

REVISED AGENDA
(ADDED CONTINUED ITEM FROM JULY 23, 2020)



BERKELEY CITY COUNCIL MEETING

Tuesday, July 28, 2020
6:00 PM

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/83653444287>. 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: **836 5344 4287**. 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:

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

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

Public Comment on Non-Agenda Matters: *Persons will be selected to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

Consent Calendar

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

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

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

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

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

Consent Calendar

- 1. Adoption of an Ordinance Amending Berkeley Municipal Code Chapter 16.10 (Excavations for Video and Telecommunications Systems)**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,726-N.S. amending Berkeley Municipal Code Chapter 16.10 (Excavations for Video and Telecommunications Systems).
First Reading Vote: Ayes – Kesarwani, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – Davila; Absent – None.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
- 2. City Consent to Declaration of Easements Between 2009 Addison and 2015 Addison**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,728-N.S. authorizing the City Manager to give City consent to an amended declaration of easements for safety and access between 2015 Addison Street, which is owned by the Berkeley Repertory Theater, and 2009 Addison Street, owned by the Joint Powers Financing Authority, leased by the City of Berkeley, and subleased to the Berkeley Repertory Theater.
First Reading Vote: All Ayes.
Financial Implications: None
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 3. Resolution Reviewing and Ratifying the Proclamation of Emergency Due to the Spread of a Severe Acute Respiratory Illness Caused by a Novel (New) Coronavirus (COVID-19)**
From: City Manager
Recommendation: Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020 and June 16, 2020.
Financial Implications: To be determined
Contact: Farimah Brown, City Attorney, (510) 981-6950
- 4. Minutes for Approval**
From: City Manager
Recommendation: Approve the minutes for the council meetings of June 2, 2020 (closed and regular), June 9, 2020 (special and special), June 16, 2020 (special, special and regular), June 22, 2020 (closed), June 23, 2020 (special), June 24, 2020 (closed) and June 30, 2020 (closed and regular).
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900

Consent Calendar

- 5. Establish 2021 City Council Meeting Schedule**
From: City Manager
Recommendation: Adopt a Resolution establishing the City Council regular meeting schedule for 2021, with starting times of 6:00 p.m.
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 6. Grant to Animal Services from the Avast Foundation**
From: City Manager
Recommendation: Adopt a Resolution accepting a grant for Animal Services from the Avast Foundation in the amount of \$10,000.
Financial Implications: Animal Services Donation Fund - \$10,000 (grant)
Contact: Erin Steffen, City Manager's Office, (510) 981-7000
- 7. Grant from the California Arts Council**
From: City Manager
Recommendation: Adopt a Resolution accepting a \$10,500 grant from the California Arts Council for the Berkeley Civic Arts Program to partner with the Berkeley Unified School District (BUSD) and four community arts providers to provide arts programming for BUSD summer sessions.
Financial Implications: See report
Contact: Jordan Klein, Economic Development, (510) 981-7530
- 8. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on July 28, 2020**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: Various Funds - \$8,645,000
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 9. Contract No. 32000094 Amendment: Youth Spirit Artworks to Provide Transition Age Youth (TAY) Case Management and Linkage Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with vendor Youth Spirit Artworks (YSA) to provide Transition Age Youth (TAY) case management and linkage services through June 30, 2021 in an amount not to exceed \$317,000. This will extend the existing contract by one year and add in \$100,000.
Financial Implications: See report
Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400

Consent Calendar

10. Revenue Grant Agreement: Federal COVID19 Funding Support from the Centers for Disease Control and Prevention for the Epidemiology and Laboratory Capacity CARES Grant

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to submit grant agreements to Heluna Health, to accept this COVID19 response grant, and to execute any resultant revenue agreements and amendments; which enables us to conduct and implement mitigation strategies in response to COVID19 for the following revenue agreement: Public Health Emergency Preparedness's COVID-19 Response Program in the projected allocation of \$196,965 for FY 2021.

Financial Implications: See report

Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400

11. Operating Funding for Community Housing Development Organizations

From: City Manager

Recommendation: Adopt a Resolution: 1. Approving a multiyear operating funding contract for Resources for Community Development (RCD) and Satellite Affordable Housing Associates (SAHA), starting FY21 and ending FY25; 2. Approving funding in the amount of \$50,000 to RCD and \$50,000 to SAHA for FY21; 3. Authorizing City Manager or her designee to determine the amount of funding to be awarded to each organization in subsequent years, FY22 to FY25, based on the amount of the City's annual allocation of Community Housing Development Organization (CHDO) HOME funds and availability of General Fund match; and 4. Authorizing the City Manager to execute all original or amended documents or agreements to effectuate this action.

Financial Implications: See report

Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400

12. California Mental Health Services Authority (CalMHSA) Participation Agreement for the Mental Health Services Act, Innovations, Help@Hand Project

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an agreement with the California Mental Health Services Authority (CalMHSA) to enable the City of Berkeley to participate in the Mental Health Services Act (MHSA) Innovations (INN) Help@Hand multi-county collaborative project, and to extend the project through June 30, 2024.

Financial Implications: See report.

Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400

Consent Calendar

- 13. Contract Amendments: Contract No. 42000079 with Community Services Block Grant (CSBG) for Calendar Year 2020-21 and Contract No. 32000238 with Downtown Berkeley Association (DBA) for Double Helping Hand Program**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to:
1. Execute an amendment to Contract No. 42000079 with the State of California's Department of Community Services and Development (CSD) for Community Services Block Grant (CSBG) Contract Number 20F-3001 to increase the amount to \$304,355 and extend the contract period to May 31, 2021, and to execute any resultant agreements and amendments to provide services to low-income people for the period January 1, 2020 to May 31, 2021; and
 2. Execute an amendment to Contract No. 32000238 with the Downtown Berkeley Association (DBA) for the Double Helping Hand program for meals for the unhoused population by providing an additional \$37,492 in CSBG funding for a total amount not to exceed \$87,492.
- Financial Implications:** See report
Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400
- 14. Contract No. 7167J Amendment: Superior, LLC for Upgrade and Support Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 7167J with Superior, LLC for development of functionalities, installation and preparation for the software upgrade of the City's FUND\$ system on the AS400 platform, increasing the contract amount by \$90,000 for a total not-to-exceed amount of \$3,565,765 from July 1, 2006 through June 30, 2021.
Financial Implications: Various Funds - \$90,000
Contact: Savita Chaudhary, Information Technology, (510) 981-6500
- 15. Contract No. 31900122-1 Amendment: Rolling Orange, Inc. for Website Redesign, Web Content Management System (CMS), and Support**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 31900122-1 with Rolling Orange, Inc. for the additional web application development, for an amount not-to-exceed \$72,000 and a total contract value not-to-exceed \$559,300 from March 1, 2019 to June 30, 2022.
Financial Implications: IT Cost Allocation Fund -\$72,000
Contact: Savita Chaudhary, Information Technology, (510) 981-6500

Consent Calendar

16. **Contract No. 10549A Amendment: Tyler Technologies Enterprise Resource Planning System for software licensing, implementation and maintenance services**

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract amendment with Tyler Technologies for software licensing, enhanced implementation services and maintenance services for the online Enterprise Resource Planning (ERP) system for the amount not to exceed \$650,000 and a total contract value not to exceed \$3,952,663 from April 1, 2017 to June 30, 2023.

Financial Implications: FUND\$ Replacement Fund - \$650,000

Contact: Savita Chaudhary, Information Technology, (510) 981-6500

17. **Contract No. 10515A Amendment: Tyler Technologies, Inc. for New World Public Safety Computer Aided Dispatch (CAD 911) Software**

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 10515A with Tyler Technologies, Inc. for New World's Computer Aided Dispatch (CAD) for Police and Fire, Mobile messaging and field reporting modules, for license renewal, software support and maintenance services, increasing the amount by \$367,500, for a total not to exceed \$1,555,230 for the period March 30, 2017 to June 30, 2021.

Financial Implications: General Fund - \$367,500

Contact: Savita Chaudhary, Information Technology, (510) 981-6500

18. **Contract: ePlus for Cohesity Backup Solution and Hosted Cloud Storage**

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to enter into a Contract with ePlus for the Cohesity backup solution and hosted cloud storage, for a total contract amount not to exceed \$608,400 for the term September 1, 2020 through August 31, 2025.

Financial Implications: IT Cost Allocation Fund - \$608,400

Contact: Savita Chaudhary, Information Technology, (510) 981-6500

19. **Contract: Digital Hands for Cybersecurity Event Monitoring and Security Information and Event Management (SIEM)**

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to enter into a contract and subsequent amendments with Digital Hands, for Cybersecurity Event Monitoring and Security Information and Event Management (SIEM), for a total not to exceed amount of \$405,000, from September 1, 2020 to August 31, 2023.

Financial Implications: IT Cost Allocation Fund - \$405,000

Contact: Savita Chaudhary, Information Technology, (510) 981-6500

Consent Calendar

20. MOU with “A Safe Place” Domestic Violence Shelter

From: City Manager

Recommendation: Adopt a Resolution approving the Memorandum of Understanding (MOU) entitled “Memorandum of Understanding with A Safe Place, a domestic violence shelter provider, and authorize the Chief of Police to enter into this agreement and any amendments.

Financial Implications: See report

Contact: Andrew Greenwood, Police, (510) 981-5900

21. MOU with California Department of Justice to Accept Grant for Submission and Testing of Sexual Assault Evidence

From: City Manager

Recommendation: Adopt a Resolution approving the Memorandum of Understanding (MOU) entitled “Memorandum of Understanding with the California Department of Justice.” The Berkeley Police Department has been selected to receive a \$312,284 grant for testing untested Sexual Assault Evidence. Approving this MOU will allow reimbursement of testing expenses and related costs covered by the grant. Authorize the Chief of Police to enter into this agreement and any amendments.

Financial Implications: See report

Contact: Andrew Greenwood, Police, (510) 981-5900

22. Lease Agreement: 1001 University Avenue with The Berkeley Food Network

From: City Manager

Recommendation: Adopt first reading of an Ordinance authorizing the City Manager to execute a retroactive lease agreement with The Berkeley Food Network (BFN) to use the City property at 1001 University Avenue for a three-year lease term with an option to extend for two additional one-year terms.

Financial Implications: See report

Contact: Liam Garland, Public Works, (510) 981-6300

23. Grant Applications: Highway Safety Improvement Program Cycle 10

From: City Manager

Recommendation: Adopt two Resolutions authorizing the City Manager to submit grant applications to the California Highway Safety Improvement Program (HSIP) Cycle 10 for the following projects: Protected Left-Turn Signals at multiple signalized intersections for up to \$4 million and Sacramento Street Pedestrian Crossings for up to \$250,000.

Financial Implications: See Report

Contact: Liam Garland, Public Works, (510) 981-6300

Consent Calendar

- 24. Contract 9274A Amendment: Ascentis Corporation 9274A for Biometric Time Card Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9730A with Ascentis Corporation for biometric time card services to extend the contract term by one year to June 30, 2022, and increase the contract amount by \$25,000 for a total contract amount not to exceed \$75,000.
Financial Implications: Various Funds - \$25,000
Contact: Liam Garland, Public Works, (510) 981-6300
- 25. Contract: McNabb Construction Inc. for the Codornices Creek Restoration at Kains Avenue Project**
From: City Manager
Recommendation: Adopt a Resolution approving plans and specifications for the Codornices Creek Restoration Kains Avenue Project, Specification No. 20-11368-C; accepting the bid of McNabb Construction Inc. as the lowest responsive and responsible bidder; and authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications in an amount not to exceed \$550,127.
Financial Implications: Various Funds - \$550,127
Contact: Liam Garland, Public Works, (510) 981-6300
- 26. Referral Response: An Action Plan for Greening the City of Berkeley Fleet of Vehicles**
From: City Manager
Recommendation: Receive the City of Berkeley Municipal Fleet Electrification Assessment, a plan to accelerate Berkeley's municipal fleet electrification by 2030, and refer to the City Manager to pursue grant and rebate opportunities through East Bay Community Energy and other entities to support its recommendations for transitioning fleet vehicles away from fossil fuels to electric vehicles, including charging infrastructure and associated distributed energy resource options.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300

Consent Calendar

27. **Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12** *(Reviewed by the Agenda & Rules Committee) (Item contains supplemental material)*
From: Fair Campaign Practices Commission
Recommendation: Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).
(On June 29, 2020, the Agenda and Rules Committee made a Positive Recommendation to the City Council that the item be referred to the Agenda & Rules Committee to be considered with other related referrals from the Fair Campaign Practices Commission.)
Financial Implications: None
Contact: Sam Harvey, Commission Secretary, (510) 981-6950

Council Consent Items

28. **Opposition to Nuclear Warfare**
From: Mayor Arreguin (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Wengraf (Co-Sponsor), Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt a Resolution marking the 75th anniversary of the atomic bombings of Hiroshima and Nagasaki with a call to prevent nuclear war.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, (510) 981-7100
29. **Support Berkeley Humane Society's Nonprofit Bark (& Meow) for the Around the Block Adoption Event and Family Street Fair in West Berkeley on August 29, 2020, organized by Berkeley Humane Society: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**
From: Councilmember Davila (Author), Councilmember Bartlett (Co-Sponsor)
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$250 from Councilmember Cheryl Davila, to Berkeley Humane Society's Nonprofit Bark (& Meow) for the Around the Block Adoption Event and Family Street Fair in West Berkeley on August 29, 2020, organized by Berkeley Humane Society, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute. (COVID-19 Update: If it is not safe to hold the one-day event a month-long virtual adopt-a-thon will be held instead to find homes for over 100 shelter pets).
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

Council Consent Calendar

- 30. Providing our Unhoused Community in the City of Berkeley with Menstrual Products** *(Reviewed by the Health, Life Enrichment, Equity & Community Committee)*

From: Councilmember Davila (Author)

Recommendation:

1. Adopt a Resolution to create an allocation of the budget towards annual purchasing of menstrual products and dispensers that will be distributed in three ways: A. Regularly scheduled replenishment of dispensers across public restrooms; B. Provide supplies to the City supported shelters, mental health offices, shower programs, and navigation centers; C. Homeless Outreach to include distribution to encampments and RV dwellers.
2. Resolution will allocate \$10,000 of the budget for the first year, and \$8,000 for every consecutive year.
3. Direct the City Manager to use existing homeless services funding to develop and deploy a program to provide a broad spectrum of menstrual products, including but not limited to, feminine hygiene, pads, tampons, underwear, and other related products, both through the City's outreach direct services, as well as through the community based homeless services providers. Additionally, require some elements of this program be deployed immediately, with a full program deployment within six months.

Financial Implications: See report

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

- 31. Resolution in Support of 1921 Walnut Street**

From: Councilmember Harrison (Author), Councilmember Hahn (Co-Sponsor)

Recommendation: Adopt A Resolution In Support of The Preservation of 1921 Walnut Street, Currently Under The Threat of Being Purchased and Demolished by the University of California at Berkeley.

Financial Implications: None

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

- 32. Adopt a Resolution Implementing Core Police Accountability Board and Director of Police Accountability functions by July 1, 2021**

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

Recommendation: 1. Adopt a Resolution, contingent upon voter approval of the Charter Amendment contained in Resolution No. 69,363-N.S., implementing the following core Police Accountability Board and Director of Police Accountability functions and policy changes by July 1, 2021: a. Establish and convene the Police Accountability Board with all investigatory, policy and other authorities, and; b. To assist in an orderly transition between the Police Review Commission and the Police Accountability Board established by this Article, Police Review Commission staff shall serve as interim Police Accountability Board staff until the City hires a Director of Police Accountability.

Financial Implications: Staff time

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

Council Consent Calendar

- 33. Resolution in Support of AB 310 to Convert The California Infrastructure Bank (IBank) to a Public Bank**
From: Councilmember Harrison (Author), Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt A Resolution In Support of AB 310 converting the California Infrastructure Bank (IBank) to a depository institution serving as a public bank for the State of California, its counties, municipalities and regional authorities.
Financial Implications: None
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 34. Oppose AB 2167 & SB 292**
From: Councilmember Wengraf (Author), Councilmember Hahn (Co-Sponsor)
Recommendation: Approve a letter opposing AB 2167 (Daly & Cooley) Insurance Action Market Plan and SB 292 (Rubio & Jones) Wildfire Risk Modeling and Mitigation, and send to Assembly Members Tom Daly and Ken Cooley and Senators Susan Rubio and Brian Jones, with copies to Senator Nancy Skinner, Assemblymember Buffy Wicks, and Governor Gavin Newsom.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
- 35. Support for SB 288: Sustainable Transportation COVID-19 Recovery Act**
From: Councilmember Robinson (Author), Councilmember Bartlett (Co-Sponsor)
Recommendation: Send a letter to Senator Scott Wiener, Senator Nancy Skinner, and Assemblymember Buffy Wicks in support of Senate Bill 288, which would exempt specified transportation projects from environmental review under CEQA, including bus rapid transit projects, pedestrian and bicycle facilities, and zero-emission charging stations
Financial Implications: None
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170
- 36. Support for SB 902: Authorizing Cities to Rezone for Density**
From: Councilmember Robinson (Author)
Recommendation: Send a letter to Senator Scott Wiener, Senator Nancy Skinner, and Assemblymember Buffy Wicks in support of Senate Bill 902, which would authorize local governments to upzone urban infill sites and parcels in transit- or jobs-rich areas for up to 10 units of residential density.
Financial Implications: None
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

Council Consent Calendar

- 37. Support for AB 2542: The California Racial Justice Act**
From: Councilmember Robinson (Author) , Councilmember Bartlett (Co-Sponsor) , Councilmember Hahn (Co-Sponsor)
Recommendation: Send a letter to Assemblymember Ash Kalra, Senator Nancy Skinner, and Assemblymember Buffy Wicks in support of Assembly Bill 2542, which would prohibit the state from seeking or obtaining a criminal conviction, or from imposing a sentence, based on race, ethnicity, or national origin.
Financial Implications: None
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170
- 38. Support for AB 2345 (CA Density Bonus)**
From: Councilmember Droste (Author)
Recommendation: That the Berkeley City Council send a letter supporting AB 2345, authored by Assemblymember Lorena Gonzalez and Assemblymember David Chiu which will help address California’s housing crisis by expanding the state density bonus for housing developers who commit to building additional affordable units.
Financial Implications: None
Contact: Lori Droste, Councilmember, District 8, (510) 981-7180

Action Calendar

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

The Presiding Officer will request that persons wishing to speak 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.

Action Calendar – Public Hearings

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

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

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

Action Calendar – Public Hearings

**39. Amendment of Urgency Ordinance for Outdoor Commerce on Private Property
From: City Manager**

Recommendation: Conduct a public hearing and, upon conclusion, adopt amendments to the Urgency Ordinance (Number 7,725-N.S.) amending Berkeley's Zoning Ordinance, Chapter 23E.18 and Section 23B.20.045, to allow additional categories of commerce and establish additional operating criteria for outdoor activities on private property.

Financial Implications: See report

Contact: Jordan Klein, Planning and Development, (510) 981-7400

40. General Plan Redesignation and Rezone of The Rose Garden Inn at 2740 Telegraph Avenue (APN 054-1716-002-00), 2744 Telegraph Avenue (APN 054-1716-003-00), and 2348 Ward Street (APN 054-1716-031-00)

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion:

1. Adopt a Resolution amending the General Plan land use designations of portions of parcels that comprise The Rose Garden Inn from Low Medium Density Residential to Avenue Commercial;
2. Adopt first reading of an Ordinance amending the Zoning Map for the portion of parcels that comprise the Rose Garden Inn from Restricted Two-Family Residential District (R-2) to General Commercial District (C-1); and
3. Certify that the reclassification of General Plan land use designations and rezoning are categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Classes 1, 3, 5, and 31.

Financial Implications: See report

Contact: Jordan Klein, Planning and Development, (510) 981-7400

Action Calendar – New Business

41. Placing a Measure on the November 3, 2020 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)

From: Rent Stabilization Board

Recommendation:

1. Adopt a Resolution placing the proposed amendments to the Rent Stabilization and Eviction for Good Cause Ordinance on the ballot of 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: Matt Brown, Rent Stabilization Board, (510) 981-7368

Council Action Items

- 42. Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals**
From: Councilmember Harrison (Author)
Recommendation: Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 43. Urgency Ordinance: Updates to the COVID-19 Emergency Response Ordinance; Resolution: Request UC Berkeley Voluntarily Comply with Local Ordinances Restricting Evictions, Delaying Rent Payments, and Empowering Tenants to Terminate their Leases Without Penalty**
From: Councilmember Davila (Author), Councilmember Bartlett (Co-Sponsor)
Recommendation:
1. Adopt an urgency ordinance amending Berkeley Municipal Code 13.110, Title 13, "The COVID-19 Emergency Response Ordinance," to enhance emergency tenant protections consistent with recently adopted Alameda County laws, action in other jurisdictions, and consultation with community stakeholders.
2. Adopt a resolution requesting the University of California at Berkeley voluntarily comply with local eviction moratoriums, rent suspension ordinances, and ordinances empowering tenants to terminate their leases without penalty.
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

Action Calendar – Continued Business

A. Changes to the Berkeley Municipal Code and City of Berkeley Policies with Respect to Local Emergency Declarations and First Amendment Curfews

(Continued from July 23, 2020)

From: Councilmember Hahn (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Harrison (Co-Sponsor), Mayor Arreguin (Co-Sponsor)

Recommendation:

1. Direct the City Manager to return to the City Council for adoption amendments to the Berkeley Municipal Code and/or policies to approve that clarify and codify the following with respect to the declaration of a Local Emergency:
 - a. A Local Emergency can only be declared by the Director of Emergency Services if a regular or special meeting and session of the City Council cannot be called due to physical impossibility of holding a meeting, because a quorum cannot be established, or because the urgency of the Local Emergency is such that waiting 24 hours for the City Council to convene a session and/or Special Meeting would endanger the community;
 - b. Should the Director declare a Local Emergency without action of the City Council (due to one of the reasons stated at (a), above), Council ratification of such action occurs at the first possible opportunity, even if it requires calling a Special Meeting and/or session of the Council; and
 - c. The applicable statutory and legal standards (Federal, State and Local) for calling a Local Emergency shall be presented to the City Council when seeking declaration or ratification of a Local Emergency, along with facts to support meeting those standards, so that the City Council, likely acting under rushed and exigent circumstances, is able to make a carefully considered and fact-based determination that declaration of such Local Emergency conforms with the legal standards and is supported by facts.
2. Direct the City Manager to return to the City Council for adoption amendments to the Berkeley Municipal Code and/or policies to approve that clarify and codify policies, terms and procedures for the order, scope, terms, duration, and all other elements and conditions of curfews called in response to, or likely to have the effect of limiting or banning, planned, expected or reasonably foreseeable first amendment activity, including rallies, marches, demonstrations and assemblies of all kinds (“First Amendment Curfews”), as enumerated (1-8) under the “Background” section of this item, below.
3. Advise the City Manager and/or Director of Emergency Services that approval of this item represents the will and direction of the City Council with respect to declarations of Local Emergencies and imposition of First Amendment Curfews, and should the occasion to declare a Local Emergency or impose a First Amendment curfew arise prior to formal Council adoption of the requested amendments and policies, the City Manager and/or Director of Emergency Services shall, to the greatest extent possible under existing law, strive to encompass actionable elements, and meet spirit, of this item.

Financial Implications: See report

Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

Information Reports

- 44. **Voluntary Time Off Program For FY 2021**
From: City Manager
Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000
- 45. **Annual Housing Pipeline Report**
From: City Manager
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 46. **LPC NOD: 1120 Second Street/#LMSAP2019-0007**
From: City Manager
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 47. **LPC NOD: 1120 Second Street/#LMSAP2019-0008**
From: City Manager
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 48. **LPC NOD: 41 San Diego Road/#LMSAP2020-0002**
From: City Manager
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Public Comment – Items Not Listed on the Agenda

Adjournment

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

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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.

I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on July 24, 2020.

A handwritten signature in black ink, appearing to read "Mark Numainville".

Mark Numainville, City Clerk

Communications

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

Item #41: Placing a Measure on the November 3, 2020 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)

1. Sara Hartley
2. Greg San Martin
3. Toni Mester
4. Erica Cleary
5. Rena Meyer
6. William Rosen
7. Labi Rabiou
8. Susan Payne
9. Colette Ford
10. Marilyn Garcia
11. Jelani Nelson
12. Matt Heafey
13. Joann Sullivan
14. Yoni Mayeri
15. Ana Perches Perez
16. David Hermele

Regenerative Economy to Address the Climate Emergency

17. Ingrid Good

18. Marcelo Garzo Montalvo

Covid-19 Related and/or Masks

19. Nina Lyons

20. Isaac Pastor-Chermak

21. Howard Goldberg

22. City of Berkeley Covid-19 Information

23. Vivian Warkentin

24. Joel Libove

25. Celeste Kidd

26. Anne Herrick (2)

27. Genevieve Nonet

28. Thomas Lord (2)

29. Russbumper (2)

30. David Lerman (5)

Telcom/5G/Cell Antennas

31. Vivian Warkentin

32. Mark Weiman

33. KO

34. Isis Feral

35. Blair Beekman

36. Pollock & James, Law Firm

Harriet Tubman Terrace

37. Darinxoso Oyamasela (4)

38. Ashley Rementer, Property Manager

Graffiti

39. Elana Nafalin-Kelman (2)

40. Customer Service, City of Berkeley (2)

Homeowners Assessment Complaint – Property Taxes

41. Finance Department, City of Berkeley

Lorin and Rosewood Support

42. Landon Williams

Cedar Properties

43. Laiming Huang

44. Tony Benado, City Clerk's Office

Civic Arts Grants

45. Sharon Dolan, Freight & Salvage

Smoking Violation

46. Carol Denney

Urban Dwellers Fleeing

47. Barbara Gilbert

Parking Enforcement

48. Suneel Jain

Small Landlord Needs Help

49. Grace Chi

Tilting Power Pole

50. Gar Smith

Pay Equity – City of Berkeley Employees

51. Jeff Apkarian, Union Representative

SB 82 Grant/OAC Priorities

52. Carole Marasovic

Supplemental Communications and Reports

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

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



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EMERGENCY ITEM AGENDA MATERIAL

Meeting Date: June 9, 2020
Item Description: Emergency Declaration and First Amendment Curfew Criteria
Submitted By: Vice Mayor Sophie Hahn (Author), Councilmembers Ben Bartlett and Kate Harrison, and Mayor Jesse Arreguin (Co-Sponsors)

This item is submitted as an Immediate Action Item pursuant to Section III.D.4.b of the Berkeley Council Rules of Procedure.

In light of ongoing demonstrations throughout California and across the Bay Area in response to illegal police killings of Black individuals, there is a need for immediate action to establish policy on the order, scope, terms, duration and other conditions and elements of curfews in the City of Berkeley.

The Council must immediately take action because demonstrations have occurred in recent days and there is evidence of planning for [additional demonstrations](#) similar to the ones that prompted the recent curfew in the City of Berkeley. Such demonstrations, including potentially challenging situations in which bad actors infiltrate groups of peaceful protestors, can place outsized demands on police and others responsible for ensuring public order and safety. In addition, the City must be prepared to protect the constitutional rights of individuals who wish to peacefully assemble and protest injustices in Berkeley and beyond.

Sadly, we know that unjust and discriminatory killings of Black individuals will continue. According to a Washington Post [database](#) tracking police killings, more than 1000 people have been shot and killed by the police in the past year, with Black Americans killed at more than twice the rate of white Americans. Shocking incidents happen all the time. In the past few days, we have had a slaying in Vallejo and a shooting in Oakland of individuals of color. Because such events occur with sad frequency, protests in opposition could arise at any time as well, potentially prompting the City to seek another declaration of Local Emergency, and curfew. Therefore, new policies must be established immediately.

The Agenda for the June 9 City Council Special Meeting was published on the afternoon of June 2, prior to the meeting at which the Council approved an emergency resolution from the City Manager imposing a curfew in response to scheduled demonstrations. Therefore, the need to take immediate action to establish a policy on curfews came to the attention of the Council after the publishing of the Agenda.



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ACTION CALENDAR
July 28, 2020
(Continued from July 23, 2020)

To: Honorable Members of the City Council
From: Vice Mayor Sophie Hahn (Author), Councilmembers Ben Bartlett and Kate Harrison, and Mayor Jesse Arreguin (Co-Sponsors)
Subject: Changes to the Berkeley Municipal Code and City of Berkeley Policies with Respect to Local Emergency Declarations and First Amendment Curfews

RECOMMENDATION

1. Direct the City Manager to return to the City Council for adoption amendments to the Berkeley Municipal Code and/or policies to approve that clarify and codify the following with respect to the declaration of a Local Emergency:
 - a. A Local Emergency can only be declared by the Director of Emergency Services if a regular or special meeting and session of the City Council cannot be called due to physical impossibility of holding a meeting, because a quorum cannot be established, or because the urgency of the Local Emergency is such that waiting 24 hours for the City Council to convene a session and/or Special Meeting would endanger the community;
 - b. Should the Director declare a Local Emergency without action of the City Council (due to one of the reasons stated at (a), above), Council ratification of such action occurs at the first possible opportunity, even if it requires calling a Special Meeting and/or session of the Council; and
 - c. The applicable statutory and legal standards (Federal, State and Local) for calling a Local Emergency shall be presented to the City Council when seeking declaration or ratification of a Local Emergency, along with facts to support meeting those standards, so that the City Council, likely acting under rushed and exigent circumstances, is able to make a carefully considered and fact-based determination that declaration of such Local Emergency conforms with the legal standards and is supported by facts.
2. Direct the City Manager to return to the City Council for adoption amendments to the Berkeley Municipal Code and/or policies to approve that clarify and codify policies, terms and procedures for the order, scope, terms, duration, and all other elements and conditions of curfews called in response to, or likely to have the effect of limiting or banning, planned, expected or reasonably foreseeable first amendment activity,

including rallies, marches, demonstrations and assemblies of all kinds (“First Amendment Curfews”),as enumerated (1-8) under the “Background” section of this item, below.

3. Advise the City Manager and/or Director of Emergency Services that approval of this item represents the will and direction of the City Council with respect to declarations of Local Emergencies and imposition of First Amendment Curfews, and should the occasion to declare a Local Emergency or impose a First Amendment curfew arise prior to formal Council adoption of the requested amendments and policies, the City Manager and/or Director of Emergency Services shall, to the greatest extent possible under existing law, strive to encompass actionable elements, and meet spirit, of this item.

BACKGROUND:

“Those who won our . . . revolution were not cowards. . . They did not exalt order at the cost of liberty. . . . Only an emergency can justify repression [of speech]. . . . The fact that speech is likely to result in some violence or in destruction of property is not enough to justify its suppression. There must be the probability of serious injury to the State. Among free men, the deterrents ordinarily to be applied to prevent crime are education and punishment for violations of the law, not abridgment of the rights of free speech and assembly.” US Supreme Court Justice Brandeis, *Whitney v. California*, 274 U.S. 357, 377–78 (1927) (Brandeis, J., concurring)

State law and the Berkeley Municipal Code both include provisions for the calling of a Local Emergency. Once a Local Emergency has been called, the power to impose curfews is in the hands of the Director of Emergency Services (“Director”), with ratification by the City Council.

This item seeks to achieve two goals:

First, the Berkeley Municipal Code only allows the Director to proclaim a Local Emergency if the City Council is not “in session.” If the City Council is “in session,” the City Council must call the Local Emergency. It also requires the City Council to ratify a Local Emergency called by the Director within seven days, or the proclamation has no further effect.

2.88.040 Director of Emergency Services--Powers and duties.

- A. The Director of Emergency Services is empowered:

1. If, in the Director’s judgment, the conditions will require the combined forces of other political subdivisions to combat, to request the City Council to proclaim the existence of a "Local Emergency" if the City Council is in session, or to issue such proclamation if the City Council is not in session. Whenever a Local Emergency is proclaimed by the Director, the City Council shall take action ratifying said proclamation within seven days of issuance or the proclamation shall have no further force and effect;

This item directs the City Manager to return to the City Council amendments to the Berkeley Municipal Code and/or a policy to adopt that emphasize and clarify that the City Council is the body empowered to call Local Emergencies, and the Director of Emergency Services must present a proclamation of Local Emergency either at a Regular meeting of the City Council, or call for a Council session and/or Special Meeting to be immediately convened, and the Director may only call a Local Emergency himself in circumstances where, despite the requirement to convene the City Council, it is either (1) extremely difficult or impossible for the City Council to meet, such as a major wildfire or earthquake that renders both physical and virtual meetings physically difficult or impossible, or (2) after convening a session and/or Special Meeting, or at a Regular Meeting of the Council, a quorum cannot be established, or (3) if the emergency is so extreme and dangers to the community so grave and imminent that waiting for a Regular or Special Meeting or session of the City Council to be convened would endanger the community.

Further, the item requests clarification that City Council ratification of a declaration of Local Emergency by the Director should take place as quickly as possible, at the first possible occasion that a Special City Council meeting or session can be convened.

Second, once a Local Emergency has been declared, the Director of Emergency Services has the following powers under BMC Section 2.88.04(A)(6)(a):

To make and issue lawful rules and regulations on matters reasonably related to the protection of life, public health or safety, or improved property as affected by such emergencies; provided, however, such rules and regulations must be confirmed at the earliest practicable time by the City Council, shall be in writing, and shall be given widespread publicity and notice

It is according to this power that a curfew can be imposed by the Director.

A second set of BMC amendments and policies will address imposition of certain types of curfews. This item directs the City Manager to return to the City Council for adoption amendments to the Berkeley Municipal Code and/or policies to approve that clarify and codify new procedures and requirements applicable curfews which may be called in response to, or are likely to have the effect of limiting or banning, planned, expected or reasonably foreseeable first amendment activity, including rallies, marches, demonstrations and assemblies of all kinds, hereinafter referred to as "First Amendment Curfews".

Establishment of all curfews impacts constitutional rights, most notably the 5th Amendment protection against government deprivation of "life, liberty, or property, without due process of law." By limiting movement of individuals during the period of the curfew in the locations where a curfew is imposed, liberty is impacted. Thus, imposition of any curfew and must meet a high standard.

Under any curfew, first amendment activity - free speech - is also curtailed, by implication. If residents are confined to their homes some or all of the day and night due to safety concerns

and dangerous conditions after a disaster, they cannot assemble publicly for any purpose, and their first amendment rights have been curtailed. But there is a difference between a curfew that is called in the wake of a major disaster such as an earthquake or fire, to protect people from dangerous conditions, and a curfew that is called specifically in response to, or anticipation of, first amendment activity. This item asks for amendments to the Berkeley Municipal Code and/or the drafting of new policies that establish higher standards and more robust processes and policies with respect to potential First Amendment Curfews.

After an earthquake, fire, landslide or other major disaster, if a curfew is imposed to avoid the possibility that individuals out at night, for example, will be hurt by falling debris, encounter live electrical wires, or fall into sinkholes, the nexus between potential harm to community members and the calling of a curfew is clear and relatively uncontroversial. The fact that the curfew also precludes a rally, protest, funeral or other assembly is incidental.

But when a curfew is issued primarily to limit or preclude assemblies, free speech and the right to “peaceably assemble” is the direct target of the curfew, and higher standards must apply. The City Council should be the body to review the statutory and legal standards for imposition of a First Amendment Curfew, to review the facts, and to evaluate whether the intrusion on First Amendment rights is necessary to address a compelling interest, narrowly tailored to achieving that purpose, and uses the least restrictive means to achieve the purpose.

Changes to the BMC and/or new policies relating to First Amendment Curfews should include, at a minimum, the following:

1. An assertion or codification that the First Amendment shall not be infringed upon by the City of Berkeley without establishing that the proposed intrusion on First Amendment rights is necessary to address a compelling interest, narrowly tailored to achieving that purpose, and uses the least restrictive means to achieve the purpose
2. Imposition of First Amendment Curfews, if any, shall be by action of the City Council at a Regular or Special meeting, except in circumstances where it is extremely difficult or impossible for the City Council to meet, such as a major wildfire or earthquake that renders both physical and virtual meetings physically difficult or impossible, or if a quorum of the City Council cannot be established, in which case the Director of Emergency Services may impose a First Amendment Curfew that meets the requirements of all applicable Federal, State and local laws, legal standards, and policies. A curfew imposed by the Director must be ratified by the City Council within the following 24 hours, except if it is extremely difficult or impossible for the City Council to meet either physically or virtually, or a quorum of the City Council cannot be convened at a regular or special meeting.
3. A First Amendment Curfew and each and every element of such curfew, including but not limited to the curfew’s physical boundaries; times of day or night; duration; and the individuals/businesses/establishments, modes of transportation, and other activities or

elements to which it applies; shall not be imposed unless specific findings are made, based on substantial evidence, that:

- a. Each element of such curfew is narrowly tailored to meet specific violence or conditions which pose a clear and present danger of imminent violence likely to be perpetrated in each covered location (residential vs. commercial/manufacturing areas, specific residential or commercial/manufacturing areas, specific types of establishments such as bars, dispensaries, big box stores, etc.), using the covered modes (pedestrians, bike riders, people in vehicles, parking, etc.), during the covered times (morning, mid day, afternoon, evening, etc.), for the covered duration (one day, half day, etc.), and in, by or during all other conditions to which the order applies, and
- b. All reasonable alternatives and more narrowly tailored means to avoid or address specific violence or conditions which pose a clear and present danger of imminent violence, as well as any new rules or regulations which may be promulgated short of a curfew in those locations, even if more expensive to deploy, for those individuals and modes, during those times and for that duration, and for all other conditions to which the curfew applies, have been explored and found to be deficient in their ability to address specific violence or conditions which pose a clear and present danger of imminent violence, and only a curfew can reasonably provide for the necessary public safety and welfare.

All reasonable alternative means, considered and rejected, to address threats related to each covered location, population, mode or other condition or element of the curfew, shall be described in the report provided to the City Council upon the Director of Emergency Services' request for Council to impose such curfew, or upon the Director's request for ratification of a curfew imposed by the Director.

4. First Amendment Curfew orders must clearly state and/or designate on a map the specific areas to be covered, list the covered individuals/businesses, modes, times, duration and any other elements and conditions to which the order applies, and explain the specific violence or conditions which pose a clear and present danger of imminent violence, that justify imposition of the curfew to each element of the order. First Amendment Curfews may not be based on fear of violence alone; there must be specific, identified threats and/or a reasonable basis to believe threats might materialize in the locations, at the times, and by the means being banned or restricted by the curfew order.
5. A First Amendment Curfew can provide a specific number of days, or unlimited days, for which the curfew is suggested to apply. However, First Amendment Curfews can only be ordered by the City Council or, if necessary, by the Director of Emergency Services, for one twenty-four hour period at a time, and may only be extended or re-imposed, if at all, through additional action taken by the City Council at a regular or special meeting or by the Director.

Notwithstanding the above, if, after 7 consecutive days of the City Council issuing daily First Amendment Curfew orders or the Director of Emergency Services issuing daily orders for the City Council's ratification, the Council or the Director wishes, on the 8th day, to issue a First Amendment Curfew order for a period longer than one day, the City Council, by a vote of $\frac{2}{3}$, or the Director, may issue or ratify curfew orders of up to 7 days in duration.

6. An overall finding must be made by the City Council or Director, in imposing a First Amendment Curfew, that reasonable alternative measures that burden substantially less speech would fail to achieve the City's interests, even if more complicated or costly to implement, and the added value of the curfew will make a substantial positive impact on public safety without unduly impacting rights guaranteed under local, state and federal laws, and in particular the First, Fifth and Fourteenth amendments of the US Constitution.
7. To the greatest extent possible, First Amendment Curfew orders shall refrain from using vague standards for enforcement and exemptions, that may result in selective, disparate or biased enforcement.
8. To mirror the notice requirements of Berkeley Municipal Code Section 2.88.040(6)(a), which requires "widespread publicity and notice" of a declaration of Local Emergency, and to meet ensure that a First Amendment Curfew is only enforceable against individuals who do not obey the curfew "after due notice, oral or written, has been given to said persons," and, to the greatest extent possible under the time constraints and physical conditions (lack of electricity or internet, widespread destruction in the event of a sudden wildfire or earthquake, etc.) which exist at the time a First Amendment order is ordered, the City of Berkeley shall publicize the First Amendment Curfew through, at a minimum, the following means:
 - a. By posting a notice at all locations where formal notices are regularly posted
 - b. By posting a notice prominently on the Home Page of the City of Berkeley website and on other appropriate pages of the website
 - c. By publicizing notice of the order through major City of Berkeley and police department social media accounts
 - d. By providing a copy of the notice to a broad array of traditional Bay Area media outlets including paper and online newspapers, radio and television stations, and other similar media
 - e. If the order applies only to specific locations within the City of Berkeley, by posting temporary signs on street fixtures and poles in such area(s), and in particular at major entrances to such areas such as on arterials and collector streets as they enter such restricted areas.
 - f. And by other means of broadcasting notice of the order to the general public.

In addition, notice and a reasonable opportunity to comply with the curfew (a “warning”) shall be provided to all individuals against whom enforcement is contemplated, by announcing the order through amplified communications and providing a verbal warning and reasonable opportunity to comply before enforcement.

FINANCIAL IMPLICATIONS

Cost of holding additional virtual or in-person meetings of the City Council to ensure rights guaranteed by the Constitution of the United States of America are upheld in all actions to declare Local Emergencies and impose First Amendment Curfews in the City of Berkeley.

CONTACT INFORMATION

Vice Mayor Sophie Hahn, Council District 5, 510-682-5905 (Cell)

ATTACHMENTS

1. ACLU of Northern California’s June 3, 2020 letter to Alameda County Sheriff Ahern
2. Karen J. Pita Loor, *When Protest Is The Disaster: Constitutional Implications of State and Local Emergency Power*, 43 SEATTLE U. L. REV. 1 (2019)