initial response force to mitigate moderately serious building fires. Small fires and medical emergencies require a single, or two-unit response (engine and ambulance) with a quick response time. Larger incidents require more fire and EMS resources. In either case, if the companies arrive too late or the total personnel sent to the emergency are too few for the emergency type, they are drawn into a losing and more dangerous battle. The art of fire company deployment is to spread companies out across a community for quick response to keep emergencies small with positive outcomes, without spreading the stations so far apart that they cannot quickly amass enough companies to be effective in major emergencies.

Given the need for fire resources to be stationed throughout a community for prompt response instead of all companies responding from a central fire station, communities such as Berkeley are faced with neighborhood equity of response issues. When one or more areas grow (in population, and/or vertical growth) beyond the capacity of the nearest fire station, the choices available are limited: add more neighborhood fire stations, increase the number of apparatus and personnel at that station, or live with the reality of longer response times and greater consequences per incident.

State and Federal Law, National Recommendations²

In addition to restrictions on local government finance, there have been a number of newer state and federal laws, regulations, and court cases over the last decade that limit the flexibility of cities in determining their staffing levels, training, and methods of operation. These are given an abbreviated overview below:

- 1999 OSHA Staffing Policies (“2-in/2-out”) - Federal OSHA applied the confined space safety regulations for work inside tanks and underground spaces to America’s firefighters. This requires in atmospheres that are Immediately Dangerous to Life and Health (IDLH) that there be teams of two firefighters inside and two outside in constant communication, and with the outside pair equipped and ready to rescue the inside pair. This situation also occurs in building fires as fire and smoke conditions require the wearing of self-contained breathing apparatus (SCBA). This is commonly called the “2-in/2-out” policy.
- 2001 National Staffing Guidelines (NFPA 1710) - The National Fire Protection Association (NFPA) Standard on Career Fire Service Deployment was issued ten years ago. While advisory to local governments, as it starts to become locally adopted and used, it develops momentum, forcing adoption by neighboring communities. NFPA 1710 calls for four-person fire crew staffing, arriving on one or two apparatus as a company. The initial attack crew should arrive at the emergency within four minutes travel time, 90 percent of the time, and the total effective response force (first alarm assignment) shall arrive within eight minutes travel time, 90 percent of the time.
- CAL-OSHA Requirements - Among the elements required is a safety orientation for new employees, a hazard communications system for employees to communicate hazards to supervisors, the CAL-OSHA process for post-injury reviews, the required annual report of injuries, and a standard for safety work plans. Employers have many different responsibilities under the Occupational Safety and Health Act of 1970 and the Code of Federal Regulations (CFR). Initially OSHA focused its efforts on the private sector; more recently, it has turned its attention to the public sector and specifically the fire service. All of these raise (appropriately for safety) fire agency training and equipment costs.
- The Insurance Services Office (ISO) Fire Department Grading Schedule would like to see first- due fire engines stations spaced 1.5 miles apart and ladder trucks spaced 2.5 miles apart, which, given travel speeds on surface streets, is a 3- to 4-minute travel time for first-due engines and a 7- to 8-minute travel time for first-due ladder trucks.

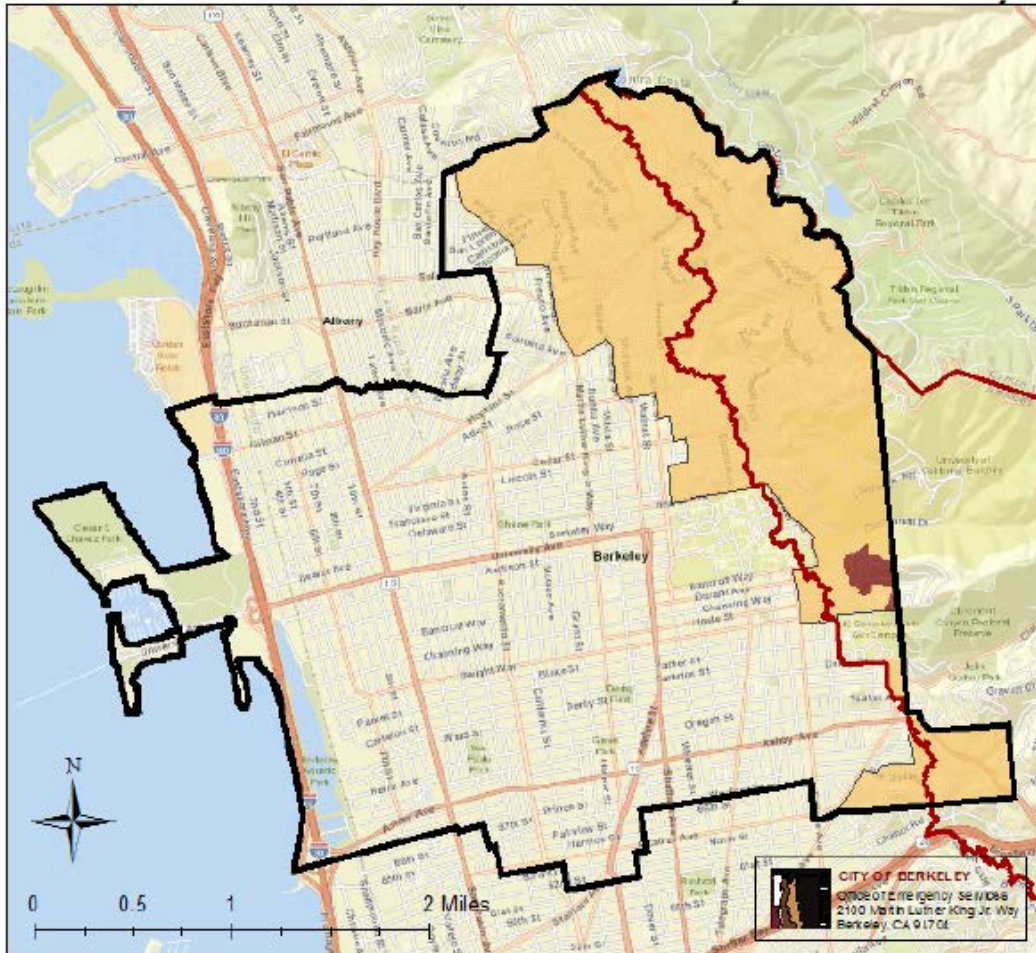
² CityGate Associates, Fire Service Standards of Response Coverage Deployment Study for the City of San Diego Fire-Rescue Department, 2011

The ISO grades community fire defenses on a 10-point scale, with Class 1 being the best. Historically, the City has been rated as a Class 3 department, but was upgraded to a Class 1 department in 2015. For many reasons, it is not necessary for an agency to only deploy to meet the ISO measures. The ISO criteria are designed to evaluate the fire protection system for the purposes of underwriting a department's ability to stop a building fire conflagration. The ISO system does not address small fires, auto fires, outdoor fires and emergency medical incidents.

Wildfire Evacuation and Fuel Reduction Programming

The City of Berkeley defines three Fire Zones designated in order of ascending fire risk. Fire Zone 3 is the Panoramic Hill area; Fire Zone 2 covers the remainder of the City's eastern hills; Fire Zone 1 covers the rest of the City west of the hills. Fire Zones 2 and 3 currently include approximately 8,300 properties and have the strictest fire prevention standards in the City regarding vegetation management and fire resistive construction. Additionally, Cal Fire designates Berkeley's "Very High Fire Hazard Severity Zone." The following map illustrates the boundaries of the Cal Fire VHFHSZ as well as Berkeley's Fire Zones.

Map 1: Hazardous Fire Zones in Berkeley



In 1923, a wildfire burned from the area of Lake Anza, down the northern hills of Berkeley, all the way to Shattuck Avenue. The 1991 Tunnel Fire in the Oakland and Berkeley hills destroyed 62 houses in Berkeley and more than 3,000 in Oakland. This led to an unprecedented increase in wildfire awareness.

A Fire Assessment District was created in 1992 (Berkeley City Ordinance 6129-N.S.) which funded fuel abatement and inspection programs in the Berkeley hills including three (3) full-time inspectors and a comprehensive fire fuel reduction program. The assessment district expired in 1997 following the passing of California Proposition 218 in 1996. With the primary funding source removed, dedicated Fire Prevention staffing was lost although some programming continues to this day in the form of the Fire Fuel Chipper and Debris Bin programs. On-duty firefighters now annually inspect a small proportion of properties in Berkeley's hills.

The 2017 fires in the North Bay and 2018 fires in Redding and Paradise were a stark reminder that wildland-urban interface fires move quickly through dry fuel with no regard to jurisdictional boundaries. These fires raised community awareness and concerns about existing fire prevention programs and triggered a need to review these programs at all levels of the City.

Three interrelated referrals that contained 82 distinct items were made to the City Manager and the "relevant commissions" on November 28, 2017, January 30, 2018 and February 28, 2018 addressing, in whole or in part, fire safety and community disaster preparedness measures. On July 10, 2018 the Berkeley City Council Referred the items to the Disaster and Fire Safety Commission and staff to come back and request funding as staff is able to meet the actual task. Of those items, 38 were directly related to Wildland Urban Interface fire safety and risk reduction

ENVIRONMENTAL SUSTAINABILITY

Uncontrolled wildfires result in enormous releases of carbon into the atmosphere. Systematic vegetation removal and management dramatically reduces the carbon emission potential created by uncontrolled fires. A comprehensive vegetation management plan will engage stakeholders on creating a plan that supports data-backed scientific management practices that improve the climate impact of the City such as maintaining a healthy tree canopy while removing harmful ladder fuels.

POSSIBLE FUTURE ACTION

Given the challenges outlined in this report, Staff is seeking input from City Council on various operational and system enhancements and requires City Council direction on funding options including ballot measures, fees, and special studies.

Option 1: Do nothing, maintain status quo.

This would result in a continued transfer from the General Fund to support the Paramedic Tax Fund and would not address the growing call volume, changing nature of the City, or the myriad challenges in emergency response outlined in this report.

Option 2: Provide direction on polling for possible ballot measures:

- 1) Increase in the existing Emergency Medical Services Tax (above FY 20 Estimated Revenue of \$3.2M) could be used to fund one or more of the items listed in the table below:

	Est. Annual Cost	Est. Additional Tax Rate Per Square Foot (b)	Est. Total Tax Rate Per Square Foot (c)	Est. Annual Cost for a 1,900 sq ft residence
a. Address existing deficits	\$900,000	\$0.01105	\$0.05035	\$95.67
b. Implement Emergency Medical Dispatch	\$3,200,000	\$0.03930	\$0.07860	\$149.34
c. 5150 Transport				
i. 3 rd -Party Contractor (existing service model)	\$2,400,000	\$0.02948	\$0.06878	\$130.68
ii. Establish Transport Division (Single Function / Basic Life Support)	\$4,200,000	\$0.05162	\$0.09092	\$172.75
d. Add Two (2) Additional Ambulances (Firefighter Paramedics / Advanced Life Support)	\$5,500,000	\$0.06755	\$0.10685	\$203.01

- a) The existing Emergency Medical Services Tax is a parcel tax. The existing tax is \$0.0393 per square foot of improvements. For a 1,900 square foot residence, the total annual Emergency Medical Services Tax is currently estimated at \$74.67.
 b) Represents the estimated parcel tax per square foot required to generate the revenue for the estimated annual cost.
 c) Includes the existing Emergency Medical Services Tax rate *plus* the Additional Tax Rate per Square Foot.

- 2) Establish a new Fire and Emergency Services Tax
 This new tax would be used to fund a re-design of the Fire Department including emergency medical dispatch capability, increasing staffing on suppression apparatus, and using a mix of staffing models on ambulances to meet the needs of mental health patients, emergency 9-1-1 medical patients, and the new height and dense nature of the built city. The total costs to achieve this vision are estimated at \$8.0 million per year followed by facilities improvements based on a facility study.

3) Wildfire District Assessment

Funds would be used to address the ongoing Wildland Urban Interface fire safety needs of the community including a system of education, action, and enforcement.

	Estimated Annual Cost	Estimated One-Time Cost
a. Wildfire Fuel Mitigation Plan	\$0	\$500,000
b. Wildland Fire Inspectors (4 FTE)	700,000	0
c. Safe passages	200,000	0
d. Vegetation Management Crew	350,000	0
e. Evacuation Training and Exercise	100,000	0
f. Undergrounding	5,000,000	0
g. Outdoor Emergency Warning System	250,000	2,000,000
h. Weather Radio Distribution	200,000	1,000,000

4) Water Supply System

Over a 25-year timeframe, the City needs approximately \$6,000,000 to staff and maintain then replace the fleet of vehicles, pumps, hose and facilities that make up the system. City Council could direct staff to extend the existing community facilities district (CFD 1) to generate the needed resources.

Option 3:

Direct staff to budget one-time funding for the followings studies:

- 1) Standards of Coverage Study \$150,000
- 2) Comprehensive Facility Study \$200,000

The Standards of Coverage Study will evaluate the service provided by the Fire Department. Specifically, the evaluation will report on the level of staffing needed compared to standards and best practices. This Staffing Needs Assessment will assist the Fire Department in future planning and provision of comprehensive emergency services to the City of Berkeley. Meanwhile, the Comprehensive Facility Study would document the condition of existing facilities and identify strategies to modernize existing facilities. The results of these studies would be presented to City Council to determine service levels and long-term funding needs.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Possible future polling and ballot language development would incur legal and consulting fees as well as staff time to work with consultants. Any special elections for special districts or community facility districts would incur costs to conduct the elections.

CONTACT PERSON

Dave Brannigan, Fire Chief, Department of Fire and Emergency Services, (510) 981-3473

Attachments:

- 1: Berkeley Fire Department Emergency Medical Response Memo
- 2: Berkeley Fire Department Call Volume Analysis



Office of the City Manager

March 12, 2019

To: Honorable Mayor and Members of the City Council

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

Re: Berkeley Fire Department Emergency Medical Response

The Berkeley Fire Department operates four, 24-hour, Advanced Life Support (ALS) ambulances. Whenever an ambulance is deployed it is staffed with two sworn firefighter paramedics. Additionally, the department has nine fire engines and trucks, staffed with a minimum of one firefighter paramedic. When responding to emergency medical incidents, a fire engine or truck is always dispatched along with an ambulance. In most cases the fire engine/truck arrives at the call faster than the ambulance and begins to provide life-saving emergency medical care at an ALS level.

A subset of emergency medical treatment and transport is for people experiencing psychiatric emergencies. These patients are always contacted by a Berkeley Police Officer and sometimes a member of Berkeley Mental Health's Mobile Crisis Team. Once they have made a determination that the patient requires further treatment and transport, the County's private ambulance provider, Paramedics Plus, is requested and responds. The Alameda County Emergency Medical Services Agency (LEMSA) reimburses Paramedics Plus for the costs related to the treatment and transport of these patients that they are unable to collect from the patient.

According to the California Code of Regulations (CCR), 5150(a) "When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, ...designated members of a mobile crisis team, ...may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment in a facility designated by the county for evaluation and treatment..."

New City of Berkeley Transport Responsibilities

In 2017, the Alameda County LEMSAs conducted a Request for Proposal (No. EMS-901017 Emergency Ambulance Service, 911 Response, ALS Transport) to select a private ambulance transport provider that would provide emergency medical transport services to Alameda County except Berkeley, Alameda City, Albany and Piedmont. Berkeley is one of four exclusive operating areas (EOA) in Alameda County. The four EOAs correspond with the fire departments that started providing emergency ALS ambulance response and transport prior to 1980. When

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Re: Berkeley Fire Department Emergency Medical Response

the new contract for Alameda County, per their RFP, goes into effect on July 1, 2019, the City will have to assume responsibility for the transport and cost of transport for psychiatric patients in Berkeley.

Berkeley Psychiatric Emergency Transport Data

In 2018 the County’s private transport provider transported 1090 psychiatric patients in Berkeley. As of July 1, 2019, these transports will become the responsibility of the City. In addition, during the same time, the Berkeley Fire Department (Department) transported 253 additional psychiatric patients. In total, there are nearly 1400 psychiatric transports that occur annually in the City.

Psychiatric patients that have no other medical symptoms or medical complaints are required to be transported to the specialized psychiatric facility, John George Psychiatric Pavilion, in San Leandro. Based on response records, the time an ambulance will be committed and unavailable for other calls will be approximately 185 minutes per psychiatric call. Approximately 50% of the psychiatric calls (based on current data) may be transported to a local emergency room to obtain medical clearance for another medical symptom before the patient can be transported to John George Psychiatric Pavilion Hospital. In these situations, the time a Department ambulance will be committed and unavailable for other calls is projected to be between 106 - 148 minutes, depending on the destination (Alta Bates, Kaiser, Summit Oakland, Children’s Oakland or Highland). In these situations a Department ambulance would become available more quickly because the hospitals are closer to Berkeley and the time it takes to transfer care is shorter than at John George.

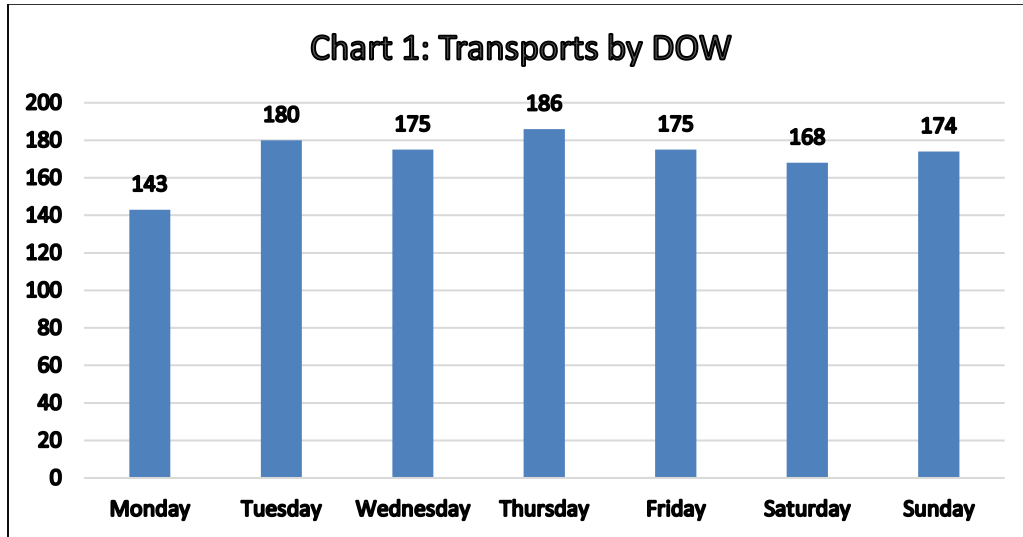
The Fire Department estimates the City of Berkeley will be required to transport 1,090 additional psychiatric patients per year, beginning July 1, 2019. Table 1 shows these estimates and the receiving facility to which patients will be transported.

Table 1

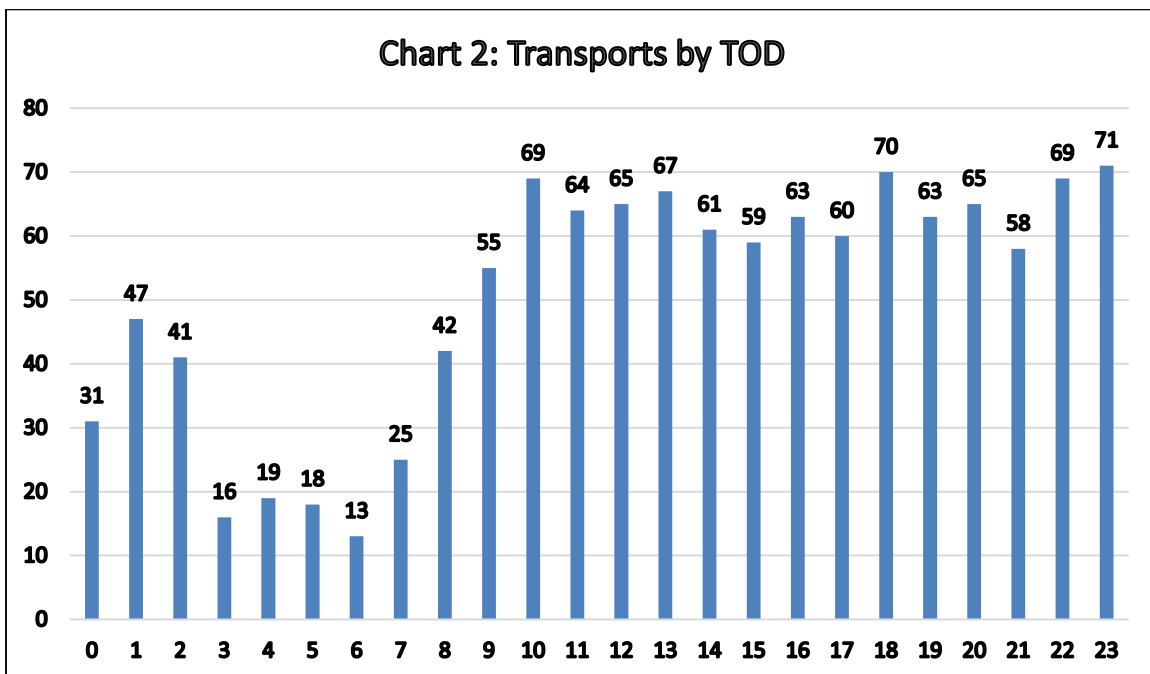
Type of Call	Receiving Facility	Total Calls 2017
Psychiatric	John George Psychiatric Pavilion	605
Psychiatric	Alta Bates	335
Psychiatric	Other	150
Total/Year:	Receiving Facility	1,090

Distribution of Calls

The distribution of psychiatric calls in the City by day of week (DOW) is shown in Chart 1.



The distribution of psychiatric calls in the City by time of day (TOD) is shown in Chart 2.



Transport Vehicle Use Time Calculation -- Unit Hour Utilization (UHU)

Unit Hour Utilization (UHU) is a calculation that measures the amount of time a transport unit is staffed, on duty, and assigned to providing response, triage, treatment and transport of patients in a given period of time. It also includes cleaning the ambulance and completing the required paperwork. During this time, the ambulance is unable to respond to other calls for service. UHU provides a standardized, shorthand way to measure workload levels in the system and to allow comparison to other systems.

The UHU calculation does not account for time necessary for employees to perform other duties that must occur each shift, including but not limited to: placing the unit in service at the beginning of the shift, taking it out of service at the end of shift, performing vehicle and equipment inspections and maintenance, training and continuing education, meal periods, public education, attending meetings, cleaning, rest and other functions including firefighting related responsibilities as assigned.

UHU is calculated by dividing the average time per call by the number of "unit hours." One-unit hour is defined as a fully equipped and staffed vehicle that is in-service and available for calls in the EMS system.

Accurately measuring UHU helps the Department demonstrate that its system is providing the community exceptional value and helps leaders determine when and what type of resources need to be added.

Table 2 shows the general scale used in the ambulance industry according to a paper written by Daniel R. Smiley who at the time was the Acting Director of the State of California Emergency Medical Services Authority, (Smiley, 2011).

Table 2

Unit Hour Utilization Range
.55 - .45 – High Utilization
.45 - .35 – Above Average Utilization
.35 - .25 – Average Utilization
.25 - .15 – Below Average Utilization
.15 - .01 – Low Utilization

Table 3 shows the total current UHU for the Department's four ambulances:

Table 3

Type	Calls/Yr	Hr/Call	Total Hours	Total Unit Hrs.	UHU
Medical calls	11,000	1.13	12,430	35,040	0.35

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Re: Berkeley Fire Department Emergency Medical Response

Table 4 shows the projected UHU for the current fleet of four ALS ambulances if they were to absorb the additional psychiatric patient transports:

Table 4

Type	Calls/Yr	Hr/Call	Total Hours	Total Unit Hrs.	UHU
Medical calls	11,000	1.13	12,430	35,040	
Psychiatric calls	1,400	3.08	4,312	35,040	
Total	12,400	1.35 (weighted)	16,742	35,040	0.48

Per ambulance industry standards, absorbing psychiatric transports by existing Fire Department ambulance resources would put Berkeley Fire into the highest category of utilization.

Managing New 5150 Transport Responsibilities

The most expeditious and reasonable way to assume the new transport responsibilities is to establish a one-year contract with an external Basic Life Support (BLS) private ambulance transport provider to temporarily handle the transport of Psychiatric patients beginning July 1, 2019. This will allow the service to continue, and give the Department time to collect and analyze response and transport data and prepare a recommendation for continuing the contract, absorbing the work internally or finding a creative alternative.

The payment structure for the selected private ambulance provider will mirror the current contract between Alameda County and Paramedics Plus, which currently provides emergency psychiatric transport for Berkeley. In this system, the selected vendor will bill the patient and/or their insurance company at a rate agreed upon with the City of Berkeley. After six months, the vendor will provide the City with evidence of the amount they collected and the City will reimburse the vendor the difference. This is necessary due to the variations in payment by private insurance, Medicare and Medi-Cal. The estimate for the potential cost to the City is based on the current 9-1-1 ambulance provider billing rate and assumes the City would have to reimburse the full cost of this rate. The actual cost to the City will likely be lower, but without knowing the agreed-upon rate or the ratio of collected revenue, the worst case scenario must be assumed.

The rate that the City could pay per transport is approximately \$2300, which is the rate Alameda County EMS Agency currently pays Paramedics Plus. It is possible that a qualified lower cost vendor will respond to the RFP, in which case the costs to the City would be lower. Using the \$2,300 figure and a collection estimate of 12% on the projected additional 1,090 transports, we estimate the likely scenario for City is that there would be a liability of \$2.2 million.

Type	Calls/Yr	Cost/Call	Sub-Total	Est. Recovery (12%)	Est. Total
Psychiatric	1,090	\$2300	\$2.5 Mil	\$300,840	\$2.2 Mil

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March 12, 2019
Re: Berkeley Fire Department Emergency Medical Response

Alternatives Considered

1. Creation of Basic Life Support (BLS) Ambulance Division: This option appears to be the best solution for the long-term reorganization of the Fire Department, it would be impossible to implement by July 1, 2019. The milestones that would need to be implemented prior to upstaffing a BLS transport division are; creation of a new job classification, recruitment and hiring of at least 12 FTE, ambulance specification/design and purchase, and modifications to fire stations to accommodate additional personnel.
2. Assumption of Psychiatric Calls by Current Deployment/Staffing: This option would result in a UHU for the current ambulances categorized as "High Utilization" according to the industry standards defined by Dr. Smiley. Between emergency calls, firefighter training, EMS training, meetings and other related duties, our current fleet of ambulances and firefighter/paramedics are extremely busy.

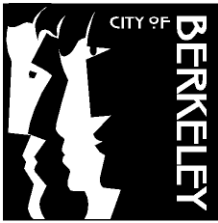
The real impacts to continuing with our current UHU or increasing it by absorbing Psychiatric transports would be less time for responding to other emergencies, and less training and development. Additionally, there would likely be increased employee fatigue (both chronic and acute), greater attrition of employees to other fire departments that do not transport and increased "burnout" and other associated mental health conditions (depression, PTSD, suicide, anger management, etc.).

3. Transport by EMT and Berkeley Mental Health: The legal authority to place a person on an involuntary psychiatric hold lies with the police, mental health professionals, and physicians. Berkeley Mental Health and Berkeley Police are the primary contacts with the patient population in question. An alternative to EMT ambulance transport is a hybrid where an EMT and a Mental Health Provider could team up and transport to John George. This adds significant cost due to the higher salaries of licensed mental health providers.
4. Transport by Berkeley Police: At times, police officers transport patients on a 5150 hold to John George Pavilion. This option would remove police officers from Berkeley for extended periods. This option also puts care and transport of psychiatric patients with law enforcement and not health care professionals.

Conclusion

The City has conducted research and explored numerous options to take over transporting mental and behavioral health patients beginning July 1, 2019. Considering the operational impacts, cost, and tight timeline, the most prudent option is to move forward with supplementing Berkeley Fire's existing transport capacity with a contracted ambulance service.

cc: Paul Buddenhagen, Deputy City Manager
David Brannigan, Fire Chief
Mark Numainville, City Clerk
Jenny Wong, City Auditor
Matthai Chakko, Assistant to the City Manager / Public Information Officer



Department of Fire and Emergency Services
Office of the Fire Chief
David Brannigan, Fire Chief

Subject: Berkeley Fire Department Call Volume Analysis

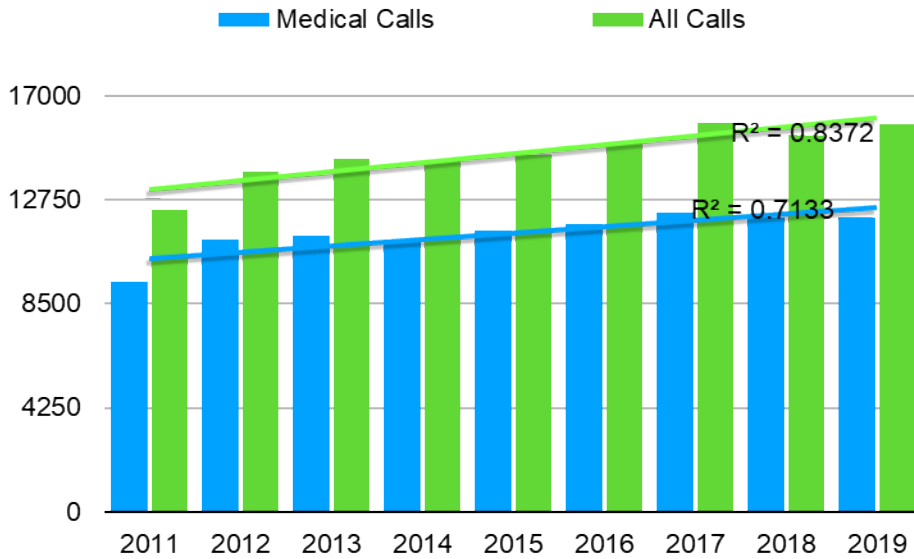
The Fire Department's call volume has significantly increased. In 1995, the Department responded to 6,300 calls-for-service, while in 2017, the Department responded to almost 16,000 calls-for-service. Over this timeframe, the only change in response capability and staffing was adding a fourth ambulance in FY2018.

Today, the increasing population density, demographic changes, increasing number of high-rise developments, UC Berkeley student population, the 5150 transport contract, as well as the imminent Alta Bates ED closure will significantly impact Berkeley public safety, its resources, and response capabilities. This confluence of factors point to an immediate need to enhance emergency medical services for the City, as well as transform and streamline EMS expansion in the future.

The Fire and EMS industry typically measure the workload of a system with a measurement known as Unit Hour Utilization (UHU) which is calculated by dividing the number of transports by the number of hours a unit is available for work. As UHU increases, response units are occupied for more of the day resulting in greater response times, increased reliance on mutual aid, and a decrease in training, maintenance, public education, and other important duties. Upcoming stresses to the EMS system will negatively impact UHU and therefore the speed and availability of response units.

Although there has been some small variation in total call volume year by year, over the past 9 years both medical and other service requests are consistently trending upward, especially in the area of medical call volume. There is no reason to expect this trend to change given the total population growth and ongoing development planned within the City.

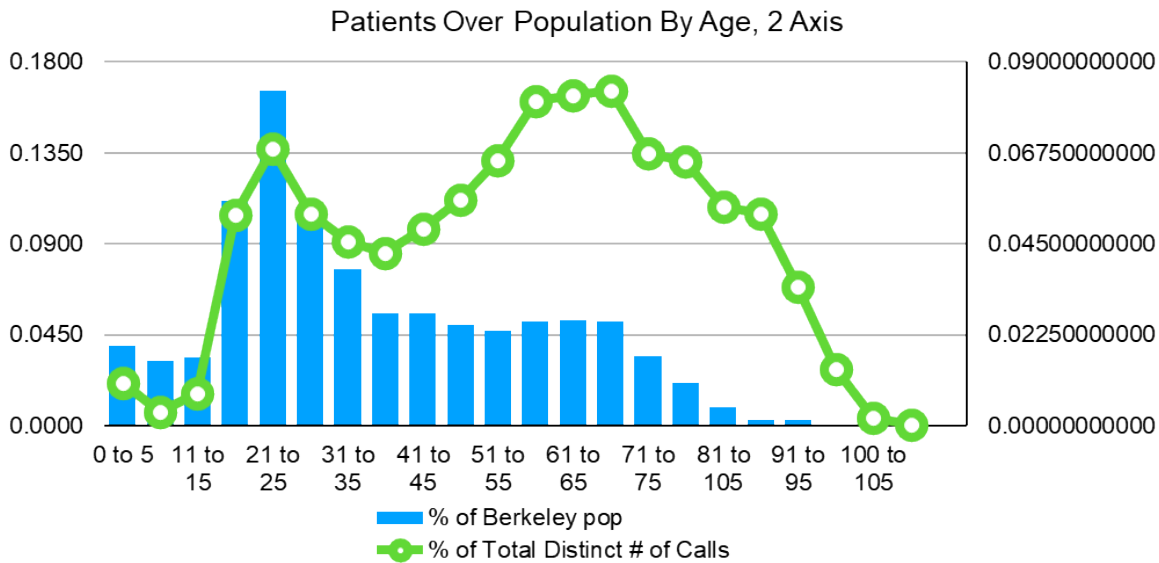
The increase in both medical and total call volume since 2011 was 22%. Considering total population growth for the same period as a rounded 7% or 8730 (according to census data), predictions for population and call volume growth can be made. By 2028 the City may have a population of 130,393, which may generate a call volume of 19,335 calls for service, at the historical rate of rise. Of those, we can estimate 15,274 will be medical calls, a number almost equal to our total call volume in 2019.



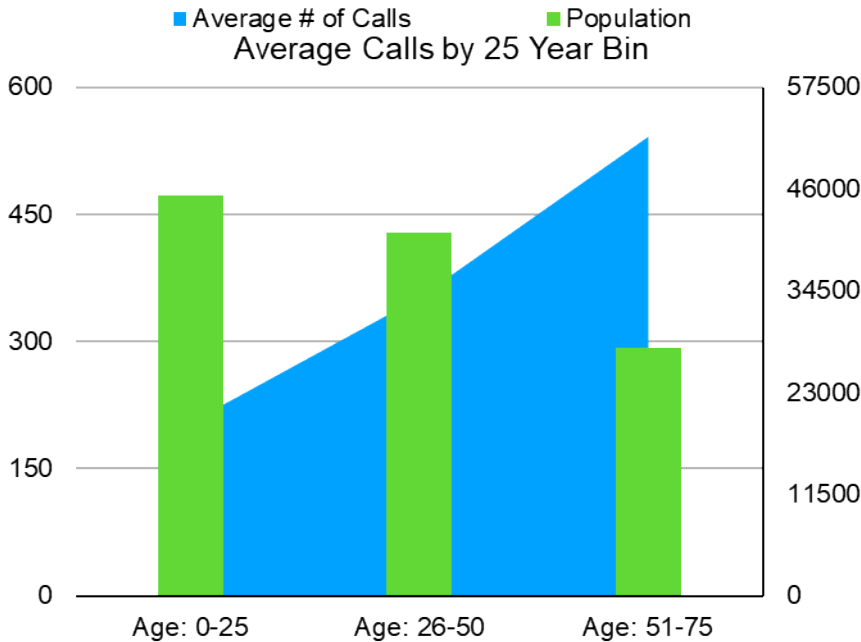
Berkeley is Aging and Expanding

The need for an efficient path toward expanding Emergency Medical services is highlighted by an analysis of Berkeley’s population by age, there is a bimodal distribution of documented patients which is roughly inversely proportional to the actual population distribution. About 60% of the documented calls come from patients over 50, while 40% come from patients over 65—only 13.7% of the total population according to census data.

Patients between 18-23 years account for about 10% of patients. This group is only matched by similarly binned groups of elderly in this respect. For example, if we binned ages individually, in 2018 the 19 year old group (at 1.8%) is responsible for as many documented patients as the 61 year old group. They each account for more documented patients than any other single age group from 0-60 years old. The likely reason for the proportion of this group in both patients and population are the students. Also, given the constancy of this segment of patients historically, it is safe to assume that this is unlikely to change—i.e. these patients are not going away, and may even increase depending on the expansion of the student population.

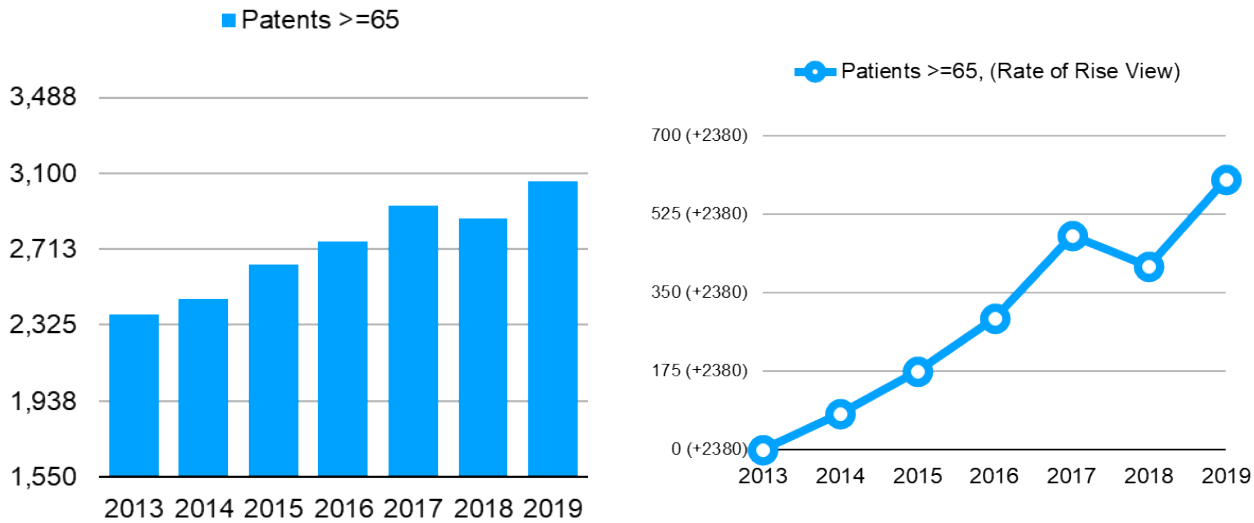


Patients between the ages of 18-23, and those 65 or older, account for roughly half of all the documented patients in Berkeley. If the patients over 50 are included, that increases to around 70%. Generally speaking, the older you are the more likely you are to use an ambulance. According to the same data, the number of documented patients over 65 has steadily risen since 2013 (even irrespective of call volume). The population of documented patients over 65 was at its highest in 2019.



Census data also shows a steady increase in the ≥ 65 segment of the Berkeley population since 2000. The census increase was +1.5% for the decade ending in 2010, and +2% again by 2018. During the past 7 years, the number of documented patients from this patient group increased by about 10%. When adjusting for changes in call volume, the increase has been at least 1% per year, conservatively 7%. Like the 18-23 year old segment, this patient group is not likely to diminish in coming years. In fact, in the state of California the number of those over 65 will nearly double by 2030 (CA State Department of Finance). When examining the population distribution of Berkeley, there is a significant segment of the population between the ages of 51-65 (about 20%) that will move into the center of the highest demand-for-service group by 2030, give or take. Notably, the Berkeley Alta Bates/Summit Emergency Room is projected to be closed by the same year.

If there is no change in the current rate of growth for the >65 population, there could be more than a 7% increase in these patients by 2026, just following the historic norm. With an increase in this population segment by merely an additional percent, the number of documented patients in this group could increase by 3.5%. That sounds like a small enough increase, however, if we see a 2% increase in total rate of growth for this segment of the population (from 2% to 4%), it could account for more than a 14% increase in patients before the end of the decade. Even if the mortality average is fixed at 85 years of age (the approximate average mortality for men and women in Berkeley is 84.85), the City has more people aging into this group than aging out of it by more than 2%.



UHU and the 4th Ambulance

Unit Hour Utilization (UHU) is a calculation that measures the amount of time a transport unit is staffed, on duty, and assigned to incidents (response, on-scene, transport, and at hospital) in a given period of time. UHU provides a standardized, shorthand way to measure workload levels in the system and to allow comparison to other systems.

Other time that is not included in the UHU calculation includes time for training, maintenance, public education, meal periods, rest and other preparedness-related functions.

UHU itself is fairly straightforward. It's calculated by dividing the average time per transport (60 minutes) by the number of "unit hours," with one-unit hour defined as a fully equipped and staffed vehicle in the EMS system.

The higher the ratio, the more productive the system, in the sense that you're getting more transports using fewer ambulances.

The following factors influence UHU and are variable by system:

- **Geography:** Road condition and layout, traffic congestion, and other factors can affect the comparison value of UHU. Example: In Berkeley, transports originating from districts in the North and East of the City are much longer because ambulances must navigate narrow streets that are farther away from freeways and thoroughfares.
- **Time-On-Task:** This measurement, the time it takes to completely manage each incident, varies and has to be considered to have an accurate UHU. Example: Hospital wait times range from 15-90 minutes depending on bed availability and staffing of the Emergency Department. If crews cannot quickly offload patients at receiving hospitals, time-on-task increases.
- **Transport Times:** The location of hospitals in relation to the City has a significant impact on the UHU. Example: With the impending closure of Alta Bates Medical Center no later than 2030, the Department must anticipate adding approximately 20 minutes to each transport time to account for travel time to and from emergency departments outside the City.

Accurately measuring UHU helps the Department demonstrate that its system is providing the community exceptional value and helps leaders determine when and what type of resources need to be added.

The specific formula used to calculate UHU is:

$$\frac{(\text{Total Calls}) \times (\text{Average Call Duration/Hrs})}{\text{Total Unit Hours}}$$

The only significant staffing change for the Berkeley Fire Department since 1989 was the addition of the 4th full time ambulance in 2017. This addition, although impactful in reducing reliance on mutual aid, did not significantly reduce UHU for City ambulances (see below). Based on current data, UHU increased for medic units, comparing 4 ambulances in 2018 to 3 in 2014, as the time on task and response availability cuts into the increase in service capacity. There are two probable reasons for this:

1. Berkeley units are responding to calls that would have been handled by a mutual aid response from another municipality in the past, and
2. The calls are taking longer.

The data suggests both are true. Average time on task (time spent per call) has increased annually according to ePCR data (Tableau Reporting; Medic UHU Summary by Year), and in the year prior to the 4th ambulance being added, the Department requested mutual aid from an outside agency 642 times. In the year that followed, it requested it only 226 times (Tableau Reporting; Where Outcome is “Transferred Care to Another Agency”).

Berkeley Fire Department UHU Based on ePCR Time Stamps					
Year	Total Trsp.	*Hrs Per Trsp.	Total Hours	Ttl Unit Hrs.	UHU
2014	7192	.95	6,832.4	26,280	0.256
2018	6767	1.6	10,827.2	35,040	0.308

*Note: It should be noted that ePCR times under-report total Time On Task, as the completion time logged in ePCR documentation may not reflect the actual time the unit is available for dispatch. For consistency in analysis, we are using this reported time as it is the most conservative.

This trend is likely to continue, especially when considering the impending closure of the emergency department at Alta Bates and the reduction of thoroughfares and multi-lane roads to increase bicycle and pedestrian safety. Additional ambulances, a more efficient system in terms of resources and their allocation, or both, will be required to manage structural changes that large.

RESOLUTION NO. ##,### –N.S.

SUBMITTING TO THE BERKELEY ELECTORATE ON THE NOVEMBER 3, 2020 GENERAL ELECTION BALLOT AN ORDINANCE MEASURE TO IMPOSE A SPECIAL TAX AT A RATE OF \$0.1047 PER SQUARE FOOT OF IMPROVEMENTS TO PAY FOR FIREFIGHTING, EMERGENCY MEDICAL RESPONSE AND COMMUNICATIONS, AND WILDFIRE PREVENTION AND PREPAREDNESS

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 3, 2020 General Municipal Election, a special tax measure at a rate of \$0.1047 per square foot of improvements to fund firefighting, emergency medical response and communications, and wildfire prevention and preparedness; and

WHEREAS, the City Council has requested that the Alameda County Board of Supervisors consolidate the November 3, 2020 General Municipal Election with the November 3, 2020 Presidential General Election; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services are to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit all measures to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure and the City Attorney's analysis shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a two-thirds vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code, and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the Registrar of Voters of Alameda County is required to perform necessary services in connection with said election.

BE IT FURTHER RESOLVED that the City of Berkeley agrees to reimburse the County of Alameda in full for the cost of election services performed.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to provide such other services and supplies in connection with said election as may be required by the Statutes of the State of California and the Charter of the City of Berkeley.

BE IT FURTHER RESOLVED that pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that said proposed Ordinance measure shall appear and be printed upon the ballots to be used at said election as follows:

CITY OF BERKELEY SPECIAL TAX ORDINANCE MEASURE	
Shall an ordinance enacting a tax at a rate of \$0.1047 per square foot of improvements, which is estimated to generate \$8.5 million annually for firefighting, emergency medical response, 9-1-1 communications services, and wildfire prevention and preparedness, until repealed by the voters, be adopted?	YES
	NO

BE IT FURTHER RESOLVED that the text of the measure be shown as Exhibit A, attached hereto and made a part hereof.

ORDINANCE NO. #,###-N.S.

IMPOSING A SPECIAL TAX AT A RATE OF \$0.1047 PER SQUARE FOOT OF IMPROVEMENTS TO PAY FOR FIREFIGHTING, EMERGENCY MEDICAL RESPONSE, 9-1-1 COMMUNICATIONS SERVICES, AND WILDFIRE PREVENTION AND PREPAREDNESS

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

Section 1. Findings and declarations.

The People of the City of Berkeley find and declare as follows:

A. On June 16, 2020, the City Council adopted an ordinance declaring a Fiscal Emergency due to the significant loss of revenue attributable to the COVID-19 pandemic and does not have adequate resources to maintain existing staffing levels, fill vacant positions, adequately train firefighters and paramedics, maintain and replace equipment and facilities, prepare and plan for wildfires, and upgrade and modernize its 9-1-1 dispatch system.

B. Over the years, the Fire Department has experienced a significant increase in calls-for-service, rising from approximately 6,300 in 1995 to approximately 16,000 in 2017 without adequate increases in staffing levels. Over the years, this has resulted in increasing response times.

C. An increasing number of calls in the Fire Department are dedicated to addressing the needs of vulnerable populations including individuals experiencing homelessness and mental health crises and the Fire Department does not have resources dedicated to addressing these vital community needs.

D. The City's 9-1-1 dispatch center does not have the resources to ensure adequate staffing levels, upgrade its systems, and modernize to include emergency medical dispatching to ensure that the appropriate emergency response services are deployed to 9-1-1 calls-for-service.

E. The City is vulnerable to wildfires that could impact significant portions of the City and without a consistent source of funding, the City does not have the resources to address wildfire prevention activities such as vegetation management, evacuation planning, public education, and an emergency alert system.

Section 2. Code Amendment. A new Chapter 7.83 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 7.83
Fire, Emergency Medical Response, 9-1-1 Communications Services, and
Wildfire Prevention and Preparedness Tax

7.83.010 Special Tax.

A. A special tax for the purpose of funding firefighter and emergency medical response including, but not limited to, training, hiring, maintaining and upgrading facilities and equipment, upgrades to the 9-1-1 communication system, and wildfire prevention and preparedness activities is hereby authorized to be imposed on all improvements in the City of Berkeley as more fully set forth in this Chapter.

B. The City Council may impose the tax authorized by this Chapter at the rate and subject to the inflation adjustments, set forth in Section 7.83.020.

C. This special tax is imposed under Article XIII A, Section 4, of the California Constitution and the City's constitutional authority as a charter city under Article XI, Section 5 of the California Constitution.

D. The proceeds of the tax imposed by this Chapter shall be placed in a special fund to be used only for the purpose of enhancing public safety by funding the following:

1. Local firefighter and emergency medical response including hiring and training personnel and upgrading safety equipment and facilities.
2. Upgrading and modernizing the 9-1-1 dispatch system to implement and maintain a system to provide emergency medical dispatching.
3. Wildfire prevention and preparedness activities including, but not limited to, vegetation management, public education, evacuation planning, and an emergency alert system.

7.83.020 Tax Authorized – Tax rate – Adjustments for Inflation

A. The City Council is hereby authorized to impose a special tax of \$0.1047 per square foot of improvements in the City of Berkeley.

B. Annually in May, the City Council may increase the previous year's tax by up to the greater of the cost of living in the immediate San Francisco Bay Area or per capita personal income growth in the state, as verified by official United States Bureau of Labor statistics. If either index referred to above is discontinued, the City shall use any successor index specified by the applicable agency, or if there is none, the most similar existing index then in existence.

7.83.030 Definitions.

For purposes of this chapter, the following terms shall be defined as set forth below:

A. "Building" shall mean any structure having a roof supported by columns or by walls and designed for the shelter or housing of any person, chattel or property of any kind. The word "building" includes the word "structure."

B. "Improvements" shall mean all buildings or structures erected or affixed to the land.

C. "Square footage" shall mean the total gross horizontal areas of all floors, including usable basement and cellars, below the roof and within the outer surface of the main walls of buildings (or the center lines of party walls separating such buildings or portions thereof) or within lines drawn parallel to and two feet within the roof line of any building or portion thereof without walls (which includes, notwithstanding paragraph 3 below, the square footage of all porches), and including pedestrian access walkways or corridors, but excluding the following:

1. Areas used for off-street parking spaces or loading berths and driveways and maneuvering aisles relating thereto.

2. Areas which are outdoor or semi-outdoor areas included as part of the building to provide a pleasant and healthful environment for the occupants thereof and the neighborhood in which the building is located. This exempted area is limited to stoops, balconies and to natural ground areas, terraces, pools, and patios which are landscaped and developed for active or passive recreational use, and which are accessible for use by occupants of the building.

3. Arcades, porticoes, and similar open areas which are located at or near street level, which are accessible to the general public, and which are not designed or used as sales, display storage, service, or production areas.

D. "Structure" shall mean anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

E. "Parcel" shall mean a unit of real estate in one ownership as shown on the most current official assessment roll of the Alameda County Assessor.

7.83.040 Exemptions.

A. The tax imposed by this Chapter shall not apply to parcels and improvements exempt from taxation by the City pursuant to the laws or constitutions of the United States and the State of California.

B. The tax imposed by this Chapter shall not apply to any property owned by any person whose total personal income, from all sources, for the previous calendar year, does not exceed that level which shall constitute "very low-income," as may be established by resolution of the City Council. Any taxpayer claiming the exemption under this section shall be required to demonstrate their entitlement thereto annually

by submitting an application and supporting documentation to the City Manager or their designee in the manner and at the time established in regulations and/or guidelines hereafter promulgated by the City Manager subject to review by the City Council in its discretion. Such applications shall be on forms provided by the City Manager, or their designee, and shall provide and/or be accompanied by such information as the City Manager shall require, including but not limited to, federal income tax returns and W-2 forms.

C. Any person or entity claiming an exemption from the tax imposed by this Chapter shall file a verified statement of exemption on a form prescribed by the City Manager prior to June 30th of the first fiscal year for which the exemption is sought

7.83.050 Duties and Authority of the City Manager.

It shall be the duty of the City Manager to collect and receive all taxes imposed by this Chapter and to keep an accurate record thereof. The City Manager is charged with the enforcement of this Chapter, except as otherwise provided herein, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter, including provisions for the re-examination and correction of returns and payments.

7.83.060 Collection with Property Tax – Penalties and Interest.

The special tax imposed by this Chapter shall be due in the same manner, on the same dates, and subject to the same penalties and interest as established by law for other charges and taxes fixed and collected by the County of Alameda on behalf of the City of Berkeley. The special tax imposed by this Chapter, together with all penalties and interest thereon, shall constitute a lien upon the parcel upon which it is levied until it has been paid, and shall constitute a personal obligation of the owners of the parcel on the date the tax is due.

7.83.070 Collection.

The amount of any tax, penalty, or interest imposed under the provisions of this chapter shall be deemed a debt to the City. Any person owing money under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount. The City shall be entitled to reasonable attorneys' fees and its costs of suit in any such action.

7.83.080 Refunds.

Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the City under this chapter, it may be refunded as provided in Chapter 7.20 of the Berkeley Municipal Code or any such successor chapter.

7.83.090 Savings clause – Severability.

The provisions of this chapter shall not apply to any person, association, corporation, entity, or property as to whom or which it is beyond the power of the City of Berkeley to impose the tax herein provided. If any sentence, clause, section, or part of this chapter, or any tax against any individual or any of the several groups specified herein

is found to be unconstitutional, illegal, or invalid, such sentence, clause, section or part shall be severable and such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section, or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or other parts of this chapter. It is hereby declared to be the intention of the City Council and the People of the City of Berkeley that this chapter would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

7.83.100 Violation – Penalty.

Any person who fails to perform any duty or obligation imposed by this chapter shall be guilty of an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code. The penalties provided in this section are in addition to the several remedies provided in this chapter.

Section 3. Increase appropriations limit. Pursuant to California Constitution Article XIII B, the appropriation limit for the City of Berkeley is hereby increased by the aggregate sum authorized to be levied by this special tax for each of the four fiscal years from 2021 through 2024.

Section 4. Effective date. The tax imposed by this Chapter shall be operative on January 1, 2021.

Section 5. Amendment, repeal, and reenactment. The City Council may repeal this ordinance, or amend it in any manner that does not result in an increase in the tax imposed herein, or add or modify exemptions, without further voter approval. If the City Council repeals this ordinance, it may subsequently reenact it without voter approval, as long as the reenacted ordinance does not result in an increase in the tax imposed herein.

Section 6. California Environmental Quality Act Requirements. This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., under, including without limitation, Public Resources Code section 21065 and CEQA Guidelines sections 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment and pursuant to Public Resources Code section 21080, subdivision (b)(8), and CEQA Guidelines section 15273 as the approval of government revenues to fund existing services.

Section 7. Special Tax; Two Thirds Vote Requirement. This Ordinance imposes a special tax for restricted general revenue purposes and shall be effective only if approved by two-thirds of the voters voting thereon.



Office of the City Manager

ACTION CALENDAR
July 21, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Placing a Tax Measure on the November 3, 2020 Ballot to Adopt a Tax on Transportation Network Companies

RECOMMENDATION

1. Adopt a Resolution submitting a ballot measure to adopt a tax on Transportation Network Companies to a vote of the electors at the November 3, 2020 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

FISCAL IMPACTS OF RECOMMENDATION

If the measure is approved by voters, the City would receive additional funds from increased tax revenues estimated at \$910,000 annually. This estimate of tax revenues assumes 20 rides per person annually, with 50% of the rides consisting of private trips and 50% of the rides consisting of pooled trips.

The table below shows the year-by-year costs for elections since 2012. Cost increases have occurred year-over-year due to the addition of required languages and a new, permanent surcharge to fund the County's voting equipment replacement account.

Date	Election				
	Nov. 2012	Nov. 2014	Nov. 2016	Mar. 2017	Nov. 2018
No. of Measures	10	7	11	0	4
No. of Candidates	26	23	29	2	30
General Costs	\$367,884	\$392,331	\$706,901	-	\$385,246
RCV Costs	\$101,041	\$189,148	\$181,954	-	\$185,578
Total Costs	\$468,925	\$581,479	\$888,855	\$85,628	\$570,824

CURRENT SITUATION AND ITS EFFECTS

The City Manager is presenting this measure for addition to the November 3, 2020 ballot pursuant to the direction provided by the City Council at the June 16, 2020 regular City Council meeting.

Adoption of the resolution attached to this item will place the measure on the ballot. In addition, with respect to who can author arguments for measures placed on the ballot by the Council, Elections Code Section 9282(b) provides that the legislative body may submit an argument in favor of the measure. The City Council may authorize the Council as a whole, or certain members of the Council, to submit an argument in favor of the measure.

BACKGROUND

At the June 16, 2020 City Council meeting, the City Council provided direction to staff to prepare a ballot measure that creates a tax at a rate of 50 cents (\$0.50) per trip for private trips and 25 cents (\$0.25) per trip for pooled trips on users of Transportation Network Companies. This attached ballot measure has been prepared in response to that direction.

Every TNC engaged in business in the City will collect the per trip tax from the user and remit the tax to the City on a monthly basis. The tax is estimated to generate \$910,000 annually for general municipal services.

A Transportation Network Company (TNC) provides prearranged transportation services using an online application or platform, such as smart phone apps, to connect drivers with passengers. Passengers can arrange for a private prearranged trip, in which the passengers are transported by a single vehicle at the same time for a single fare; or passengers can also arrange for a pooled trip, in which two or more passengers are transported by a single vehicle a prearranged ride at the same time for which separate fares are charged. All fares and tips are charged and collected by the TNC through the online application and not by the driver. The TNC then distributes compensation to the driver in a separate transaction.

TNC trips in Berkeley use the public streets and roads, and contribute to the wear and tear of the public infrastructure. TNC trips also contribute to traffic congestion and air pollution within the City. TNC's do not pay taxes to offset their impacts on the City.

In addition to Berkeley, the cities of Oakland and Emeryville are also considering measures for the November 2020 ballot that would impose a general tax on users of TNCs at a rate of 50 cents (\$0.50) per trip for private trips and 25 cents (\$0.25) per trip for pooled trips. The City of Emeryville discussed a TNC tax on July 7, 2020 and will be returning to their respective City Council on July 21, 2020 for additional consideration. It

is also anticipated that the City of Oakland will discuss a TNC tax substantially similar to Berkeley on July 21, 2020.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

The City Clerk is presenting this action in accordance with the direction given by the City Council at the June 16, 2020 meeting.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Mark Numainville, City Clerk, (510) 981-6900

Attachments:

1: Resolution

Exhibit A: Text of Measure

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

SUBMITTING TO THE BERKELEY ELECTORATE, AT THE GENERAL MUNICIPAL ELECTION ON NOVEMBER 3, 2020, A PROPOSED ORDINANCE TO IMPOSE A GENERAL TAX ON USERS OF TRANSPORTATION NETWORK COMPANIES AT A RATE OF 50 CENTS FOR PRIVATE TRIPS AND 25 CENTS FOR POOLED TRIPS; AND DIRECTING THE CITY CLERK TO TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE NOVEMBER 3, 2020 GENERAL MUNICIPAL ELECTION

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 3, 2020 General Municipal Election, a measure to impose a general tax on users of Transportation Network Companies (TNCs) at a rate of 50 cents for private trips and 25 cents for pooled trips; and

WHEREAS, in accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Statewide General Election to be held November 3, 2020; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services are to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Council hereby authorizes and directs the City Clerk at least 88 days prior to November 3, 2020 to file with the Alameda County Clerk certified copies of this Resolution.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication, and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code, and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies, and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that for all City measures and contests for elected office, the consolidated election shall be held and conducted in the manner prescribed in Section 10418 of the California Elections Code.

BE IT FURTHER RESOLVED that pursuant to Elections Code Section 9285(b), the City Council hereby adopts the provisions of Elections Code Section 9285(a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that the City Clerk and City Manager are hereby authorized and directed to take any and all actions necessary under law to prepare for and conduct the 2020 General Municipal Election and appropriate all monies necessary for the City Manager and City Clerk to prepare and conduct the November 3, 2020 General Municipal Election.

BE IT FURTHER RESOLVED that said proposed ballot measure shall appear and be printed upon the ballots to be used at said election as follows:

CITY OF BERKELEY GENERAL TAX MEASURE	
Shall an ordinance enacting a tax on users of Transportation Network Companies (such as Uber or Lyft) for prearranged trips originating in Berkeley, at a rate of 50 cents per trip for private trips and 25 cents per trip for pooled trips, regardless of the number of passengers on the trip, which is estimated to generate \$910,000 annually for general municipal services in the City of Berkeley until repealed by the voters, be adopted?	Yes
	No

BE IT FURTHER RESOLVED that the text of the ordinance be shown as Exhibit A, attached hereto and made a part hereof.

BE IT FURTHER RESOLVED that certain sections of the ordinance may be codified into the City of Berkeley Municipal Code at the direction of the City Clerk upon approval by the voters.

ORDINANCE NO. #,###-N.S.

IMPOSING A GENERAL TAX ON USERS OF TRANSPORTATION NETWORK COMPANIES AT A RATE OF 50 CENTS FOR PRIVATE TRIPS AND 25 CENTS FOR POOLED TRIPS

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

Section 1. Findings and declarations.

The People of the City of Berkeley find and declare as follows:

A. Transportation Network Company (TNC) trips use the public infrastructure of the City of Berkeley, including our streets.

B. Maintaining our streets, sidewalks, and pedestrian crossings is costly, and important to the public.

C. The trips of TNCs contribute to traffic congestion, air pollution, and wear and tear on the public infrastructure.

D. Currently, TNC trips do not pay taxes to the City of Berkeley.

E. A 2017 study from the *University of California Davis, Institute of Transportation Studies* stated: "Directionally, based on mode substitution and ride-hailing frequency of use data, we conclude that ride-hailing is currently likely to contribute to growth in vehicle miles traveled (VMT)."

F. A report by the *San Francisco County Transportation Authority* states: "TNCs drive approximately 570,000 vehicle miles within San Francisco on a typical weekday. This accounts for 20% of all local daily vehicle miles traveled (VMT) and includes both in-service and out-of-service mileage."

G. A report by former NYCDOT staffer Bruce Schaller on TNC use in New York City stated that, "As a result of growing trip volumes, TNCs added 600 million miles of driving to city streets in 2016. The growth of on-demand ride services is also working to undercut the essential role of mass transit in absorbing growth in residents, workers and visitors."

H. The City of Berkeley wishes to ensure tax fairness, and to provide for adequate revenue for public needs.

I. Multiple other jurisdictions, including the City of Chicago, and the State of Massachusetts, have adopted and implemented per-trip charges for the trips taken via Transportation Network Companies.

Section 2. Code Amendment. A new Chapter 7.71 is added to the Berkeley Municipal Code to read as follows:

Chapter 7.71
TRANSPORTATION NETWORK COMPANY USER TAX

7.71.010. Title

This chapter shall be known as the “Transportation Network Company User Tax Ordinance.”

7.71.020. Definitions

Except as where context otherwise requires, the definitions given in this section govern the construction of this chapter:

- A. “City” means the City of Berkeley.
- B. “Digital Network” means an online-enabled application software, website, or system offered, utilized, or controlled by a Transportation Network Company that enables the prearrangement of transportation services by Drivers with Users.
- C. “Driver” means a person who receives connections to potential Users through a Digital Network and uses a vehicle to offer or provide Prearranged Transportation Services to those Users.
- D. “Originate” refers to the location where a passenger of a Prearranged Transportation Service is picked up by a Driver. It does not refer to the location of the User who arranges the Prearranged Transportation Service, if different.
- E. “Person” or “people” mean any non-exempt individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
- F. “Pooled Prearranged Trip” means the transportation of multiple passengers in two or more Prearranged Trips in a single vehicle at the same time for which separate fares are charged. The Prearranged Trips that comprise a Pooled Prearranged Trip may Originate or terminate in different locations.
- G. “Prearranged Trip” means the transportation of one or more passengers in a single vehicle at the same time by a Driver that is arranged through a Digital Network.

H. "Prearranged Transportation Service" means a "Prearranged Trip" or a "Pooled Prearranged Trip."

I. "Tax", "Transportation Network Company User Tax", or "TNC User Tax" means the tax imposed by this chapter.

J. "Transportation Network Company" or "TNC" means an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, that provides Prearranged Transportation Services for compensation using a Digital Network to connect Users with Drivers.

K. "User" means a person who uses a Digital Network to connect with a Driver to request and pay for Prearranged Transportation Service. A User may or may not be a passenger.

7.71.030. Imposition and Rate of Tax

A. For each Prearranged Trip that Originates in the City that is not part of a Pooled Prearranged Trip there is imposed a tax of 50 cents on the User. There is no additional tax on guests of a User who arranges a Prearranged Trip.

B. For each Pooled Prearranged Trip there is imposed a tax of 25 cents on each User who arranges each Prearranged Trip that Originates in the City and which comprises part of the Pooled Prearranged Trip. There is no additional tax on guests of a User who arranges a Prearranged Trip that comprises part of a Pooled Prearranged Trip.

C. The tax constitutes a debt owed by the User to the City, which is extinguished only by payment to the TNC at the time of payment for the Prearranged Transportation Service.

D. While the tax imposed by this section is in effect, Drivers shall not be required to pay Berkeley business license fees under Chapter 9.04 of the Berkeley Municipal Code for carrying on the business of being a Driver in the City.

E. The City Council may by Ordinance adopt exemptions, waivers, discounts, or rebates for the tax, including, but not limited to, exemptions, waivers, discounts, or rebates for low-income discount programs or free donated trips.

7.71.040. Collection and Remittance of Tax by Transportation Network Company

Every TNC engaged in business in the City shall at the time of collecting payment for a Prearranged Transportation Service originating in the City, collect the tax from the User and remit the tax to the City on a monthly basis. In all cases in which the tax is not collected by the TNC, the TNC shall be liable to the City for the amount of tax due. A TNC is engaged in business in the City if it facilitates a trip for a User that Originates in the City.

7.71.050. Registration of Transportation Network Company

A. Within thirty (30) days after the effective date of this chapter, or within thirty (30) days after commencing business, whichever is later, every TNC engaged in business in

the City must register with the Finance Department of the City, using a form provided by the Director of Finance.

B. Each TNC registration shall set forth the name under which the TNC transacts or intends to transact business, the location of its primary place or places of business, and such other information to facilitate the collection of the tax as the Director of Finance may require. The registration shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the registration. The Director of Finance shall within thirty (30) days after such registration issue without charge a certificate of authority to each registrant to collect the tax from a User. Such certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the Director of Finance upon the cessation of business in the City or upon its sale or transfer.

7.71.060 Duties of the Director of Finance

It shall be the duty of the Director of Finance to collect and receive all taxes imposed by this chapter and to keep an accurate record thereof. Said Director of Finance is charged with the enforcement of this chapter, except as otherwise provided herein, and may prescribe, adopt, and enforce those rules and regulations necessary or advisable to effectuate the purposes of this chapter, including provisions for the re-examination and correction of declarations, returns, and payments; the exclusive discretionary authority to waive penalties; and the authority to defer the payment due dates as prescribed herein. In individual cases, the Director of Finance may make findings of fact in support of decisions, determinations, and rulings enforcing this chapter. The Director of Finance may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

7.71.070. Determinations, Returns, and Payments

A. Due Date of Taxes. All taxes imposed by this chapter and collected by any TNC or required to be collected by any TNC are due and payable to the Director of Finance for each taxable month on or before the last day of the month immediately following each respective monthly period.

B. Return—Time for Filing. On or before the last day of the month immediately following each monthly period, a return for the preceding monthly period must be filed with the Director of Finance, in such form as the Director of Finance may prescribe.

C. Contents of Return. Returns must show the amount of tax collected for the related period and such other information as required by the Director of Finance. The Director of Finance may require returns to show the total number of Prearranged Trips and Pooled Prearranged Trips originating within the City upon which tax was collected or otherwise due, the total number of Prearranged Trips and Pooled Prearranged Trips originating in the City for such period, and an explanation in detail of any discrepancy between the amounts.

D. Delivery for Return and Remittance. The return shall be transmitted with the remittance of the amount of the tax due to the Director of Finance at the Finance Department on or before the date provided in this chapter.

7.71.080. Penalties and Interest

A. Original Delinquency. Any TNC that fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten (10) percent of the amount of the tax in addition to the amount of the tax.

B. Continued Delinquency. Any TNC that fails to remit any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten (10) percent of the amount of the tax in addition to the amount of the tax and the 10% penalty first imposed

C. Fraud. If the Director of Finance determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five (25) percent of the amount of the tax shall be added thereto in addition to the penalty stated in subdivisions A and B of this section.

D. Interest. In addition to any penalties imposed, any TNC that fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

E. Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

7.71.090. Deficiency Determinations

A. Recomputation of Tax—Authority to Make—Basis of Recomputation. If the Director of Finance is not satisfied with the return or returns of the tax or the amount of the tax paid to the City by a TNC, he or she may compute and determine the amount required to be paid based upon the facts contained in the return or returns or upon any information within the Director of Finance's possession or that may come into his or her possession. One or more deficiency determinations may be made of the amount due for one or more periods.

B. Penalties and Interest on Deficiency. Penalties and interest under Section 7.71.080 shall be applied to any additional amount of tax determined to be due in a deficiency determination under subdivision A of this section. Interest shall be calculated from the original due date of the additional amount of tax determined to be due.

C. Offsetting of Overpayments. In making a deficiency determination, the Director of Finance may offset overpayments for a period or periods against underpayments for another period or periods or against penalties and interest on the underpayments.

D. Notice of Director of Finance's Determination—Service of. The Director of Finance shall give to the TNC written notice of the deficiency determination. The notice may be

served personally or by mail; if by mail, service shall be made by depositing the notice in the United States mail, in a sealed envelope with postage paid, addressed to the TNC at its business address as it appears in the records of the Director of Finance. In case of service by mail or any notice required by this chapter, the service is complete at the time of the deposit of the notice in the United States Post Office, without extension of time for any reason.

E. Time Within Which Notice of Deficiency Determination Is to Be Mailed. Except in the case of fraud, intent to evade this chapter or authorized rules and regulations, or failure to make a return, every notice of a deficiency determination shall be mailed within three years after the last day of the calendar month following the monthly period for which the deficiency determination applies or within three years after the return for the period to which the deficiency determination applies was filed, whichever period expires later. The time to issue a notice of deficiency determination under this section shall be tolled during the pendency of an audit of a TNC under Section 7.71.120.

7.71.100. Determinations If No Return Made

A. Estimate—Computation of Tax Penalty. If any TNC fails to make a return, the Director of Finance shall estimate the number of Prearranged Trips and Pooled Prearranged Trips originating in the City subject to the tax. The estimate shall be made for the period or periods for which the TNC failed to make a return and shall be based upon any information that is in the Director of Finance's possession or may come into his or her possession.

B. Penalties and Interest. Penalties and interest under Section 7.71.080 shall be applied to the tax determined to be due in subdivision A of this section. Interest shall be calculated from the original due date of the amount of tax determined to be due.

C. Manner of Computation—Offsets—Interest. In making a determination, the Director of Finance may offset overpayments for a period or periods against underpayments for another period or periods or against penalties and interest on the underpayments.

D. Giving Notice—Manner of Service. After making the determination, the Director of Finance shall give the TNC written notice of the estimate, determination, penalty, and interest. The notice shall be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

E. Time to Make a Determination. The Director of Finance may make a determination in accordance with this Section at any time within three years of a return being due. The time to issue a determination under this section shall be tolled during the pendency of an audit of a TNC under Section 7.71.120.

7.71.110. Administrative appeal to the City Manager from Director of Finance decision.

A. Petition for Redetermination. Any TNC against whom a determination is made under this chapter may appeal such decision to the City Manager by filing a verified appeal with the City Manager within thirty (30) days after service upon the TNC of notice thereof.

If a petition for redetermination is not filed in writing with the City Manager, City Hall, 2180 Milvia St. Berkeley, California 94704, within the 30-day period, the determination becomes final at the expiration of the period.

B. Consideration of Petition—Hearing. If a petition for redetermination is filed within the 30-day period, the City Manager shall reconsider the determination and, if the TNC has so requested in its petition, shall grant the TNC an oral hearing, and shall give the TNC at least ten days notice of the time and place of hearing. The City Manager may designate one or more deputies for the purpose of conducting hearings and may continue a hearing from time to time as may be necessary.

C. Determination of Petition. The City Manager or their designee may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the City Manager or their designee at or before the hearing.

D. Finality of Determination. The order or decision of the City Manager, or their designee upon a petition for redetermination becomes final thirty (30) days after service of notice thereof upon the petitioner. There is no appeal of the City Manager's decision (or his or her deputies designated for a redetermination) to the City Council; writs challenging the City Manager's decision must be filed with the appropriate court within ninety (90) days of the final date of such redetermination. (California Code of Civil Procedure § 1094.6.)

E. Tax a Debt. The amount of any tax, penalty, and interest imposed under the provisions of this chapter shall be deemed a debt to the City. Any TNC owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount. Such action must be filed within three years of a determination under Sections 7.71.090 or 7.71.100 becoming final or a redetermination under Section 7.71.110 becoming final.

7.71.120. Records and Audits

A. It shall be the duty of every TNC engaged in business in the City to keep and preserve, for a period of five years, all records as may be necessary to determine the amount of tax the TNC may have been liable for the collection of and payment to the City, which records the Director of Finance shall have the right to inspect upon notice at a reasonable time.

B. The Director of Finance may conduct an audit of any TNC engaged in business in the City to ensure compliance with the requirements of this chapter. The Director of Finance shall notify the TNC of the initiation of an audit in writing. The audit period of review shall not exceed three years. Upon completion of the audit, the Director of Finance may make determinations under Section 7.71.090 and/or Section 7.71.100 of any tax determined to be owed.

7.71.130. Refunds

Whenever any tax under this chapter has been paid more than once or has been erroneously or illegally collected or received by the City, it may be refunded only as

provided in Chapter 7.20 of the Berkeley Municipal Code. Filing a claim for refund under Chapter 7.20 does not absolve a claimant of the requirement to exhaust the administrative remedies provided in this chapter.

7.71.140. Violations

Any TNC which fails or refuses to register as required herein, or to furnish any return required to be made or which fails or refuses to furnish any other data required by the Director of Finance, or which renders a false or fraudulent return or claim, or which fails to meet the substantive requirements of any other provision of this chapter may be charged with a civil penalty or an infraction.

Section 3. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable, or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

Section 4. California Environmental Quality Act Requirements. This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., under, including without limitation, Public Resources Code section 21065 and CEQA Guidelines sections 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment and pursuant to Public Resources Code section 21080, subdivision (b)(8), and CEQA Guidelines section 15273 as the approval of government revenues to fund existing services.

Section 5. Increase appropriations limit. Pursuant to California Constitution Article XIII B, the appropriation limit for the City of Berkeley is hereby increased by the aggregate sum authorized to be levied by this special tax for each of the four fiscal years from 2021 through 2024.

Section 6. General Tax; Majority Approval; Effective Date. This Ordinance enacts a general tax for unrestricted general revenue purposes. Tax revenue collected pursuant to the Ordinance may be used by the City for any municipal governmental purpose. The Ordinance shall be effective only if approved by a majority of the voters voting thereon and after the vote is declared by the City Council. The effective date of this Ordinance shall be January 1, 2021.

Section 7. Council Amendments. The City Council of the City of Berkeley is hereby authorized to amend Chapter 7.71 of the Berkeley Municipal Code as adopted by this Ordinance in any manner that does not increase the rate of the Transportation Network Company User Tax, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution, including reducing the rate of the tax or even eliminating the tax.



Office of the City Manager

ACTION CALENDAR
July 21, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Mark Numainville, City Clerk
 Subject: Placing a Tax Measure on the November 3, 2020 Ballot to Increase the Utility Users Tax to Pay for General Municipal Services and Establish a Climate Equity Action Fund to Support Measures to Reduce Local Greenhouse Gas Emissions and Air Pollution

RECOMMENDATION

1. Adopt a Resolution submitting a ballot measure to increase the Utility Users Tax to pay for general municipal services and to establish a Climate Equity Action Fund to support measures to reduce local greenhouse gas emissions and air pollution to a vote of the electors at the November 3, 2020 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

FISCAL IMPACTS OF RECOMMENDATION

If the measure is approved by voters, the City would receive additional funds from increased tax revenues estimated at \$4 million annually. This revenue estimate is based on an increase in the Utility Users Tax from 7.5% to 10%.

The table below shows the year-by-year costs for elections since 2012. Cost increases have occurred year-over-year due to the addition of required languages and a new, permanent surcharge to fund the County's voting equipment replacement account.

Date	Election				
	Nov. 2012	Nov. 2014	Nov. 2016	Mar. 2017	Nov. 2018
No. of Measures	10	7	11	0	4
No. of Candidates	26	23	29	2	30
General Costs	\$367,884	\$392,331	\$706,901	-	\$385,246
RCV Costs	\$101,041	\$189,148	\$181,954	-	\$185,578
Total Costs	\$468,925	\$581,479	\$888,855	\$85,628	\$570,824

CURRENT SITUATION AND ITS EFFECTS

The City Manager is presenting this measure for addition to the November 3, 2020 ballot pursuant to the direction provided by the City Council at the June 16, 2020 regular City Council meeting.

Adoption of the resolution attached to this item will place the measure on the ballot. In addition, with respect to who can author arguments for measures placed on the ballot by the Council, Elections Code Section 9282(b) provides that the legislative body may submit an argument in favor of the measure. The City Council may authorize the Council as a whole, or certain members of the Council, to submit an argument in favor of the measure.

BACKGROUND

The City of Berkeley adopted a Climate Action Plan in June 2009. Subsequent to that, on June 12, 2018, the Council adopted a goal of creating a “Fossil Fuel Free Berkeley” and a “Declaration of a Climate Emergency,” which together reinforced the City Council’s desires to make Berkeley a global leader on reducing the threat of climate change.

Rising greenhouse gas concentrations in the atmosphere are leading to rising global average temperatures and greater incidence of drought, wildfire, flooding, extreme weather, and other impacts. Berkeley contributes to greenhouse gas emissions, due to reliance of its residents on gasoline and diesel vehicles, natural gas in homes and businesses, consumption of goods with high levels of “embedded emissions” from manufacturing and distribution, and other sources. New technologies, along with changes to infrastructure and human behavior, offer significant potential to cut fossil fuel use and carbon emissions in Berkeley.

The community is making notable progress in reducing greenhouse gas (“GHG”) emissions. Based on the best currently available data from 2018, the community has reduced overall GHG emissions by 26% since 2000, despite population increasing by 18% and an expanding economy.¹ This achievement is largely due to reduced energy use in buildings and the transition to purchasing cleaner electricity provided by East Bay Community Energy (EBCE), Alameda County’s community-based electricity provider, which started enrolling customers in 2018. Although Berkeley has made progress, additional work is required to achieve the City’s ambitious goal to become a Fossil Fuel-Free City.

A significant impediment to greater progress on the City’s Climate Action Plan is the lack of funding. While City departments sometimes implement measures that cut carbon emissions, their budgets do not have line items for climate action, and rarely are actions prioritized solely because of the carbon reduction benefits. Instead, the City’s sustainability programs are often forced to seek support from outside funding sources,

¹ Staff Report: Berkeley Economic Dashboards, March 26, 2019:
https://www.cityofberkeley.info/uploadedFiles/Manager/Economic_Development/2019-03-26%20Item%2026%20Berkeley%20Economic%20Dashboards.pdf

such as state and philanthropic grants. Given the City's declared fiscal emergency and budget deficit due to the loss of revenue attributed to the COVID-19 pandemic, the City does not have the resources to invest in programs and measures that would reduce local greenhouse gas emissions and air pollution. For this reason, the City Council directed city staff to survey the community on its support for an increase in the Utility Users Tax to support general municipal services and measures to reduce greenhouse gas emissions and local air pollution, including increasing electric vehicle, bicycle and pedestrian infrastructure and other clean transportation options, increasing energy efficiency and renewable energy use in homes and businesses, and investing in clean and reliable back-up power for emergency services facilities. The results of the community survey indicated strong community support for the increase in the utility users tax and on June 16, 2020, City Council directed staff to prepare a tax measure for the November 3, 2020 ballot. Should the proposed increase in the Utility Users Tax be adopted by the voters, it would provide much needed revenue to support city services and to be proactive in achieving its climate action goals.

ENVIRONMENTAL SUSTAINABILITY

This measure, if it passes, would potentially generate additional funding to support reduction of local greenhouse gas emissions and air pollution.

RATIONALE FOR RECOMMENDATION

The City Clerk is presenting this action in accordance with the direction given by the City Council at the June 16, 2020 meeting.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Mark Numainville, City Clerk, (510) 981-6900

Attachments:

1: Resolution

Exhibit A: Text of Measure

RESOLUTION NO. ##,### –N.S.

SUBMITTING TO THE BERKELEY ELECTORATE ON THE NOVEMBER 3, 2020 GENERAL ELECTION BALLOT AN ORDINANCE MEASURE TO INCREASE THE UTILITY USERS TAX FROM 7.5% TO 10% TO PAY FOR GENERAL MUNICIPAL SERVICES, TO ESTABLISH A CLIMATE EQUITY ACTION FUND TO REDUCE LOCAL GREENHOUSE GAS EMISSIONS AND AIR POLLUTION, TO AUTHORIZE THE CITY COUNCIL TO INCREASE THE GAS USERS TAX BY UP TO AN ADDITIONAL 2.5%, AND TO MODERNIZE AND UPDATE TECHNICAL PROVISIONS OF THE UTILITY USER TAX

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 3, 2020 General Municipal Election, a general tax measure to increase the Utility Users Tax from 7.5% to 10% and to authorize the City Council to increase the gas users tax by up to an additional 2.5% to fund general municipal services, to establish a climate equity action fund that may receive a portion of the revenues from the increase in electricity and gas users taxes that could be used to reduce local greenhouse gas emissions and air pollution, and to modernize and update technical provisions of the utility user taxes; and

WHEREAS, the City Council has requested that the Alameda County Board of Supervisors consolidate the November 3, 2020 General Municipal Election with the November 3, 2020 Presidential General Election; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services are to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit all measures to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that full text of the measure and the City Attorney's analysis shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the Registrar of Voters of Alameda County is required to perform necessary services in connection with said election.

BE IT FURTHER RESOLVED that the City of Berkeley agrees to reimburse the County of Alameda in full for the cost of election services performed.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to provide such other services and supplies in connection with said election as may be required by the Statutes of the State of California and the Charter of the City of Berkeley.

BE IT FURTHER RESOLVED that pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that said proposed Ordinance measure shall appear and be printed upon the ballots to be used at said election as follows:

CITY OF BERKELEY GENERAL TAX ORDINANCE MEASURE	
Shall an ordinance increasing the Utility Users Tax from 7.5% to 10% to fund general municipal services, including programs to reduce local greenhouse gas emissions and air pollution, authorizing the City Council to increase the gas users tax by an additional 2.5%, and modernizing and updating technical provisions of the Utility Users Tax, with the total increase in the tax estimated to generate \$4 million annually, until repealed by the voters, be adopted?	YES
	NO

BE IT FURTHER RESOLVED that the text of the measure be shown as Exhibit A, attached hereto and made a part hereof.

ORDINANCE NO. #,###-N.S.

INCREASING THE UTILITY USERS TAXES (TELEPHONE, ELECTRICITY, GAS, AND VIDEO) FROM 7.5% TO 10% TO FUND GENERAL MUNICIPAL SERVICES AND TO ESTABLISH A CLIMATE EQUITY ACTION FUND TO REDUCE LOCAL GREENHOUSE GAS EMISSIONS AND AIR POLLUTON, AUTHORIZING THE CITY COUNCIL TO INCREASE THE GAS USERS TAX BY UP TO AN ADDITIONAL 2.5%, AND MODERNIZING AND UPDATING TECHNICAL PROVISIONS OF THE UTILITY USER TAXES

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

Section 1. Findings and declarations.

The People of the City of Berkeley find and declare as follows:

- A. Human activities have warmed the earth and global warming has set in motion catastrophic environmental changes.
- B. According to climate projections, the Earth's temperature is on track to increase at a level that could cause irreparable damage to the environment and uncontrollable global warming.
- C. The effects of global warming are being felt in the City of Berkeley through severe weather patterns, drought, uncontrollable wildfires, and anticipated sea level rise.
- D. In November 2006, Berkeley voters issued a call to action by overwhelmingly endorsing ballot Measure G. The mandate was simple but bold: "Reduce our entire community's greenhouse gas (GHG) emissions by 80% by the year 2050."
- E. In 2009, the City of Berkeley adopted a Climate Action Plan that established a vision and plan to achieve greenhouse gas emissions reduction targets of 33% below 2000 levels by 2020 and consistent with Measure G, 80% below 2000 levels by 2050.
- F. While the City has made great strides in reducing greenhouse gas emissions, achieving a 15% reduction below 2000 levels, there is still much work to be done.
- G. In 2018, Berkeley declared a Climate Emergency (Res. No, 68,486-N.S.) to call attention to the climate crisis and as a call to action to mobilize the city, region, state, and entire country around the urgent need to take action to reduce greenhouse gas emissions.
- H. On June 16, 2020, the City adopted an ordinance declaring a Fiscal Emergency due to the significant loss of revenue attributable to the COVID-19 pandemic and does not

have the resources to adequately address the climate crisis and support general municipal services. The City needs new funds to pay for municipal services and to establish a climate equity action fund to reduce greenhouse gas emissions and local air pollution including increasing electric vehicle, bicycle and pedestrian infrastructure and other clean transportation options, increasing energy efficiency and renewable energy use in homes and businesses, investing in clean and reliable back-up power for emergency services facilities, and supporting low-income and historically marginalized individuals address the climate crisis.

Section 2. Code Amendment. Berkeley Municipal Code Chapter 7.70 Utility Users Tax, Section 7.70.020 is hereby amended to read as follows:

The following words and phrases whenever used in this chapter shall be construed as defined in this section.

A. "Person" shall mean, without limitation, any domestic, non-profit, or foreign corporation; firm; trust; estate; association; syndicate; joint stock company; limited liability company; partnership of any kind; joint venture; club; private cogeneration facility; Berkeley business; Massachusetts business or common law trust; society; joint power agency, municipal district or municipal corporation (other than the City); municipal district; cooperative; receiver, trustee, guardian or other representative appointed by order of any court; or any natural individual.

B. "City" shall mean the City of Berkeley.

~~C. "Telephone corporation," "electrical corporation," and "gas corporation," shall have the same meanings as defined in Sections 234, 218, and 222 respectively, of the Public Utilities Code of the State of California as said sections existed on January 1, 1983. "Electrical corporation" shall be construed to include any municipality or franchised agency engaged in the selling or supplying of electricity to a service user, but shall not be construed to include any private co-generation facility. "Gas corporation" shall be construed to include any municipality or franchised agency engaged in the selling or supplying of gas power to a service user, but shall not be construed to include any private cogeneration facility.~~

CD. "Exempt Wholesale Generator" shall have the same meaning as set forth in the Federal Power Act (15U.S.C. Section 79z-5a) and regulations thereunder.

DE. "Service supplier" shall mean any entity or person, including the City, that provides or sells telephone communication, electric, gas or cable television video service to a user of such services within the City. The term shall include any entity or person required to collect, or self-collect under Section 7.70.071 of this chapter, and remit a tax imposed by this chapter, including its billing agent in the case of electric, gas or videocable television service suppliers.

EF. "Non-utility service supplier" shall mean:

1. a service supplier, other than a supplier of electric distribution services to all or a significant portion of the City, which generates electricity for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator, municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;
2. an electric service provider (ESP), electricity broker, marketer, aggregator, pool operator, or other electricity supplier other than a providersupplier of electric distribution services to all or a significant portion of the City, which sells or supplies electricity or supplemental services to electricity users within the City; and
3. a gas service supplier, aggregator, marketer or broker, other than a supplier of gas distribution services to all or a significant portion of the City, which sells or supplies gas or supplemental services to gas users within the City.

FG. "Service user" shall mean a person required to pay a tax imposed by this chapter.

GH. "Month" shall mean a calendar month.

H. "Tax administrator" shall mean the City Manager of the City, or his or her authorized representative.

I. "Gas" shall mean natural or manufactured gas or any alternative hydrocarbon fuel, which may be substituted therefore.

~~K. "Public utility," as used in Section 7.70.070, shall be construed to include "electrical corporations," as defined in Section 218 of the Public Utilities Code, but shall not be construed to include any private cogeneration facility.~~

JL. "Cogenerator" shall mean any corporation or person employing cogeneration (as defined in Section 2168.65 of the Public Utilities Code) for producing power for the generation of electricity for self use or sale to others from a qualified cogeneration facility (as defined in the federal Public Utility Regulatory Policies Act of 1978 and regulations thereunder).

KM. "Video service supplier" shall mean any person, company, or service which provides or sells one or more channels, programs or individual episodes of video programming, or provides or sells the capability to receive one or more channels, programs, or individual episodes of video programming, including any telephone communications that are ancillary, necessary or common to the provision, use or-and enjoyment of the video programming, to or from an address in the City, including to or from a business, home, condominium, or apartment, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or telephone communications. A "video service supplier" includes, but is not limited to, multi-channel video programming distributors [as defined in 47 U.S.C.A. Section 522(13)], open video

systems (OVS) suppliers, suppliers of cable television or video program delivery of any kind, be it through channel or other subscribers or to individual buyers of programs or unique episodes, master antenna television, satellite master antenna television, multichannel multipoint distribution services, video services using internet protocol (e.g., IP-TV and IP-Video, which provide, among other things, broadcasting and video on demand), direct broadcast satellite (to the extent allowed by federal law, now or in the future), and other suppliers of video ~~services programming or communications~~ (including two-way communications), whatever their technology.

LN. "Video services" shall mean "video programming" and any and all services related to the providing, recording, delivery, use or enjoyment of video programming (including origination programming and programming using Internet Protocol, e.g., IP-TV and IP-Video), using one or more channels by a video service supplier, regardless of the technology used to deliver, store, or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes including any communications that are ancillary video services, data services, telephone communications services, or interactive communication services that are functionally integrated with video services., necessary or common to the use and enjoyment of the video programming, regardless of the content of such video programming or communications. "Video services" shall not include services for which a tax is paid under Section 7.70.050 of this chapter.

ME. "Service address" shall mean the residential street address or the business street address of the premises of the gas or electricity service user. For a telephone communications or video service user,'s "service address" means either:

1. The location of the service user's telecommunications or video equipment from which the communication originates or terminates, regardless of where the communication is billed or paid; or
2. If the location in (1) of this definition is unknown or mobile (e.g., mobile telecommunications service or VoIP service), the service address shall mean the location of the service user's place of primary use.~~place of telephone communication service usage.~~
3. For prepaid telecommunication service, "service address" means the point of sale of the services where the point of sale is within the City, or if unknown, the known address of the service user (e.g., billing address or location associated with the service number), which locations shall be presumed to be the place of primary use.

NP. "Billing address" shall mean the mailing address of the service user where the service supplier submits invoices or bills for payment by the service user~~customer~~.

OQ. "Telephone communication services" shall mean ~~and include~~ the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, ~~whether or not such information is transmitted~~

~~through interconnected service with the public switched network, whatever the technology used, and includes broadband service (e.g., digital subscriber line (DSL), fiber optic, coaxial cable, and wireless broadband, including Wi-Fi, WiMAX, and Wireless MESH) to the extent Federal and/or State law permits taxation of such broadband services, now or in the future. whether such transmission, conveyance or routing occurs by wire, cable, fiber-optic, light wave, laser, microwave, radio wave (including, but not limited to, cellular service, commercial mobile service, personal communications service (PCS), specialized mobile radio (SMR), and other types of personal wireless service--see 47 USCA Section 332(c)(7)(C)(i)--regardless of radio spectrum used), switching facilities, satellite or any other technology now existing or developed after the adoption of the ordinance codified in this chapter, and includes, without limitation, fiber optic, coaxial cable, and wireless.~~ The term "telephone communication services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data services that are functionally integrated with tele~~phone~~ communications services. "Telephone communication services" include, but are not limited to, the following services, regardless of the manner or basis on which such services are calculated or billed: intrastate, interstate and international telecommunication services; all forms of VoIP service; central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); local number portability; text messaging; ancillary telecommunication services; prepaid telecommunication service; and post-paid telecommunications services ~~(including but not limited to prepaid calling cards)~~; mobile telecommunications service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers call in to prerecorded or live service; and value-added non-voice data service. For purposes of this section, "private telecommunication service" means any dedicated telephone communications service that entitles the customer a user to exclusive or priority use of a communications channels or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. A communications channel is a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points (i.e., the location where the customer either inputs or receives the communications). "Telephone communication service" does not include: internet access services to the extent they are exempt from taxation under the Internet Tax Freedom Act, 47 U.S.C. 151 note; video programming services; and digital downloads, such as downloads of books, music, ringtones, games and similar digital products.

R.—Reserved.

PS. "Ancillary telecommunications services" shall mean services that are associated with or incidental to the provision, use or enjoyment of telecommunications services including, but not limited to, the following:

1. "Conference bridging service" shall mean an ancillary sServices that links two (2) or more participants of an audio or video conference call and may, including the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.
2. "Detailed telecommunications billing service" shall mean an ancillary sServices that separately states information pertaining to individual calls on a customer's billing statement.
3. "Directory assistance" shall mean an ancillary sServices that provides telephone number information, and/or address information.
4. "Vertical service" shall mean an ancillary sServices that is offered in connection with one (1) or more telecommunications services, which offer advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.
- 5. "Voice mail service" shall mean an ancillary sServices that enables the customers to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

Q. "Mobile telecommunications service" shall mean commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations and as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations thereunder, as may be amended from time to time.

R. "Paging service" shall mean a "telephone communication service" that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

S. "Place of primary use" shall mean the street address representative of where the customer's use of the telephone communications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

T. "Post-paid telecommunication service" shall mean the telephone communication service obtained by making a payment on a communication-by-communication basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service number which is not associated with the origination or termination of the telephone communication service.

U. "Prepaid telecommunication service" (including prepaid mobile telecommunication service) shall mean the right to access telephone communication services, which must be paid for in advance and which enables the origination of communications using an access number or authorization code, whether manually or electronically dialed.

V. "VoIP" or "Voice Over Internet Protocol" shall mean the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.

W. "800 Service" shall mean a "telephone communications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

X. "900 Service" shall mean an inbound toll "telephone communications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: collection services provided by the seller of the "telephone communications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.

Y. "Video programming" shall mean those programming services commonly provided to subscribers by a "video service supplier", including, but not limited to, basic services, premium services, audio services, video games, pay-per-view services, video on demand, origination programming, or any other similar services, regardless of the content of such video programming, or the technology used to deliver such services, and regardless of the manner or basis on which such services are calculated or billed.

Z. "Ancillary video services" shall mean services that are associated with or incidental to the provision or delivery of video services, including but not limited to electronic program guide services, search functions, recording services, interactive services or other communications services that are associated with or incidental to the provision, use or enjoyment of video services.

Section 3. Code Amendment. Berkeley Municipal Code Chapter 7.70 Utility Users Tax, Section 7.70.050 is hereby amended to read as follows:

7.70.050 Telephone users tax.

A. There is hereby imposed a tax upon every person in the City who uses any international, interstate and/or intrastate telephone communication services in the City, other than a telephone corporation. Interstate calls shall include calls to and from the District of Columbia or any U.S. territory. The tax imposed by this section shall be at the rate of ~~seven and one-half ten~~ percent (~~7.510~~%) of the charges made for such telephone communication services. The tax shall be collected from the service user by the telephone communication services supplier or its billing agent, or as otherwise provided by law. To

the extent allowed by federal and state law, the tax on telephone communication services is intended to, and does, apply to all charges within the city's tax jurisdiction, such as charges billed to a telephone account having a situs in the city as permitted by the Mobile Telecommunications Sourcing Act of 2000, 4 U.S.C. Section 116 et seq. There is a rebuttable presumption that telephone communication services billed to a billing or service address in the city are used, in whole or in part, within the city's boundaries, and that such services are subject to taxation under this Chapter. There is also a rebuttable presumption that prepaid telephone communication services sold within the city are primarily used, in whole or in part, within the City and are therefore subject to taxation under this Chapter. ~~that are not billed to a billing address or provided to a primary physical location are used, in whole or in part, within the city's boundaries and that such services are subject to taxation under this chapter.~~ If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax.

B. The following shall be exempt from the tax imposed by this Section, if any:

1. Service paid for by inserting coins in coin-operated telephones with respect to local telephone service, or with respect to toll telephone service if the charge for such toll telephone service is less than 25 cents; except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be subject to the tax.
2. Payment received from any person for services used in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such service is billed in writing to such person.
3. Payment received for services furnished to an international organization designated under the International Organizations Immunities Act and defined in 22 USCA § 288, or to the American National Red Cross.
4. Payment received for any toll telephone service which originates within a combat zone from a member of the Armed Forces of the United States performing service in such combat zone, as determined under such section, provided a certificate, setting forth such facts as the Secretary may by regulations prescribe, is furnished to the person receiving such payment.
5. The amount paid for any toll telephone service to the extent that the amount so paid is for use by a common carrier, telephone or telegraph company, or radio broadcasting station or network in the conduct of its business as such.
6. The amount paid by a nonprofit hospital for services furnished to such organization. For purposes of this subsection, the term "nonprofit hospital" means a

hospital which is exempt from federal and state income tax under section 501(a) of the Internal Revenue Code.

7. Any payment received for services or facilities furnished to the government of any State, or any political subdivision thereof, or the District of Columbia.

8. Any amount paid by a nonprofit educational organization for services or facilities furnished to such organization. For purposes of this subsection, the term "nonprofit educational organization" means an educational organization which is exempt from income tax under section 501(a) of the Internal Revenue Code. The term also includes a school operated as an activity of an organization which is exempt from income tax under section 501(a) if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

9. Private mobile radio service. For purposes of this chapter "private mobile radio service" is a radio communication service which is not a commercial mobile service. A "mobile service" means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding. A "commercial mobile service" is a "mobile service" that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public.

C. The tax administrator may, from time to time, issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this Chapter, administrative rulings identifying those ~~telecommunication~~-telephone services that are subject to the tax of subsection (A) above. The administrative rulings shall implement the intent of the City Council that the telephone users tax be imposed on any person who initiates or receives high-quality voice communications without regard to the type or kind of transmission media or technology that exists on the date the amendments to this section became effective or which may be developed in the future. Such administrative rulings shall be consistent with legal nexus and laws pertaining to telephone communications services and shall not impose a new tax, revise an existing tax methodology, or increase an existing tax, except as allowed by California Government Code §§ 53750(h)(2) and (h)(3) or other law. The tax administrator may consider state-wide interpretive rules and guidelines promulgated by any government agency or association of government agencies as a factor in determining the intent of voters adopting this section. To the extent that the tax administrator determines that the tax

imposed under this section shall not be collected in full for any period of time, such an administrative ruling falls within the tax administrator's discretion to settle disputes. The tax administrator's exercise of prosecutorial forbearance under this chapter does not constitute a change in taxing methodology for purposes of Government Code § 53750(h), and the city does not waive or abrogate its ability to impose the telephone users' tax in full as a result of issuing such administrative rulings and may suspend such rulings and recommence collection of the tax without additional voter approval. The administrative ruling shall be consistent with and shall not impose a new tax or increase an existing tax without voter approval.

D. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telephone communication services. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier identifies, by verifiable data, non-taxable charges based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles. The service supplier has the burden of proving the proper apportionment of taxable and non-taxable charges.

E. As used in this section, the term "charges" shall not include charges for any type of service or equipment furnished by a service supplier subject to public utility regulation during any period in which the same or similar services or equipment are also available for sale or lease from persons other than a service supplier subject to public utility regulation.

F. To prevent actual multi-jurisdictional taxation of telephone communication services subject to tax under this section, any service user, upon proof to the tax administrator that the service user has previously paid the same tax in another American state or city on such telephone communication services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or city; provided, however, the amount of credit shall not exceed the tax owed to the City under this section.

G. The tax on telephone communication services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one (1) month shall be remitted to the tax administrator on or before the last day of the following month; and must be received by the tax administrator on or before the last day of the following month.

H. For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Section, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users tax to the fullest extent permitted by state and federal law, and as that law may change from time to time. Any telephone communication service (including VoIP) used by a person with a service address in the city, which service is capable of terminating a call to another person on the general telephone network, shall be subject to a rebuttable presumption that "substantial

nexus/minimum contacts” exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this chapter. A service supplier shall be deemed to have sufficient activity in the city to be obligated to collect and remit the tax imposed by this chapter if it does any of the following: maintains or has within the city, directly or through an agent or subsidiary, a place of business of any nature; solicits business in the city by employees, independent contractors, resellers, agents or other representatives; solicits business in the city by means of advertising that is broadcast or relayed from a transmitter within the city or distributed from a location within the city; or advertises in newspapers or other periodicals printed and published within the city or through materials distributed in the city by means other than the United States mail; or if there are activities performed in the City on behalf of the service supplier that are significantly associated with the service supplier’s ability to establish and maintain a market in the City for the provision of utility services that are subject to a tax under this Chapter (e.g., an affiliated person engaging in activities in the City that inure to the benefit of the service supplier in its development or maintenance of a market for its services in the City).

I. The tax imposed by this Section shall not apply to any person whose total personal income, from all sources, for the previous calendar year, does not exceed that level which shall constitute “very low-income,” as may be established by resolution of the City Council. Any taxpayer claiming the exemption under this Section shall be required to demonstrate his or her entitlement thereto annually by submitting a claim for a refund, with supporting documentation, to the Finance Director in the manner and at the time established in regulations and/or guidelines hereafter promulgated by the City Manager. Such applications shall be on forms provided by the Finance Director, or their designee, and shall provide and/or be accompanied by such information as the Finance Director shall require, including but not limited to federal income tax returns and W-2 forms. Upon timely receipt and verification of the required claim and supporting documentation, the Finance Director shall promptly refund the tax paid for the prior 12 months. Any person or entity claiming an exemption from the tax imposed by this Chapter shall file a verified statement of exemption on a form prescribed by the City Manager prior to June 30th of the first fiscal year for which the exemption is sought.

J. "Mobile telecommunications service" shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124). The tax administrator may issue and disseminate to telephone communication service suppliers, which are subject to the tax collection requirements of this section, sourcing rules for the taxation of other telephone communication services, including but not limited to post-paid telecommunication services, prepaid telecommunication services, and private telecommunication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation.

K. As used in this section, the term “telephone communication services” shall include, but is not limited to, charges for: connection, reconnection, termination, movement, or change of telephone communication services; late payment fees; detailed billing; central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services;

directory assistance; access and line charges; universal service charges; regulatory or administrative fees, charges or surcharges; charges or surcharges for programs imposed by state or federal law (whether such charges or surcharges are imposed on the service supplier or the customer); local number portability charges; and text and instant messaging. "Telephone communication services" shall not include digital downloads that are not "ancillary telecommunication services," such as music, ringtones, games, and similar digital products.

Section 4. Code Amendment. Berkeley Municipal Code Chapter 7.70 Utility Users Tax, Section 7.70.060 is hereby amended to read as follows:

7.70.060 Electricity users tax.

A. There is hereby imposed a tax upon every person ~~other than an electrical or gas corporation,~~ using electricity in the City, except individuals that have been accepted into the California Alternate Rates for Energy Program ("CARE"). The tax imposed by this section shall be at the rate of ~~seven and one-half ten~~ percent (~~7.510~~%) of the charges made for such electricity, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service user, which are provided by a service supplier or non-utility service supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent. There is a presumption that electricity services, which are billed to a service address in the City or have electricity meter(s) located in the City, are used within the City's boundaries, and such services are subject to taxation under this section.

B. The tax administrator may, from time to time, survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefore, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The tax administrator may, thereafter, issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items which are: i) necessary or ~~the various unbundled billing components of electric retail service that they commonly provide to~~ common to the receipt, use and enjoyment of electric service; or, ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. ~~Unbundled eCharges~~ for such components and items shall be subject to the tax of subsection (A) above.

C. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the electricity or services related to the provision of such electricity. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier can reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with

generally accepted accounting principles. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable.

D. As used in this section, the term “using electricity” shall not be construed to mean:

1. The use of an electricity product of which a significant portion is derived from high-quality, new renewable resources. The tax administrator shall adopt rules and regulations not inconsistent with this section to establish definitions and criteria for electricity products that qualify under this paragraph. This paragraph shall become inoperative and be deemed repealed five years after its effective date, unless extended by an ordinance adopted by the City Council.

2. The mere receiving of such electricity by an electric public utility or governmental agency at a point within the City for resale; or the use of such electricity in the production or distribution of water by a public utility or a government agency.

3. The use of “self-generated electricity” from sources other than a conventional power source as defined in Public Utilities Code Section 2805. “Self-generated electricity” shall mean electricity which is generated by the end user of the electricity within the City and is delivered to the end user on a dedicated set of conductors that are owned by or operated exclusively on behalf of the producer/consumer. This paragraph shall become inoperative and be deemed repealed five years after its effective date, unless extended by an ordinance adopted by the City Council.

E. The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in Section 7.70.071 of this chapter. All other taxes on charges for electricity imposed in this section shall be collected from the service user by the service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the tax administrator, and must be received by the tax administrator on or before the last day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the tax administrator on or before the last day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the tax administrator, may be applied against any subsequent tax bill that becomes due.

F. As used in this section, the term "charges" shall apply to all services, components and items that are: i) necessary or common to the receipt, use and enjoyment of electric service; or, ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

1. Energy charges;

2. Distribution or transmission charges;

3. Metering charges;

4. Standby, reserves, firming, voltage support, regulation, emergency, or other similar charges for supplemental services to self-generation service users;

5. Customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees and surcharges which are necessary to or common for the receipt, use and enjoyment of electric service; and

6. Charges, fees, or surcharges for electricity services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, or by any state or federal law, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer.

Section 5. Code Amendment. Berkeley Municipal Code Chapter 7.70 Utility Users Tax, Section 7.70.070 is hereby amended to read as follows:

7.70.070 Gas users tax.

A. There is hereby imposed a tax upon every person ~~other than a gas corporation or electrical corporation,~~ using gas within the City, which is delivered through a pipeline distribution system ~~or by mobile transport.~~ The tax imposed by this section shall be at the rate of ~~seven and one-half ten~~ percent (~~7.510~~%) of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas. The City Council may by ordinance further increase the tax by up to an additional two and one-half percent (2.5%) from 10% up to 12.5%. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent, and shall apply to all uses of gas, including, but not limited to, heating and the use of gas as a component of a manufactured product. There is a presumption that gas services, which are billed to a service address in the City or have gas meter(s) located in the City, are used within the City's boundaries, and such services are subject to taxation under this section. Individuals that have been accepted into the California Alternate Rates for Energy Program ("CARE") are exempt from this tax.

B. The tax administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The tax administrator may, thereafter, issue

and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: i) necessary or common to the receipt, use and enjoyment of gas service; or, ii) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. ~~Unbundled eC~~charges for such components and items shall be subject to the tax of subsection (A) above.

C. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the gas or services related to the delivery of such gas. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier can reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles.

D. There shall be excluded from the calculation of the tax imposed in this section:

1. Charges made for gas which is to be resold and delivered through mains, pipes, by mobile transport, or other means~~a pipeline distribution system by a public utility or governmental agency.~~

~~2. Charges made for gas used in the production of electricity by a public utility, or for the production or distribution of water by a public utility or governmental agency.~~

E. The tax ~~on that is calculated on charges for~~ gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in Section 7.70.071 of this chapter. All other taxes on charges for gas imposed ~~in~~by this section shall be collected from the service user by the gas service supplier or its billing agent. The amount collected in one (1) month shall be remitted to the tax administrator, and must be received by the tax administrator on or before the last day of the following month; or at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of the service user, which must be received by the tax administrator on or before the last day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the tax administrator, may be applied against any subsequent tax bill that becomes due.

F. As used in this section, the term "charges" shall apply to all services, components and items for gas service that are: i) necessary or common to the receipt, use and enjoyment of gas service; or, ii) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

1. The commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system;
2. Gas transportation charges (including interstate charges to the extent not included in commodity charges);
3. Storage charges; provided, however, that the service provider shall not be required to apply the tax to any charges for gas storage services when the service providers cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;
4. Capacity or demand charges, late charges, service establishment or reestablishment charges, marketing charges, administrative charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges which are necessary or common to the receipt, use and enjoyment of gas service; and,
5. Charges, fees, or surcharges for gas services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer.

Section 6. Code Amendment. Berkeley Municipal Code Chapter 7.70 Utility Users Tax, Section 7.70.075 is hereby amended to read as follows:

7.70.075 Video service tax.

A. There is hereby imposed a tax upon every person in the City using video services ~~in the City from a video service supplier~~. The tax imposed by this section shall be at the rate of ~~seven and one-half ten~~ percent (~~7.510~~%) of the charges made for such video services. The tax shall be collected from the service user by the video service supplier or its billing agent. There is a rebuttable presumption that video services which are billed to a billing or service address in the City are used, in whole or in part, within the City's boundaries, and such services are subject to taxation under this section. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax.

B. The tax administrator, from time to time, may survey the video service suppliers in the City to identify the various components of video service that are being offered to customers within the City, and the charges therefor. The tax administrator may, thereafter,

issue and disseminate to such video service suppliers an administrative ruling identifying those components that are: i) necessary or common to the receipt, use and enjoyment of video service; or, ii) which currently are, or historically have been, included in a bundled rate for video service by a ~~local~~ distribution company. Charges for such components shall be subject to the tax of subsection (A) above.

C. As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the video services. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier can reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles.

D. The tax imposed in this section shall be collected from the service user by the video service supplier, its billing agent, or a reseller of such services. In the case of video service, the service user shall be deemed to be the purchaser of the bulk video service (e.g., an apartment owner), unless such service is resold to individual users, in which case the service user shall be the ultimate purchaser of the video service. The amount collected in one month shall be remitted to the tax administrator on or before the last day of the following month and must be received by the tax administrator on or before the last day of the following month.

E. The tax imposed by this section shall not apply to any person whose total personal income, from all sources, for the previous calendar year, does not exceed that level which shall constitute “very low income” as may be established by resolution of the City Council. Any taxpayer claiming the exemption under this section shall be required to demonstrate their entitlement thereto annually by submitting an application and supporting documentation to the City Manager, or their designee in the manner and at the time established in regulations and/or guidelines hereafter promulgated by the City Manager subject to review by the City Council in its discretion. Such applications shall be on forms provided by the City Manager, or their designee, and shall provide and/or be accompanied by such information as the City Manager shall require, including but not limited to, federal income tax returns and W-2 forms.

F. Once annually (July), the City Manager, or their designee shall receive all applications and certify as exempt those subscribers whose gross annual income constitutes “very low income” as may be established by resolution of the City Council. Upon completion of the verification process, the City Manager, or their designee shall process within thirty days refunds to qualified applicants. All exemptions shall continue and be renewed automatically by the City Manager or their designee so long as the prerequisite facts supporting the initial qualification for the exemption continue. It shall be a misdemeanor for any person to knowingly receive the benefits of the exemption provided by this section when the basis for such exemption either does not exist or ceases.

G. As used in this section, the term “charges” shall include, but is not limited to, charges for the following:

1. Regulatory fees and surcharges, franchise fees and access fees (PEG);
2. Initial installation of equipment necessary for provision and receipt of video services;
3. Late fees, collection fees, bad debt recoveries, and return check fees;
4. Activation fees, reactivation fees, and reconnection fees;
5. Video programming and video services;
6. Ancillary video services (e.g., electronic program guide services, search functions, recording functions, or other interactive services or communications that are ancillary, necessary or common to the use or enjoyment of the video services);
7. Equipment leases (e.g., remote, recording and/or search devices; converters); and
8. Service calls, service protection plans, name changes, changes of services, and special services.

Section 7. Berkeley Municipal Code Chapter 7.70 Utility Users Tax, Section 7.70.073 is hereby added to read as follows:

7.70.073 Climate Equity Action Fund

The Climate Equity Action Fund is hereby established. Revenues received from the user tax imposed on electricity and gas above 7.5% and any other funds designated by the City Council may be placed in the fund, and the Energy Commission shall provide non-binding recommendations to the City Council on how these proceeds could be spent to address climate equity issues. At the City Council’s discretion, the proceeds may be spent to reduce local greenhouse gas emissions or air pollution or for any other municipal purpose.

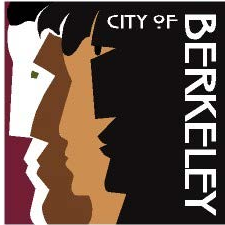
Section 8. **Severability.** If any word, phrase, sentence, part, section, subsection, or other portion of this ordinance, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley hereby declare that they would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Section 9. Increase appropriations limit. Pursuant to California Constitution Article XIII B, the appropriation limit for the City of Berkeley is hereby increased by the aggregate sum authorized to be levied by this special tax for each of the four fiscal years from 2021 through 2024.

Section 10. Amendment, repeal, and reenactment. The City Council may amend this ordinance in any manner, including reducing any applicable tax rates or adding or modifying exemptions that does not result in an increase in the tax imposed herein without further voter approval. If the City Council repeals this ordinance, it may subsequently reenact it without voter approval, as long as the reenacted ordinance does not result in an increase in the tax imposed herein.

Section 11. California Environmental Quality Act Requirements. This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., under, including without limitation, Public Resources Code section 21065 and CEQA Guidelines sections 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment and pursuant to Public Resources Code section 21080, subdivision (b)(8), and CEQA Guidelines section 15273 as the approval of government revenues to fund existing services.

Section 12. General Tax; Majority Vote Requirement. This Ordinance imposes a general tax for general revenue purposes and shall be effective only if approved by a majority of the voters voting thereon.



Kate Harrison
Councilmember District 4

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: June 16, 2020

Item Number: D

Item Description: Recommendation to Prepare a City Ballot Measure to Create a Climate Action Fund, in Response to the Fossil Fuel Free Berkeley Referral

Supplemental/Revision Submitted By: Councilmember Harrison

“Good of the City” Analysis:

The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.

The supplemental material is in the public interest as it:

1. reflects action taken by the neighboring Albany City Council on June 15, 2020 (after the deadline for Supp. 2);
2. provides data on average gas and electric bills;
3. provides a proposal for the Council to direct the City Manager to prepare ballot measure language to increase the gas and electric Utility Users Tax to fund a Climate Equity and Action Fund.

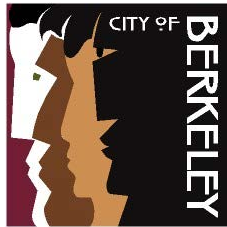
These additions further facilitate Council and public consideration.

Consideration of supplemental or revised agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revision agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.



Kate Harrison
Councilmember District 4

REVISED AGENDA MATERIAL for Supplemental Packet 3

Meeting Date: June 16, 2020

Item Number: D

Item Description: Recommendation to Prepare a City Ballot Measure to Create a Climate Action Fund, in Response to the Fossil Fuel Free Berkeley Referral

Submitted by: Councilmember Harrison

Recommendation:

Direct the City Manager to: prepare a ballot tax measure to increase the electricity and gas portion of the Utility Users Tax by 2.5%, except for CARE customers, for the purpose of funding a Climate Equity and Action Fund, and providing authority to the Council to potentially raise the gas portion an additional 5% at a rate of 1% per year.

Rationale

The City of Berkeley is working to achieve its Climate Action Plan goals of reducing greenhouse gas (GHG) emissions 33% below 2000 levels by 2020 and 80% by 2050. According to the Berkeley Office of Energy and Sustainable Development, the latest and best available data suggest that Berkeley's 2016 community-wide GHG emissions, including emissions from transportation, building energy use, and solid waste disposal, are approximately 15% below 2000 baseline levels. Therefore the City is approximately 18% behind its 2020 goal. In 2018, the Council declared a citywide climate emergency, calling for increase in funding to accomplish rapid greenhouse gas (GHG) reductions.

The Utility Users Tax (UUT) is Berkeley's fourth largest source of general fund revenue. The tax is applied at a rate of 7.5% to consumption of electricity, gas, telephone, cable, and cellular services. Revenues can fluctuate from year to year due to various consumption, market and regulatory factors. For example, the COVID-19 pandemic will likely reduce demand for electricity and gas in the commercial sector.

Approximately 60% of total UUT revenues are generated from gas and electric services and 40% from telecommunications. Among gas and electric service revenue, gas accounted for 32% and electric 68% during the last two fiscal years.

Before the COVID-19 pandemic, the Finance Department projected a total UUT revenue of \$15,000,000 in Fiscal Years 2020 and 2021. During that same period, gas and electric revenues were expected to be approximately \$9,555,753.

UTILITY USERS TAX	Actual Revenue			Projected Revenue		
	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Total Collections	14,211,318	\$15,109,305	\$14,828,120	\$14,600,000	\$15,000,000	\$15,000,000
\$ Change	(90,739)	897,987	(281,185)	228,120	400,000	0
% Change	(0.63%)	6.32%	(1.90%)	(1.53%)	2.73%	0%
Cable	1,283,102	1,251,842	1,341,570	1,316,080	1,352,008	1,353,008
Gas/Elec	8,675,201	9,445,069	9,441,160	9,300,427	9,555,753	9,555,753
Phone	2,043,557	2,009,0350	1,915,053	1,885,752	1,937,233	1,937,233
Cellular	2,209,458	2,403,544	2,130,336	2,097,741	2,155,009	2,155,009

The Berkeley Energy Commission recommends increasing the electric and gas portion of the tax to equitably fund a number of greenhouse gas reduction programs. This item proposes that funds be aimed primarily at supporting low-income and historically marginalized individuals through programs that reduce greenhouse gas emissions. Programs may include building electrification, weatherization, low-carbon shuttles, and other low-carbon transportation and mobility subsidies. The Council and staff may also consider equity-focused recommendations in Commission's Fossil Free Berkeley Report and the Office of Energy and Sustainable Development's Electric Mobility Roadmap. In addition, the tax rate modification would help incentivize reductions in energy consumption.

Survey results suggest that an increase in the UUT would garner sufficient support for a general tax, but not necessarily a special tax. Assuming that the measure proceeds as a general tax, it is in the public interest that the Council, through its budgetary authorities directly allocate funds to equity-focused climate mitigation programs instead of to other general fund expenditures. Council would rank projects and programs based on their equity and greenhouse gas reduction outcomes.

In recognizing the regressive nature of the UUT and the environmental justice principles, a substantial portion of revenues should be allocated to programs that mitigate climate-related environmental injustices. In addition, it is in the public interest that low-income customers enrolled California Alternate Rates for Energy Program (CARE) be exempted from the proposed UUT increase.

Despite current limitations in the Pacific Gas & Electric Company's (PG&E) billing software, Berkeley should aim to reduce the tax on the electric portion overtime, in acknowledgment of the lower GHG intensity of electric energy (currently a minimum 86% GHG-free) as compared to natural gas, which is inherently GHG intensive. In considering an increase in its UUT tax, the neighboring City of Albany has determined that Pacific Gas & Electric Company (PG&E) software is not currently capable of bifurcating rates applied to the gas and electric portions of the tax. Albany's city staff

determined that to tax electricity and natural gas at different rates PG&E would charge approximately \$500,000 - \$800,000. In addition to exploring modification of the UUT, the City of Berkeley should explore opportunities to coordinate with neighboring cities to share the cost of modifying PG&E’s software.

On June 15, 2020, the Albany City Council asked their staff to consider and provide ballot language granting authority to raise the gas portion of the UUT up to a maximum of 15% from 10% at a rate of 1% per year. This item asks the City Manager to provide similar language.

Using City revenue projections for FY 2021, the following table details the estimated increase in revenue if the City were to increase the gas-electric UUT rate between 1-2.5%:

	Projected Gas/Electric Revenue with 1-2.5% increase in UUT Rate (FY 2021)
Marginal rate	+ 2.5% (10%)
Marginal revenue (gas)	\$1,019,280
Marginal revenue (electric)	\$2,165,970
Marginal revenue (gas + electric)	\$3,185,251

If for example voters agreed to increase the gas-electric UUT to 2.5%, a residential utility customer with an average \$100 monthly bill would see \$2.50 increase in their bill.

The average residential electric bill in the East Bay Community Energy *Bright Choice* Service territory is \$88.58.¹ Commercial customers on *Bright Choice* have an average bill of \$375.79. As of late 2019, the average statewide residential electric bill in the PG&E service territory was \$121.10 and \$56.64 for gas.² Assuming an average total residential bill of \$177.74, the proposed tax increase would result in an average monthly utility tax increase of \$4.44.

¹ East Bay Community Energy, Residential Rates, <https://ebce.org/residents/>.

² “PG&E electricity and gas bills will rise in October,” Mercury News, September, 9, 2019, <https://www.mercurynews.com/2019/09/19/pge-electricity-and-gas-bills-will-rise-in-october/>.



Energy Commission

ACTION CALENDAR

July 21, 2020

(Continued from June 30, 2020)

To: Honorable Mayor and Members of the City Council
From: Energy Commission
Submitted by: Cate Leger, Chairperson, Energy Commission
Subject: Recommendation to Prepare a City Ballot Measure to Create a Climate Action Fund, in response to the Fossil Fuel Free Berkeley referral

RECOMMENDATION

The Commission recommends that the City Council develop a referendum and seek approval for it on the 2020 ballot to create a Climate Action Fund, which would support actions to achieve the Berkeley Climate Action Plan, to become Fossil Fuel Free, and to respond to the Climate Emergency.

FISCAL IMPACTS OF RECOMMENDATION

Development of the referendum would involve work time of staff and City Council members, plus members of the public. The Council should survey voters about fundraising options, as part of polling on ballot measures. Adoption of the referendum by voters would result in a new Climate Action Fund of \$5 million to \$10 million per year to be spent on measures to reduce carbon pollution.

CURRENT SITUATION AND ITS EFFECTS

On June 12, 2018, the Council adopted a goal of creating a “Fossil Fuel Free Berkeley” and a “Declaration of a Climate Emergency,” which together reinforced the Council’s desires to make Berkeley a global leader on reducing the threat of climate change.

Rising greenhouse gas concentrations in the atmosphere are leading to rising global average temperatures and greater incidence of drought, wildfire, extreme weather events, and other impacts. Berkeley is a significant contributor to greenhouse gas emissions, due to heavy reliance of its citizens on gasoline and diesel vehicles, natural gas in homes and businesses, consumption of goods with high levels of “embedded emissions” from manufacturing and distribution, and other sources. New technologies, along with changes to infrastructure and human behavior, offer significant potential to cut fossil fuel use and carbon emissions in Berkeley.

The Energy Commission submitted to Council “Recommendations for a Fossil Fuel Free Berkeley” in January 2019, in response to the Council’s Fossil Fuel Free Berkeley proclamation and Declaration of a Climate Emergency. In that report, the Commission

recommended, among other things, that the Council put a referendum on the November 2020 ballot that “would include binding mandates and specific priorities for emissions reductions.” This recommendation provides further ideas about the content of that referendum.

At its meeting of February 26, 2020, the Energy Commission voted to recommend to the City Council that a referendum be placed on the ballot to ask voters to create an ongoing funding stream for carbon reduction activities, called a Climate Action Fund, with annual revenues of \$5 million to \$10 million. (Moved by Paulos, second by Stromberg. Ayes: Zuckerman, Bell, Weems Paulos, Stromberg, O’Hare; Nays: None; Abstentions: None; Absent: Schlachter Leger, Gil; 6-0-0-3).

The key issues for Council to explore are 1) how to raise revenues for the Fund, and 2) how to spend the funds. The Council should initiate a public process to explore funding and spending options. The Commission recommends the following principles: Revenues for the Fund should be raised in accord with the “polluter pays principle,” such as by imposing a higher price on fossil fuels, and as progressively as possible, with reduced burdens on low-income citizens. Preliminary ideas for funding sources include:

- An increase in the Utility Users Tax (UUT) for natural gas consumption, along with a reduction in the UUT for electricity, to encourage switching from a fossil fuel to renewable electricity;
- A tax on “transportation network companies” like Uber and Lyft, who have caused a drop in transit use and an increase in carbon emissions and traffic congestion, and on delivery services and fleets;
- Taxes aimed at internal combustion vehicles, such as a tax on gasoline and diesel fuel, vehicle registration fees, oil changes and smog inspections; and
- An increase in parking fees and a tax on privately-owned parking lots.

Funds would be administered by City offices with input from current Commissions or a new expert panel, similar to the panels that guide funding for the Sugar-Sweetened Beverages Tax and Measure O. The Fund would be spent on activities that reduce climate emissions, as described in the Berkeley Climate Action Plan. Funds would be used to fill gaps in regional, state, and federal policy, and leverage local, state, federal, philanthropic, and private-sector funds. Proposals for funding would be accepted from businesses, non-profits, and government agencies, and scored based on a) their effectiveness at reducing carbon emissions, b) equity benefits, c) cost effectiveness, and d) local economic benefits. Funds would not be used to backfill existing City budgets. Some potential areas for funding could include:

- Electric mobility and charging infrastructure;
- Renewable energy in homes and businesses;

- Accelerated deployment of bicycle, micro-mobility and pedestrian improvements, such as protected bike and micro-mobility lanes, and safer street crossings; and
- Building electrification and energy efficiency.

Funding allocation strategies would be reassessed annually. Berkeley would join other communities with similar voter-approved funds, including Boulder, Colorado; Athens, Ohio; and Portland, Oregon.

BACKGROUND

The City of Berkeley adopted the Climate Action Plan in June 2009. While the City has made good progress in some areas, it has lagged overall and is behind schedule in achieving interim goals. In addition, many of the gains have been caused by state and federal policy and market and technology developments, rather than by City actions.

One impediment to greater progress on the Climate Action Plan is the lack of dedicated funding for it. While City departments sometimes implement measures that cut carbon emissions, their budgets do not have line items for climate action, and rarely are actions prioritized solely because of the carbon reduction benefits. Instead, the City's sustainability programs are often forced to seek support from outside funding sources, such as state and philanthropic grants.

Having a dedicated funding source would give the City greater ability to be proactive; to take advantage of local opportunities and create more local benefits; to expand upon or fill in gaps left by state, regional and federal policies; and to leverage outside funding opportunities.

ENVIRONMENTAL SUSTAINABILITY

These recommendations are intended to accelerate citywide reductions in greenhouse gases and reduce the impact of global warming.

RATIONALE FOR RECOMMENDATION

Creation of a Climate Action Fund would increase the City's ability to meet the goals of the Climate Action Plan, the Fossil Fuel Free Berkeley declaration, and the Climate Emergency declaration.

ALTERNATIVE ACTIONS CONSIDERED

The Commission's report to Council on the Fossil Fuel Free Berkeley and Climate Emergency resolutions explored many options. The idea for a climate referendum was included as a "fast track proposal." This memo supplements the previous Energy Commission recommendation.

CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report.

CONTACT PERSON

Billi Romain, Energy Commission Secretary, (510) 981-7432

Attachments:

1: Fossil Fuel Free Berkeley Report of the Berkeley Energy Commission, January 23, 2019

Fossil Free Berkeley Report

Berkeley Energy Commission January 23, 2019

Council Referral

On June 12, the Berkeley City Council passed item 30 “Fossil Free Berkeley” which refers “to the Energy Commission and Transportation Commission consideration of the proposed resolution or similar action to further implement the Climate Action Plan and establish the goal of becoming a Fossil Fuel Free Berkeley, and further consider:

Establishing a date by which we are committed to being a Fossil Fuel Free City;

Opposing further transportation of oil, gas, and coal;

Fully implementing Berkeley Deep Green Building, raising the citywide LEED certification requirement above the current LEED Silver, and applying the same requirements to newly constructed city facilities, and major renovations;

Requiring all future City government procurements of vehicles to minimize emissions, and establishing a goal and plan for transitioning the city’s vehicle fleet to all electric vehicles;

Establishing a goal and plan for transitioning to 100% renewable energy for municipal operations and a community wide goal of 100% reductions by 2030;

Formally opposing the recent expansion of offshore drilling by the Trump Administration; and

Calling for region-wide solutions to carbon emissions, including rapid adoption of renewable energy sources, affordable densification of cities and low-emissions public transportation infrastructure.”

On June 12, the Berkeley City Council also passed item 49 “Declaration of a Climate Emergency” which refers “to the Energy Commission to study and report back to Council on a path for Berkeley to become a “Carbon Sink” as quickly as possible, and to propose a deadline for Berkeley to achieve this goal” ideally by 2030.

This Report is the Energy Commission’s response to Council’s June 12 referrals.

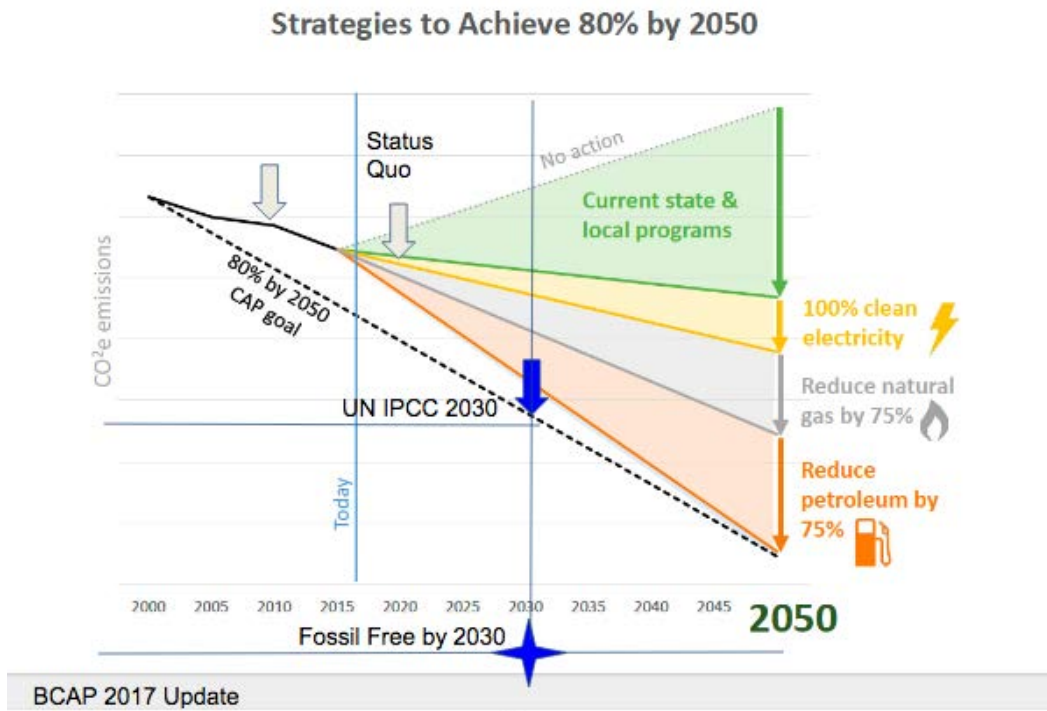
Executive Summary

The City Council's Climate Emergency Resolution lists record breaking climate related catastrophes and urges 'out of the box' thinking for solutions.

As if intended to support the Council's climate emergency declaration, the UN IPCC issued a heart rattling Special Report ([IPCC-SR15](#), 10/9/2018) noting global temperatures are rising faster than predicted and a myriad of cascading effects are happening sooner, and reiterating a worldwide goal to keep warming to no more than 1.5 °C. It asserts Greenhouse pollution must be reduced 45 percent from 2010 levels by 2030 and 100 percent by 2050.

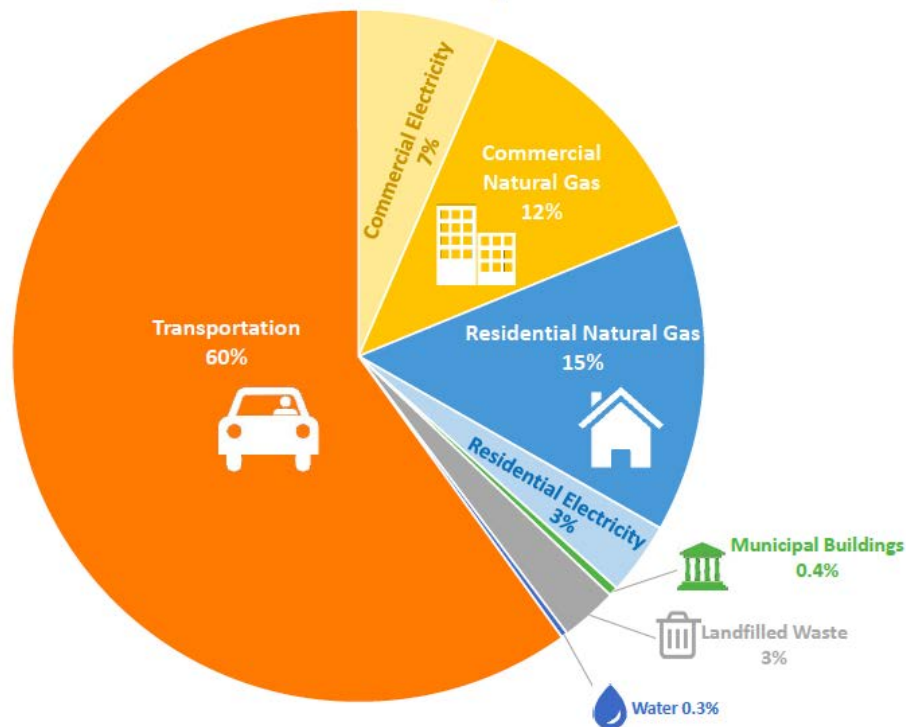
The trajectory of the Berkeley Climate Action Plan's 2020 emission reduction targets, extended to 2030, is roughly in line with the IPCC-SR15 goal. However, according to the city's 2018 [Annual Progress Update](#) Berkeley is significantly behind in achieving the Climate Action Plan 2020 reduction goals, let alone extending that trajectory through 2030 as recommended by IPCC-SR15, or doubling down to become 100% fossil free by 2030 as to be considered in the Fossil Fuel Free Berkeley Resolution Council adopted in June.

IPCC and Fossil Free by 2030 goals superimposed on 2017 CAP update



Clearly in order to meet any of these 2030 goals we need a sea change in commitment. Specifically, we must exert the will to honestly accept and meet the challenge we face. The 2018 CAP Update shows where we need to act:

2016 Community Emissions



Given statutory limitations on specific authorities held by the City, the Energy Commission is not able to determine a date by which Berkeley could be completely fossil fuel free. However, aiming to be fossil fuel free by 2030 to the fullest extent possible is a compelling goal. Urgency prompts the Commission to recommend aggressively prioritizing options with high early impacts. Lastly, Berkeley will only become a carbon sink if it is also virtually fossil free. The City has little capacity to sequester carbon.

Four Fast Track Proposals

- Opt all East Bay Community Energy accounts to 100% renewable electricity in 2019. This would result in an immediate 10% reduction in GHGs.
- Integrate greenhouse gas (GHG) reduction goals into the objectives and responsibilities of every city department. Amend funding priorities to support this initiative.

- Develop an updated Climate referendum to put before the voters that doesn't soft pedal very challenging proposals and why they are necessary. A successful referendum campaign would provide the platform for massive public education and support Council decision making. This referendum would be submitted to the voters in November 2020 and would include binding mandates and specific priorities for emissions reductions.
- Lead a regional effort to make changes to the Utility Users Tax structure in order to assess taxes on natural gas usage separately from electricity usage. Once complete, the City should submit a referendum to voters that would raise the tax on natural gas usage and dedicate the funds to decarbonization efforts.

Summary of Recommendations

Citywide Transportation

1. Accelerate infrastructure changes to support walking, biking, and small electric and human powered vehicles.
 - a. Build all high priority projects in the city's bicycle, pedestrian, and BeST plans including tier 1 projects in the bike plan by 2025.
 - b. Re-prioritize road and sidewalk capital expenditures to accelerate changes in favor of walking, human powered vehicles, and other low carbon footprint mobility alternatives.
 - c. Add 3 FTE to the Transportation Division to expedite implementation.
2. Adopt financial incentives and disincentives to reduce transportation carbon emissions such as: free transit passes for youth, restricted vehicle access to certain streets, and additional parking fees. Funds raised would be used to support fossil fuel free transportation programs.
3. Explore developing Berkeley shuttle services similar to the Emery Go-Round using EVs.
4. Develop effective communication and education strategies. Continue to expand programs that encourage residents to shift to fossil fuel free modes of transport.

Residential and Commercial Buildings

1. Opt all accounts in Berkeley up to 100% renewable EBCE electricity with a policy of no added cost for CARE customers and an outreach campaign to enroll all eligible customers in the CARE program. This is the most significant immediate thing the city can do reduce greenhouse gas emissions. A ton of GHG gases eliminated in 2019 is far more impactful in slowing climate change than a ton eliminated in 2025 or even in 2020 because of the impact of positive feedback loops.
2. Expand BESO and include electrification along with energy efficiency. Consider instituting more triggers that require an energy audit, more detailed energy

- audits, not allowing the seller to transfer the audit to the buyer, and required implementation of some of the measures recommended in the energy audit.
3. Stop expansion of natural gas infrastructure by prohibiting gas cooktops and dryers in new residences. Place a moratorium on new gas hook ups if possible.
 4. Funding options for electrification and energy efficiency upgrades:
 - a. Sales transfer tax rebates, similar to the seismic rebate but tied to implementation of BESO recommendations.
 - b. A new, very low interest revolving loan fund.
 - c. Strategic relaxation of the Planning Code, such as density and/or parking requirements, or accelerated review in exchange for electrification and energy efficiency measures.
 5. Develop an effective communication and education strategy that reaches the Berkeley community at large. This strategy should include updating the City's website to reflect the City's prioritization of electrification, and low carbon footprint and low toxic construction. Updated green building information should be easily found on the Permit Service Center home page. The City's website needs to offer clear guidance reflecting the urgency of the climate crisis.

Regional Action

1. Lead a regional effort to make changes to the Utility Users Tax structure in order to assess taxes on natural gas usage separately from electricity usage. The City Council adopted a resolution in favor of this change and is awaiting support from other cities in the region to share the fees PGE would charge to modify the billing. It is time to look aggressively for the necessary funds and initiate the process. Once complete, the City should submit a referendum to voters that would raise the tax on natural gas usage and dedicate the funds to decarbonization efforts.
2. Encourage the Bay Area Air Quality Management District (BAAQMD) to adopt rules with future effective dates to prohibit sale of gas powered appliances. It has used the authority in the past to prohibit the sale of polluting products like high VOC paints and to restrict installation of wood burning fireplaces. Prohibiting sale of gas powered appliances would support electrification.
3. Increase regional and support state efforts to expand availability of low global warming potential refrigerant heat pump space and water heaters for the retrofit markets.
4. Initiate regional policy consistent with fossil free goals for ride hailing services and the introduction of autonomous vehicles. Support state programs that restrict the use of fossil fuel by ride hailing services and autonomous vehicles. Regulate these services to reduce overall per capita VMT.
5. Explore viability of reducing R-1 zoning to increase housing availability, opportunities for home ownership and improve transit access through increasing densification. Such transit oriented development can be adopted

throughout the region to reduce development pressure on open spaces, provide more housing near jobs, and provide the density to support expansion of regional transit.

Analysis

I. Establishing a date by which we are committed to being a Fossil Fuel Free City

Recommendations

1. Consider a new ballot initiative for updating the Climate Action Plan in order to engage Berkeley residents in the comprehensive and ambitious efforts that will be needed.
2. The City should take aggressive, immediate, and sustained action to achieve the goal of a fossil free Berkeley to the fullest extent possible while simultaneously calling for necessary and immediate complementary emergency actions by other local, regional (e.g. MTC/ABAG, BAAQMD, BayREN) state and federal governmental bodies.

Discussion

The Energy Commission believes that the Berkeley Residents who initiated “Fossil Free Berkeley” intend it to apply to the entire city, not just municipal operations. Our comments reflect this point of view.

The two Council items 30 and 49 taken together suggest a goal of 2030 for Berkeley to become fossil free. It should be noted that this is far more ambitious than recommendations by the IPCC and recently adopted state laws¹ which taken together would suggest a goal of 50% reduction of greenhouse gas (GHG) emissions by 2030.

In some ways, Berkeley is better positioned than many cities to take the initiative to make accelerated and meaningful reductions in fossil fuel consumption.

- Unlike many other GHG emissions sectors, techniques for eliminating building GHGs--specifically improving energy efficiency, electrifying remaining energy uses, and using renewably generated electricity--are all commercially available, and can improve comfort and safety and offer property owners economic savings over time. Energy efficiency programs have been around for decades and the city’s unique BESO energy audit program helps property owners prioritize efficiency upgrade spending. Because of recent developments in heat pump technologies making electric heat pump space and water heating more than 3 times as efficient as their gas equivalents and the dramatic

¹ SB 100 commits state utilities to provide 60% renewable electricity by 2030, and zero carbon electricity by 2045.

AB 3232 charges the California Energy Commission with assessing how to reduce emissions from the state’s building stock by 40 percent below 1990 levels by 2030.

SB 1477 will expand the accessibility of clean heating technologies by promoting them in the market with incentives and training.

Executive Order B-55-18 commits California to economy-wide carbon neutrality by 2045.

increase of renewables on the electricity grid, all electric homes, even without solar panels, can produce substantially less GHGs than natural gas powered ones.

- Berkeley's size, density, mild and dry climate, and mass transit infrastructure make it ideally suited for an accelerated reduction in transportation related GHGs. The recent commercial introduction of vehicle sharing programs and proliferation of small electric vehicles such as electric bikes, scooters, and tricycles solve two of the main long time challenges to rethinking the transportation picture in Berkeley. They dramatically reduce costs of electric transport and offer small scale power assisted options, particularly for hills residents.

According to the 2017 Bicycle Plan a "2015 survey of Berkeley residents showed 90 percent of Berkeley residents already bicycle or would consider bicycling if the right bikeway facility or roadway conditions were available. That is a larger percentage than any other city that has conducted a similar study, including Portland...."

- Finally, residents voted overwhelming in favor of the Berkeley Climate Action plan in 2006 and are likely to support new targeted programs to accelerate reductions in GHGs.

The challenges to accelerating GHG reductions cannot be overstated. They are technological, political and social. And, the more ambitious the reduction goals the greater the challenges. While Berkeley is better set up to meet a goal of 100% reduction by 2030 than many communities, it is still a very difficult task.

- The vast majority of buildings rely on natural gas for operation. Every one of them will need to be shifted from gas to all electric operation. Every fossil fuel operated vehicle on the roads will need to be eliminated. How do we motivate ourselves to electrify our buildings and give up our fossil fuel vehicles?
- As much as a quarter of Berkeley's past GHG reductions are a result of state programs such as the renewable fuels portfolio standard. To push ahead with an accelerated GHG reduction goal, the city will need to rely on local programs.
- There are real technological hurdles that need to be solved before complete electrification of the California or US economy can occur. It is hoped these problems will be solved by 2030 or much sooner. While they do not prohibit Berkeley from being fossil free by 2030 as an isolated entity, they do drive up the cost for some of the needed technologies, particularly in relationship to vehicles and battery storage. In addition, regional and state governments will be reluctant to set goals without confidence that the technologies are in place to meet them, so Berkeley will likely be out of step with others the more aggressively it pursues accelerated GHG reductions.

Finally, the urgency of the climate crisis requires use of the simplest, cheapest and most available tools at hand to achieve high early results. A ton of GHG gases eliminated in 2019 is far more impactful in slowing climate change than a ton eliminated in 2025 or even in 2020. Because of positive feedback loops, the effects of GHG emissions are amplified. For example warmer, dryer forests burn more which releases more CO₂ which contributes to more forest fires. Establishment of new manufacturing facilities and a city scale power company would take decades. It will be far more effective to work with existing programs such as East Bay Community Choice Energy, BESO, and the Berkeley Bicycle Plan.

II. Opposing further transportation of oil, gas, and coal

Recommendations

1. In order to put the brakes on the transport of refinery feedstock and refined products traveling through Berkeley, call for a plan to responsibly wind down all Bay Area refineries as California demand wanes.
2. Consider a ban on the storage and transport of coal within the City

Discussion

It should be noted that the City of Berkeley has already adopted a more specific position in opposition to transport of oil, gas and coal: joining neighboring communities in September in calling for a ban on coal shipments through East Bay Communities.

Unfortunately, the Federal Government has jurisdiction over rail transport limiting the City's options for preventing travel by rail through Berkeley.

Eliminating transport of fossil fuels would require the shutdown of all Bay Area oil refineries, because their products are trucked to and through Berkeley for cars, trucks, planes and trains operating in the Bay Area. It would also mean that all ground vehicles, including trains would have to be converted to run on 100% carbon-free electricity, and air transport be fueled by bio-fuel or by imported fossil fuels.

Regarding the shutdown of local refineries, Communities for a Better Environment has drafted a California Refinery Study and will soon launch a campaign to responsibly wind down all California refineries by 2035, by requiring annual emission reductions of 5% beginning in 2020. Mayors of Benicia and Richmond, home to the Valero and Chevron refineries, are already making public statements in support of winding down Bay Area refineries. As California electrifies its vehicles, we must ensure refineries are not permitted to maintain or increase refining activities such that fossil fuel exports increase and frontline communities remain subject to the health consequences of this dirty, outdated industrial sector.

III. Fully implementing Berkeley Deep Green Building plan, raising the citywide LEED certification requirement above the current LEED Silver,

and applying the same requirements to newly constructed city facilities, and major renovations

Municipal Buildings Recommendations

1. Immediately convene a citywide departmental summit including Public Works and Planning and Development to establish a timeline and budget for electrifying all city owned buildings and installing solar plus storage at City buildings wherever possible.
2. Review and re-prioritize all funds currently earmarked for capital improvements to facilitate rapid electrification of municipal buildings.
3. Work with East Bay Community Energy to secure grants for solar with storage.
4. Use the 2 x 2 process to coordinate with BUSD in establishing a fossil fuel free goal and providing BUSD with technical and policy assistance to achieve it.
5. Set higher goals for municipal buildings related to indoor air quality, lowered carbon footprint, and all electric as outlined in Berkeley Deep Green Building and Healthy Building Network's HomeFree Spec guidance.² In addition to developing expertise that can be shared with Berkeley residents and property owners, these changes would have health, environmental, and economic benefits. The City can decide the standards which municipal buildings must be built or remodeled to. It is our understanding that currently, there is no requirement beyond meeting minimum state building codes.

Residential and Commercial Buildings Recommendations

1. Develop options for expanding the coverage of the current LEED requirements to other areas of the City including mandatory points in certain sections.
2. Strategically relax the Planning Code, such as density and/or parking requirements or accelerated permit review in exchange for electrification and energy efficiency measures.
3. Place moratorium on natural gas cooktops and dryers in new residences or on new gas hook ups if possible.
4. Institute a transfer tax rebate for energy efficiency upgrades and electrification at time of sale.
5. Ensure every plan checker is trained in methods of electrification, and instructed to present that information to property owners at the beginning of the permit application process. In this way, every interaction with property owners becomes an opportunity to educate them on their options for home energy efficiency and

² <https://homefree.healthybuilding.net/reports>

electrification and their importance. Building owners need to understand the importance of reducing energy consumption and electrification and to switch out fossil fuel appliances for electric whenever possible.

6. Expand BESO and shift focus to include electrification along with energy efficiency. To be considered are: instituting more triggers that require an energy audit, more detailed energy audits, not allowing the seller to transfer the audit to the buyer, and required implementation of some of the measures recommended in energy audit.
7. Develop an effective communication and education strategy that reaches the Berkeley community at large. This strategy should include updating the City's website to reflect the City's prioritization of electrification, and low carbon footprint and low toxic construction. Updated green building information should be easily found on the Permit Service Center home page. Many architects, builders and homeowners begin the design process online, making key decisions based on information found online. It is critical the City's website offer clear guidance reflecting the urgency of the climate crisis.
8. Work with PG&E to develop a plan for eventually shutting down natural gas service in Berkeley. Priority should be given to areas most vulnerable to the effects of climate change and earthquakes and those where infrastructure has not yet been upgraded to plastic. Funds that would be spent on upgrading gas infrastructure can instead be used for electrifying buildings and under-grounding electrical lines.
9. Consider the development of a long term funding plan such as a very low interest revolving loan fund to assist property owners to decarbonize their buildings.
10. The City should work with the BAAQMD to adopt rules with future effective dates to prohibit sale of gas powered appliances.
11. Increase regional and support state efforts to expand availability of low global warming potential refrigerant heat pumps space and water heaters for retrofit markets.

Discussion

The Berkeley Deep Green Building (BDGB) initiative, adopted by the City Council in 2017, outlines best practices for green building including zero net energy and all electric construction, low carbon footprint and low toxicity building materials, and water conservation. City staff has provided a detailed analysis and review of progress in implementation. See the [Energy Commission](#) Agenda from 4-25-18 for copy of this review.

Energy efficiency measures including: low toxic, low carbon footprint insulation, air sealing, and replacing incandescent with LED lights, have long been recognized as important to greenhouse gas reduction. BDGB argues in addition that going all electric is foundational to achieving fossil fuel free goals. Historically energy efficiency standards and incentive programs have been based on the assumption that natural

gas appliances have lower environmental impacts than electric appliances. However, this is no longer the case. The dramatic increase of renewables in supplying electricity and the development of heat pump technologies for space and water heating, which are more than 3 times as efficient as their gas equivalents, have turned this balance around. If the significant fugitive emissions from gas infrastructure and their concomitant climate changing and indoor air quality impacts are added to the equation, the scale definitely tips in favor of all electric buildings.

Natural gas is also a safety issue in Berkeley. The recent gas line explosions around Lawrence Massachusetts are only the most recent in a long line of such incidents. Even though PG&E is working to upgrade existing infrastructure, rising sea levels in West Berkeley and the overdue earthquake on the Hayward fault threaten Berkeley. Electricity infrastructure has its safety issues as well. Money saved on gas infrastructure could be used on improving the safety and reliability of electric power.

One of the stumbling blocks to a fossil free California is energy storage. All electric, energy efficient buildings can be key in addressing this problem by reducing overall energy demand and drawing energy for space and water heating in the middle of the day when it is most abundant and storing it for use in the evening after the sun goes down. As a quarter of all energy used in the home is for water heating, state policymakers and manufacturers are already working on ways to incorporate tanked electric water heaters into energy management programs.

Heat pump space and water heaters are commercially available and can be economical. Recent studies of homes by Rocky Mountain Institute and NRDC³ have found that all electric construction can be cost effective, especially in new construction where there are significant savings from not installing natural gas plumbing and infrastructure. All electric construction can also be economical in remodels in cases where natural gas equipment is older and needs replacing and where electrification is coupled with solar PV installation.

As the city is largely built out, construction tends to focus on remodels and new construction of high rise apartment buildings. Every effort needs to be made to guide these projects to be all electric. Currently it appears the economics for high rise residential buildings in Berkeley favor electric heating and air conditioning paired with central gas heat for water. Though adding significant cost to construction, some developers will run natural gas to individual units for the perceived increased value of a gas cooktop. It should be noted that building owners who install natural gas heating and appliances now will be left with stranded assets as society is quickly shifting to all electric operation.

³ <https://rmi.org/insight/the-economics-of-electrifying-buildings/>
<https://www.nrdc.org/experts/pierre-delforge/new-report-heating-next-clean-energy-frontier-ca>

The biggest challenge in Berkeley is electrifying existing buildings -- particularly where no work is anticipated or no permit is obtained for the work. This is a major source of greenhouse gases in our city and across the state. Several state level assistance programs can help property owners with improvements. However they generally fall short of amounts needed and currently rebates are not available for switching gas appliances to electric.

California has been a leader in improving energy efficiency and expanding renewable electricity generation. Several state laws from 2018 will continue that effort:

- SB 100 commits state utilities to provide 60% renewable electricity by 2030, and zero carbon electricity by 2045.
- AB 3232 charges the California Energy Commission with assessing how to reduce emissions from the state's building stock by 40 percent below 1990 levels by 2030.
- SB 1477 will expand the accessibility of clean heating technologies by promoting them in the market with incentives and training.
- Executive Order B-55-18 commits California to economy-wide carbon neutrality by 2045.

While California has been a leader in improving energy efficiency, state laws and regulations have been slow to guide and in some cases act as barriers to the transition to all-electric construction. Many of these barriers are obscure and buried deep in regulatory policy:

- 3 prong test. The 3 prong test is policy established in the early 1990s originally intended to ensure fuel switching did not occur that caused adverse effects on the environment. At the time it generally meant discouraging shifts from natural gas to electric. However the policy assumptions continue to serve the same purpose even as the climate impacts of the two fuels have completely changed places. This policy is the core of why PG&E will not provide energy upgrade rebates when changing gas to electric heat.
- Title 24 assumptions. Title 24 is the shorthand name for the energy efficiency standards of the California Building Code. These are updated every 3 years and currently include several assumptions that favor gas heating and air conditioning over electric.
- Energy rate structure. Retail prices for natural gas do not reflect the GHG emissions of gas compared to electricity, or the grid benefits of flexible electric loads like tanked electric water heaters.

Of these barriers, only the assumptions in title 24 have begun to shift in PG&E territory. The standards that will go into effect in 2020 will no longer penalize use of

heat pump water heaters in low rise residential construction. However many other assumptions within the new standards will continue to support use of natural gas such as the climate benefits of electricity in the TDV and the lack of credit given to tanked electric water heaters for energy storage.

At the regional level, BAAQMD has the authority to regulate air pollution including GHGs. It has used the authority in the past to prohibit the sale of polluting products like high VOC paints. It could prohibit sale of gas powered appliances to support electrification and elimination of GHG emissions.

Working within state level constraints, planning staff have developed and pushed policies that improve the energy efficiency of buildings in Berkeley and encourage a shift to all electric, carbon free operation. Policies they have developed unique to Berkeley include:

- New non-residential construction and additions in the downtown area need to be LEED Gold or equivalent.
- Free advice and consultation on green building design and strategies.
- Building renovation and new construction over 10,000 square feet needs to have an energy analysis and a completed green building checklist.
- Under the BESO program, at time of sale for residences and more frequently for commercial properties, owners must complete an energy audit of the building.

City staff are pursuing many additional efforts:

- Reviewing the BESO program to improve effectiveness. Scope of review to include requiring energy audits sooner for more properties, expanding the triggers that require an audit to include remodeling, more detailed energy audits including electrification, elimination of the option of allowing the buyer to perform the audit, and implementation of some of the upgrades recommended by the energy audits.
- Expanding heat pump water heater availability through collaboration on BayRen's mid-market expansion grant program.
- Pursuing "reach" building codes for the 2020 building codes that give regulatory advantage to all electric construction. The most important priority for this effort is new multi-unit high rise apartment buildings and major remodels.
- Advocating for state level policies that allow building owners to receive energy efficiency rebates when switching fuels.

- Advocating for removal of all biases against electrification within the state building energy codes including Total Daily Value (TDV) and computer modeling assumptions.

Care should be taken that solutions do not create additional problems. Many building materials are coming under increasing scrutiny for their long trail of environmental and health impacts, such as polystyrene and PVC plastics and organo-halogenated materials. Others have such a high global warming footprint, such as certain foam plastic insulations that their use minimizes the GHG reduction benefits of the projects. The refrigerants commonly used in most heat pumps in the U.S.A. also have very high global warm potential. While heat pumps still have dramatic energy saving benefits over other options, phase out of these chemicals under state Air Resources Board programs will improve their GHG benefits.

IV. Requiring all future City government procurements of vehicles to minimize emissions, and establishing a goal and plan for transitioning the city's vehicle fleet to all electric vehicles

See V. for discussion and recommendation concerning 100% renewable energy for municipal vehicles.

V. Establishing a goal and plan for transitioning to 100% renewable energy for municipal operations and a community wide goal of 100% reductions by 2030.

See III. for discussion and recommendation concerning 100% renewable energy for buildings.

Municipal Transportation Recommendations

1. Assess the city's transportation vehicle needs and develop an aggressive timeline for transitioning to all electric.⁴ This assessment would include consideration of: 1) Switching to lower carbon transport options such as electric carts or bicycles where possible and 2) the timing of technology development and commercialization for car batteries.
2. Immediately switch diesel vehicles to run on renewable diesel in the interim until fossil fuel free options are available for the tasks they perform.

⁴ Ref: San Francisco Ordinance 115-17 Administrative Code Section 4.10-1:

c) By December 31, 2022, all light duty vehicles in the City fleet must be Zero Emission Vehicles in compliance with Environment Code Section 404, unless there is a waiver, exemption, or applicable exception. detailed in Environment Code Chapter 4.

Citywide Transportation Recommendations

The Energy Commission would like to coordinate recommendations with the Transportation and Public Works Commissions to accelerate a reduction in fossil fuel vehicles in Berkeley. To begin the process, the Energy Commission makes the following recommendations:

1. Re-prioritize road and sidewalk capital expenditures to accelerate changes in favor of walking, human powered vehicles, and other low carbon footprint mobility alternatives. The Council should amend funding priorities to reflect the climate emergency.
2. Adopt financial incentives and disincentives to reduce transportation carbon emissions such as: free transit passes for youth, restricted vehicle access to certain streets, and additional parking fees. Funds raised would be used to support fossil fuel free transportation programs.
3. Develop and implement a transit plan in support of the Climate Action Plan. The transit plan could include detailed accountability metrics such as required dates for identified new routes, dates for replacement of fossil fueled busses and shuttles with electric busses and shuttles, and smaller intra-neighborhood subsidiary transit (shuttles). The city should explore developing its own shuttle services similar to the Emery Go-Round using EVs as part of the transit plan.
4. Add 3 FTE to the Transportation Division to expedite implementation of the city's bicycle, pedestrian, and BeST plans.
5. Build all high priority projects in the city's bicycle, pedestrian, and BeST plans including tier 1 projects in the bike plan by 2025.
6. Develop a communication strategy to inform residents of fossil free and lower carbon footprint personal mobility options and the desirability of prioritizing these options.
7. Continue to develop and expand programs that encourage residents to shift to fossil fuel free modes of transport, such as electric bike and scooter sharing, Waterside Workshop, and Safe Routes to School.
8. Work with State authorities to prohibit operation of autonomous vehicles within city limits unless they are electric vehicles.
9. Use the 2x2 process to encourage the BUSD to develop a plan for phasing out fossil fuel vehicles and supporting families to safely get to and from school without cars.
10. Lobby and work collaboratively with public and private transportation providers and the commercial sector to convert all vehicle fleets to electric power.

11. Support state programs that restrict the use of fossil fuel vehicles by ride hailing services such as Uber and Lyft.

Discussion

One of the greatest challenges we face is how to eliminate emissions from transportation. By far the most promising way to make transportation renewable is with electric vehicles.

The vast majority of fossil fuel powered vehicles operated in the city are owned by individuals and companies and government entities outside of the city simply driving through the city or entering the city for business or pleasure. For the purposes on this report, the fossil fuel free goal will be focused on reducing fossil fueled vehicular traffic on city streets. It should be noted that for Berkeley to be truly fossil free, all ground vehicles, including trains, must be converted to electric power. We recognize the City has no independent way to get Amtrak and freight trains off fossil fuels.

The Commission believes that the goal of 100% emission reduction from vehicles is most likely to happen using batteries. Fuels other than electricity are possible but less likely to be adopted. Biofuels have a limited role because of lack of feedstock availability without associated environmental damage (the food vs. fuel problem).

Electric automobiles are quieter and more economical to operate than gas cars. Although only 2% of new car sales in the United States in 2018 were electric, that represented an 81% increase in sales over 2017. Electric auto sales were about 6% of new cars in California in 2018, and reached 10% in December. Because of their lower operating and maintenance costs, electric cars are competitive in lifetime costs of ownership. Residents of homes without garages (of which there are many in Berkeley), and apartments without charging stations, face a serious challenge to find a place to plug in. We encourage further city action on this.

Another option is hydrogen. To be emission-free the hydrogen has to be produced from renewable electricity or directly from sunlight with a catalyst. The problem is that hydrogen storage is very expensive either as a liquid or as a high pressure gas, both because it is energy intensive and because the container is expensive. Furthermore, the likelihood of leakage is much higher than, say, natural gas and the likelihood of explosive ignition in the presence of oxygen is also much higher than natural gas.

One biofuel that can play a useful role in Berkeley as bridge to electrification is renewable diesel. Renewable diesel though made entirely from vegetable oils is not biodiesel. It is processed to meet the exact performance specifications required for diesel motors. It does not void manufacturer warranties and can be used in any diesel vehicle. The emissions are much cleaner, the carbon footprint is lower and it is cheaper than diesel. While its use should be minimized because of the potential food vs fuel concerns, it can be used immediately in all city diesel vehicles until they can be replaced with fossil fuel free alternatives.

The city already has advocated walking, human powered vehicles, electric vehicles and mass transportation accessibility to all in its 2009 Climate Action Plan. In achieving a fossil fuel free goal, there are important timing issues. Several significant transportation changes are just over the horizon that will dramatically reshape our city street experience including:

- Expanded ride hailing operations such as Uber and Lyft, especially as autonomous vehicle operation is perfected;
- Docked and undocked ride sharing vehicles; and
- Proliferation of varied electric vehicles including electric golf carts, bicycles, tricycles, stand-up scooters, hoverboards, Segways, and wheelchairs.
- Breakthroughs in battery technologies that will dramatically lower the cost and improve performance of electric vehicles.

The city should be careful about engaging in longer term contracts and that decisions be revisited regularly as new technologies mature and the economics change for different transportation modes.

VI. Formally opposing the recent expansion of offshore drilling by the Trump Administration

Offshore Drilling Recommendation

Formally endorse California laws intended to block offshore drilling if it has not done so already.

Discussion

The State legislature has passed and the Governor has signed SB 834 (an act to add Section 6245 to the Public Resources Code, relating to state lands) and SB 1775 (an act to add Section 6245 to the Public Resources Code, relating to state lands). Both Sections are entitled State lands: leasing: oil and gas. These new laws are intended to block the Trump administration's plan to expand offshore oil drilling by prohibiting new leases for new construction of oil and gas-related infrastructure, such as pipelines, within state waters if the federal government authorizes any new offshore oil leases.

VII. Calling for region-wide solutions to carbon emissions, including rapid adoption of renewable energy sources, affordable densification of cities and low-emissions public transportation infrastructure

The Council has rightly included the need for regional coordination to address energy supply, housing and transportation. It's safe to say all Bay Area cities are grappling with these issues in one way or another, with significant disparities among them in both priorities and resources. It will take trust, willingness to move away from a

provincial mentality, leadership from MTC/ABAG and BAAQMD and probably some State action to facilitate deep progress in these areas.

VII.1. Renewable Energy Sources

Renewable Energy Sources Recommendations

1. Opt up all Berkeley's municipal, commercial and residential accounts to EBCE's⁵ 100% Renewable electricity with a policy of no added cost for CARE customers and an outreach campaign to enroll all eligible customers in the CARE program in 2019.
2. Partner with all cities in CCAs to influence state legislators, the Governor, and CPUC Commissioners to develop guiding legislation, policies, and rules that support the continued existence of CCAs.

Discussion

It is critical to move toward 100% clean energy generation sources as soon as possible in order to fully realize GHG emission reductions through "fuel switching" from combustion to electricity in all spheres. There is long established worldwide consensus that the path to climate stabilization requires, in this order:

1. Deep reductions in energy demand through conservation and efficiency,
2. Conversion to clean electricity generation, and
3. Massive electrification.

⁵ A regional approach to increase reliance on renewable energy sources is possible through our new energy provider: East Bay Community Energy (EBCE). EBCE was initiated under a state law passed in 2002 that allowed government jurisdictions to create agencies (called Community Choice Aggregators or CCAs) to purchase power on their residents' behalf as a way to provide energy options to Californians. As a local government agency, EBCE is not for profit and is entirely devoted to the community. Even before EBCE was providing electricity, it was developing a plan to invest locally in energy development. In July 2018, the Board of EBCE adopted a groundbreaking Local Development Business Plan which spells out strategies for local clean energy, energy efficiency, and energy storage projects specifically to help address the environmental, economic, and social justice needs of the East Bay community.

Once established, a CCA is authorized to automatically enroll all accounts in its jurisdiction in the new energy program. Customers have the option of changing the product they are enrolled in or switching back to PG&E. EBCE currently offers three electricity supply products to its residential, commercial and municipal customers:

- Bright Choice - a mix of electricity generated by fossil fuels, renewable sources and large scale hydro, which the State of California does not classify as renewable. It is offered at a slightly lower in price than electricity from PG&E;
- Brilliant 100 - a mix of renewable energy and large hydropower at the same price as PG&E power; and
- Renewable 100 - 100% renewable energy at a slightly higher price.

Both Berkeley (through BESO and other programs) and California (largely through frequent Energy Code updates) have long standing, successful conservation and efficiency requirements. We are national leaders in this and continue to press forward with program improvements and new initiatives. Now that a 100% renewable option is available from EBCE, Berkeley can immediately convert the entire city to clean electricity generation, and turn its focus to the challenge to ‘electrifying everything.’ Shifting accounts to 100% renewable will reduce community-wide GHG emissions by a whopping 10%.⁶

Under the Climate Emergency Resolution, Council has signaled the intention to act boldly. Berkeley has already fallen significantly behind in achieving its 2050 GHG emission reduction goal as set forth in the 2009 Climate Action Plan.⁷ Opting all its EBCE customers to the Renewable 100 plan is the single most impactful and timely action the City can take in 2019, both because of immediate emission reductions, and to avoid GHG emissions from future increases in demand due to electrification. It is critical to do this now because by the end of 2020, EBCE will be required to sign long term contracts for 65% of its supply portfolio. Once these long term contracts are signed, it will be more difficult for EBCE to shift the sources of its power mix. For these reasons, the Energy Commission recommends that Berkeley move to 100% renewable electricity in 2019.

While EBCE energy mix options were being established last spring, the Berkeley City Council, as did most EBCE cities, chose to enroll all residential and commercial accounts in Bright Choice. Berkeley enrolled its municipal accounts in Brilliant 100. The City of Albany enrolled all accounts in Brilliant 100, Hayward enrolled its residential accounts in Brilliant 100, and the City of Piedmont enrolled all accounts in Renewable 100. We note that ten jurisdictions in Los Angeles and Ventura counties served by Clean Power Alliance (CPA, a CCA) were enrolled in Green Power, its 100% renewable product, as the default. These ten jurisdictions cover a third of CPA's one million customers.⁸

CPA, like EBCE, also has a Community Advisory Committee to help prioritize local renewable energy development and job creation, rebates and incentives. For California's progressive cities and counties, enrollment in 100% renewable energy is a climate action whose time has clearly come. Because 35% of EBCE's power purchase agreements are not required to be long term and electrification will increase demand, we anticipate ample opportunities for EBCE to make significant investments in local

⁶ Berkeley Climate Action Plan Annual Progress Update, Office of Energy and Sustainable Development, Planning Department, Slide 5, December 6, 2018

⁷ Berkeley Climate Action Plan Annual Progress Update, Office of Energy and Sustainable Development, Planning Department, Slide 14, December 7, 2017

⁸ Clean Power Exchange, Alliance will provide clean, competitive energy, January 12, 2019 <https://cleanpowerexchange.org/alliance-will-provide-clean-competitive-energy/>

energy development. As the local development market matures, there will be rolling opportunities to incorporate locally generated power into long term contracts.

There were initial concerns that new EBCE customers would opt out and go back to PG&E. There were also worries that customers would opt out if enrolled in a cleaner mix of energy generation priced at the same or slightly higher cost than PG&E rates. Both of these fears have been shown to be unfounded for the inner East Bay cities of Alameda County. In fact, among all Alameda County cities in EBCE, only the City of Livermore, at 5.56%, has had an opt out rate greater than 2.07%.⁹ Piedmont's experience in making Renewable 100 the default level is instructive. As of December 2018, 6.8% of customers opted down to Brilliant 100 or Bright Choice, and only 2.07% opted out and went back to PG&E. The takeaway is that few customers took any action, and of those who did, the overwhelming majority (77.7%) chose to stay in EBCE.

Concerns have also been raised that opting all customers to the 100% Renewable product would harm low-income customers. The Energy Commission recommends that EBCE follow CPA's lead in which "customers in 100 percent renewable energy communities who are enrolled in CARE, FERA or Medical Baseline will get Green Power at no extra charge."¹⁰ We understand that EBCE is reporting strong net revenues which could be allocated to subsidize CARE customers. Alternatively, non-CARE customers could absorb the additional cost. Furthermore, the value of the non-binding nature of the enrollments is that price sensitive customers can opt down. Unlike an increase in property taxes, nonCARE customers who cannot afford to pay any more for power can simply opt down to the lower priced option.

It has recently come to light that Bright Choice power may in fact have a higher carbon content than electricity provided by PG&E.¹¹ The City Council has the opportunity right now, while the nascent EBCE is locking in long term contracts for power, to opt all accounts to fossil fuel free power to ensure that joining the CCA does in fact reduce citywide GHGs.

The political landscape for CCAs is fraught with heavy opposition from PG&E and its entrenched allies in State government even as they supply electricity that is cleaner and cheaper than their for-profit counterparts.¹² Berkeley needs to partner with all Bay

⁹ EBCE Enrollment Update, December 5, 2018

¹⁰ Clean Power Exchange, Alliance will provide clean, competitive energy, January 12, 2019 <https://cleanpowerexchange.org/alliance-will-provide-clean-competitive-energy/>

¹¹ See comments in: <https://www.berkeleyside.com/2018/12/11/why-does-your-december-electricity-bill-look-different>

¹² [A 2016 UCLA study](#) found that CCAs in California offered 25% more renewable energy compared to the investor-owned utility (IOU) in the same area resulting in an estimated reduction of 600,000 metric tons of CO2 in 2016.

Area cities in CCAs to work with our elected representatives to defeat legislative threats and overcome obstacles at the California Public Utilities Commission. Also, the CCA's themselves need to ensure unity and coordinated responses to initiatives aimed at undermining success.

VII.2. Affordable Densification of Cities

Affordable Densification Recommendations

1. Work with MTC/ABAG, BART cities and counties to reframe and expand Transit Oriented Development concepts to conform with internationally used approaches that look beyond infill at already heavily used transit hubs, and prioritize infill housing everywhere developed in concert with expanded transportation strategies and expanded services (educational, recreational, commercial and environmental enhancement).
2. Work with Bay Area cities and counties to develop a regional funding mechanism to subsidize low income and affordable housing in all jurisdictions.
2. Explore viability of reducing R-1 zoning to increase housing availability, opportunities for home ownership and improve transit access through increasing densification. In addition, support adoption of such transit oriented development throughout the region to reduce development pressure on open spaces, provide more housing near jobs, and provide the density to support expansion of regional.

Discussion

In order to provide affordable densification we need massive housing construction, housing subsidies and expanded transit opportunities. The high cost of living in the Bay Area includes the high cost of construction. If we want to reduce vehicle miles traveled (VMT) and the unhealthy stress of long commutes we must find ways to subsidize housing for average people, because at the present time people living on average incomes who do not already own homes cannot afford to live in the Bay Area either as renters or homeowners, forcing many into ever longer vehicular commutes. This is something that needs to be addressed by both the region and the state. There is too much disparity in wealth across the region for the problem to be completely solved by individual cities.

A desire for walkable neighborhoods and transit access has contributed to gentrification in Berkeley and San Francisco. This new gentrification is fueled by the migration of young professionals from the suburbs to these two cities in particular because they both have ample neighborhood scale services. Remarkably, the median price paid per square foot of living space is no longer significantly higher in most R-1 zones where access to transit is often limited.¹³ This indicates that the hunger for the amenities of a more urban lifestyle is widespread. It's quite possible that there is an

¹³ (https://www.trulia.com/real_estate/Berkeley-California/market-trends/)

untapped openness to neighborhood-scale services and transit development in existing suburbs too. This possibility needs to be explored. Any such nascent cultural shifts should be identified and reinforced. The suburbs have already absorbed job growth in the form of large business parks. Likewise, rails to trails conversions have acculturated suburban residents to walking and biking where convenient. Managed thoughtfully, initiatives to increase suburban infill housing coupled with increased transit, active transportation options and some small scale services could be welcome developments.

The push for housing densification in the Bay Area has relied on a concept of transit-oriented development (TOD) defined by MTC as [emphases added]:

“the clustering of homes, jobs, shops and services near *rail stations, ferry terminals or bus stops with high-frequency service*”

defined by BART as:

“mixed-use, higher density development *adjacent to frequent transit.*”

and directed by Berkeley’s General Plan to:

“[e]ncourage and maintain zoning that allows greater commercial and residential density and reduced residential parking requirements in *areas with above-average transit service* such as Downtown Berkeley.”

This perspective pre-supposes that densification is not a serious goal beyond existing heavily used transit corridors, or beyond cities that are already dense. Plan Bay Area forecasts the need for 800,000 new housing units by 2040. It seems doubtful that so much new housing can be built only around existing transit lines. Recent state legislation for infill housing fell victim to this kind of limited thinking.

In other parts of the world, TOD includes community scale planning with new transit service in mind, not just placing new homes near existing heavily used transit. We need to expand the mindset of housing development in the Bay Area to one of transit *coordinated* development (TCD). We need suburban infill housing developed in concert with public transit strategies, and educational, recreational and commercial services. Infill housing and transit alone do not address human needs for social, commercial and fitness activities. Enhancement of ecological surroundings is also important. A comprehensive TCD approach would improve the quality of life in many ways, serve as an attractor to development and significantly reduce GHG emissions.

Note that a substantial amount of new housing units in the suburbs will need to be subsidized for the reasons described above. Affordable and workforce housing is critical for every Bay Area city and county. Plan Bay Area has set forth affordable housing goals for the whole region, but so far every city is failing. Taking a comprehensive TCD approach would make such infill projects more relevant and attractive to existing residents.

One action cities such as Berkeley can take is to change zoning restrictions to eliminate R-1 zoning. Berkeley's General Plan institutionalizes R-1 low density housing:

"These areas are generally characterized by single-family homes. Appropriate uses for these areas include: residential, community services, schools, home occupations, recreational uses, and open space and institutional facilities. Building intensity will range from one to 10 dwelling units per net acre, not including secondary units, and the *population density will generally not exceed 22 persons per acre.*"[Emphasis added.]

The recent move to allow Accessory Dwelling Units is too restrictive to increase density to the extent needed on the land that is most available. It also preserves privilege, in failing to foster home ownership for additional residents.

Berkeley's R-1 zoning is visually correlated with the legacy of red-lining. Its perpetuation restricts growth in areas with the most open land that could support densification. There is quite a lot of aging housing stock in the Berkeley that needs significant renovation, including in R-1 zones. Under current policies, large houses in R-1 cannot be subdivided to allow for more occupants. As a result when modernized they grow larger and more luxurious, a sort of "deep gentrification." It's well documented, but rarely acknowledged, that such consumption drives GHG emission increases.

If the zoning was changed and subsidies provided, we could see small scale condo development like is happening in areas with higher density zoning, and much lower average household CO2e emissions because all the infill would be natural gas free as well as house more people. We could also reverse gentrification and truly become a city that prioritizes diversity. Increased density in R-1 areas would facilitate increased transit service and car sharing, and reduce congestion in shopping corridors. The fact is, many people actually spend little free time in their homes and gardens, preferring to recreate elsewhere, and even when self or contractually employed, preferring to go to work spaces and coffee shops with other people. Children in R-1 zones don't generally play in their neighborhoods, but are shuttled daily to many activities, increasing VMT. Densifying housing in R-1 areas could eventually prompt further zoning changes along the more major roads already served by public transit leading to infill services and commercial development there as well such as the two small and well used commercial districts in Kensington. The result could very well be both environmentally preferable and lead to an increase in our city-wide happiness quotient. Human happiness is correlated with low economic disparity. Our zoning ordinances should be reviewed to see how they amplify disparity and/or inhibit community happiness and act as a bias toward creating GHGs.

VII.3. Low Emissions Public Transportation Infrastructure

Public Transportation Recommendations

The Energy Commission would like to coordinate recommendations with the Transportation and Public Works Commissions for accelerating a reduction in fossil fuel vehicles in Berkeley. To begin the process, the Energy Commission makes the following recommendations.

1. Work with AC Transit to convert all public transit to EVs.
2. Work with AC Transit and major employers to expand existing bus service and add all manner of appropriately sized bus and shuttle services, including into the suburbs.
3. Work to create dedicated bus/shuttle-only lanes on all bridges, freeways and major streets.
4. Work to normalize ride sharing.
5. Work with MTC, regional transit providers and the state to augment subsidies such that public transit is affordable for all.
6. Lobby the state to regulate ride hailing services to reduce overall per capita VMT.

Discussion

MTC distributes enormous sums of money and wields huge power over regional transportation decisions but has not seriously addressed how the region can mitigate climate pollutants from transportation. As a start we need to press MTC to set clean transportation goals commensurate with the damage to our climate that dirty transportation has wrought and the urgency to make drastic emission cuts by 2030. The goal setting process must include a planning document showing the path to take, and policy commitment to achieve the goals.

The Bay Area's freeways are already some of the most crowded in the nation. As housing affordability has worsened, more people are commuting farther distances to their Bay Area jobs. According to MTC, time spent in weekly traffic in the Bay Area shot up 80% between 2010 and 2016. All this traffic is increasing transportation emissions, with no end in sight. Clearly there is a need for increased transportation options, and they need to be carbon free. To expand clean public transits as quickly as possible, light rail is not likely to play a large role. EV buses and shuttles can be built and routed in the time frame we need.

Given the number of tech workers (living all over the region, including the suburbs) who now take buses to their jobs, it is clear that old ideas about who will use bus transit is completely obsolete.

Like housing, transportation is an equity issue. All driving services, public or private, should be required to provide a living wage to drivers. Likewise, we cannot expand public transportation services without massive investment to assure affordability for all. This is a wealthy region that can afford such investments. Significant wealth generated

in this region is also sent to Sacramento. We need the state to assist in subsidizing the transition to clean, affordable public transit available to all.

On June 12, the Berkeley City Council also passed item 49 “Declaration of a Climate Emergency” which refers “to the Energy Commission to study and report back to Council on a path for Berkeley to become a “Carbon Sink” as quickly as possible, and to propose a deadline for Berkeley to achieve this goal.”

Carbon Sink Recommendations

1. Plant more trees.
2. Apply compost (and biochar where possible) to city parks, median strips and generally all planted areas.
3. Support use of low carbon construction materials both in municipal buildings and commercial and residential projects.
4. Support urban farming: for example through recently adopted urban farming policies and also planting suitable edible perennials in public spaces.
5. Support citywide programs, such as the Ecology Center’s farmers market program, that give all residents access to fresh, organic, regionally grown foods.

Discussion

Carbon sequestration is an essential component of comprehensive state, national and global efforts to meet climate change reduction goals. The October 9, 2018 UN IPCC report recommends that at least 1000 gigatons of CO₂ be removed from the atmosphere and sequestered by the end of the century. A wide range of strategies are being looked at to remove and sequester atmospheric carbon. The most promising strategies, biological sequestration, rely on natural processes, including afforestation and carbon farming. The California Air Resources Board is already providing Cap and Trade funds to support and expand these promising approaches to carbon sequestration.

Because of the density of habitation, Berkeley is unlikely to be able to be a carbon sink until annual emissions have been reduced by about 99%. Citywide CO₂ emissions totaled 640,000 metric tons in 2015. With roughly 6 square miles of space not covered with buildings and roads, only a very small fraction of these annual emissions could be offset with biological sequestration.¹⁴

¹⁴ Background for Carbon Sink section:

Carbon sequestering buildings: While using rapidly renewable materials such as wood, straw and bamboo can sequester carbon in buildings, the amount is quickly offset by the vastly greater energy intensity of metals, plastics and concrete required in taller buildings and

While not having significant climate benefits, carbon sequestering strategies such as afforestation and application of biochar to the soil can have health and resilience benefits for the city residents improving air quality and local sources of food.

seismically active zones. In Berkeley, the effects of low carbon footprint construction can at best lower the carbon footprint of an individual building, which is important. However, it cannot provide a means to offset carbon emissions in the city generally.

Biological sequestration in soil: It is practical to sequester carbon from the atmosphere in two ways, changing farming practices to capture more carbon in soils, and reversing deforestation. (It is also possible to capture CO₂ from the air but because of the low concentration of CO₂ in the air, the cost is prohibitive. Sequestering the captured CO₂ is also expensive, , requiring either mineralization or pressurization in a natural cavern (think Aliso Canyon) which is not present in Berkeley.)

Berkeley is 10.5 square miles. If 40% is impervious surfaces, then approximately 6.3 square miles would be available for carbon sequestration.

(https://en.wikipedia.org/wiki/Impervious_surface#Total_impervious_area) If the City and its residents were to implement ambitious carbon building land management practices, the land could optimistically sequester 2 metric tons of CO₂ per acre annually or about 8000 metric tons of CO₂. (Soil Carbon Restoration: Can Biology do the Job? by Jack Kittredge, policy director, NOFA/Mass www.nofamass.org August 14, 2015) This compares to annual emissions of approximately 640,000 metric tons.

Purchasing carbon offsets: Carbon offsets cost between \$5.50 and \$29 per ton of CO₂. Taking the average, it would cost \$1.1 mill to offset 640,000 metric tons or about \$90 per resident. (<https://www.whatitcosts.com/carbon-offsets-cost-prices/>) However, purchasing carbon offsets should be discouraged since it transfers money away from Berkeley without addressing our local objective of becoming fossil free.

