



## 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:

**Thursday, July 30, 2020**

**6:00 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/81409898529>. 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: **814 0989 8529**. 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](mailto: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

### 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.*

### 1. Memorandum of Understanding: Berkeley Police Association

**From: City Manager**

**Recommendation:** Adopt a Resolution approving a one (1) year extension to Memorandum of Understanding (hereafter referred to as "MOU") with the Berkeley Police Association (hereafter referred to as the "Union") with a term of July 30, 2020 through June 30, 2021; authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the extended MOU with no changes in compensation except for economic items related to the COVID-19 epidemic; and authorizing the City Manager to make non-substantive edits to the format and language of the Memorandum of Understanding in alignment with the tentative agreement, and conforming to legal requirements.

**Financial Implications:** See report

Contact: LaTanya Bellow, Human Resources, (510) 981-6800

## Consent Calendar

### 2. Memorandum of Understanding: SEIU Local 1021 Community Services Unit And Part-Time Recreation Leaders Association

**From: City Manager**

**Recommendation:** Adopt a Resolution approving a one (1) year extension to Memorandum of Understanding (hereafter referred to as "MOU") with SEIU Local 1021 Community Services Unit And Part-Time Recreation Leaders Association (hereafter referred to as the "Union") with a term of June 27, 2020 through June 26, 2021; authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the extended MOU with no changes in compensation except for economic items related to the COVID-19 epidemic; and authorizing the City Manager to make non-substantive edits to the format and language of the Memorandum of Understanding in alignment with the tentative agreement, and conforming to legal requirements.

**Financial Implications:** See report

Contact: LaTanya Bellow, Human Resources, (510) 981-6800

### 3. Memorandum of Understanding: SEIU Local 1021 Maintenance & Clerical Chapter

**From: City Manager**

**Recommendation:** Adopt a Resolution approving a one (1) year extension to Memorandum of Understanding (hereafter referred to as "MOU") with SEIU Local 1021 Maintenance & Clerical Chapter (hereafter referred to as the "Union") with a term of June 27, 2020 through June 26, 2021; authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the extended MOU with no changes in compensation except for economic items related to the COVID-19 epidemic; and authorizing the City Manager to make non-substantive edits to the format and language of the Memorandum of Understanding in alignment with the tentative agreement, and conforming to legal requirements.

**Financial Implications:** See report

Contact: LaTanya Bellow, Human Resources, (510) 981-6800

### 4. Unrepresented Employees: Salary Adjustments and Update to Unrepresented Employee Manual

**From: City Manager**

**Recommendation:** Adopt a Resolution approving as amended the Unrepresented Employee Manual to attach a one (1) year Agreement with terms and conditions (hereafter referred to as "Agreement") with the Unrepresented Employees group (hereafter referred to as the "Unrep Group") with a term of July 30, 2020 to June 30, 2021 that includes COVID-19 considerations, Additional Emergency Paid Sick Leave Allocation, Additional Floating Holidays, and Limited Reopener language effective July 1, 2020, and rescinding Resolution No. 68, 535-N.S.

**Financial Implications:** See report

Contact: LaTanya Bellow, Human Resources, (510) 981-6800

## 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.*

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

*(Continued from July 21, 2020) (Item contains supplemental material.)*

**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

### **6. Placing Charter Amendment Measure on the November 3, 2020 Ballot to Amend Multiple Administrative Provisions** *(Continued from July 21, 2020) (Item contains revised and supplemental material.)*

**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

- 7a. 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** *(Continued from July 21, 2020) (Item contains revised material.)*

**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

- 7b. Recommendation to Prepare a City Ballot Measure to Create a Climate Action Fund, in response to the Fossil Fuel Free Berkeley referral** *(Continued from July 21, 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 28<sup>th</sup> day of July, 2020.



Jesse Arreguin, Mayor

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

ATTEST:



Date: July 28, 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.*

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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.



Office of the City Manager

CONSENT CALENDAR  
July 30, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: LaTanya Bellow, Director of Human Resources

Subject: Memorandum of Understanding: Berkeley Police Association

RECOMMENDATION

Adopt a Resolution approving a one (1) year extension to Memorandum of Understanding (hereafter referred to as "MOU") with the Berkeley Police Association (hereafter referred to as the "Union") with a term of July 30, 2020 through June 30, 2021; authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the extended MOU with no changes in compensation except for economic items related to the COVID-19 epidemic; and authorizing the City Manager to make non-substantive edits to the format and language of the Memorandum of Understanding in alignment with the tentative agreement, and conforming to legal requirements.

FISCAL IMPACTS OF RECOMMENDATION

The purpose of this one year extension agreement is in response to the City's financial effects of the COVID-19 pandemic. The terms of the new MOU provide for no wage increase for the period of the extension.

Upon mutual agreement the Parties can further extend the MOU for another year with no additional changes to terms, except that, in the second year the Union shall have the option to reopen two non-economic issues.

The funding for this agreement comes from the general fund and other funding sources.

CURRENT SITUATION AND ITS EFFECTS

The City's labor contract with the Union expired and was fully terminated as of June 30, 2020. In an effort to reach agreement on a successor MOU, representatives of the City and representatives of the Union held approximately seven negotiating sessions beginning in April of 2020. The parties reached an extension agreement with no substantive change on all outstanding economic (aside from COVID-19 related issues) and non-economic issues on June 30, 2020.

While the labor contract expired and fully terminated on June 30, 2020, the laws governing collective bargaining agreements provide that the terms and conditions set forth in the expired contract remain in full force and effect until modified through the collective

bargaining process. The collective bargaining process has now been completed and the parties have reached tentative agreement on all outstanding issues. On, July 09, 2020 the Union ratified the tentative agreement by a vote.

**BACKGROUND**

There are approximately 180 employees represented by the Union in two (2) representational units (Units E and F).

The City’s philosophy during negotiations with the Union was to follow City Council policies to protect the City’s short and long-range economic health. City Council policies for labor negotiations include, but are not limited to, the following:

1. Assure that labor organizations and their members are treated fairly and with respect.
2. Negotiate in good faith and within the process established by the parties including honoring the traditional confidentiality of the negotiation process.
3. Negotiate contracts based on a “Total Compensation Package” model (changes in current and future salary, and health and welfare benefits) within the City’s overall financial conditions. The City’s current overall condition included the recent declaration of a fiscal emergency on June 16, 2020.

Major provisions of the new labor contract are as follows:

Section	Change
10 Duration	NEW LANGUAGE: Parties agree to a one-year term extension starting July 30, 2020 and ending on June 30, 2021 with no changes in compensation or terms. This agreement shall be subject to ratification by the BPA and the City Council. The purpose of this extension agreement is to permit additional time to assess the financial effects of the COVID-19 epidemic on the City prior to negotiating a successor MOU. Upon mutual agreement, the Parties can further extend the MOU for another year with no additional changes to the terms, except that, in the second year, the Union shall have the option to reopen on up to two non-economic issues.
10.1 Meet and Confer	The Parties agree to meet and confer during the term of this Extension Agreement on any revisions to laws, ordinance, rules, general orders and charter amendments within the mandatory scope of bargaining or, to the extent that such matters are not within the mandatory scope of

	<p>bargaining, to informally consult upon the request of the Union to receive input regarding impact of such changes.</p> <p>The Parties agree to meet at least quarterly to discuss the changes in the City's financial conditions.</p>
37.4 120 Day Limit on Imposition of Discipline	<p>NEW LANGUAGE: If the November 2020 ballot measure amending the City Charter to create the Police Accountability Board is adopted by the voters, the 120 Day Limit on Imposition of Discipline as set forth in Section 37.4 of the MOU shall be amended as follows: The City agrees that no disciplinary action against an employee covered by this Understanding, which action involves a loss or reduction of pay or discharge, shall be imposed unless such action is taken within two hundred forty (240) calendar days from the date of the City's discovery by a person authorized to initiate and investigation of an alleged act, omission or other misconduct unless a Government Code section 3304(d) exception applies.</p>

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Representatives of the City worked within policies set by the City Council for guiding contract negotiations and staff met with the City Council in closed session to discuss and receive the policy direction and economic authority to settle this contract. The overall settlement must be within the City's ability to pay based on projected revenue as well as demands for services across the spectrum of programs the City provides the community. The proposed changes to the MOU are consistent with City Council's direction to staff and is fair and equitable to the members of the Union.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

LaTanya Bellow, Director of Human Resources, Human Resources, 981-6806

Attachments:

- 1: Resolution: Memorandum of Understanding: Berkeley Police Association  
Exhibit A: Memorandum of Understanding between the City of Berkeley and Berkeley Police Association (Edited Version)

Exhibit B: Memorandum of Understanding between the City of Berkeley and  
Berkeley Police Association (Clean Version)

Exhibit C: Tentative Agreement

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

MEMORANDUM OF UNDERSTANDING: BERKELEY POLICE ASSOCIATION

WHEREAS, the City is obligated under the provisions of California Government Code Section 3500 – 3510, commonly referred to as the Meyers-Milias-Brown Act, to meet and confer in good faith and attempt to reach agreement with representatives of recognized bargaining units on matters within the scope of representation including, but not limited to wages, hours and other terms and conditions of employment; and

WHEREAS, representatives of the City and the Berkeley Police Association have met and conferred in good faith and have reached agreement on a new Memorandum of Understanding that incorporates all changes and modifications in wages, hours and other terms and conditions of employment agreed to by the parties.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute the new Memorandum of Understanding for the period July 30, 2020 through June 30, 2021 with the Berkeley Police Association, including changes in certain benefits on dates specified in the Memorandum of Understanding which is attached hereto, made a part hereof and marked Exhibit B.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute and implement said Memorandum of Understanding including all changes in wages, hours, and other terms and conditions of employment. A fully executed original of said contract is filed in the Office of the City Clerk.

Exhibits

- A: Memorandum of Understanding between the City of Berkeley and Berkeley Police Association (Edited Version)
- B: Memorandum of Understanding between the City of Berkeley and Berkeley Police Association (Clean Version)
- C: Tentative Agreement







**Memorandum of Understanding**  
**between**  
**City of Berkeley**  
**and**  
**Berkeley Police Association**

**July 1, 2017 to June 30, ~~2020~~2021**



RESOLUTION NO. 68,582-N.S.

MEMORANDUM OF UNDERSTANDING: BERKELEY POLICE ASSOCIATION

WHEREAS, the City is obligated under the provisions of California Government Code Section 3500 – 3510, commonly referred to as the Meyers-Milias-Brown Act, to meet and confer in good faith and attempt to reach agreement with representatives of recognized bargaining units on matters within the scope of representation including, but not limited to wages, hours and other terms and conditions of employment; and

WHEREAS, representatives of the City and the Berkeley Police Association have met and conferred in good faith and have reached agreement on a new Memorandum of Understanding that incorporates all changes and modifications in wages, hours and other terms and conditions of employment agreed to by the parties.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute the new Memorandum of Understanding for the period July 1, 2017 through June 30, 2020 with the Berkeley Police Association, including changes in certain benefits on dates specified in the Memorandum of Understanding which is attached hereto, made a part hereof and marked Exhibit A.

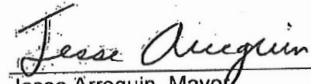
BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute and implement said Memorandum of Understanding including all changes in wages, hours, and other terms and conditions of employment. A fully executed original of said contract is filed in the Office of the City Clerk.

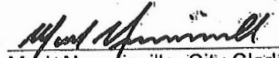
The foregoing Resolution was adopted by the Berkeley City Council on July 31, 2018 by the following vote:

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

Noes: None.

Absent: Harrison.

  
Jesse Arreguin, Mayor

Attest:   
Mark Numainville, City Clerk

RESOLUTION NO. 68,583-N.S.

APPROVE A NEW CLASSIFICATION AND SALARY RESOLUTION FOR THE BERKELEY POLICE ASSOCIATION AND RESCINDING RESOLUTION NO. 67-187-N.S.

WHEREAS, the City Council has approved a new three-year Memorandum of Understanding with the Berkeley Police Association which includes cost of living adjustments; and

WHEREAS, it is necessary for the City Council to adopt a new Classification and Salary Resolution to reflect the salary adjustments reflected in the new Memorandum of Understanding.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley adopts a new Classification and Salary Resolution for employees in Representation Units E (sworn, managerial employees in the Police Department), and Representation Unit F (sworn, non-managerial employees in the Police Department) effective July 1, 2017 through June 30, 2020 to incorporate changes to the salary schedule as shown in Exhibit A, attached hereto and made a part hereof.

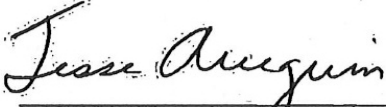
BE IT FURTHER RESOLVED that Resolution No. 67-187-N.S is hereby rescinded.

The foregoing Resolution was adopted by the Berkeley City Council on July 31, 2018 by the following vote:

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

Noes: None.

Absent: Harrison.

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

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

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## ARTICLE 1 – ADMINISTRATION

### SECTION 1: RECITALS

This Memorandum of Understanding, (hereinafter referred to as “Understanding”) is entered into pursuant to the Meyers-Milias-Brown Act (Government Code, sections 3500 - 3511), as amended, and has been jointly prepared by the parties.

The City Manager is the representative of the City of Berkeley in employer-employee relations as provided in Resolution No. 43,397-N.S., adopted by the City Council on October 14, 1969.

The Berkeley Police Association (hereinafter referred to as "the Association") is the recognized employee organization for Representation Unit E (sworn, managerial employees in the Police Department) and Representation Unit F (sworn, non-managerial employees in the Police Department), which organization has been certified as such pursuant to said Resolution No. 43,397-N.S. The employee positions in such Representation Units are hereinafter set forth in Exhibit A, and the Association is recognized as the sole representative of employees assigned to such positions.

The parties have met and conferred in good faith regarding wages, hours, and other terms and conditions of employment of the employees in said Representation Units E and F, have freely exchanged information, opinions, and proposals, and have endeavored to reach agreement on all matters relating to the employment conditions and employer-employee relations of such employees.

This Understanding shall be presented to the City Council as the joint recommendation of the undersigned.

### SECTION 2: RECOGNIZED EMPLOYEE ORGANIZATION

2.1 The Association is the majority representative of all employees within Representation Units E and F and shall continue to be recognized as such unless, in accordance with the provisions of Resolution No. 43,397-N.S. or as said Resolution may be amended, the Association is no longer certified as the recognized employee organization for employees in Representation Units E and F.

2.2 Responsibility for management of the City and direction of its work force is vested in City officials and the City Manager whose powers and duties are specified by law. In order to fulfill this responsibility, it is the exclusive right of City management to determine the mission of its constituent departments, set standards of service to be offered to the public and exercise control and discretion over the City's organization and operations. It is also the exclusive right of the City Manager to take disciplinary action for just cause, to implement a layoff pursuant to Section 57 of this Understanding, determine the methods, means and personnel by which the City's operations are to be conducted and to take all necessary actions to maintain uninterrupted service to the community and carry out the City's mission in emergencies; provided, however, the Association shall be notified of any proposed changes affecting wages, hours and other terms and conditions of employment of employees represented by the Association, and the City Manager shall, upon request, meet and confer with representatives of the Association and endeavor to reach

agreement on the practical consequences of any such changes in wages, hours and other terms and conditions of employees represented by the Association except as otherwise provided in this Understanding.

### SECTION 3: NO DISCRIMINATION

- 3.1 The Association certifies that it has no restriction on membership based on race, color, creed, ethnicity, ancestry, religion, age, gender, sexual orientation, marital or domestic partner status, gender identify or gender expression, parental status, pregnancy, national origin, political affiliation, disability or medical condition, Acquired Immune Deficiency (AIDS/HIV) or AIDS related condition, or any other status protected by applicable state or federal law. The Association agrees that it will support programs for making members of minority groups and women aware of employment opportunities within the City, and that it will work with the City to increase recruitment efforts of such minorities and women into City service. The Association recognizes and supports the City's commitment to equal employment opportunity.
- 3.2 Neither the City nor the Association shall discriminate against any employee covered by this Understanding in a manner which would violate any applicable laws because of race, creed, color, religion, political affiliation, sexual orientation, sex, national origin, disability, or age (including AIDS.) The City and the Association agree that no employee shall be discriminated against on the basis of membership or non-membership in the Association or any lawful activity on behalf of the Association.

### SECTION 4: ASSOCIATION SECURITY

- 4.1 All employees who are, or hereafter voluntarily choose to become, members of the Association shall maintain such membership in good standing as a condition of continued employment for the duration of this Understanding; provided, however, that withdrawal from membership shall be allowed during the month which precedes the month in which this Understanding expires. Employees may withdraw by sending written notice of withdrawal to the Association (with a copy to the Director of Human Resources of the City) during the withdrawal period.
- 4.2 The Association shall indemnify and save the City harmless from any and all claims, demands, suits, or any other action arising from Section 4 or from complying with any request for termination of employment under Section 4. The Association will not undertake to compensate the City for any time which may be spent by the City Attorney or anyone on the staff of the City Attorney in preparing for or defending any legal action which may be filed. The Association will, however, pay directly any fine or reimburse the City for the payment of any fine which may be assessed against the City by virtue of its agreement to Sections 4.1 and 4.2, and the Association will pay any judgment or award, including the payment of any wages lost by an employee whose services are temporarily or permanently terminated because of his or her failure to comply with the provision of Section 4.
- 4.3 It is understood and agreed that the City Council retains the right, in its sole discretion, to determine that the Association is not discriminating against any employee or class of

employees. It is further understood and agreed that the City Council retains the right to withdraw the Association security privilege if at any time it determines that the Association is discriminating against any individual or classifications prohibited by Section 3 of this Understanding.

- 4.4 The City shall furnish the Association, on a monthly basis, the name, date of hire, salary, classification, and work location of all newly hired employees subject to the Understanding. The City shall furnish newly hired employees with information concerning the Association as supplied by the Association.

## **SECTION 5: DEDUCTION OF ASSOCIATION DUES**

- 5.1 The City shall deduct, once monthly, the amount of the Association's regular and periodic dues, service fees, or insurance premiums as may be specified by the Association under the authority of an authorization card furnished by the Association and signed by the employee. Such deductions, together with a written statement of the names and amounts deducted, shall be forwarded promptly to the Association office.
- 5.2 Upon receipt of a notice from the Association of an increase in the amount of regular and periodic dues, service fees, or insurance premiums, an employee may, within thirty (30) days, revoke the deduction authorization by furnishing written notice of such revocation to the Department of Human Resources. An employee may also revoke the deduction authorization by furnishing written notice of such revocation during the thirty (30) day period immediately preceding the expiration of this Understanding.

## **SECTION 6: ASSOCIATION REPRESENTATIVES**

- 6.1 The City shall allow representatives of the Association, subject to the conditions set forth in Sections 6.2 and 6.3, reasonable time off from work without loss of compensation or other benefits to represent its members in disputes which involve the interpretation or application of those rules, regulations, and resolutions which have been or may hereafter be adopted by the City Council to govern personnel practices and working conditions, including such rules, regulations, and resolutions as may be adopted by the City Council to effect Memoranda of Understanding which may result from the meeting and conferring process, and to represent its members in meeting and conferring in good faith for amendments to this Understanding in the future. The Parties agree to work cooperatively to negotiate the rules of procedure governing the conduct of the Police Accountability Board with the goal of completing negotiations no later than June 30, 2021.
- 6.2 Representatives**  
With respect to the meet-and-confer process, four (4) Association representatives shall be the maximum number who will be allowed concurrent time off. In all other cases, such as disputes defined in Section 6.1, the maximum number allowed concurrent time off shall be two (2).

### 6.3 Notice Requirements

Association representatives seeking time off to carry out functions described in Section 6.1 shall advise their supervisors at the earliest possible time and, except in emergency cases, no later than 24 hours in advance before leaving their work assignments. The Department will not unreasonably deny release time to the Association President (or Acting President) so that he or she may schedule the duties specified in Section 6.1; there may be times, however, when the City will, on short notice, need to modify or adjust such release time because of unpredictable service needs.

6.3.1 In emergency situations which require the immediate attention of said employee, the employee shall notify a supervisor upon his or her return to work. It is understood that employees will not leave their work assignments without the approval of the supervisor and that such approval shall not be unreasonably denied.

6.3.2 To the extent possible, the Association will attempt to schedule all release time to avoid impacting service levels. If necessary, however, Association representatives' workloads will be adjusted on the basis of approved release time. Employees shall record release time for activities described in Section 6.1 with the appropriate code on their time sheets and cards.

### 6.4 Meetings

Reasonable release time will be available so that members can attend periodic meetings of the Association which occur during their shift.

### 6.5 Bulletin Boards

The City shall provide bulletin board space for Association use at each of its work centers where covered employees are regularly employed.

### 6.6 Board of Review

All time spent in attendance at Board of Review meetings and Police Review Commission meetings, interviews, and hearings as an official representative of the Association by appointed Association officers shall be considered time worked, and shall be compensated in accordance with Section 19 of this MOU. The compensable time outside of an employee's regularly schedule shall be limited to one person.

6.7 Up to three (3) officers designated by the Board of Directors of the Association may meet with the City Manager and Chief of Police every second month to foster communication. These meetings will be scheduled so that Association representatives can attend during regular work hours. Association representatives will record time spent in such meetings as work (rather than release) time.

## SECTION 7: ASSOCIATION RELEASE TIME

The Association will be entitled to up to six hundred (600) hours of paid leave of absence each calendar year to be granted collectively to employees who are designated representatives of the Association to attend seminars, conferences, or conventions away from the job site, where employees are not available to respond to emergencies. The Chief may, in his or her discretion, approve additional Association requests. The Chief or the Chief's designee may not deny such

requests solely on the need to post overtime. Time spent on such Association business will be recorded with the appropriate code on time sheets.

## **SECTION 8: SEVERABILITY OF PROVISIONS**

In the event that any provision of this Understanding is declared by a court of competent jurisdiction to be illegal or un-enforceable, that provision of this Understanding shall be null and void, but such nullification shall not affect any other provisions of this Understanding, all of which other provisions shall remain in full force and effect.

## **SECTION 9: FINALITY OF RECOMMENDATIONS**

- 9.1 This Understanding sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior and existing Understanding, understandings, or agreements, whether formal or informal, are hereby superseded and terminated in their entirety. This Understanding cannot be modified except in writing upon the mutual consent of the parties and subject to ratification by the BPA and City Council.
- 9.2 Existing provisions and/or benefits provided by ordinance or resolution of the City Council or as provided in the Municipal Code and which are referred to in the Understanding shall be provided in accordance with the terms of the Understanding.
- 9.3 There is no guarantee that working conditions and practices will be continued if they are not included in this Understanding or if they have not been or are not hereafter specifically authorized by ordinance or by a resolution of the City Council.
- 9.4 It is the intent of the parties that ordinances, resolutions, rules and regulations enacted pursuant to this Understanding shall be administered and observed in good faith.
- 9.5 Although nothing in this Understanding shall preclude the parties from mutually agreeing to meet-and-confer on any subject within the scope of representation during the term of this Understanding, it is understood and agreed that neither party may require the other to meet-and-confer on any subject matter covered herein or with respect to any presentation during the term of this Understanding.
- 9.6 Amendments to this Understanding shall be effective only when adopted by the City Council and ratified by the Association.

## **SECTION 10: DURATION**

The term of this Understanding shall commence when the terms and conditions set forth herein have been adopted by resolution by the City Council but in no event shall this Understanding be effective prior to 0001 hours July 1, 2017. Those provisions which have been assigned effective dates herein will become effective on those dates. This Understanding and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at 2400 hours June 30, 2020.

Parties agree to extend the July 1, 2017 to June 30, 2020 Memorandum of Understanding (MOU or Agreement) for a period of one-year; until June 30, 2021, with no changes in compensation or terms.

Parties can further extend the MOU for another year with no additional changes to terms, except that, in the second year, the Union shall have the option to reopen on up to two non-economic issues.

The Parties agree to meet and confer during the term of this Extension Agreement on any revisions to laws, ordinances, rules, general orders and charter amendments within the mandatory scope of bargaining or, to the extent that such matters are not within the mandatory scope of bargaining, to informally consult upon the request of the Union to receive input regarding the impact of such changes.

The parties agree to meet at least quarterly to discuss changes in the City's financial condition during the extended term of this agreement.



## ARTICLE 2 - SALARIES, HOURS OF WORK AND COMPENSATION ISSUES

### SECTION 11: SALARIES

- 11.1 Salaries are set according to the classifications and salary ranges assigned to those classifications and with the effective dates listed in Exhibit "A" to this MOU and attached hereto. Effective the first full pay period following Council approval of this July 2017 – June 2020 MOU, represented employees still employed in that pay period shall receive a 4.0% wage increase. Also effective the first full pay period following Council approval of this July 2017 – June 2020 MOU, employees still employed in that pay period shall receive a 1-time stipend of \$1,500, less applicable payroll taxes. Effective the first full pay period in July 2019, employees shall receive a further 4.0% wage increase. Effective the first full pay period in January 2020, employees shall receive a further 1.0% wage increase.

Effective July 12, 1998, the salary ranges for the classifications of Police Captain and Police Lieutenant were adjusted in recognition for performance of the duties of the Duty Command Officer. This section is not intended to prohibit a Police Lieutenant from receiving overtime compensation or any other special compensation earned while serving as a Duty Command Officer.

- 11.2 Employees occupying a position in the competitive service shall be paid a salary or wage within the range established for that position's class as set forth in Exhibit "A". The minimum rate for the class shall apply to employees upon original appointment to the position except in cases of lateral entry. Lateral entry shall be provided for Police Officer only, and the Chief of Police, with the approval of the Director of Human Resources and City Manager, may pay to lateral entrants a salary above the first step. Employees reinstated or reemployed after layoff shall receive a rate within the range established for the class. Transfers shall not affect an employee's salary rate. Employees appointed to any of the positions set forth in Exhibit "A" and employed or working on a part-time basis shall be paid in proportion to the time worked and described in their appointment.
- 11.3 No salary advancement shall be made so as to exceed the maximum rate established for the class to which the advanced employee's position is allocated. Advancement shall be in accordance with the compensation plan of the City and shall depend upon increased service value of an employee to the City as exemplified by recommendations of the department head, performance record, special training, length of service, and other pertinent evidence.
- 11.3.1 An employee's salary step increase as provided in Section 12 (Salary Advancement) shall not be affected by any leave of absence without pay if the employee is off the payroll for less than one hundred sixty (160) consecutive hours. If the employee is off the payroll for one hundred sixty (160) consecutive hours or more, the total amount of time off shall be made up before the employee shall be entitled to such salary step increase.
- 11.4 Salary reductions may be made as a result of an employee's diminished service value or as part of a general plan to reduce salaries and wages as an economy measure or as part of a general curtailment program. No reduction shall be made below the minimum rate established for the class to which the reduced employee's position is allocated. Notice of the

reduction shall be given to the employee not later than two (2) weeks prior to the effective date of the reduction. Any employee whose salary has been reduced shall be entitled to receive a written statement of the reasons for such action.

11.4.1 Salary reductions which are part of a general plan to reduce salaries and wages as an economy measure or as part of a general curtailment program shall not be subject to the provisions of Sections 11.4, 11.5 or 56.

11.5 Y Rate

Any employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary, or occupying a position in a class, the salary rate or range for which is reduced, shall continue to receive his or her present salary. Such salary shall be designated as a "Y" rate. When an employee on a "Y" rate vacates his or her position, subsequent appointments to that position shall be made in accordance with Section 11.2.

11.6 Pay Periods

Payment of salaries herein established shall be bi-weekly. Each pay period shall begin at 12:01 a.m. Sunday up to and including 12:00 midnight Saturday two weeks following. Each payment shall be made not later than the Friday following the ending of each payroll period and shall include payment for all earnings during the previous payroll period.

11.7 For purposes of calculating pay and benefits, the end of the year shall be defined as the last day of the last full pay period of the calendar year.

11.8 **Effective Date of Salary and Benefit Adjustments**

The City and the Union agree that all future general salary and benefit adjustments shall become effective on the first day of the pay period closest to the date otherwise specified or applicable.

11.9 **Effective Date of Step Increases**

Step increases shall be effective, for payroll purposes only, on the first day of the pay period nearest the date an employee is entitled to a step increase (anniversary date or 1040 hours).

**SECTION 12: SALARY ADVANCEMENT**

12.1 Effective July 7, 2002, employees in the classification of Police Officer will be placed in the salary step according to the schedule on the chart below. Increases between salary steps shall occur on the employee's anniversary date. The period of time necessary to move from one salary step to the next is expressed in months on the chart below:

Length of Service – Police Officer	Salary Step
0 to completion of 12 months	Step A
Beginning of 13 <sup>th</sup> month to completion of 24 <sup>th</sup> month	Step B
Beginning of 25 <sup>th</sup> month to completion of 36 <sup>th</sup> month	Step C
Beginning of 37 <sup>th</sup> month to completion of 48 <sup>th</sup> month	Step D
Beginning of 49 <sup>th</sup> month to completion of 60 <sup>th</sup> month	Step E
Beginning of 61 <sup>st</sup> month to completion of 72 <sup>nd</sup> month	Step F

Beginning of 73 <sup>rd</sup> month and beyond	Step G
--	--------

12.2 Effective July 7, 2002, employees in the classifications of Police Sergeant, Police Lieutenant and Police Captain will be placed in the salary step according to the schedule on the chart below. Increases between salary steps shall occur on the employee's anniversary date. The period of time necessary to move from one salary step to the next is expressed in months on the chart below:

Length of Service – All Ranks Above Police Officer	Salary Step
Beginning of 25 <sup>th</sup> month to completion of 36 <sup>th</sup> month	Step A
Beginning of 37 <sup>th</sup> month to completion of 48 <sup>th</sup> month	Step B
Beginning of 49 <sup>th</sup> month to completion of 60 <sup>th</sup> month	Step C
Beginning of 61 <sup>st</sup> month to completion of 72 <sup>nd</sup> month	Step D
Beginning of 73 <sup>rd</sup> month and beyond	Step E

12.3 Upon promotion, the employee shall be placed at the step of the higher rank that is commensurate with the employee's length of service in any classifications represented by the Association.

12.4 Lateral Entry Step Placement

An employee appointed through lateral entry may be appointed at either a salary step or longevity range level commensurate with his or her experience as a sworn peace officer.

**SECTION 13: PREMIUM/SPECIAL ASSIGNMENT**

13.1 Explosives Ordinance Technician

An employee assigned as an Explosives Ordinance Technician shall receive double his or her regular straight-time rate for that time spent (from call to completion) in dealing with explosives. Said double time shall be the total compensation for such time spent, whether on regular duty time or when called in from off-duty. If an employee is assigned as an Explosive Ordinance Technician while on regular duty and not while on overtime, those hours worked as an Explosive Ordinance Technician on regular duty shall be reported to CalPERS as Hazard Premium Pay.

13.2 Special Response Team (S.R.T)

An employee assigned as a member of the Special Response Team (S.R.T.) shall receive a five percent (5%) salary differential when involved in an active S.R.T. incident. If an employee is assigned as a member of the Barricaded Subjects Hostage Negotiation Team while on regular duty and not while on overtime, those hours worked as a S.R.T. member on regular duty shall be reported to CalPERS as Hazard Premium Pay.

13.3 Supervisor Special Assignment

When a Police Sergeant is assigned to function as the Field Training Officer Supervisor, he or she shall receive a five percent (5%) salary differential while occupying that position. If an employee is assigned as the Field Training Officer Supervisor, while on regular duty and not while on overtime, this differential for hours worked on regular duty shall be reported to CalPERS as Supervisor Special Assignment Pay.

13.4 Field Training Officer Special Assignment:

Employees assigned as Field Training Officers shall receive a ten percent (10%) differential during any calendar year when actually working as a Field Training Officer. If an employee is assigned as a Field Training Officer while on regular duty and not while on overtime, this differential for hours worked on regular duty shall be reported to CalPERS as Supervisor Special Assignment Pay.

13.5 Hazard Premium Pay - Mental Health Crisis Intervention Pay

The City of Berkeley (City) and Berkeley Police Association (Association) agree that the parties may agree under this MOU provision that the City will provide Hazardous Premium Pay for particular hazardous duties and activities. At present, the City and Association have agreed that, effective the first full pay period after Council approval of this MOU, all sworn employees shall receive a Hazard Premium Pay called Mental Health Crisis Intervention Pay equal to 1.0% of base salary, which pay shall be provided on all hours the employee is in a paid status. This pay shall be in recognition of the fact that the City's sworn personnel are routinely and consistently exposed to uniquely hazardous conditions arising from law enforcement interactions with the mentally ill and are required to complete training intended to enhance sworn personnel's ability to perform the hazardous and specialized mental health related law enforcement duties which Berkeley's sworn personnel are consistently and routinely asked to perform, including arrests, potential arrests and addressing other mental health related disputes. Effective the first full pay period of January 2016, the amount of pay shall increase to 2.0% of base salary.

13.6 Homicide Detail

A Police Sergeant assigned to the Homicide Detail shall receive a four percent (4%) salary differential. If a Police Sergeant is assigned to the Homicide Detail while on regular duty and not while on overtime, this differential for hours worked on regular duty shall be reported to CalPERS as Detective Division Special Assignment Pay. A Police Officer assigned to the Homicide Detail shall receive a three percent (3%) salary differential. If a Police Officer is assigned to the Homicide Detail while on regular duty and not while on overtime, this differential for hours worked on regular duty shall be reported to CalPERS as Detective Division Special Assignment Pay.

13.7 Peace Officer Standards and Training (POST)

In addition to the salary set forth in the Exhibit "A" of this MOU, employees covered by this MOU who qualify under regulations promulgated by the California Commission on Peace Officer Standards and Training shall receive the following educational/training incentive compensation. To receive the Intermediate Certificate and/or Advanced Certificate differential pay below, employees must submit documents required by the Berkeley Police Department Professional Standards Division verifying POST eligibility, including but not limited to copies of college transcripts, proof of a college degree and other related forms. Failure of the employee to submit documents required by the Professional Standards Division shall delay the POST incentive pay eligibility until such time as the employee provides all required documentation.

**13.7.1 Intermediate Certificate:** Within thirty (30) working days of approval from the Berkeley Police Department Professional Standards Division of an Officers' eligibility for a Peace Officers Standards and Training Intermediate Certificate, the

employee shall receive a two percent (2%) differential to base salary and such payment shall be reported to CalPERS as Peace Officers Standards and Training Certificate Pay as a form of Educational Pay. Effective the first full pay period following Council approval of this MOU, this Intermediate POST Certificate differential shall increase to three percent (3%) of base salary. Effective January 1, 2016, this Intermediate POST Certificate differential shall increase to four percent (4%) of base salary. Effective July 1, 2016, this Intermediate POST Certificate differential shall increase to five percent (5%) of base salary.

13.7.2 **Advanced Certificate:** Within thirty (30) working days of approval from the Berkeley Police Department Professional Standards Division of an Officers' eligibility for a Peace Officers Standards and Training Advanced Certificate, the employee shall receive a two percent (2%) differential to base salary and such payment shall be reported to CalPERS as Peace Officers Standards and Training Certificate Pay as a form of Educational Pay.

13.7.3 An employee may simultaneously receive the Intermediate and Advanced Certificate differential for a total differential of four percent (4%), five percent (5%) following Council approval of this MOU, six percent (6%) effective January 1, 2016, and seven percent (7%) effective July 1, 2016.

#### **SECTION 14: BILINGUAL PREMIUM PAY**

The Chief of Police may make a Bilingual Premium Pay Special Assignment of an employee who is able to demonstrate verbal communication skills in a language other than English, including Braille and sign language, and who routinely and consistently utilizes these bilingual skills for the City of Berkeley. Candidates for the Bilingual Premium Pay Special Assignment will be selected in a manner similar to the manner used to select Field Training Officers. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay shall be a five percent (5%) to base pay, shall apply to all hours in a paid status and shall be reported to CalPERS as Bilingual Premium Special Assignment Pay.

#### **SECTION 15: LONGEVITY PAY**

Effective June 28, 2009, employees completing nineteen (19) years of service in a classification represented by the Association shall receive a five percent (5%) differential beginning with the anniversary date of beginning the twentieth (20<sup>th</sup>) year of service and shall apply to all hours in a paid status. This Longevity Pay shall be reported to CalPERS as Longevity Pay Incentive Pay.

#### **SECTION 16: SUPPLEMENTAL RETIREMENT INCOME PROGRAM**

Effective December 25, 1988, the City will pay two percent (2%) of the employee's regular annual salary for the first \$32,400 in salary, into a Supplemental Retirement Income Program.

## SECTION 17: HIGHER CLASS PAY, TEMPORARY APPOINTMENTS, PROVISIONAL APPOINTMENTS

### 17.1 Acting Assignment

When an employee occupying a position in any of the classifications covered by this Memorandum of Understanding is specifically assigned by the Chief of Police or his or her authorized representative to temporarily serve in a higher classification for a minimum of one (1) entire shift (either 8, 10 or 12.5 hours depending on the employee's shift schedule), said employee shall be paid at the lowest step of the higher classification which provides at least a five (5) percent differential or the lowest step of the higher classification to which the employee is assigned, whichever is greater. To be eligible for a higher class assignment the employee must meet the minimum qualifications, as outlined in the class description, and perform the duties of the higher classification. In no case, however, will an employee acting in a higher classification be paid in excess of the top step of the salary range of the higher class. In no instance shall an acting assignment last for more than thirty (30) consecutive days; any assignment over thirty (30) consecutive days shall be deemed a provisional assignment.

### 17.2 Temporary Vacancy

When a temporary vacancy is to be filled in a classification for which there is an existing eligibility list, the City shall attempt to make the temporary assignment from that list.

### 17.3 Provisional Appointment

An employee who holds a provisional appointment in a classification shall receive step increases in such classification as if the employee held a permanent appointment thereto.

### 17.4 Duration

Temporary and provisional assignments may be made up to six (6) months in any calendar year.

## SECTION 18: HOURS AND DAYS OF WORK

18.1 Subject to the terms of this MOU, hours and days of work shall be governed by rules established by the City Manager and the Chief of Police. The work schedule is attached as Exhibit "B" for illustrative purposes and is described as follows:

18.1.1 **4/10 Work Schedule:** Employees assigned to the 4/10 Work Schedule shall be assigned to begin work on Monday, Tuesday, Wednesday and Thursday. Employees assigned to this Work Schedule shall have a normal work week of four (4) consecutive ten (10) hour days. Scheduled days off shall be Friday, Saturday and Sunday.

18.1.2 **3/12.5 Work Schedule:** Employees assigned to the 3/12.5 Work Schedule shall be assigned to begin work on Friday, Saturday and Sunday. Employees assigned to this Work Schedule shall have a normal work week of three (3) consecutive twelve and one-half (12.5) hour days. Scheduled days off shall be Monday, Tuesday, Wednesday and Thursday. Employees assigned to this Work Schedule shall also work one additional ten (10) hour shift on either the first, second or third Thursday of each Fair



Labor Standards Act (FLSA) 28 consecutive day work period depending on the Team Assignment of the employee.

18.1.3 Either party may request to modify the work schedule after initial implementation and any modification shall be subject to the meet and confer process.

18.1.4 There may be some special assignments including, but not limited to Sergeants assigned to the Internal Affairs Bureau or the Sergeant assigned to the Professional Standards Division who work a 4/10 schedule from Tuesday through Friday with scheduled days off on Saturday, Sunday and Monday.

18.1.5 When an employee's schedule is changed from the 3/12.5 to the 4/10 schedule, the employee shall be given the option of working the additional four (4) hours or taking earned vacation or compensatory time to cover the pay period shortage.

#### 18.1.6 Daylight Savings Time

18.1.6.1 **Spring:** In the Spring when transitioning to Daylight Savings Time (DST), employees working during the one (1) hour transition from Standard Time to DST will be paid only for actual hours worked. Employees working on a shift which includes the one (1) hour transition may be granted an option by the Chief to work an additional hour or use compensatory time, floating holiday, or vacation to make up the lost work hour.

18.1.6.2 **Fall:** In the Fall when transitioning from DST, employees working during the one (1) hour transition will be paid for all hours worked including overtime and one-and-one-half (1½) times the straight-time rate of pay for hours worked in excess of the regular workweek as set forth in either Section 18.1.1 or 18.1.2 of this Understanding, or all hours worked in excess of 171 hours in a 28 consecutive day work period as provided in Section 207(k) of the Fair Labor Standards Act (FLSA).

#### 18.2 Shift Trades

The practice of trading of work shifts (where one Unit F employee trades a shift with another of the same rank) shall be limited as set forth in Police Department General Orders which include the following provisions:

18.2.1 Each Unit F employee shall be allowed no more than four (4) trades of shifts in any calendar month. Employees desiring in excess of four (4) trades of shifts must first seek and receive permission for additional trades of shifts from the Commanding Officer of the division involved.

18.2.2 Notwithstanding the foregoing, under no circumstances will employees be allowed to regularly or systematically trade shifts with one another in a manner that negates or converts the hours or days any employee is regularly scheduled to work (e.g., to work a four [4] day work week on a regular basis).



18.2.3 Permission for additional trades of shifts shall generally be granted if the request is supported by a bona fide reason and the request will not circumvent the requirements of Section 18.2.2 above.

18.2.4 In no event shall compensatory time off be transferred to compensate for a trade of shift by one employee for another.

### 18.3 Lunch Period

Employees may, upon clearance by the on-duty supervisor, extend their lunch period by no more than thirty (30) minutes in order to work out. Employees availing themselves of this opportunity will limit their workout within the Berkeley City limits and remain available and reachable by telephone during the entire period in the event of a specific need. As is the case with any lunch period, the needs of the City and Department take precedence.

## SECTION 19: OVERTIME/SHIFT EXTENSION

19.1 Employees of the rank of Lieutenant or below shall be entitled to receive overtime pay. No employee may work overtime or extend his or her shift without express prior approval of his or her supervisor. Time spent in a paid status but not actually worked (i.e., sick leave, vacation leave, workers' compensation, holiday time when receiving pay, when being represented, or other approved leaves with pay) shall be considered "time worked" for the purposes of this section. Unless specifically requested by a commanding officer, employees shall not work overtime on their regularly scheduled shift on days they would normally work. On days when they have taken paid time off for any reason other than workers' compensation, they are not automatically restricted from working overtime during those same days on shifts other than their own.

As set forth in Section 18.1 of this Understanding, employees at the rank of Police Lieutenant or below shall be assigned to work either a 4/10 Work Schedule or a 3/12.5 Work Schedule. Overtime is defined as all hours an employee is required to work in excess of the regular workweek as set forth in either Section 18.1.1 or 18.1.2 of this Understanding, or all hours worked in excess of 171 hours in a 28 consecutive day work period as provided in Section 207(k) of the FLSA.

19.1.1 Employees of the rank of Lieutenant or below shall be compensated for as follows:

19.1.1.1 The overtime rate applicable under this section shall be one and one-half (1½) times the straight-time rate based upon the hourly rate of the employee who works the overtime.

19.1.1.2 Whether an employee shall be compensated for overtime by compensatory time off or by payment shall be at the sole discretion of the employee's department director.

19.1.1.3 Flexing of shifts will only be used on a voluntary basis. Members shall notify the BPA before they flex their schedule.

- 19.1.1.4 **Work Week:** For the purpose of computing overtime, the workweek shall be defined as beginning at 12:01 a.m. Sunday and ending at 12:00 midnight Saturday.
- 19.2 Employees holding the rank of Captain shall be ineligible for overtime compensation. The practice of permitting Captains to receive overtime for special events such as U.C. Berkeley football games, the Fourth of July celebration, and for Federal Emergency Management Act (FEMA) disaster work is hereby discontinued.
- 19.3 Emergency On-Call Status  
An employee shall be paid or given compensatory time off for being placed on emergency on-call status as follows:
- 19.3.1 An employee who is placed on emergency on-call status on his or her regularly scheduled work day shall be paid for a minimum of one hour and at a one-quarter time rate (i.e., 0.25 multiplied by the hourly rate and multiplied by the number of hours placed on emergency on-call status).
- 19.3.2 An employee who is placed on emergency on-call status on his or her regularly scheduled day off shall be paid for a minimum of two hours and at a one-quarter time rate (i.e., 0.25 multiplied by the hourly rate and multiplied by the number of hours placed on emergency on-call status).
- 19.4 Compensatory Time Off  
Compensatory time off may be earned in lieu of overtime pay at the rate of one and one-half (1½) hours for each overtime hour worked up to a maximum, effective July 1, 1984, of one hundred twenty (120) hours in such compensatory time. Consistent with FLSA regulations, upon termination of employment, employees will be paid for the full amount of compensation for accumulated but unused compensatory time. Utilization of compensatory time shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of service, consistent with FLSA regulations.
- 19.5 Administrative Leave for Captains
- 19.5.1 Effective January 1 of each year, Captains shall be credited with forty (40) hours of Administrative Leave. Such leave shall be in lieu of overtime earned by individuals in the ranks of Lieutenant and below. After successful completion of six (6) months of initial employment, employees are able to use Administrative Leave. Administrative Leave which is not utilized during any calendar year will be credited to the individual's vacation balance at the end of the calendar year. All rules governing vacation balances and when vacation can be scheduled in Section 22 shall apply to Administrative Leave.
- 19.5.2 Persons appointed to the rank of Captain during the calendar year shall receive Administrative Leave prorated based on the number of pay periods remaining in the calendar year.
- 19.6 Any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

### 19.7 Emergency Overtime

An employee is guaranteed at least three (3) hours overtime when called to emergency overtime duty from his or her residence.

## SECTION 20: COURT TIME

### 20.1 Court Overtime

20.1.1 Court overtime is defined as that overtime worked in connection with an assigned appearance before any criminal or civil court, Police Review Commission meeting or Board of Inquiry, Department Board of Review, and any other specially approved appearance on behalf of another City department or commission.

20.1.2 Unless otherwise approved by a Commanding Officer, all court overtime shall be paid.

20.1.3 A sworn employee who makes an off-duty court appearance shall receive a minimum of four (4) hours overtime unless his or her scheduled duty reporting time, regular shift or overtime shift is less than four hours after the scheduled court appearance in which case the employee will receive overtime in the lesser amount.

20.1.4 Overtime spent conferring with the prosecuting attorney will be considered as court overtime and part of the court session only if the employee's presence is required in court after the conference.

20.1.5 For off-duty, out-of-town court appearances, travel constitutes court overtime and is determined by the round trip time from the Hall of Justice.

20.1.6 To receive court overtime credit, an employee shall submit an Extraordinary Duty Report.

20.1.6.1 Subpoena should be attached and case number indicated if either or both are available.

20.1.6.2 Report is to be completed by the employee and should specify the amount of time required for "testifying/conferring," "time waiting," or "not needed."

20.1.6.3 The employee's supervisor shall review the report for accuracy and complete the lower boxed area, indicating the court paid overtime budget code, the Activity Code and the proper project designation.

### 20.2 Court Overtime/Telephone Stand-By

20.2.1 Sworn employees who are placed on telephone stand-by for the court will be compensated by earned compensatory time as follows:

- 20.2.1.1 **Duty Day:** One hour minimum compensatory time and hour for hour thereafter.
- 20.2.1.2 **Day Off:** Two hour minimum compensatory time and hour for hour thereafter.
- 20.2.2 To receive compensatory overtime credit for telephone stand-by, an officer shall submit an Extraordinary Duty Report.
  - 20.2.2.1 Subpoena should be attached and case number indicated if either or both are available.
  - 20.2.2.2 Report is to be completed by the officer and shall specify the case number and the name of the Deputy District Attorney placing him or her on telephone stand-by.

## SECTION 21: RECOVERY TRANSFER TIME

- 21.1 Recovery Time Transfer is that system whereby an employee grants time from earned compensatory time off, vacation leave or sick leave to another employee. Such transfer of time shall be limited to situations where the recipient of the transfer is, by reason of illness or injury, threatened with the loss of earnings due to his/her exhaustion of employment benefits. Such time transfer request must be in writing, and subject to the approval of the City Manager or designee. Such approval shall not be unreasonably denied. Such transfer shall be credited to the recipient at the donor's rate of pay. Recovery Transfer Time will not be used for industrial injuries or illnesses. The use or receipt of Recovery Transfer Time shall not preclude possible medical separation of the recipient employee. The City reserves the right to require medical verification by a qualified medical practitioner of the recipient employee's medical condition.
- 21.2 An employee may donate compensatory time off or vacation leave.
- 21.3 An employee may donate accrued but unused sick leave as Recovery Transfer Time subject to the following conditions:
  - 21.3.1 An employee may donate one hour of sick leave for each hour of compensatory time off and/or vacation leave time donated for Recovery Time Transfer. To donate sick leave hours beyond the number of hours of compensatory time off and/or vacation leave time, the employee will be charged two hours of sick leave for each hour of sick leave donated for use as Recovery Time Transfer.
  - 21.3.2 The employee donating the sick leave must maintain a sick leave balance of at least 120 hours after the donation of leave for Recovery Transfer Time.

## ARTICLE 3 - LEAVES

### SECTION 22: VACATION

- 22.1 All employees who have worked for the City six (6) months or more and have worked half-time or more in the preceding year shall be entitled to vacation leave.
- 22.2 The times during the calendar year at which an employee shall take vacation shall be determined by the Chief of Police or his or her designee in accordance with department policies with regard for the wishes of the employee and particular regard for the needs of service. With advance supervisory approval, vacations may be in increments of one (1) hour.
- 22.3 Employees shall be entitled to annual vacation leave as follows:

Years of Service	Vacation Accrual
The first (1) through third (3) years of service (except as provided in Sections 22.4 and 22.5 below)	80 work hours
Fourth (4) through eleventh (11) years of service (except as provided in Sections 22.4 and 22.5 below)	120 work hours
Twelfth (12) through seventeenth (17) years of service (except as provided in Sections 22.4 and 22.5 below)	160 work hours
Eighteenth (18) through twentieth (20) years of service (except as provided in Sections 22.4 and 22.5 below)	200 work hours
Twenty-first (21) and subsequent years of service (except as provided in Sections 22.4 and 22.5 below)	240 work hours

22.3.1 Employees shall accrue vacation leave at the following rates:

Vacation Hours Earned Per Year	Hours of Vacation Earned per Hour of Regularly Scheduled Work
90	0.0385
120	0.0577
160	0.0769
200	0.0962
240	0.1154

22.3.2 **Use of Vacation Leave:** Each employee shall be entitled to take during the first two (2) years of employment only such annual vacation leave as the employee earns: provided, however, that no employee with less than six (6) months of service shall be entitled to take earned vacation leave.

22.3.3 **Lateral Entry Vacation Accrual Rate at Time of Appointment:** Subject to the provisions of Section 22.1, an employee appointed through lateral entry shall accrue and take Vacation Leave commensurate with his or her experience as a sworn peace officer.

## 22.4 Calculation of Vacation for Part-Time or Intermittent Employees

For an employee who has worked on a part-time or intermittent basis, the actual years of service with the City shall be used for the purpose of computing length of service in determining eligibility for vacation as specified in Section 22.3.

**22.4.1 Pro-Ration of Vacation for Part-Time or Intermittent Employees:** Employees working on an intermittent or part-time basis who have worked half-time or more in the preceding calendar year without termination of employment shall be entitled to a prorated vacation leave based upon the actual years of service with the City and upon the actual amount of time worked in the preceding calendar year.

**22.4.2** For the purpose of computing length of service in determining eligibility for vacation, time spent on an extended military leave shall be counted as time spent in the service of the City.

## 22.5 Maximum Vacation Leave Accrual Carryover

Employees can carry over from one vacation year (see glossary) to the next no more than three hundred twenty (320) hours of earned vacation.

**22.5.1 Annual Vacation Leave Sell Back:** Once per year, an employee will have the option to sell to the City up to one hundred sixty (160) hours of accumulated vacation time. The employee shall notify the Department on a form provided by the Auditor that he or she is exercising this option no later than March 1 of any calendar year. The City will pay the employee for the purchased vacation hours by March 31 of the same calendar year.

**22.5.2 Excess Vacation:** Not later than October 1 of each vacation year, the City will notify each affected employee of the amount of the employee's earned vacation projected to exceed three hundred twenty (320) hours at the end of the vacation year. By October 31, those employees notified of projected excess vacation will submit to the Chief of Police a proposal for use of the projected excess vacation prior to the end of the vacation year. Such a proposal may include both vacation leave and "sell back" to the City.

**22.5.3** An employee who has attained maximum accumulation, and does not submit a proposal for use of excess vacation, may be required to take all the projected excess earned vacation or receive pay in lieu thereof, at the option of the City. Such time off shall be scheduled in accordance with the provisions of Section 22.2.

## 22.6 Return from Extended Unpaid Leave

An employee who has returned from extended military leave or any other extended leave of absence without pay or who has been reemployed or reinstated shall be entitled, during the calendar year in which the employee returns to City service, to a prorated vacation based upon the total years of service with the City and upon the total number of months of actual service with the City during the calendar year. For succeeding calendar years, vacation shall be as provided in Section 22.

**22.7** Any employee who is granted a leave of absence without pay and who is off the payroll for less than one hundred-sixty (160) consecutive hours shall be entitled to a full vacation. If

such an employee is off the payroll for the employee shall not earn vacation leave credit for each one hundred–sixty (160) consecutive hours that he or she is off the payroll. Vacation leave shall be accrued on hours worked or in a paid status exclusive of overtime.

## 22.8 Payment upon Death, Termination or Extended Leave

If, after six (6) months of continuous service, an employee dies, is terminated or is granted an extended military leave or other extended leave of absence without pay, such employee, or his or her estate shall be paid for accrued but unused vacation leave.

22.8.1 Upon death or termination, if the vacation balance is negative, for employees who received advanced vacation, such employee, or his or her estate, shall, on the same basis, reimburse the City or the City may deduct the balance due from the employee's salary due, accrued floating holidays, holiday pay due, compensatory time due or sick leave, in the listed order of priority.

22.8.2 Payment for excess of vacation leave shall be made in lump sum at the time of termination or death, as soon as possible.

## SECTION 23: HOLIDAYS

23.1 All employees in Representation Units E and F who are required to work on any of the hereinafter enumerated holidays, shall have the option of receiving compensation, in addition to their regular monthly salaries, either in the form of holiday pay or compensatory overtime. The holiday pay will be equivalent to the employee's regular hourly salary multiplied by the number of hours worked during such day, except that the sum of the hours compensated by holiday pay and hours taken as time off shall not exceed eight (8) for any single holiday; or the employee shall receive compensatory time off at the straight-time rate on the same basis. For purposes of overtime computation, holiday pay is not to be considered compensation for time worked. Employees may utilize accrued compensatory time off, vacation, floating holidays and/or administrative leave (if applicable) for the difference between 8 hours and the number of hours in their regularly scheduled shift.

23.2 In the event that any of the enumerated holidays fall on a day which is not a regularly scheduled workday, such employees shall, in addition to the regular salary which such employees receive, be paid for eight (8) hours for each such holiday at straight-time rate based upon their regular monthly salary or shall, at the discretion of the Chief of Police, be given eight (8) hours of compensatory time off at a straight-time rate.



23.3 Recognized holidays for employees in Representation Units E and F to which this section applies are as follows:

<ul style="list-style-type: none"> <li>• New Year's Day</li> <li>• Martin Luther King, Jr.s' Birthday</li> <li>• Washington's Birthday</li> <li>• Lincoln's Birthday</li> <li>• Malcolm X's Birthday</li> <li>• Memorial Day</li> <li>• Independence Day</li> <li>• Labor Day</li> </ul>	<ul style="list-style-type: none"> <li>• Indigenous People's Day</li> <li>• Veteran's Day</li> <li>• Thanksgiving Day</li> <li>• Day after Thanksgiving</li> <li>• Christmas Day</li> </ul> <p><i>(Any other special holiday as declared by the City Manager)</i></p>
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23.4 Floating Holidays

After successful completion of six (6) months of initial employment, employees shall be granted three (3) floating holidays, equivalent to eight (8) hours each, during the calendar year. The days selected shall be by mutual agreement between the employee and the Chief of Police or his or her designee. In the event mutual agreement cannot be reached, the time sought shall be added to his or her accrued vacation time. Employees may take floating holidays in one (1) hour increments. Employees who terminate employment within the first six (6) months of initial employment shall not be eligible for payout of any accrued but unused floating holidays.

23.5 Pro-Rated Holidays

A new employee or an employee returning from a long term leave of absence without pay will receive floating holidays on a pro-rated basis, according to the following schedule:

Date of Hire or Return	Floating Holiday Entitlement
January 1 - April 30	3
May 1 - August 30	2
September 1 - December 31	1

23.6 Employees shall receive specially declared holidays on the same basis as they now receive other holidays.

23.7 **Eligibility**

To be eligible for holiday pay, an employee must be on paid leave status on the employee's last regularly scheduled workday before the holiday.

**SECTION 24: SICK LEAVE**

24.1 Employees shall be entitled to take sick leave with full pay in case of sickness, disability, or serious illness of the employee or of members of the employee's immediate family in accordance with the provisions of Sections 24.2 to 24.7, inclusive.



#### 24.2 Sick Leave Accrual

Each employee shall be credited with one (1) eight-hour work day of sick leave with full pay for each month of service. Provided further that employees hired on or after September 11, 2012 shall accrue eight (8) hours of paid sick leave for each month of service. Employees hired before September 11, 2012 shall accrue sixteen (16) hours of paid sick leave for each month of service after the completion of twenty (20) years of service.

Actual accrual of sick leave will be based upon those days on which the employee was on the payroll and receiving pay.

24.3 An employee working on a part-time basis shall be entitled to use earned sick leave only on a pro rata basis; for example, if an employee works half-time the employee shall be paid for time off on sick leave on a half-time basis.

#### 24.4 Intermittent Employees Use of Sick Leave

An employee who works on an intermittent basis shall be entitled to use earned sick leave only for those days on which the employee would have worked if the employee had not been sick; provided, however, that an employee working on an intermittent basis who works only when called shall be entitled to use earned sick leave only when the employee becomes sick after reporting to work in response to such call.

#### 24.5 Notice Requirements

Except in the case of emergencies, in order to receive compensation while absent on sick leave the employee shall notify the Chief of Police or other personnel designated by the Chief of Police at least one hour prior to the start of the employee's daily duties.

#### 24.6 Sick Leave Program

Effective December 23, 2012, the following Sick Leave Program went into effect.

**24.6.1 Five (5) Year Payout to PORAC Trust:** If a sworn member of the Berkeley Police Department ("Employee") has an accrued sick leave balance on December 23, 2012 that exceeds 200 hours, one half of all those hours in excess of 200 shall be maintained in a separate account. The financial value of those hours shall be converted and deposited into the employee's retiree Peace Officers Research Association of California (PORAC) medical trust account over five successive years in equal installments commencing on January 1, 2013 to January 1, 2017. The conversion shall be at the Employee's rate of pay on December 23, 2012. The City may accelerate the payment of hours to be converted.

The remaining fifty percent (50%) of the sick leave balance in excess of 200 hours shall be credited into the employee's separate "catastrophic/service time" bank no later than February 1, 2013 up to a maximum of 500 hours.

**24.6.2 Annual Conversion to Cash:** At the end of each calendar year, if an employee has an accrued sick leave balance of 200 hours or more of sick leave, fifty percent (50%) of all hours accrued in excess of 200 hours shall be converted to a cash equivalent at the end of each calendar year. The annual cash conversion shall be calculated at the employee's hourly rate including additional pay such as POST Pay, Bilingual Pay and Longevity Pay then in effect at the end of the calendar year. The

annual cash conversion shall be limited to 50% of the hours an employee has accrued in excess of 200 hours as of December 31<sup>st</sup> of each year. The City shall pay the annual cash equivalent into an employee's retiree PORAC medical trust account on behalf of the employee member. Upon retirement, any sick leave hours that have not been converted onto an employee's PORAC medical trust account, used for the purpose of additional retirement service credit as provided in PERL Section 20965, or "catastrophic/service time" bank shall be forfeited.

The remaining fifty percent (50%) of accrued hours in excess of 200 hours, up to a maximum of 500 hours, shall be maintained in the employee's separate "catastrophic/service time" bank. These hours are available for the employee's use in the event that the employee has a catastrophic illness or injury and has exhausted all accrued sick leave hours and compensatory time off hours. At the time of the employee's retirement or termination, any sick leave balance in the catastrophic/service time bank may only be used for additional retirement service credit as provided in PERL Section 20965 and the employee cannot cash it out at retirement or separation.

**24.6.3 Catastrophic/Service Time Bank of Hours:** The catastrophic/service time bank of hours is available for use subject to the following conditions.

- 24.6.3.1 Employee or employee's dependent family member must be suffering from a catastrophic illness or injury. Catastrophic illness or injury means an unanticipated life threatening illness or injury, either for a permanent or temporary period anticipated to exceed thirty (30) working days, that results in the incapacity of an employee or the employee's dependent family member and by virtue of the illness or injury to the employee or the employee's dependent family member, the employee's ability to perform the essential functions of his or her usual and customary occupation is limited.
- 24.6.3.2 Employees may also utilize "catastrophic/service time" bank hours for the birth or adoption of a child.
- 24.6.3.3 Employee shall provide the City proof of catastrophic injury or illness from an authorized health care provider on a form to be provided by the City
- 24.6.3.4 The employee must have exhausted all of his or her available paid leave balances (except accrued vacation) and, as a result, will be placed on unpaid leave status unless the catastrophic/service time bank is utilized.

**24.6.4** Employee is prohibited from using the catastrophic/service time bank under the following circumstances:

- 24.6.4.1 Employee is prohibited from using the catastrophic/service time bank for any industrial injuries or illnesses that are covered by the California workers' compensation laws and regulations, except and

until the employee has exhausted all benefits under Labor Code Section 4850 and all the employee's available paid leave balances.

24.6.4.2 Employee is prohibited from simultaneously using the catastrophic/service time bank and receiving benefits under any Berkeley Police Association sponsored Long Term Disability benefit.

24.6.4.3 The employee is not permitted to extend employment into retirement through the use of catastrophic/service time.

24.6.4.4 Any balance in the catastrophic/service time bank at time of employee's retirement will not be cashed out. However, an employee may use any balance to purchase CalPERS additional service credit.

#### 24.7 Family Sick Leave

Sick leave shall not be considered a privilege which an employee may use at the employee's discretion but shall be allowed only in case of sickness or disability or in the case of serious illness of the employee or within the immediate family of the employee. Not more than fifteen (15) working days in any calendar year may be taken as sick leave because of illness of a member of the employee's immediate family, except for serious medical conditions covered under the provisions of Administrative Regulation 2.4-Family Care Leave, federal Family and Medical Leave Act. The immediate family of an employee, for the purposes of this section, shall include: dependent residing in the employee's household, spouse, son, daughter, parent and other relationships as determined by the City, such as domestic partner (see glossary).

#### 24.8 Sick Leave Bonus

Employees shall be entitled to receive an additional eight (8) hours of paid leave for every six (6) months of uninterrupted non-use of sick leave. Leave of absence for any reason other than Vacation Leave, Administrative Leave, use of Compensatory Time Off or Bereavement Leave, or partial day absences due to a prescribed follow-up physical therapy or medical appointment (Payroll Code M0) for a Workers' Compensation claim, disqualifies an employee for this bonus. This additional leave accrual is prorated for part-time employees. Not more than sixteen (16) additional hours per year may be achieved; this paid leave may be used for any leave purpose covered by this Understanding.

#### 24.11 Absenteeism Control System

The City may implement an absenteeism control system, which will include the detailed and ongoing recording of absences and counseling of employees regarding abuse, with management and supervisory personnel having the discretion to require medical verification in instances where abuse appears evident and to take disciplinary action as appropriate to correct patterns of abuse.

## SECTION 25: WORKERS' COMPENSATION

- 25.1 All employees shall be entitled to such compensation as may be allowed pursuant to the applicable provisions of the Workers' Compensation Insurance and Safety Act of the State of California (specifically Labor Code Sections 4850 et seq.).
- 25.2 No sick leave shall be allowed for time off for an injury incurred while working for another employer, provided that such injury is covered by the Workers' Compensation laws of the State of California or other provision for payment for time off because of such injury is made by such other employer. In the event such injury is not covered by the Workers' Compensation laws of the State of California and no other provision for payment for time off because of such injury is made by such other employer, sick leave in accordance with the provisions of Section 24 shall be allowed only if such outside employment has been approved by the City.
- 25.3 Workers' Compensation salary in lieu of temporary disability payments as provided in California Labor Code Section 4850 are reportable to CalPERS as compensation earnable for a period not to exceed one year. Any temporary disability benefits, which are coordinated with the employee's available leave accruals, paid after one year is not reportable to CalPERS as compensation earnable.

## SECTION 26: FUNERAL LEAVE

- 26.1 In the case of death within the immediate family of an employee such employee shall be entitled to remain absent from duty with pay in order to attend the funeral or memorial service for a period not exceeding three (3) consecutive working days, or, in the case of a funeral or memorial service conducted out of the State of California, for a period not exceeding five (5) consecutive working days. The immediate family of an employee, for the purpose of this section, shall be defined as: wife, husband, domestic partner, (see glossary), mother, father, sister, brother, child, grandmother, grandfather, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and grand-children. A working day for the purpose of this section is based on the actual number of hours an employee is normally scheduled to work (i.e., eight (8) hours; ten (10) hours; or twelve and a half (12.5) hours).
- 26.2 Leave of absence with pay because of death in an employee's immediate family is allowed provided the employee attends a funeral or memorial service during the time off, and such leave shall not be charged against vacation or sick leave which an employee may be entitled to but shall be in addition thereto.

In special cases, with the approval of the Chief of Police, the City Manager may grant a death leave to allow an employee to attend funeral or memorial services because of the death of a person not included within the definition of the immediate family.

In addition, employees may request, and the City will make reasonable efforts to accommodate requests, for employees to supplement funeral leave by using accrued vacation, compensatory time, or floating holidays.

## 26.3 Bereavement Leave Statement:

Any employee requesting funeral leave must submit a statement and provide documentation if possible, i.e., obituary or funeral home or church program or notice, that the family member meets the definition of “immediate family members” as provided in Section 26.1. In recognition that there may be situations where an employee is unable to provide funeral or memorial service documentation because there was no formal service, the employee must so note that on the statement confirming that the service occurred during the time period the employee was off work on funeral leave.

**SECTION 27: MILITARY AND MARITIME LEAVE**

Military and Maritime Leave shall be governed by the provisions of the Federal Uniformed Services Employment and Reemployment Rights Act (USERRA) and any regulations promulgated to implement the Act, and the California Military and Veteran’s Code. Employees will be granted a leave of absence without pay with appropriate seniority, pay, status and vacation as required by law for the purpose of fulfilling any required military obligation. If allowed by the USERRA and/or the State of California Military and Veteran's Code, where the employee is entitled to receive his/her regular pay during the period of the military leave, military pay is to be deducted from the employee's regular pay from the inception of the military leave.

**SECTION 28: FAMILY CARE LEAVE**

Administrative Regulation 2.4 (Family Care Leave) is intended to comply with the Family and Medical Leave Act of 1993 and the California Family Rights Act of 1991 as may be amended from time to time. A copy of Administrative Regulation 2.4 is attached to this Memorandum of Understanding for illustrative and convenience purposes. It is not the intent of the parties to incorporate Administrative Regulation 2.4 into this Memorandum of Understanding. The Association will be notified of any revisions to Administrative Regulation 2.4.

**SECTION 29: LEAVE OF ABSENCE WITHOUT PAY**

29.1 Upon request of the employee, the Chief of Police may grant a leave of absence to an employee within his or her department without pay not to exceed fifteen (15) working days. No leave without pay shall be granted for more than fifteen (15) working days, except upon the written request of an employee and approval of the City Manager. Failure on the part of an employee on leave to report promptly at its expiration shall be cause for discharge.

29.2 An employee must use all available compensatory and vacation leave, including banked vacation, in order to become eligible for an approved leave of absence without pay. In the event of illness, an employee must also exhaust sick leave prior to receiving authorization for leave without pay. However, in the event of an illness or injury requiring the use of sick leave, an employee has an option to notify the City in writing that he/she wishes to freeze the use of sick leave after thirty (30) calendar days prior to receiving authorization for leave without pay in order to take advantage of an Association sponsored Long Term Disability benefit.

29.3 In the event of a request for leave of absence for personal reasons (not related to sickness), an employee must exhaust all compensatory and vacation time available prior to receiving authorization for leave without pay.

**SECTION 30: JURY DUTY LEAVE**

An employee who is called or required to serve as a trial juror shall be entitled to be absent from duties or service with the City with pay during the period of such service, as defined in the glossary (Exhibit B) or while being present in court as a result of such call. Any employee, working any shift, shall be eligible for this benefit. Jury duty that does not occur during the employee's work shift but does occur on a scheduled work day, shall cause that employee's next scheduled work shift to be shortened by the number of hours spent on jury duty.



## ARTICLE 4 - HEALTH AND WELFARE BENEFITS

### SECTION 31: HOSPITAL-MEDICAL, DENTAL AND LIFE INSURANCE COVERAGE

#### 31.1 Medical Coverage

The City will pay 100% of the premium for the applicable (single, couple, family) Kaiser rate. Plans that are less expensive than or equal to the Kaiser plan shall be fully paid by the City. For coverage under more expensive plans the employee shall pay the difference through payroll deduction. If an employee chooses to complete and submit to the an Affidavit of Domestic Partnership and sign up for medical benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

The Understanding can be reopened on health plan topics by mutual consent. In addition, the Association agrees to meet with the City during the term of this MOU in a timely fashion following a City request, regarding whether the Association will agree to meet and confer regarding how the City can avoid potential 2018 ACA excise tax obligations and on a new and/or replacement health plan or plans and other methods to reduce the current cost of health benefits.

#### 31.2 Dental Coverage

The City shall provide a dental care program for employees. Dental benefits will remain at 90% coverage of the Bay Area Usual, Customary and Reasonable charges for the life of this Understanding. Effective January 1, 2002, the maximum annual coverage will increase to \$3,000 per calendar year and the lifetime limit on orthodontia will be increased to \$3,000. If an employee chooses to complete and submit to the an Affidavit of Domestic Partnership and sign up for dental benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

31.3 Should the City deem it feasible to provide the same level of benefits through another provider or to provide such benefits on a non-insured basis, it will notify the Association and, upon written request, will meet and confer on the matter.

#### 31.4 Life Insurance

The City shall provide term life insurance of \$100,000 for each employee that shall include a standard accidental death and dismemberment provision of a like amount. In addition, employees may purchase additional life insurance in increments of \$10,000 up to a maximum of \$300,000 at a rate offered by the City's insurance carrier and subject to any medical exam as required by the insurance carrier.

#### 31.5 Pro-Ration for Less Than Full-Time Employees

All career and grant-funded provisional employees working less than a full forty (40) hour week shall receive prorated rather than full fringe benefits and shall pay, by payroll deduction, the remainder of the health and dental insurance premiums.

#### 31.6 Cash In-Lieu

Effective the first full pay period following Council approval of this MOU, and for those employees who show proof of alternate medical coverage, the City will compensate the employee \$560.72 per month.

**SECTION 32: RETIREE MEDICAL COVERAGE**

**32.1 Sick Leave Trust Fund**

A retiree, with a sixty (60) day notice, may at any time request a lump sum payment of the balance in his or her Sick Leave Trust Fund. Upon the death of the retiree, any money in the account will be disbursed to the employee's estate.

**32.2 Retiree Health Coverage**

The City will establish an Internal Revenue Code Section 401(a) plan for the purpose of paying the benefit provided in this Section.

The City shall pay to the retiree or his or her surviving spouse an amount equivalent to the two party active Kaiser monthly medical insurance premium until the death of both. (See Exhibit Letter from Kaiser dated September 14, 2001 attached to this Memorandum of Understanding for illustrative and convenience purposes.) The maximum amount the City shall pay to the retiree or his or her surviving spouse is based on the following schedule:

<b>Years of Service</b>	<b>Percentage to be Paid by the City</b>
10 years of Service	City to pay an amount equal to 25% of the 2-party Kaiser plan rate
15 years of Service	City to pay an amount equal to 50% of the 2-party Kaiser plan rate
20 years of Service	City to pay an amount equal to 75% of the 2-party Kaiser plan rate
25 Years of Service	City to pay an amount equal to 100% of the 2-party Kaiser plan rate

**32.2.1 Payment:** If payment is made under the Code section 401(a) plan, the payment to be made on a monthly basis shall be made directly to the retiree, or if the retiree is deceased, to the surviving spouse. If payment is made under the retiree health premium assistance plan per Section 32.3, the payment to be made on a monthly basis shall be made directly to the provider who is providing retiree health coverage to the retiree or his or her surviving spouse (if spouse is eligible, per Section 32.5.2). The retiree or surviving spouse assumes full responsibility for the tax consequences for this benefit.

**32.2.2 Notification of Death:** The retiree or surviving spouse is exclusively responsible for notifying the City of a death of his or her spouse. Such notification must be reported in writing to the City by U.S. Postal Service addressed to: Director of Finance, City of Berkeley Finance Department, 2180 Milvia Street, Berkeley, CA. When both the retiree and surviving spouse die all payments under this Section shall cease.

**32.2.3 Notification of Change of Address:** The retiree or surviving spouse is exclusively responsible for notification to the City of his or her current mailing address. A change in mailing address must be reported in writing to the City by U.S. Postal Service addressed to: Director of Finance, City of Berkeley Finance Department,



2180 Milvia Street, Berkeley, CA. If the U.S. Postal Service returns payment checks for two consecutive months, the City will cease making payments under this Section. However, if the retiree and/or surviving spouse re-establishes contact with the City and notifies the City in writing of a new mailing address, the City shall resume making payments including arrears payments for the period when payment checks were undeliverable.

**32.2.4 Payments Commence 10 Years after Retirement Plan:** For employees retiring on or after January 1, 1989 through July 5, 1997, the City shall begin making payments to the retiree or his or her surviving spouse ten (10) years after the employee retires. No payments will be made under this Section until January 1, 1999. For the purposes of this Section, a “retiree” is anyone who separated from the City on or after January 1, 1989, is vested in CalPERS, has ten years of service as a sworn officer with the Berkeley Police Department and has reached the age of 50. However, a “retiree” is also anyone, regardless of age, who receives a disability or industrial disability retirement benefit from CalPERS and has at least ten (10) years of sworn service with the Berkeley Police Department.

**32.2.5 Payments Commence 5 Years after Retirement Plan:** For employees retiring on or after July 6, 1997, the City shall begin making payment to the retiree or his or her surviving spouse, or to the provider of retiree health care coverage through a newly established retiree health premium assistance plan, as applicable, five (5) years after the employee retires. No payments will be made under this Section until July 6, 2002. For the purposes of this Section, a “retiree” is anyone who separated from the City on or after July 7, 1997, is vested in CalPERS, has ten years of service as a sworn officer with the Berkeley Police Department and has reached the age of 50. However, a “retiree” is also anyone, regardless of age, who receives a disability or industrial disability retirement benefit from CalPERS and has at least ten (10) years of sworn service with the Berkeley Police Department.

**32.2.6 Payments Commence 2 Years after Retirement Plan:** Effective July 1, 2008 for employees retiring after July 1, 2007, the City shall begin making payments to or on behalf of the retiree or his or her surviving spouse two (2) years after the employee retires. The maximum amount the City shall pay to or on behalf of the retiree is based on the following schedule:

Years of Service	Percentage to be Paid by the City
10 years of Service	City to pay an amount equal to 25% of the 2-party Kaiser plan rate
15 years of Service	City to pay an amount equal to 50% of the 2-party Kaiser plan rate
20 years of Service	City to pay an amount equal to 100% of the 2-party Kaiser plan rate

For the purposes of this Section, a “retiree” is anyone who separated from the City on or after July 1, 2007, is vested in CalPERS, has ten years of service as a sworn officer with the Berkeley Police Department and has reached the age of 50.

However, a “retiree” is also anyone, regardless of age, who receives a disability or industrial disability retirement benefit from CalPERS and has at least ten (10) years of sworn service with the Berkeley Police Department.

**32.2.7 Overpayments:** In the event of an overpayment, the procedures set forth in Section 41 (Payroll Errors) of the Understanding shall apply to the recovery of overpayments under this Section, with adjustments as appropriate to reflect that retirees are no longer on the active payroll, so offsets or reductions must be made to future payments that would become due under the applicable plan providing benefits to the retiree or his or her surviving spouse.

### 32.3 Retiree Health Premium Assistance Coverage

Effective September 19, 2012, the City will cease making contributions to an Internal Revenue Code Section 401(a) plan for the purpose of paying the retiree health care benefit provided under this Section for any employees hired on or after that date who would otherwise have qualified for benefits under the terms described in this Section 32. Any employees hired on or after September 19, 2012, as well as any current employees who retire on or after such date, shall receive the benefits described in this Section 32.3 as a benefit provided by the City under a newly established retiree health premium assistance plan and related trust agreement. Any benefits payable to employees who have retired prior to such date or to their surviving spouses may continue to be made under the Internal Revenue Code Section 401(a) plan that was established for such purpose to the extent benefits are not provided for such retirees under the new retiree health premium assistance plan. Under the newly established retiree health premium assistance plan, benefits will be the same as previously provided under the 401(a) plan, except for different eligibility criteria and that payment under the 401(a) plan was made directly to the retiree or his or her surviving spouse, and under the new plan the City will pay the retiree health premium assistance amount to the provider who is providing retiree health coverage to the retiree or his or her surviving spouse (if spouse is eligible per Section 32.5.2. Upon the death of the retiree, the amount provided to an eligible surviving spouse will be an amount equivalent to the appropriate percentage of the single party active Kaiser monthly medical insurance premium amount, which will continue until the death of the eligible surviving spouse. The maximum amount the City shall pay towards coverage for the retiree or his or her surviving spouse, either directly or to a health care provider on his or her behalf, is based on the following schedule set forth in Section 32.5 et seq.

### 32.4 Amendment or Termination of 401(a) Plan

As provided under Section 32.2 (Retiree Health Coverage), the City established an Internal Revenue Code Section 401(a) plan for the purpose of paying the benefits for retirees and their surviving spouses provided under this Section 32 (Retiree Medical Coverage). Section 12 of that plan (Berkeley Police Supplemental Retirement Plan) provides that such plan may be amended or terminated in accordance with a Memorandum of Understanding between the City and the Association. The City and the Association have determined that it is desirable, to the extent legally permissible and administratively practicable, to offer benefits previously provided under that Berkeley Police Supplemental Retirement Plan through a retiree health premium assistance plan and related trust under Section 115 of the Internal Revenue Code. Additionally, the parties have agreed that the City may take reasonable steps to amend or terminate the Berkeley Police Supplemental Retirement Plan, or spin-off assets and liabilities under such Plan for certain covered participants into

a new section 401(a) plan that also may be amended or terminated, to the extent such actions are necessary or desirable to accomplish, in providing future retiree medical premium assistance benefits as described in this Section 32 (Retiree Medical Coverage) for some or all of the covered retirees and their surviving spouses through a newly established retiree health premium assistance plan and related trust.

### 32.5 Retiree Medical Coverage

For those employees who retire on or after September 19, 2012 and effective immediately upon the date of retirement, the City will assist in the payment of medical insurance premium payments for the retiree and/or surviving spouse/domestic partner by making payments directly to the medical insurance provider. Retirees shall be permitted at their discretion to enroll in non-City sponsored health plans. In that event, the City shall make medical insurance premium payments directly to the health insurance provider equal in value to the City sponsored health plan. The City shall not be responsible for any excess cost differentials associated with the direct payment of premiums to non-City sponsored plans. The City will only make payments through its third party administrator to provide medical insurance premium payments for an individual plan and will not make payments for a group plan. The retiree and/or surviving spouse or domestic partner will pay the administrative set up fee and the monthly administrative fee established by the third party administrator. No cash payments will be paid directly to the retiree and/or the retiree's spouse/domestic partner.

There shall be no cash in lieu payments made under this benefit.

32.5.1 For employees that retire on or after September 19, 2012 the City will discontinue the current practice of paying directly to the retiree the cash equivalent of the active two-party Kaiser rate. However, for those employees who retired before September 19, 2012, the City shall continue to make cash payments to these retirees under the MOU provisions in effect at the time of their retirement.

32.5.2 **Qualifying Spouse or Domestic Partner.** A retiree will receive the appropriate percentage of two-party coverage for a spouse or domestic partner that meets any of the following criteria ("Qualifying Spouse"): (1) the spouse or domestic partner of the retiree at the time of retirement; (2) for a retiree that did not have a spouse or domestic partner at the time of retirement, the initial spouse or domestic partner a retiree adds to his or her health plan after retirement; or, (3) for any retiree, a subsequent spouse or domestic partner if the previous spouse or domestic partner died. For all times that a retiree does not have a Qualifying Spouse, the City will only pay the appropriate percentage of single party premium for that retiree. If a retiree predeceases a Qualifying Spouse, the City will continue to pay the appropriate percentage of single party premium for that individual.

32.5.3 In the event that an employee retires and initially elects not to utilize the Berkeley retiree medical plan as described above, the employee may opt back into the Berkeley retiree medical plan during any open enrollment period with either single only coverage or two-party coverage, if applicable.

32.5.4 The City will comply with any lawfully executed Qualified Domestic Relations Order (QDRO) but under no circumstances will it provide retiree medical benefits to more than two persons.

32.5.5 In order to be eligible for the Retiree Health Premium Assistance Coverage a "Retiree" must meet all of the following criteria (note, this is different criteria than used for previous plans):

- 32.5.5.1 A person who is vested in CalPERS, and
- 32.5.5.2 Has reached the age of 50, and,
- 32.5.5.3 Has retired from the City at age 50 or thereafter, and
- 32.5.5.4 Has applied for and is receiving a pension from CalPERS at the time of retirement.

However, a "retiree" is also anyone, regardless of age, who receives a disability retirement benefit, either industrial disability or non-industrial disability, from CalPERS.

32.5.6 The maximum amount the City will contribute toward the payment of medical insurance premiums is based on the employee's years of service as a sworn member of the Berkeley Police Department at time of retirement. The retiree must have at least 10 years of service as a sworn member of the Berkeley Police Department to qualify for this benefit.

32.5.7 The maximum amount the City will contribute toward payment of the medical premium is based on the following schedule:

Years of Service	Percentage to be Paid by the City
10 Years of Service	City to provide medical premium assistance equal to 25% of either the single party or two party amount as determined below
15 Years of Service	City to provide medical premium assistance equal to 50% of either the single party or two party amount as determined below
20 Years of Service	City to provide medical premium assistance equal to 100% of either the single party or two party amount as determined below

There will be no pro-rating of years of service.

32.5.8 The City will assist the retiree and/or surviving spouse/domestic partner in the payment of the medical insurance premium as follows:

32.5.9 **Early Retirees who are not Medicare Eligible:** Beginning September 19, 2012, each month after the employee retires, the City will pay the health care service provider an appropriate percentage based on the chart in Section 32.5.7 of an

amount equal to \$1,200.00 per month for two party coverage for the retiree and a qualifying spouse/domestic partner or \$600.00 per month for single party coverage. Upon the death of either the retiree or the retiree's spouse, the City will only pay the appropriate percentage based on the chart in Section 32.5.7 of the single party rate to the provider on behalf of the surviving retiree or spouse/domestic partner. If there is no spouse/domestic partner at the time of retirement, the City shall only pay the single party rate. The retiree and/or surviving spouse/domestic partner will be responsible for payment of the difference between the amount the City contributes toward payment of the premium and the actual premium cost. The funds for this difference will come from the retirees CalPERS retirement account and the retiree must authorize such withdrawal of funds.

Beginning July 1, 2013 and effective each July 1 thereafter, the base rates the City contributes toward payment of the premium amount described in the preceding paragraph shall be increased by either the amount Kaiser increases the early retiree plan medical premium for that year, or 6%, whichever is less. The retiree and/or surviving spouse/domestic partner shall pay the difference between the amount the City contributes toward payment of the premium and the actual premium cost.

- 32.5.10 **Retirees who reach Medicare eligibility age:** Beginning September 19, 2012, for retirees who reach Medicare eligibility age, the City will pay the health care service provider the appropriate percentage based on the chart in Section 32.5.7 of an amount equal to \$765.80 per month for two-party coverage for the retiree and spouse/domestic partner or \$382.90 month for single party coverage. Upon the death of either the retiree or spouse/domestic partner, the City will only pay the appropriate percentage based on the chart in Section 32.5.7 of the single party rate to the health care service provider on behalf of the surviving retiree or spouse/domestic partner. If there is no spouse at the time of retirement, the City shall only pay the single party rate. The retiree and/or surviving spouse/domestic partner will be responsible for payment of the difference between the amount the City contributes toward payment of the premium and the actual premium cost. The funds for this difference will come from the retirees CalPERS retirement account and the retiree must authorize such withdrawal of funds.

Beginning July 1, 2013 and each July 1 thereafter, the base rates the City contributes toward payment of the premium amount described in the preceding paragraph shall be increased by either the amount Kaiser increases the retiree medical premium for that year, or 6% whichever is less. The retiree and/or surviving spouse/domestic partner shall pay the difference between the amount the City contributes toward payment of the premium and the actual premium cost.

Former employees who leave employment prior to age 50 and do not qualify as a "Retiree" under the definition above ("non-qualifying retiree") will not receive any funds from the City, either directly or indirectly, for payment of medical insurance premiums. However, a non-qualifying retiree shall be permitted to purchase health insurance from the retiree medical pool if **all** of the following criteria are met:

- 32.5.10.1 The former employees is vested in CalPERS, and

- 32.5.10.2 Has reached the age of 50, and,
- 32.5.10.3 Has applied for and is receiving a pension from CalPERS, and
- 32.5.10.4 The City sponsored group health plan permits the retiree to enroll in the retiree medical pool, and
- 32.5.10.5 The retiree pays all cost associated with enrolling and maintaining eligibility in the group health plan, including, but not limited to, the administrative set up fee and the monthly administrative fee established by the third party administrator.

**SECTION 33: SUPPLEMENTAL RETIREMENT PLAN**

Effective July 1, 2001 the City adopted a Supplemental Retirement Plan and Trust Agreement to provide supplemental retirement income and other benefits for eligible career benefited employees through the liquidation of termination pay.



## ARTICLE 5 - TERMS AND CONDITIONS OF EMPLOYMENT

### SECTION 34: PROBATIONARY PERIOD

#### 34.1 Police Officer

Original appointments from employment lists for the classification of Police Officer shall be tentative and subject to a probationary period of two (2) years of actual service.

**Completion of Probationary Period upon Return from Military Leave:** Probationary employees who are granted military leaves of absences shall complete the balance of their probationary period within a period of six (6) months following their return to City service. No provision of this Section 34 shall be interpreted to preclude the City from establishing new classifications which may require probationary periods of varying lengths.

**Field Training Officer Rating:** Probationary Police Officers will be rated daily/weekly while in the Field Training Officer (FTO) program, and then semi-annually thereafter.

#### 34.2 Other Probationary Periods

Original and promotional appointments to classes above the rank of Police Officer shall be tentative and subject to a probationary period of six (6) months of actual service and shall be completed within a one (1) year period.

#### 34.3 Provisional Appointments during Probationary Period

If, before completing the required probationary period, an employee is provisionally appointed to a higher class in the same or a related series of classes, the time served in such higher class shall be counted toward completion of the probationary period in the lower class.

#### 34.4 Completion of Probationary Period

If the service of the probationary employee has been satisfactory to the Chief of Police, the Chief of Police shall file with the Director of Human Resources a statement in writing to such effect and stating that the retention of such probationary employee in the service is desired. If such service has been unsatisfactory, the department head shall file with the Director of Human Resources such a statement, in writing, with the recommendation to the City Manager that the employee be rejected.

#### 34.5 Rejection during Probationary Period

During the probationary period, an employee may be rejected at any time without right of appeal or hearing except as provided by the procedures mandated by Government Code 3303 and 3304, as well as provided in Section 40.8.5 of this Understanding. An employee rejected from a position to which the employee has been promoted shall be reinstated to the position from which the employee was promoted unless charges are filed and the employee is discharged as provided in Section 37.

**SECTION 35: PROMOTION/EXAMINATION****35.1 Promotional Exams**

Insofar as practicable and consistent with the best interests of the service, all vacancies in the competitive service shall be filled by promotion from within the competitive service after a promotional examination has been given and a promotional list established.

**35.2 Tests and Applications**

Regular tests shall be given for all ranks including promotional ranks. Applications for Police Officer shall be accepted on a continuous testing basis. Tests for Sergeant, Lieutenant and Captain shall be given at least every two years.

**35.3** From the time that a promotional list no longer contains any names, 1) the City will make a conscientious effort to hold a written examination within ninety (90) days, but in any event will hold the examination within one hundred twenty (120) days; and 2) the City will announce the written examination at least sixty (60) days before the examination takes place.**35.4 Notice of Examinations**

Selection criteria shall be reflected on all examination announcements. All phases of each examination shall be listed in the examination announcement. A study list shall be included in each examination announcement. Each examination shall be announced no less than 60 calendar days in advance of the written test date.

**35.5 Open Competitive Examination**

If, in the opinion of the City Manager, the best interests of the service can be served by an open, competitive examination instead of a closed, promotional examination, and if there is not already a promotional list for the higher position, which list has not been abolished and from which the vacancy could be filled, then the City Manager may instruct the Director of Human Resources to call for applications for the vacancy and arrange for an open, competitive examination and for the preparation and publication of an eligibility list.

**35.6 Criteria for Promotion**

Employees who have qualified for promotional lists shall be considered for promotion based on the following factors: previous work performance, previous training and experience, merit (proven ability or accomplishment), seniority, current and previous special/temporary duty assignments held.

**SECTION 36: DEMOTION****36.1 City Manager Authority**

The City Manager may demote an employee who so requests it, or whose ability to perform required duties falls below standard, or for disciplinary purposes. No employee shall be demoted to a class for which the employee does not possess the minimum qualifications as determined by the Director of Human Resources.



**36.2 Notice Requirements**

Notice of the demotion shall be given the employee no later than two (2) weeks prior to the effective date of demotion, and a copy of said notice shall be filed with the Director of Human Resources. Any employee who has been demoted shall be entitled to receive a written statement of the reasons for such action.

**36.3 Permanent Status**

An employee with permanent status who is demoted shall assume permanent status in the class to which the employee is demoted.

**36.4 Demotion to Vacant Position**

Upon request of the employee, demotion may be made to a vacant position as a substitution for layoff. In such cases, the employee shall be restored to his or her former position without further examination whenever such position is again to be filled in accordance with the reemployment provisions in Section 57.

**SECTION 37: SUSPENSION AND DISCHARGE****37.1 30 Calendar Day Maximum Suspension**

The City Manager may suspend an employee from his or her position at any time for just cause. Suspension without pay shall not exceed thirty (30) calendar days, nor shall any employee be penalized by suspension for more than thirty (30) calendar days in any one-year period.

**37.2 Suspensions of 3 Days or Less**

For just cause, the Chief of Police may suspend an employee for not more than three (3) working days for any one offense. Such suspension shall be reported immediately to the City Manager. At any step in the process of reviewing recommended disciplinary actions, the City Manager may elect to impose more severe discipline.

**37.3 Discharge**

An employee may be discharged at any time by the City Manager, but if the probationary period has been completed, then such discharge must be for a cause. Any employee who has been discharged shall be entitled to receive a written statement of the reasons for such action.

**37.4 120 Day Limit on Imposition of Discipline**

The City agrees that no disciplinary action against an employee covered by this Understanding, which action involves a loss or reduction of pay or discharge, shall be imposed unless such action is taken within one hundred twenty (120) calendar days after the date of the incident giving rise to the disciplinary action or within one hundred twenty (120) calendar days of the date the City has knowledge of the incident giving rise to the disciplinary action.

If a letter of advice or written reprimand is issued by the Department, neither the document nor any testimony offered by the Department or the City in an appeal process shall reference any time restrictions set forth in this section, nor reference any other discipline

that may have been considered, recommended or imposed, but for the time restrictions set forth herein.

If the November 2020 ballot measure amending the City Charter to create the Police Accountability Board is adopted by the voters, the 120 Day Limit on Imposition of Discipline as set forth in Section 37.4 of the MOU shall be amended as follows:

The City agrees that no disciplinary action against an employee covered by this Understanding, which action involves a loss or reduction of pay or discharge, shall be imposed unless such action is taken within two hundred forty (240) calendar days from the date of the City's discovery by a person authorized to initiate and investigation of an alleged act, omission or other misconduct unless a Government Code section 3304(d) exception applies.

- 37.5 Suspension of FLSA Exempt Employees  
Notwithstanding any of the above, FLSA exempt employees in the rank of Captain and above shall not be suspended except as permitted by the Fair Labor Standards Act.
- 37.6 All references in Sections 37.1 and 37.2 to "days" shall be calculated in terms of eight (8) hour equivalencies, unless otherwise provided.

## **SECTION 38: RESIGNATION**

An employee wishing to leave the competitive service in good standing shall file with the Chief of Police, at least two (2) weeks before leaving the service, a written resignation stating the effective date and reasons for leaving. The resignation shall be forwarded to the Director of Human Resources with a statement by the Chief of Police as to the resigned employee's service, performance and other pertinent information concerning the cause for resignation. Failure of the employee to give the notice required shall be entered on the service record of the employee and may be cause for denying future employment by the City. The resignation of an employee who fails to give notice shall be reported by the Chief of Police immediately. Resignations shall take effect on the last day of the pay period in which an employee works unless the City Manager determines that it is in the City's best interest to accept the resignation immediately.

## **SECTION 39: REINSTATEMENT**

A permanent or probationary employee who has resigned with a good record may be reinstated within two (2) years to the employee's former position, if vacant, or to a vacant position in the same or comparable class without further competitive examination. This section shall not be interpreted as a guarantee of reinstatement to an employee who has resigned with a good record and who requests reinstatement within two (2) years.

## ARTICLE 6 - GRIEVANCE AND APPEAL PROCEDURE

### SECTION 40: GRIEVANCE & DISCIPLINARY APPEAL PROCEDURE

- 40.1 A grievance is any dispute which involves the interpretation, application, claimed violation, or claimed noncompliance with the provisions of the Understanding between the City and the Association or with any City ordinance, rule, or regulation which may have been or may hereafter be adopted by the City to govern personnel practices or working conditions of City employees covered by the Understanding, including any rule, regulation, or resolution which may be adopted by the City Council which results from the meet-and-confer process. The grievance procedure discussed below shall be the dispute resolution mechanism applicable to employees covered by this Understanding.
- 40.2 A disciplinary appeal is the procedure established hereunder to afford an employee his or her due process rights. An employee may appeal the recommendation or imposition of discipline for demotion, pay reduction, suspension or discharge other than probationary discharge.
- 40.3 Grievance Procedure  
Grievances shall be processed in the following manner:
- 40.3.1 **Step 1:** Any employee who believes he or she has a grievance (and/or the employee's Association representative) may discuss the employee's complaint with the Chief of Police or with such subordinate management official as the Chief of Police may designate. Nothing in this Section precludes an employee from utilizing the chain of command to solve grievances and/or complaints. If the issue is not resolved within five (5) days, the employee (and/or the employee's Association representative) may elect to invoke the procedure hereinafter specified.
- 40.3.2 **Step 2:** Any grievance which has not been resolved by the procedures hereinabove set forth may be referred to the City Manager by the affected employee or by the Association within ten (10) working days of receipt of the decision at Step 1. Any such referral shall be in writing, and the specific issues involved shall be detailed in such referral, together with a statement of the resolution which is desired. The City Manager shall designate a representative to investigate the merits of the complaint and to meet with the complaining employee (and/or the employee's Association representative). The City Manager shall issue a written decision to the grievant and the Union within ten (10) working days of the meeting. This shall conclude Step 2 of the Grievance Procedure.
- 40.3.3 **Step 3:** If the Association is not satisfied with the City Manager's decision at Step 2 of the Grievance Procedure, the Association may require that the grievance be referred to an impartial arbitrator by notifying the City Manager within ten (10) days of the conclusion of Step 2. Either the Association or the City may require that the grievance be referred to an impartial arbitrator if for any reason forty-five (45) days have elapsed from the date upon which the grievance was received by the City Manager.

A list of five arbitrators shall be requested from the California State Mediation and Conciliation Services (SMCS). The impartial arbitrator shall be selected by either mutual agreement between the Association and the City Manager, or designee, or by each side taking turns striking a name from the arbitrator list with the question of which party shall strike first determined by a coin flip. The Association shall forward to the City the Association's portion of the SMCS fee within thirty (30) days of selection of the arbitrator. The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the Association and the City. Each party, however, shall bear the cost of its own presentation, including preparation and post-hearing briefs, if any.

#### 40.4 Arbitrator Decisions

Arbitrator decisions on matters properly before them which pertain to grievances as defined in Section 40.1 of this Understanding shall be in the forms of recommendations to the City Manager, who may, within five (5) days of receipt of said decision, reject said decision. In the event of said rejection, then, as to that particular grievance, the fees and expenses of the arbitrator and the court reporter shall not be shared by the Association, and full payment thereof shall be the sole responsibility of the City.

#### 40.5 Grievance of Affirmative Action Program

Any grievance which in any way affects the implementation of the City's affirmative action program shall not be subject to arbitration. The decision as to whether or not implementation of the affirmative action program is in any way involved shall be made at the sole discretion of the City Manager. If, in the City Manager's judgment, any grievance involves the affirmative action program, the Equal Employment Opportunity and Diversity Officer shall notify the Association to that effect in writing within seven (7) days of the date upon which the grievance is received in the Human Resources Department and in such notification refer to that section of the affirmative action program which is involved; provided, however, that such notice may come at any time prior to arbitration if additional factors come to the attention of the Equal Employment Opportunity and Diversity Officer on the basis of which he or she considers it appropriate to change his or her original determination.

40.6 No arbitrator shall entertain, hear, decide or make recommendations on any dispute unless the Association seeks a determination or if the dispute involves 1) the issue of unit determination; 2) a question of representation; 3) an aggrieved employee not in a classification of the units represented by the Association; or 4) non-punitive transfers, promotional decisions, and probationary employee terminations except as provided in Sections 34.5 and 40.8.5 et seq. of this Understanding.

#### 40.7 Compensation Grievances

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Director of Human Resources. In such cases no adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed or thirty (30) days from the date when an employee may reasonably be expected to have learned of said claimed violation. Only complaints which allege that employees are not being compensated in accordance with the rules, regulations, and resolutions of the City Council or in accordance with the understandings contained in any memorandum agreement which has resulted from the meet-and-confer process shall be considered as

grievances. Any other matters of compensation are to be resolved in the meet-and-confer process and, if not detailed in the Memorandum of Understanding which results from such meet-and-confer process, shall be deemed withdrawn until the meet-and-confer process is next opened for such discussion.

#### 40.8 Disciplinary Appeals

Disciplinary Appeals shall be processed in the following manner:

40.8.1 **Step 1:** Except as provided for suspensions of not more than three (3) days as provided in Section 37.2, the imposition of a disciplinary demotion, pay reduction, suspension or discharge of an employee will be in the form of a written recommendation from the Chief of Police to the City Manager. For suspensions of not more than three (3) days, the Chief of Police may impose such discipline subject to the appeal procedures set forth hereunder. No disciplinary appeal involving the disciplinary demotion, pay reduction, suspension or discharge of an employee will be entertained unless it is filed in writing with the Chief of Police within five (5) days of the time at which the affected employee was notified of such action in writing.

40.8.2 **Step 2:** The affected employee may appeal the recommendation to impose discipline, or the imposition of discipline for suspensions of not more than three (3) days, to the Chief of Police or his or her designee. The affected employee shall be entitled to a personal conference with the Chief of Police or his or her designee or the affected employee may choose to make an appeal in written form. The Chief of Police or his or her designee shall communicate a decision in writing within ten (10) days after the completion of the personal conference with the affected employee or receipt of the written appeal. This shall conclude Step 2 of the Disciplinary Appeal Procedure.

40.8.3 **Step 3:** Any disciplinary appeal which has not been resolved by the procedures hereinabove set forth may be referred to the City Manager within five (5) days after conclusion of Step 2 by the affected employee or the Association. The City Manager shall designate a personal representative to meet with the affected employee and/or the employee's Association representative and hear the disciplinary appeal or the affected employee may choose to make an appeal in written form.. The City Manager's designee shall communicate a decision within twenty (20) days after the completion of the personal conference with the affected employee or, if the employee chooses to make an appeal in written form, receipt of the written appeal. If the City Manager's designee, in pursuance of the procedures outlined above resolves a disciplinary appeal as defined in Section 40.2 above, the City Manager's designee may order payment for lost time or wages or reinstatement with or without payment for lost time. This shall conclude Step 3 of the Disciplinary Appeal Procedure.

40.8.4 **Step 4:** If the Association is not satisfied with the City Manager's designee's decision at Step 3 of the disciplinary appeal procedure, the Association may require that the disciplinary appeal be referred to an impartial arbitrator by notifying the City Manager within ten (10) days of the conclusion of Step 3.

A list of five arbitrators shall be requested from the California State Mediation and Conciliation Services (SMCS). The impartial arbitrator shall be selected by mutual agreement between the Association and the City Manager or designee, or by each side taking turns striking a name from the arbitrator list with the question of which party shall strike first determined by a coin flip. The Association shall forward to the City the Association's portion of the SMCS fee within thirty (30) days of receipt of the City Manager's response.

The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the Association and the City. Each party, however, shall bear the cost of its own presentation, including preparation and post-hearing briefs, if any. Arbitrator decisions on matters properly before them which pertain to the disciplinary actions involving the suspension, demotion, pay reduction or discharge of an employee shall be final and binding on both parties.

40.8.5 Notwithstanding their probationary status, probationary employees may use the grievance process for disciplinary actions other than termination.

40.8.5.1 **Probationary Employees' Appeal of Discipline:** Notwithstanding his or her probationary status, a probationary employee has appeal rights for disciplinary action where the employee alleges that the City's action was for an illegal or discriminatory reason, such as the exercise of Association membership, political affiliation, or other constitutionally protected activities; provided, however, that any appeal by a probationary employee of rejection from probation alleging a violation of his or her rights under Title VII (42 U.S.C. Section 2000e, et. seq.) or the California Fair Employment and Housing Act (California Labor Code Section 12900 et. seq.) may be pursued as provided in the City's Affirmative Action program, which shall be specifically amended to allow probationary employees a right of appeal under that program. Nothing in this Section 40.8.5.1 is intended to preclude a probationary employee from seeking enforcement of rights through state and/or federal regulatory agencies or in courts of competent jurisdiction.

40.8.5.2 **"Lubey" Hearing:** A probationary employee who is terminated on grounds of misconduct may establish a formal record of the circumstances surrounding his or her termination, but is not entitled to a determination that his or her dismissal was for "just cause." Such a grievance shall terminate upon the conclusion of Section 40.8.3. The City Manager's decision at Section 40.8.3 is final and is not subject to further review.

#### 40.9 Days Defined

All references in this Section 40 to "days" shall mean calendar days unless otherwise provided.

#### 40.10 Waiver of Time Lines

The time lines contained in this Grievance and Disciplinary Appeal Procedure may be waived for a specific time period at any step in the Procedure with the mutual agreement of the parties.



## ARTICLE 7 - MISCELLANEOUS TERMS AND CONDITIONS

### SECTION 41: PAYROLL ERRORS

To ensure that system or other errors which affect an employee's pay are processed in an efficient and effective manner, the City shall notify the affected employee(s) as soon as practicable. Payroll errors detected by an employee shall, as soon as practicable, be communicated to the employee's Departmental Payroll Clerk. In the case of under payments, the Payroll Clerk shall submit the appropriate adjustments as soon as practicable.

Payroll errors identified by the Auditor will be communicated to the employee either directly by Auditor staff or through the Departmental Payroll Clerk. Under payments will be processed as soon as practicable.

In the event of an overpayment or underpayment, no adjustment shall be retroactive for more than the applicable statute of limitations. As to any overpayment, the Auditor's Office will determine a reasonable repayment schedule and inform the employee of the schedule directly, or through the Department Payroll Clerk. The affected employee shall be given an opportunity to discuss the schedule of repayment and, if necessary, to request an adjustment to the repayment schedule as a needed and reasonable accommodation. Factors considered in determining a reasonable accommodation for repayment of wages include, but are not limited to, the length of time the overpayment has occurred, the amount of the overpayment, the employee's normal salary, and other financial obligations of the employee.

In the event that the employee disputes the determination of the Auditor's Office as to a reasonable accommodation for repayment, the employee may appeal the Auditor's Office decision to the City Manager. The employee may appeal the decision of the Auditor's Office in writing within thirty (30) days of the Auditor's Office decision as to a repayment schedule. The City Manager, or his/her designee, shall meet with the affected employee and consider the matter for final determination. The City Manager's decision shall be issued no later than thirty (30) days from the date the affected employee met with the City Manager or his or her designee. The determination of the City Manager shall be final.

In the event that (1) the employee does not respond within 5 working days of being notified of the overpayment, or (2) mutual agreement on the repayment schedule is not achieved within 10 working days of the employee being notified of the overpayment, the Auditor's Office will proceed to implement a reasonable repayment schedule.

**SECTION 42: PERSONAL CONDUCT**

- 42.1 Employees shall follow the General Orders and Regulations of the Berkeley Police Department, as written and as they may be amended.
- 42.2 Off the Job Activities  
No employee shall be disciplined for off-the-job activities which do not affect his or her job performance.
- 42.3 Official Badge/Insignia  
No official or employee who wears a badge or other official insignia as evidence of his or her authority and identity shall permit such badge insignia to be used or worn by any other person of the same or another department, or otherwise to leave his or her possession, without approval except as to persons regularly and formally appointed by the City Manager to the position designated by the badge or insignia.

**SECTION 43: UNIFORMS**

- 43.1 Effective June 27, 2010, the annual uniform allowance shall be \$1,400. The uniform allowance is intended to cover uniform expenses incurred by the employee during the six months prior to the payment and shall be paid semi-annually in installments of equal amounts. However, the amount the City contributes toward the uniform allowance is subject to federal and state income tax withholding. The Uniform Allowance shall be reported to CalPERS as Special Compensation under authority of the statutory requirement provided in the Chapter 2 of Division 1 of Title 2 of the California Code of Regulations Subchapter 1, Article 5, Section 571(a)(5).
- 43.2 Effective June 29, 2008, in addition to the annual uniform allowance set forth in Section 43.1, employees assigned to the Special Response Team (S.R.T) shall be paid an annual uniform allowance of \$1,500. The S.R.T. uniform allowance is intended to cover uniform expenses incurred by the employee in the performance of training and duties related to this assignment and shall be paid annually in December for those members of the S.R.T. team who are members of the team on November 1<sup>st</sup> of any year. However, the amount the City contributes toward the S.R.T. uniform allowance is subject to federal and state income tax withholding. The S.R.T. Uniform Allowance shall be reported to CalPERS as Special Compensation under authority of the statutory requirement provided in the Chapter 2 of Division 1 of Title 2 of the California Code of Regulations Subchapter 1, Article 5, Section 571(a)(5).



43.3 Pro-Rated Uniform Allowance

Employees who are hired during the year or are absent from work by reason of leave without pay shall receive a reduced uniform allowance in accordance with the following schedule:

Absence of:	Percentage Reduction
3 months	25%
6 months	50%
9 months	75%
12 months	100%

43.4 Uniform and Equipment Committee

The Uniform and Equipment Committee will be charged with adopting specifications and regulations governing the wearing of uniforms and plain clothes. All components of the uniform are subject to the approval of the Chief of Police.

43.5 Rain Gear

Rain Gear specifications as currently listed in the Uniform/Equipment Specifications Manual under subsection XIX (e) will be updated to reflect optional rain gear (Jacket and Pants) that may be purchased at the employee’s expense for use during inclement weather.

**SECTION 44: SAFETY GLASSES**

The City's present safety glass program provides that the City will guarantee replacement of prescriptions broken in the line of duty, but it is understood that the City will be under no obligation to routinely provide safety glasses to every police officer simply desiring a pair.

**SECTION 45: SAFETY AND TRAINING**

45.1 Responsibility

Responsibility for developing training programs for employees shall be assumed by the City Manager. Such training programs may include lecture courses, demonstrations, assignment of reading matter or such other devices as may be available for the purpose of improving the efficiency and broadening the knowledge of municipal employees in the performance of their duties.

45.2 Special Training Courses

Participation in and successful completion of special training courses may be considered in making advancements and promotions. Evidence of such activity shall be filed with the Chief of Police.

45.3 Ammunition and Firing Range Program

The City shall provide the necessary amount of ammunition for employees for use in City-sponsored range programs. The Department will enforce requirements of regular employees participating in range programs. Employees who do not perform at a passing

standard will receive instruction and retake the test during the regularly scheduled range program. Employees who are not able to achieve the minimum standard within a reasonable period of time will be immediately assigned to work on an intensive basis with the range master who will evaluate the severity of the problem. Consistent inability to meet the standard may be cause for termination.

#### 45.4 Safety Programs

The City and the Association will make every effort to maintain excellent health and safety standards. No employee shall be required to perform work with unsafe equipment or perform duties that are not in compliance with safety procedures or protocols. To further these purposes, the City shall maintain an ongoing safety program which shall include committees comprised of representatives from the Association and appropriate supervisory personnel.

45.5 No employee shall be required to drive a vehicle, the mechanical condition of which is in violation of the Vehicle Code of the State of California.

### SECTION 46: USE OF AUTOMOBILES

The City Manager shall govern the use of City-owned automotive equipment and privately owned automobile equipment by such rules and regulations as he or she may establish. The mileage reimbursement will be equal to the amount established by the Internal Revenue Service, and will change as necessary to comply with the IRS standard mileage rate.

### SECTION 47: ANNUAL PHYSICAL EXAMINATION

47.1 Employees in the classifications of Police Officer, Police Sergeant, Police Lieutenant and Police Captain shall each year receive a City-paid mandatory physical examination ) physical examination based on the City's specification as to scope of examination and with the City's designated Occupational Medicine Provider.

47.2 As an alternative to receiving an annual physical examination with the City's designated Occupational Medicine Provider, an employee may provide verification that the employee received a physical examination consistent with the City's requirements as to the scope of examination with the employee's own personal physician. Employees who choose their own personal physician must notify Policy Personnel and training at least sixty (60) days prior to a deadline to be announced by the City to conduct the annual physical examination. Failure by the employee to meet the sixty (60) day notification deadline will result in the employee needing to receive the annual physical examination with the City's designated Occupational Medicine provider.

47.3 The City will not ask for, request or receive any confidential medical information from the medical professionals, their agents or contractors administering, conducting or participating in the annual examination described in this Section 47. The only information to be provided to the City will confirm whether the examination was administered.

**SECTION 48: ASSIGNMENTS FOR TEMPORARILY DISABLED EMPLOYEES**

48.1 **Employees on Workers' Compensation Leave:** The City may assign any employee on Workers' Compensation leave who is medically released to return to modified duty when feasible, to such work within the Police Department which is consistent with medical limitations as determined by the attending physician and the employee's skills and abilities at no reduction in the employee's regular rate of pay. Prior to changing the shift of a member who is medically released to return to work on modified duty, the Department shall make a reasonable and good faith effort to accommodate the member's personal/family scheduling for the duration of the period on modified duty. However, if the Department is not able to accommodate the member's personal/family scheduling for the period of the modified duty the Department is not precluded to change the member's shift.

## 48.2 Non-industrial Disabilities

48.2.1 The City may accommodate an employee disabled with a non-industrial disability by providing a modified work assignment. The City will periodically review such modified assignments in order to determine whether such assignments continue to meet the needs of the City.

48.2.2 The modified assignment may be in that employee's classification. To be eligible for such a modified assignment, the employee must initially, and subsequently at the request of the City, provide the Human Resources Department with a medical statement from his or her attending physician that clearly states the medical limitations and abilities of the employee and estimates when the employee will be able to return to a regular assignment. If modification of that assignment within that employee's classification does not serve the best interests of the City, other classifications may be considered, subject to the approval of the Director of Human Resources. Compensation will be provided at the level of the classification in which the temporarily disabled employee works during the disability. The employee must meet standards of satisfactory performance for the duration of the work assignment.

**SECTION 49: ANNUAL PERFORMANCE EVALUATION**

The City may implement a program of annual performance evaluation. Such evaluations shall be conducted by the employee's immediate supervisor and reviewed by additional levels of supervision. Each employee may make written comments on the evaluation which shall be made a part of the employee's personnel record.

**In Line of Duty Death Notification Package:** At this time, each employee shall be given an opportunity to update or fill out his or her "In Line of Duty Death Notification Package". This Package is to be maintained by the Administrative Captain in a sealed envelope and be opened only in the event of the officer's death.

**SECTION 50: RESERVE OFFICER FUNCTIONS**

50.1 Reserve officers shall not be regularly assigned to perform, police functions normally performed by a sworn officer working in a pay status (i.e., normal beat patrol, walking beats, normal detective functions, etc.). Reserve officers may be used by the Department to supplement police services, such as for additional staffing for special projects, in emergencies, for traffic or crowd control, in positions where they have been utilized previously, or in other short-term circumstances.

50.2 Special Events

Any outside requests for police services for special events shall be offered first to employees represented by the Association. Reserves can only be used for such events when the overtime, after being offered to regulars, does not sell within 48 hours of the event. In any event, minimal patrol division staffing levels will take priority over special events. Sponsored events traditionally staffed by reserved officers are not affected by this section. These sponsored events include the following which is provided for illustrative purposes:

<ul style="list-style-type: none"> <li>• Asian Pacific Heritage Fair</li> <li>• Berkeley Beer Festival</li> <li>• Berkeley Cycle Club</li> <li>• Berkeley Jazz Festival</li> <li>• Berkeley Kite Festival</li> <li>• Berkeley Unified School District Football Games</li> <li>• Berkeley Unified School District Youth Celebration</li> <li>• Cajun Music Festival</li> <li>• Cinco de Mayo</li> <li>• Civic Center Criterium</li> <li>• Earth Day Celebration</li> <li>• Elmwood Street Fair</li> </ul>	<ul style="list-style-type: none"> <li>• How Berkeley Can You Be?</li> <li>• Indigenous Peoples Day</li> <li>• Juneteenth</li> <li>• July 4th Fireworks</li> <li>• Jupiter Jam Concerts</li> <li>• Korean Day</li> <li>• Live Oak Park Faire</li> <li>• People’s Park Celebration</li> <li>• Solano Stroll</li> <li>• Telegraph Avenue Holiday Fair</li> <li>• Telegraph Avenue Street Fair</li> <li>• Triple Rock Beer Festival</li> <li>• 4th Street Bicycle Race</li> </ul>
<p><u>University of California Events (samples listed below)</u></p> <ul style="list-style-type: none"> <li>○ University of California Football events</li> <li>○ University of California Basketball Team Parade</li> <li>○ University of California dignitary visits</li> </ul>	

50.3 If the Association believes that reserve officers are being utilized inappropriately, it may meet with the Chief of Police or his or her designee to discuss such disputes or disagreements and to attempt to resolve any disputes or disagreements. Disputes regarding utilization of reserve officers shall not be subject to the grievance procedure.

**SECTION 51: CLEAN WORK SITE**

The City shall make every effort to maintain a clean work site with properly equipped lavatory and shower rooms.

**SECTION 52: WEIGHT ROOM**

The Association will enter into a lease with the City which provides for the Association to lease exercise equipment to the City for use by Police Department employees for the nominal charge of \$1 per year. The lease agreement will hold the Association harmless against any claims related to that equipment or its use. The City agrees to keep the weight room clean and maintain the equipment.

**SECTION 53: PHYSICAL AND PSYCHOLOGICAL EXAMINATIONS**

- 53.1 The City may require employees to submit to physical or psychiatric examinations by a City appointed physician where reasonable cause exists to believe that the employee is suffering from a physical or psychiatric condition which adversely impacts the employee's ability to perform his or her duties.
- 53.2 Whenever possible, an employee shall be advised in writing of the basis for the existence of "reasonable cause" and the grounds thereof before being directed to report to any such examination. In any case, such written notice is to be provided within 48 hours of such an examination.
- 53.3 Any psychiatric report to the City shall consist of the psychiatrist's ultimate conclusion as to the employee's fitness to serve and return to work date, if any. If the psychiatrist believes that the employee is not fit for duty he or she may also supply a brief non-intrusive analysis as it relates to the employee's ability to perform his or her duties. The psychiatrist shall respect the physician-patient privilege in all other regards and shall not, without the employee's written permission, release any other information, documents, reports or conclusions to the City.
- 53.4 Failure to report for a medical or psychiatric examination under this section may constitute grounds for discipline under Section 37.

**SECTION 54: YMCA MEMBERSHIP**

The City shall offer employees a low cost group membership in the Berkeley YMCA. The amount the City contributes toward the employee's monthly membership fee is subject to federal and state income tax withholding. The City of Berkeley or its Claims Administrator may not be liable for any injury which arises out of a City of Berkeley employee's participation in and use of a YMCA membership.

**SECTION 55: PARKING**

The City agrees to continue to provide 33 parking spaces for sworn employees. The parties recognize that construction in the downtown area will result in the relocation of the spaces from time to time. If relocation becomes necessary, the City agrees that all 33 spaces will remain within their current proximity. The parties recognize their mutual obligation to meet and confer and reach an agreement which meet the interests of each party.

## ARTICLE 8 - CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

### SECTION 56: PUBLIC EMPLOYEES' RETIREMENT SYSTEM

- 56.1 Participation  
The City shall continue participating under the Safety Members Plan of the California Public Employees' Retirement System (CalPERS).
- 56.2 "Classic Employees" Definition  
Classic Employees are defined as current employees and future employees who do not qualify as a "New Member" under the California Public Employees' Pension Reform Act of 2013 (PEPRA).
- 56.3 "New Members" Definition  
New Members are defined in the Public Employees' Pension Reform Act of 2013 (PEPRA), Government Code Section 7522.04(f).
- 56.4 CalPERS Retirement Formula for New Members as Defined Under the Public Employees' Pension Reform Act of 2013 (PEPRA)  
"New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the 2.7% at age 57 retirement formula with highest three (3) year average final compensation as set forth in PEPRA.
- 56.5 CalPERS Retirement Formula for Classic Employees Hired on or After November 27, 2012 (current employees and employees who do not qualify as "New Members" under PEPRA)  
Current employees or former City of Berkeley employees who were members of CalPERS while employed with the City and had membership with CalPERS prior to December 31, 2012 and who are rehired on or after November 27, 2012 and other employees who do not qualify as "new Members" under PEPRA shall be entitled to or continue to be entitled to the 3% at age 55 retirement formula as provided in Section 21363.1, with highest three years average final compensation as provided in Section 20037.
- 56.6 CalPERS Retirement Formula for Classic Employees Hired Before November 27, 2012  
Employees hired before November 27, 2012 shall continue to be entitled to the 3% at age 50 retirement formula as provided in Section 21362.2 (July 7, 2002), with highest One-Year Final Compensation as provided in Section 20042 (July 22, 1976).
- 56.7 Optional Benefits  
For both Classic and New Members, the City's contract with CalPERS shall include the following optional benefits:
- 56.7.1 Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (March 1, 1973).
- 56.7.2 Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).
- 56.7.3 Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988).



56.7.4 1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (March 1, 1973).

56.7.5 Third Level of 1959 Survivor Benefits as provided in Section 21573 (November 28, 1996).

56.7.6 Fourth Level of 1959 Survivor Benefits as provided in Section 21574 (October 15, 1998).

56.7.7 Pre-Retirement Optional Settlement 2 Death Benefit as provided in Section 21548 (November 6, 1998).

56.7.8 Military Service Credit as Public Service as provided in Section 21024 (November 6, 1998).

#### 56.8 Classic Employees' Pension Contribution

Effective July 1, 1994, the City increased the base salary of employees by nine percent (9%). Employees then assumed and shall continue to assume an obligation to pay this 9% normal employee contribution retirement to CalPERS. Employees also contributed three percent (3%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis from July 1, 2012 through June 30, 2015. The City and Association agree that, effective January 1, 2016 employees will pay an additional 1% contribution to the City's CalPERS employer contribution rate via automatic payroll deduction. Effective July 1, 2016, employees will pay an additional 1% contribution to the City's CalPERS employer contribution rate via automatic payroll deduction. The City shall designate such payments to the City's CalPERS employer contribution rate as an Employer Pickup as defined by Section 414(h)(2) of the Internal Revenue Code.

#### 56.9 New Members' Pension Contributions

New Members hired on or after January 1, 2013, shall pay 50% of the normal share of cost required by PEPR. The City and Association agree that, effective January 1, 2016, employees will pay an additional 1% contribution to the City's CalPERS employer contribution rate via automatic payroll deduction. Effective July 1, 2016, employees will pay an additional 1% contribution to the City's CalPERS employer contribution rate via automatic payroll deduction. The City shall designate such payments to the City's CalPERS employer contribution rate as an Employer Pickup as defined by Section 414(h)(2) of the Internal Revenue Code.



## ARTICLE 9 - LAYOFF PROCEDURE

### SECTION 57: LAYOFF POLICY

This layoff policy for the City of Berkeley is intended to provide the maximum employment protection to the City staff should a layoff become necessary. The policy also aims to minimize the impact such a layoff might have on the City's affirmative action accomplishments.

#### 57.1 Announcement of Layoff

57.1.1 The City Council, City Manager, and the Chief of Police shall make every reasonable effort to manage and budget the City's resources effectively and to plan for the delivery of City services in a manner which will avoid the necessity to layoff career City employees. If a reduction in the work force for more than thirty (30) calendar days is necessitated by, but not limited to, a material change in duties and organization, adverse working conditions, return of employees from leaves of absence, or shortage of work or funds, the City Manager shall notify the Director of Human Resources of the intended action and the reason for the layoff.

57.1.2 Immediately following a decision which may involve the potential layoff of career employees, the City Manager shall freeze all current vacancies in the Police Department service in similar and related classifications to those likely to be targeted for layoff, as well as all related full-time, benefited, or temporary (see glossary) positions which are expected to last six (6) months or more, and notify the department head that such current and anticipated vacancies will be frozen until further notice in order to implement the provisions of Section 57.6.

#### 57.2 Seniority Service Date

57.2.1 All service of persons in the employ of the City shall be counted toward the establishment of an employee's City seniority service date, including, for example, permanent, probationary, provisional, temporary (full-time and intermittent), seasonal, and exempt employment, as well as leaves of absence for obligatory military service while an employee with the City. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the City seniority service date. Time off, or vacation or compensatory time forfeited in lieu of time off, as a result of formal disciplinary action will be subtracted from the rank seniority service date, however, such date(s) shall not affect any employee's date(s) relative to bidding for shifts or vacation.

57.2.2 All service of persons in the employ of the City in a promotional rank above the entry-level rank shall be counted toward the establishment of an employee's rank seniority service date including only probationary and permanent service as well as leaves of absence for obligatory military service while an employee of the City. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the rank seniority service date. Time off as a result of disciplinary action will be subtracted from the rank seniority service date.

57.2.3 All time spent in an appointed rank shall be credited to the employee's service in the employee's permanent rank. In computing both City and rank seniority, all time spent on paid leaves of absences shall be included, and all time spent on unpaid leaves of absence in excess of two consecutive payroll periods shall be excluded.

57.2.4 The Human Resources Department will maintain up-to-date and current City and rank seniority service dates for all City employees holding probationary and permanent appointments.

### 57.3 Establishment of Seniority Lists

57.3.1 Whenever a layoff of one or more career employees becomes necessary, as defined above, such layoffs shall be made according to City-wide classification seniority lists. Upon receiving notification that the City Manager must proceed with a possible reduction in the work force and following receipt of information concerning the specific positions, programs, and departments involved, the Human Resources Department will immediately establish separate probationary and permanent seniority lists for each classification targeted for layoff.

57.3.2 The names of all City employees holding permanent and probationary appointments in a given classification will be listed on the appropriate list in descending order by City seniority service date in the entry-level position and by rank seniority service date in promotional positions. Except as provided in Section 57.4 below, employees on all lists shall be laid off on the basis of their seniority service dates (i.e., employees with the least amount of total service shall be laid off first). All emergency, temporary, and provisional employees working in classifications similar to those identified for layoff must be terminated prior to the layoff of probationary or permanent employees. Employees on the probationary seniority list for a specific classification will be laid off prior to employees on the permanent seniority list for that class.

57.3.3 Probationary or permanent employees temporarily acting out of classification and holding a provisional appointment in another classification will only be listed on a seniority list of the class in which they hold permanent or probationary status targeted for layoff.

57.3.4 If two (2) or more employees on a seniority list have identical seniority service dates, the tie shall be broken based on established departmental procedures for awarding commission numbers in such instances.

### 57.4 Employee Retreat Rights

57.4.1 Before an employee with permanent or probationary status may be released from employment with the City of Berkeley, the Human Resources Department must consider the employee's right to retreat to lower-level classifications through which he or she was originally promoted or any subsequently created intermediate-level career classification series. Retreat rights shall also extend to employees who have not previously been promoted through a classification but for whom the classification is a natural progression or beginning in the classification series.

57.4.2 In the process of retreating, the rank seniority date list shall be utilized. Employees with the least amount of rank seniority shall retreat first; provided, however, that a retreat from any rank below the employee's current rank shall be based on a rank seniority date which is derived from a combination of all credited service in the rank to which the employee has retreated and all credited service in higher ranks held on a probationary or permanent Identification Expert will be available only to employees who have previously held such ranks on a permanent or probationary basis. There shall be no retreat rights to appointed ranks or positions.

57.4.3 If an employee is qualified for retreat into more than one classification with comparable salary ranges or if a vacancy exists in a classification to which an employee is entitled to retreat, the options shall be discussed with the employee, and due consideration shall be given to the employee's preferences. However, it is the prerogative of the City Manager to determine the final placement offer to the employee.

57.4.4 The retreating employee has a right to be retained in the highest salary range possible which is equal to or less than his or her present salary range. An employee involved in layoff does not have a right of mandatory placement to positions with a higher salary range, i.e., promotion.

## 57.5 Employee Notification

57.5.1 Emergency, temporary, intermittent, seasonal, etc., employees shall be notified individually, in writing, of pending layoff as soon as possible, but no definite time period is required. However, at least two (2) weeks notification is desirable, if possible.

57.5.2 Provisional employees shall be notified individually, in writing, of pending layoff as soon as possible, with no less than fifteen (15) calendar days notification if targeted for release or reassignment.

57.5.3 Permanent, probationary, and career-exempt employees should be notified individually, in writing, of pending layoffs as soon as possible, with no less than thirty (30) calendar day notification if targeted for release, reassignment, or retreat. Notice to an employee absent from work for any reason shall be sent by United States Mail, return receipt requested.

If an employee fails to accept a bona fide offer of reassignment or retreat in writing within five (5) calendar days after receipt of the offer, the employee forfeits further right to employment retention. Acceptance of a reassignment or retreat does not remove the right of appeal under Section 57.9.

## 57.6 Flexible Placement Program

57.6.1 In order to minimize the negative impact of a layoff, the City Manager will, as previously stated in Section 57.1, impose a city-wide freeze on all appropriate

vacancies as soon as it has been determined that a layoff of career City employees may be necessary.

57.6.2 Following the release of all emergency, temporary, and provisional employees in classes similar to those targeted for layoff and as soon as employees targeted for layoff or retreat have been identified and the provisions under Section 57.3 and 57.4 have been carried out, the Human Resources Department will review and identify the frozen vacant classifications into which employees ultimately targeted for layoff may be placed on the basis of total experience and education. In making this decision, a waiver of minimum qualification standards and/or the substitution of related experience and education may be made with an understanding on the part of management and supervisory personnel that adequate on-the-job training, which can be completed within no more than six (6) months, will be provided to facilitate job adjustment and to compensate for the waiver of qualification standards, if that has occurred.

57.6.3 Assignments under the Flexible Placement Program shall be limited to positions in the same or lesser salary range as the classification from which the employee is to be laid off.

57.6.4 Offers to positions under the Flexible Placement Program shall be made according to City seniority service date and in accordance with the probationary and permanent seniority list certification process outlined in Section 57.3. All offers and placements made under this provision of the layoff policy shall be documented in detail, with records available for audit and review at all times.

57.6.5 If an employee fails to accept a bona fide written offer of an alternative job within five (5) calendar days after receipt of the offer, he or she forfeits further rights to employment retention. Acceptance of an alternative job under the Flexible Placement Program in no way jeopardizes an employee's standing on the reemployment priority lists on which his or her name has been placed in accordance with Section 57.7.

## 57.7 Reemployment Lists

57.7.1 The names of all probationary and permanent employees released or retreated from positions in the competitive service as a result of layoff or retreat must be placed on reemployment priority lists for those classifications from which the employee was removed, as well as all other classifications to which they have retreat rights in accordance with Section 57.4.

57.7.2 The reemployment priority list for employees who were laid off shall remain in effect for three (3) years. Said list shall remain in effect indefinitely for employees who were retreated.

57.7.3 Departments with vacancies in any classification for which there is an active reemployment priority list must use the reemployment priority list to fill their positions and may not use any other recruitment or appointment method to fill a vacancy until appropriate reemployment lists have been exhausted.

56.8.4 When a vacancy occurs in a class for which there is a reemployment priority list, the name of the employee on the appropriate reemployment priority list with the highest seniority date shall be certified to the selecting official. Employees so certified from the reemployment priority list must be appointed to the existing vacancy.

57.7.5 If a former employee fails to accept a bona fide written offer of reemployment within five (5) calendar days, his or her name will be removed permanently from the reemployment priority list from which the offer was made. Failure to accept an offer to reemployment to the class with the highest salary range for which the employee is eligible for reemployment will result in automatic removal from all reemployment priority lists. However, the employee may decline (or accept) reemployment to lower salary range classifications without jeopardizing his or her standing on the reemployment priority list for the classification from which he or she was original terminated.

57.7.6 Upon reappointment to the classification from which the employee was originally separated or demoted, the employee has the right to be placed at the step of the salary range which the employee held at the time of layoff or demotion.

#### 57.8 Career-Exempt Employees

Only those employees holding full-time, benefited, exempt positions who, in the past, have achieved permanent status and have been continuously employed without a break in service between their career and exempt appointment, have the right to retreat to previously held career classifications, placement on the reemployment priority lists, and all other provisions governing layoff procedures. For the purpose of layoff, such employees shall be referred to as "career-exempt."

#### 57.9 Appeal Procedures

Any permanent, probationary, or career-exempt employee who is laid off, demoted, or reassigned as a result of layoff and who believes that the layoff procedure has been administered in violation of the terms of this agreement as it pertains to the employee's case may appeal the action under the grievance procedure, including that provision relating to non-disciplinary arbitration. In addition, employees may at all times before, during, and subsequent to layoff review all records, including seniority lists, reemployment priority lists, documentation pertaining to appointments under the Flexible Placement Program, etc., which pertain to their classification and their rights under the provisions of the layoff policy.

#### 57.10 Audit

57.10.1 On an annual basis, the City Manager's Office shall order an audit by an outside auditor of all vacant positions filled in each department and authorized positions which have not been filled to determine whether the vacancies occurred in classifications for which reemployment priority lists were in existence and, if so, whether the appointments made by the selecting official were in accordance with the procedures outlined in Section 57.7. In the event vacancies for which reemployment priority lists are in existence remain unfilled, the auditor shall offer an opinion as to whether or not the reasons for leaving the positions vacant appear

to be legitimate. A report of the audit must be transmitted to the City Manager and the City Council.

- 57.10.2 If it is determined that a vacancy has been filled by a non-reemployment priority list eligible in a classification for which a reemployment priority list existed which included available applicants at the time, the former employee with reemployment rights shall be hired and given retroactive pay from the date that the vacancy occurred. The employee who was originally to fill the vacancy shall continue to be retained in City employment.

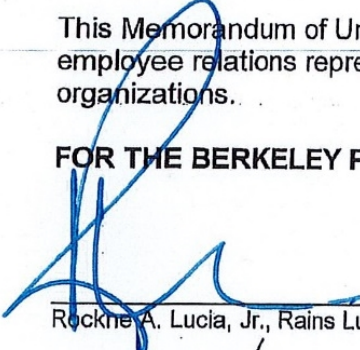


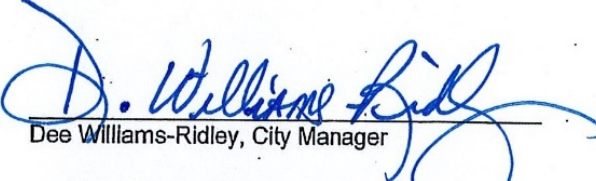
SIGNATURE PAGE

This Memorandum of Understanding is executed this 31st day of July, 2018, by the employer-employee relations representatives whose signatures appear below for their respective organizations.

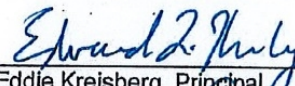
FOR THE BERKELEY POLICE

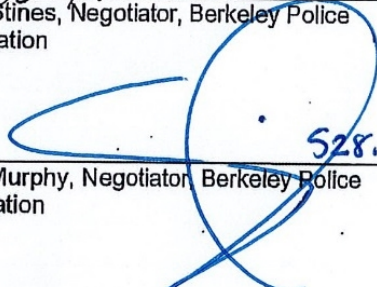
FOR THE CITY OF BERKELEY

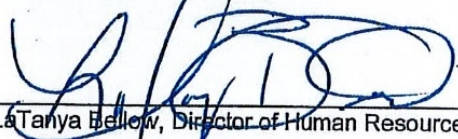
  
Rockne A. Lucia, Jr., Rains Lucia Stern, PC

  
Dee Williams-Ridley, City Manager

 5-30  
Chris Stines, Negotiator, Berkeley Police Association

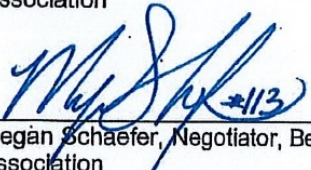
 9/5/18  
Eddie Kreisberg, Principal Meyers I Nave

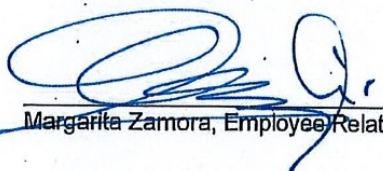
 528.  
Emily Murphy, Negotiator Berkeley Police Association

 9/5/18  
LaTanya Bellow, Director of Human Resources

Daniel Breaux, Negotiator, Berkeley Police Association

 9/19/18  
Andrew Greenwood, Police Chief

 \*113  
Megan Schaefer, Negotiator, Berkeley Police Association

 9-5-18  
Margarita Zamora, Employee Relations Manager

**EXHIBIT A**

<b>Hourly Salary Schedule as of January 1, 2018</b>					
	STEP	STEP	STEP	STEP	STEP
CLASSIFICATION TITLE	A	B	C	D	E
Police Captain	78.8681	81.5017	84.1952	87.0244	89.9210
Police Lieutenant	68.8383	71.1109	73.4734	75.8959	78.4393
Police Officer (Steps A-E)	45.5287	47.6427	49.8625	51.4803	53.1432
Police Officer (Steps F-G)	54.8888	56.6644			
Police Sergeant	57.4016	59.2828	61.2317	63.2556	65.3473

<b>Hourly Salary Schedule as of August 12, 2018 (Four Percent (4%) Wage Increase)</b>					
	STEP	STEP	STEP	STEP	STEP
CLASSIFICATION TITLE	A	B	C	D	E
Police Captain	82.0228	84.7618	87.5630	90.5054	93.5178
Police Lieutenant	71.5918	73.9553	76.4123	78.9317	81.5769
Police Officer (Steps A-E)	47.3498	49.5484	51.8570	53.5395	55.2689
Police Officer (Steps F-G)	57.0844	58.9310			
Police Sergeant	59.6977	61.6541	63.6810	65.7858	67.9612

<b>Hourly Salary Schedule as of July 16, 2019 (Four Percent (4%) Wage Increase)</b>					
	STEP	STEP	STEP	STEP	STEP
CLASSIFICATION TITLE	A	B	C	D	E
Police Captain	85.3037	88.1523	91.0655	94.1256	97.2585
Police Lieutenant	74.4555	76.9135	79.4688	82.0890	84.8400
Police Officer (Steps A-E)	49.2438	51.5303	53.9313	55.6811	57.4797
Police Officer (Steps F-G)	59.3678	61.2882			
Police Sergeant	62.0856	64.1203	66.2282	68.4172	70.6796

<b>Hourly Salary Schedule as of January 12, 2020 (One Percent (1%) Wage Increase)</b>					
	STEP	STEP	STEP	STEP	STEP
CLASSIFICATION TITLE	A	B	C	D	E
Police Captain	86.1567	89.0338	91.9762	95.0669	98.2311
Police Lieutenant	75.2000	77.6826	80.2635	82.9099	85.6884
Police Officer (Steps A-E)	49.7362	52.0456	54.4706	56.2379	58.0545
Police Officer (Steps F-G)	59.9615	61.9011			
Police Sergeant	62.7065	64.7615	66.8905	69.1014	71.3864



EXHIBIT B

4.10/3.121/2 74 OFFICER DEPLOYMENT - 18 BEATS

AREA 1 Lieutenant	AREA 2 Lieutenant	AREA 3 Lieutenant	AREA 4 Lieutenant				
<b>TEAM 1</b> DAY SHIFT 0600-1600 Mon, Tue, Wed, Thu (2 Officers Early Out @ 0630)	<b>TEAM 2</b> EARLY SWING 1100-2100 Mon, Tue, Wed, Thu	<b>TEAM 3</b> LATE SWING 1530-0130 Mon, Tue, Wed, Thu (Thur 2 Officers Late Out @ 1830)	<b>TEAM 4</b> NIGHT SHIFT 2030-0630 Mon, Tue, Wed, Thu	<b>TEAM 5</b> DAY SHIFT 0600-1830 Fri, Sat, Sun (2 Officers Early Out @ 0630)	<b>TEAM 6A</b> SWING SHIFT 1130-0000 Fri, Sa, Sun	<b>TEAM 7</b> NIGHT SHIFT 1800-0630 Fri, Sat, Sun	
Sergeant	Sergeant	Sergeant	Sergeant	Sergeant	Sergeant	Sergeant	
Sergeant	Sergeant	Sergeant	Sergeant	Sergeant	Sergeant	Sergeant	
BEAT	BEAT	BEAT	BEAT	BEAT	BEAT	BEAT	
Officer 2	Officer 1	Officer 2	Officer 1	Officer 2	Officer 13	Officer 2	
Officer 4	Officer 3	Officer 4	Officer 3	Officer 4	Officer 17	Officer 4	
Officer 6	Officer 5	Officer 6	Officer 5	Officer 6	Officer 1	Officer 6	
Officer 8	Officer 7	Officer 8	Officer 7	Officer 8	Officer 5	Officer 8	
Officer 10	Officer 9	Officer 10	Officer 9	Officer 10	Officer 9	Officer 10	
Officer 12	Officer 11	Officer 12	Officer 11	Officer 12	Officer 13	Officer 12	
Officer 14	Officer 13	Officer 14	Officer 13	Officer 14	Officer 17	Officer 14	
Officer 16	Officer 15	Officer 16	Officer 15	Officer 16	Officer 1	Officer 16	
Officer 18	Officer 17	Officer 18	Officer 17	Officer 18	Officer 5	Officer 18	
Officer SW	Officer SW	Officer SW	Officer SW	Officer SW	Officer 9	Officer SW	
Officer SW		Officer SW	Officer SW	Officer SW	Officer 13	Officer SW	
					Officer 17		
					<b>TEAM 6B</b>		
					1400-0230		
					Fri, Sat, Sun		
					Sergeant		
					Officer 3		
					Officer 7		
					Officer 11		
					Officer 15		
					Officer SW		
					Officer SW		
Minimum Staffing (9)	Minimum Staffing (8)	Minimum Staffing 8	Minimum Staffing (9)	Minimum Staffing (9)	Minimum Staffing 6A (4)	Minimum Staffing (9)	
				1st Thu TM1 Backfill	Minimum Staffing 6B (4)		
Training 1st Thu	Training 2nd Thu	Training 4th Fri	Training 3rd Thu	Training 1st Thu	2nd Thu TM2 Backfill	3rd Thu TM4 Backfill	
					Training 2nd Thu	Training 3rd Thu	

## EXHIBIT C

### GLOSSARY

**Allocation:** The assignment of a single position to the proper class in accordance with the duties performed, and the authority and responsibilities exercised.

**Classification (class):** A group of positions sufficiently similar in respect to their duties and responsibilities that: (a) the same descriptive title may be used with clarity to designate each position allocated to the class; (b) the same minimum requirements as to education, experience, knowledge, ability and other qualifications may be required of all incumbents; (c) the same tests of fitness may be used to choose qualified employees and, (d) the same schedule of compensation can be made to apply with equity under the same employment conditions.

**Career Employee:** An employee who is appointed to a position in the competitive service and who has a probationary or permanent appointment with the City of Berkeley.

**Continuous Testing:** An examination process in which applications are accepted on a continuous basis, not subject to a closing date with a viable list maintained at all times.

**Demotion:** The movement of an employee from one class to another class having a lower maximum rate of pay.

**Domestic Partner:** A person residing with and sharing the common necessities of life with a City of Berkeley employee, where both intend to continue this arrangement indefinitely. They are unmarried; at least eighteen (18) years of age; not related by blood closer than would bar marriage in the State of California, and mentally competent to consent to contracts.

**Employee:** A person who has been legally appointed under the City of Berkeley Personnel Ordinance and the Personnel Rules and Regulations, who is on the City payroll and whose employment has not been terminated and whose position is included in this representation unit.

**Flexing of Shifts (aka Offsetting of Overtime):** Changing of hours of work to avoid the payment of overtime.

**Full-Time:** An assignment of forty hours per week; a full-time employee works an assignment of forty hours per week or a combination of assignments totaling forty hours per week.

**High Risk Classifications:** A group of positions whose duties and responsibilities present: (a) significant probability or chance of injury, damage or loss of life; (b) exposure to risk and; (c) ability to incur the risk.

**Impasse:** "Impasse" means that the City and the Association have a dispute over matters within the scope of representation and have reached a point in meeting and negotiating over the dispute at which their differences in positions are so substantial or prolonged that future meetings would be futile.

**Jury Duty Period:** The period of time from which an employee appears in court as required by law to serve on an inquest jury or trial jury until such time as the employee is discharged from such

service by the court. "Jury Duty Period" expressly covers only that period of time spent by the employee in service of the court as a juror and does not include any time spent in court by the employee as a result of being a party to the action, being a witness to the action, or being subpoenaed to testify in the action.

**Lateral Entry:** Recruitment and selection status of candidates who have successfully completed P.O.S.T. academy training and meet the minimum requirement for Police Officer-Lateral classification.

**Position:** A grouping of duties and responsibilities which constitute a single assignment which is in a classification covered by this Memorandum of Understanding.

**Promotion:** The movement of an employee from one class to another class having a higher maximum rate of pay.

**Promotional Examination:** An examination for promotion to a class in the competitive service in which participation is limited to current employees with permanent status and/or to former permanent or probationary employees who are on current mandatory reemployment lists of layoff.

**Provisional:** A career employee who is temporarily serving in a higher level or unclassified position as a temporary assignment, pending examination, classification, or in the absence of the permanent incumbent.

**Reclassification:** Reallocation of a position from one classification to another classification based upon consideration of the kind and level of assigned duties and responsibilities.

**Reemployment:** Reappointment of a former probationary or permanent employee to a vacant position who has been laid off under Section 55.7 of the Layoff section in this Understanding.

**Regular Hourly Salary:** The Regular Monthly Salary multiplied by twelve (12) months and divided by 2080 annual work hours.

**Regular Monthly Salary:** The base pay for a classification (as included in Exhibit A of this Understanding).

**Reinstatement:** Appointment to a vacant position of a former probationary or permanent employee, within two years of the termination date, without obtaining new eligibility through examination. Reinstatement is not mandatory and a former employee must request consideration in writing. Eligibility for reinstatement is no guarantee of appointment and former probationary employees who did not obtain permanent status must complete their probationary period in accordance with Section 32.

**Rejection (Probation):** The separation of any employee from the service before the completion of the probationary period.

**Release Time:** Paid time off permitted employees, during their scheduled hours of work, to perform Association activities as provided by this Memorandum of Understanding. This paid time off is in addition to the employee paid leave and is subject to the conditions of the applicable sections of this Understanding.

**Termination:** The separation of an employee from the service of the City. Termination may include death, discharge, layoff, resignation, retirement, and work completion.

**Transfer:** The movement of any employee from one position to another within the same class in another department or the movement of an employee from one class to another class having a comparable level of duties and responsibilities and the same maximum rate of pay.

**Vacation Year:** A period that annually commences at the close of the last City pay period for which the payday falls in March. For example, if paychecks were issued on March 27 to pay employees for the pay period running from March 8 until March 21, the next vacation year would commence on March 22.

**Y-Rate:** An employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary or occupying a position in a class the salary rate or range for which is reduced, shall continue to receive his or her present salary. Such salary shall be designated as a Y-rate and when that employee vacates this position, it shall be filled in accordance with new salary range established. Y-rating shall not apply to employees who are demoted for just cause, including unacceptable level of performance, or as a result of demotion under the provisions of the Layoff policy.



**Memorandum of Understanding**

**between**

**City of Berkeley**

**and**

**Berkeley Police Association**

**July 1, 2017 to June 30, 2021**



RESOLUTION NO. 68,582-N.S.

MEMORANDUM OF UNDERSTANDING: BERKELEY POLICE ASSOCIATION

WHEREAS, the City is obligated under the provisions of California Government Code Section 3500 – 3510, commonly referred to as the Meyers-Milias-Brown Act, to meet and confer in good faith and attempt to reach agreement with representatives of recognized bargaining units on matters within the scope of representation including, but not limited to wages, hours and other terms and conditions of employment; and

WHEREAS, representatives of the City and the Berkeley Police Association have met and conferred in good faith and have reached agreement on a new Memorandum of Understanding that incorporates all changes and modifications in wages, hours and other terms and conditions of employment agreed to by the parties.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute the new Memorandum of Understanding for the period July 1, 2017 through June 30, 2020 with the Berkeley Police Association, including changes in certain benefits on dates specified in the Memorandum of Understanding which is attached hereto, made a part hereof and marked Exhibit A.

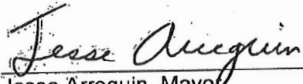
BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute and implement said Memorandum of Understanding including all changes in wages, hours, and other terms and conditions of employment. A fully executed original of said contract is filed in the Office of the City Clerk.

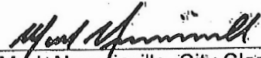
The foregoing Resolution was adopted by the Berkeley City Council on July 31, 2018 by the following vote:

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

Noes: None.

Absent: Harrison.

  
Jesse Arreguin, Mayor

Attest:   
Mark Numainville, City Clerk

RESOLUTION NO. 68,583-N.S.

APPROVE A NEW CLASSIFICATION AND SALARY RESOLUTION FOR THE BERKELEY POLICE ASSOCIATION AND RESCINDING RESOLUTION NO. 67-187-N.S.

WHEREAS, the City Council has approved a new three-year Memorandum of Understanding with the Berkeley Police Association which includes cost of living adjustments; and

WHEREAS, it is necessary for the City Council to adopt a new Classification and Salary Resolution to reflect the salary adjustments reflected in the new Memorandum of Understanding.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley adopts a new Classification and Salary Resolution for employees in Representation Units E (sworn, managerial employees in the Police Department), and Representation Unit F (sworn, non-managerial employees in the Police Department) effective July 1, 2017 through June 30, 2020 to incorporate changes to the salary schedule as shown in Exhibit A, attached hereto and made a part hereof.

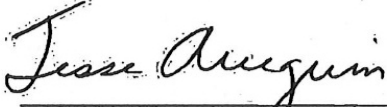
BE IT FURTHER RESOLVED that Resolution No. 67-187-N.S is hereby rescinded.

The foregoing Resolution was adopted by the Berkeley City Council on July 31, 2018 by the following vote:

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

Noes: None.

Absent: Harrison.

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

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



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## ARTICLE 1 – ADMINISTRATION

### SECTION 1: RECITALS

This Memorandum of Understanding, (hereinafter referred to as "Understanding") is entered into pursuant to the Meyers-Miliias-Brown Act (Government Code, sections 3500 - 3511), as amended, and has been jointly prepared by the parties.

The City Manager is the representative of the City of Berkeley in employer-employee relations as provided in Resolution No. 43,397-N.S., adopted by the City Council on October 14, 1969.

The Berkeley Police Association (hereinafter referred to as "the Association") is the recognized employee organization for Representation Unit E (sworn, managerial employees in the Police Department) and Representation Unit F (sworn, non-managerial employees in the Police Department), which organization has been certified as such pursuant to said Resolution No. 43,397-N.S. The employee positions in such Representation Units are hereinafter set forth in Exhibit A, and the Association is recognized as the sole representative of employees assigned to such positions.

The parties have met and conferred in good faith regarding wages, hours, and other terms and conditions of employment of the employees in said Representation Units E and F, have freely exchanged information, opinions, and proposals, and have endeavored to reach agreement on all matters relating to the employment conditions and employer-employee relations of such employees.

This Understanding shall be presented to the City Council as the joint recommendation of the undersigned.

### SECTION 2: RECOGNIZED EMPLOYEE ORGANIZATION

- 2.1 The Association is the majority representative of all employees within Representation Units E and F and shall continue to be recognized as such unless, in accordance with the provisions of Resolution No. 43,397-N.S. or as said Resolution may be amended, the Association is no longer certified as the recognized employee organization for employees in Representation Units E and F.
- 2.2 Responsibility for management of the City and direction of its work force is vested in City officials and the City Manager whose powers and duties are specified by law. In order to fulfill this responsibility, it is the exclusive right of City management to determine the mission of its constituent departments, set standards of service to be offered to the public and exercise control and discretion over the City's organization and operations. It is also the exclusive right of the City Manager to take disciplinary action for just cause, to implement a layoff pursuant to Section 57 of this Understanding, determine the methods, means and personnel by which the City's operations are to be conducted and to take all necessary actions to maintain uninterrupted service to the community and carry out the City's mission in emergencies; provided, however, the Association shall be notified of any proposed changes affecting wages, hours and other terms and conditions of employment of employees represented by the Association, and the City Manager shall, upon request, meet and confer with representatives of the Association and endeavor to reach agreement on the practical consequences of any such changes in wages, hours and other terms and conditions of

employees represented by the Association except as otherwise provided in this Understanding.

### SECTION 3: NO DISCRIMINATION

- 3.1 The Association certifies that it has no restriction on membership based on race, color, creed, ethnicity, ancestry, religion, age, gender, sexual orientation, marital or domestic partner status, gender identify or gender expression, parental status, pregnancy, national origin, political affiliation, disability or medical condition, Acquired Immune Deficiency (AIDS/HIV) or AIDS related condition, or any other status protected by applicable state or federal law. The Association agrees that it will support programs for making members of minority groups and women aware of employment opportunities within the City, and that it will work with the City to increase recruitment efforts of such minorities and women into City service. The Association recognizes and supports the City's commitment to equal employment opportunity.
- 3.2 Neither the City nor the Association shall discriminate against any employee covered by this Understanding in a manner which would violate any applicable laws because of race, creed, color, religion, political affiliation, sexual orientation, sex, national origin, disability, or age (including AIDS.) The City and the Association agree that no employee shall be discriminated against on the basis of membership or non-membership in the Association or any lawful activity on behalf of the Association.

### SECTION 4: ASSOCIATION SECURITY

- 4.1 All employees who are, or hereafter voluntarily choose to become, members of the Association shall maintain such membership in good standing as a condition of continued employment for the duration of this Understanding; provided, however, that withdrawal from membership shall be allowed during the month which precedes the month in which this Understanding expires. Employees may withdraw by sending written notice of withdrawal to the Association (with a copy to the Director of Human Resources of the City) during the withdrawal period.
- 4.2 The Association shall indemnify and save the City harmless from any and all claims, demands, suits, or any other action arising from Section 4 or from complying with any request for termination of employment under Section 4. The Association will not undertake to compensate the City for any time which may be spent by the City Attorney or anyone on the staff of the City Attorney in preparing for or defending any legal action which may be filed. The Association will, however, pay directly any fine or reimburse the City for the payment of any fine which may be assessed against the City by virtue of its agreement to Sections 4.1 and 4.2, and the Association will pay any judgment or award, including the payment of any wages lost by an employee whose services are temporarily or permanently terminated because of his or her failure to comply with the provision of Section 4.
- 4.3 It is understood and agreed that the City Council retains the right, in its sole discretion, to determine that the Association is not discriminating against any employee or class of employees. It is further understood and agreed that the City Council retains the right to



withdraw the Association security privilege if at any time it determines that the Association is discriminating against any individual or classifications prohibited by Section 3 of this Understanding.

- 4.4 The City shall furnish the Association, on a monthly basis, the name, date of hire, salary, classification, and work location of all newly hired employees subject to the Understanding. The City shall furnish newly hired employees with information concerning the Association as supplied by the Association.

## **SECTION 5: DEDUCTION OF ASSOCIATION DUES**

- 5.1 The City shall deduct, once monthly, the amount of the Association's regular and periodic dues, service fees, or insurance premiums as may be specified by the Association under the authority of an authorization card furnished by the Association and signed by the employee. Such deductions, together with a written statement of the names and amounts deducted, shall be forwarded promptly to the Association office.
- 5.2 Upon receipt of a notice from the Association of an increase in the amount of regular and periodic dues, service fees, or insurance premiums, an employee may, within thirty (30) days, revoke the deduction authorization by furnishing written notice of such revocation to the Department of Human Resources. An employee may also revoke the deduction authorization by furnishing written notice of such revocation during the thirty (30) day period immediately preceding the expiration of this Understanding.

## **SECTION 6: ASSOCIATION REPRESENTATIVES**

- 6.1 The City shall allow representatives of the Association, subject to the conditions set forth in Sections 6.2 and 6.3, reasonable time off from work without loss of compensation or other benefits to represent its members in disputes which involve the interpretation or application of those rules, regulations, and resolutions which have been or may hereafter be adopted by the City Council to govern personnel practices and working conditions, including such rules, regulations, and resolutions as may be adopted by the City Council to effect Memoranda of Understanding which may result from the meeting and conferring process, and to represent its members in meeting and conferring in good faith for amendments to this Understanding in the future. The Parties agree to work cooperatively to negotiate the rules of procedure governing the conduct of the Police Accountability Board with the goal of completing negotiations no later than June 30, 2021.

### **6.2 Representatives**

With respect to the meet-and-confer process, four (4) Association representatives shall be the maximum number who will be allowed concurrent time off. In all other cases, such as disputes defined in Section 6.1, the maximum number allowed concurrent time off shall be two (2).

### **6.3 Notice Requirements**

Association representatives seeking time off to carry out functions described in Section 6.1 shall advise their supervisors at the earliest possible time and, except in emergency cases,

no later than 24 hours in advance before leaving their work assignments. The Department will not unreasonably deny release time to the Association President (or Acting President) so that he or she may schedule the duties specified in Section 6.1; there may be times, however, when the City will, on short notice, need to modify or adjust such release time because of unpredictable service needs.

6.3.1 In emergency situations which require the immediate attention of said employee, the employee shall notify a supervisor upon his or her return to work. It is understood that employees will not leave their work assignments without the approval of the supervisor and that such approval shall not be unreasonably denied.

6.3.2 To the extent possible, the Association will attempt to schedule all release time to avoid impacting service levels. If necessary, however, Association representatives' workloads will be adjusted on the basis of approved release time. Employees shall record release time for activities described in Section 6.1 with the appropriate code on their time sheets and cards.

#### 6.4 Meetings

Reasonable release time will be available so that members can attend periodic meetings of the Association which occur during their shift.

#### 6.5 Bulletin Boards

The City shall provide bulletin board space for Association use at each of its work centers where covered employees are regularly employed.

#### 6.6 Board of Review

All time spent in attendance at Board of Review meetings and Police Review Commission meetings, interviews, and hearings as an official representative of the Association by appointed Association officers shall be considered time worked, and shall be compensated in accordance with Section 19 of this MOU. The compensable time outside of an employee's regularly schedule shall be limited to one person.

6.7 Up to three (3) officers designated by the Board of Directors of the Association may meet with the City Manager and Chief of Police every second month to foster communication. These meetings will be scheduled so that Association representatives can attend during regular work hours. Association representatives will record time spent in such meetings as work (rather than release) time.

### SECTION 7: ASSOCIATION RELEASE TIME

The Association will be entitled to up to six hundred (600) hours of paid leave of absence each calendar year to be granted collectively to employees who are designated representatives of the Association to attend seminars, conferences, or conventions away from the job site, where employees are not available to respond to emergencies. The Chief may, in his or her discretion, approve additional Association requests. The Chief or the Chief's designee may not deny such requests solely on the need to post overtime. Time spent on such Association business will be recorded with the appropriate code on time sheets.

## SECTION 8: SEVERABILITY OF PROVISIONS

In the event that any provision of this Understanding is declared by a court of competent jurisdiction to be illegal or un-enforceable, that provision of this Understanding shall be null and void, but such nullification shall not affect any other provisions of this Understanding, all of which other provisions shall remain in full force and effect.

## SECTION 9: FINALITY OF RECOMMENDATIONS

- 9.1 This Understanding sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior and existing Understanding, understandings, or agreements, whether formal or informal, are hereby superseded and terminated in their entirety. This Understanding cannot be modified except in writing upon the mutual consent of the parties and subject to ratification by the BPA and City Council.
- 9.2 Existing provisions and/or benefits provided by ordinance or resolution of the City Council or as provided in the Municipal Code and which are referred to in the Understanding shall be provided in accordance with the terms of the Understanding.
- 9.3 There is no guarantee that working conditions and practices will be continued if they are not included in this Understanding or if they have not been or are not hereafter specifically authorized by ordinance or by a resolution of the City Council.
- 9.4 It is the intent of the parties that ordinances, resolutions, rules and regulations enacted pursuant to this Understanding shall be administered and observed in good faith.
- 9.5 Although nothing in this Understanding shall preclude the parties from mutually agreeing to meet-and-confer on any subject within the scope of representation during the term of this Understanding, it is understood and agreed that neither party may require the other to meet-and-confer on any subject matter covered herein or with respect to any presentation during the term of this Understanding.
- 9.6 Amendments to this Understanding shall be effective only when adopted by the City Council and ratified by the Association.

## SECTION 10: DURATION

The term of this Understanding shall commence when the terms and conditions set forth herein have been adopted by resolution by the City Council but in no event shall this Understanding be effective prior to 0001 hours July 1, 2017. Those provisions which have been assigned effective dates herein will become effective on those dates. This Understanding and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at 2400 hours June 30, 2020.

Parties agree to extend the July 1, 2017 to June 30, 2020 Memorandum of Understanding (MOU or Agreement) for a period of one-year; until June 30, 2021, with no changes in compensation or terms.

Parties can further extend the MOU for another year with no additional changes to terms, except that, in the second year, the Union shall have the option to reopen on up to two non-economic issues.

The Parties agree to meet and confer during the term of this Extension Agreement on any revisions to laws, ordinances, rules, general orders and charter amendments within the mandatory scope of bargaining or, to the extent that such matters are not within the mandatory scope of bargaining, to informally consult upon the request of the Union to receive input regarding the impact of such changes.

The parties agree to meet at least quarterly to discuss changes in the City's financial condition during the extended term of this agreement.

## ARTICLE 2 - SALARIES, HOURS OF WORK AND COMPENSATION ISSUES

### SECTION 11: SALARIES

- 11.1 Salaries are set according to the classifications and salary ranges assigned to those classifications and with the effective dates listed in Exhibit "A" to this MOU and attached hereto. Effective the first full pay period following Council approval of this July 2017 – June 2020 MOU, represented employees still employed in that pay period shall receive a 4.0% wage increase. Also effective the first full pay period following Council approval of this July 2017 – June 2020 MOU, employees still employed in that pay period shall receive a 1-time stipend of \$1,500, less applicable payroll taxes. Effective the first full pay period in July 2019, employees shall receive a further 4.0% wage increase. Effective the first full pay period in January 2020, employees shall receive a further 1.0% wage increase.

Effective July 12, 1998, the salary ranges for the classifications of Police Captain and Police Lieutenant were adjusted in recognition for performance of the duties of the Duty Command Officer. This section is not intended to prohibit a Police Lieutenant from receiving overtime compensation or any other special compensation earned while serving as a Duty Command Officer.

- 11.2 Employees occupying a position in the competitive service shall be paid a salary or wage within the range established for that position's class as set forth in Exhibit "A". The minimum rate for the class shall apply to employees upon original appointment to the position except in cases of lateral entry. Lateral entry shall be provided for Police Officer only, and the Chief of Police, with the approval of the Director of Human Resources and City Manager, may pay to lateral entrants a salary above the first step. Employees reinstated or reemployed after layoff shall receive a rate within the range established for the class. Transfers shall not affect an employee's salary rate. Employees appointed to any of the positions set forth in Exhibit "A" and employed or working on a part-time basis shall be paid in proportion to the time worked and described in their appointment.
- 11.3 No salary advancement shall be made so as to exceed the maximum rate established for the class to which the advanced employee's position is allocated. Advancement shall be in accordance with the compensation plan of the City and shall depend upon increased service value of an employee to the City as exemplified by recommendations of the department head, performance record, special training, length of service, and other pertinent evidence.
- 11.3.1 An employee's salary step increase as provided in Section 12 (Salary Advancement) shall not be affected by any leave of absence without pay if the employee is off the payroll for less than one hundred sixty (160) consecutive hours. If the employee is off the payroll for one hundred sixty (160) consecutive hours or more, the total amount of time off shall be made up before the employee shall be entitled to such salary step increase.
- 11.4 Salary reductions may be made as a result of an employee's diminished service value or as part of a general plan to reduce salaries and wages as an economy measure or as part of a general curtailment program. No reduction shall be made below the minimum rate established for the class to which the reduced employee's position is allocated. Notice of the

reduction shall be given to the employee not later than two (2) weeks prior to the effective date of the reduction. Any employee whose salary has been reduced shall be entitled to receive a written statement of the reasons for such action.

11.4.1 Salary reductions which are part of a general plan to reduce salaries and wages as an economy measure or as part of a general curtailment program shall not be subject to the provisions of Sections 11.4, 11.5 or 56.

#### 11.5 Y Rate

Any employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary, or occupying a position in a class, the salary rate or range for which is reduced, shall continue to receive his or her present salary. Such salary shall be designated as a "Y" rate. When an employee on a "Y" rate vacates his or her position, subsequent appointments to that position shall be made in accordance with Section 11.2.

#### 11.6 Pay Periods

Payment of salaries herein established shall be bi-weekly. Each pay period shall begin at 12:01 a.m. Sunday up to and including 12:00 midnight Saturday two weeks following. Each payment shall be made not later than the Friday following the ending of each payroll period and shall include payment for all earnings during the previous payroll period.

11.7 For purposes of calculating pay and benefits, the end of the year shall be defined as the last day of the last full pay period of the calendar year.

#### 11.8 **Effective Date of Salary and Benefit Adjustments**

The City and the Union agree that all future general salary and benefit adjustments shall become effective on the first day of the pay period closest to the date otherwise specified or applicable.

#### 11.9 **Effective Date of Step Increases**

Step increases shall be effective, for payroll purposes only, on the first day of the pay period nearest the date an employee is entitled to a step increase (anniversary date or 1040 hours).

### **SECTION 12: SALARY ADVANCEMENT**

12.1 Effective July 7, 2002, employees in the classification of Police Officer will be placed in the salary step according to the schedule on the chart below. Increases between salary steps shall occur on the employee's anniversary date. The period of time necessary to move from one salary step to the next is expressed in months on the chart below:

<b>Length of Service – Police Officer</b>	<b>Salary Step</b>
0 to completion of 12 months	Step A
Beginning of 13 <sup>th</sup> month to completion of 24 <sup>th</sup> month	Step B
Beginning of 25 <sup>th</sup> month to completion of 36 <sup>th</sup> month	Step C
Beginning of 37 <sup>th</sup> month to completion of 48 <sup>th</sup> month	Step D
Beginning of 49 <sup>th</sup> month to completion of 60 <sup>th</sup> month	Step E
Beginning of 61 <sup>st</sup> month to completion of 72 <sup>nd</sup> month	Step F

Beginning of 73 <sup>rd</sup> month and beyond	Step G
--	--------

- 12.2 Effective July 7, 2002, employees in the classifications of Police Sergeant, Police Lieutenant and Police Captain will be placed in the salary step according to the schedule on the chart below. Increases between salary steps shall occur on the employee's anniversary date. The period of time necessary to move from one salary step to the next is expressed in months on the chart below:

<b>Length of Service – All Ranks Above Police Officer</b>	<b>Salary Step</b>
Beginning of 25 <sup>th</sup> month to completion of 36 <sup>th</sup> month	Step A
Beginning of 37 <sup>th</sup> month to completion of 48 <sup>th</sup> month	Step B
Beginning of 49 <sup>th</sup> month to completion of 60 <sup>th</sup> month	Step C
Beginning of 61 <sup>st</sup> month to completion of 72 <sup>nd</sup> month	Step D
Beginning of 73 <sup>rd</sup> month and beyond	Step E

- 12.3 Upon promotion, the employee shall be placed at the step of the higher rank that is commensurate with the employee's length of service in any classifications represented by the Association.
- 12.4 Lateral Entry Step Placement  
An employee appointed through lateral entry may be appointed at either a salary step or longevity range level commensurate with his or her experience as a sworn peace officer.

### **SECTION 13: PREMIUM/SPECIAL ASSIGNMENT**

- 13.1 Explosives Ordinance Technician  
An employee assigned as an Explosives Ordinance Technician shall receive double his or her regular straight-time rate for that time spent (from call to completion) in dealing with explosives. Said double time shall be the total compensation for such time spent, whether on regular duty time or when called in from off-duty. If an employee is assigned as an Explosive Ordinance Technician while on regular duty and not while on overtime, those hours worked as an Explosive Ordinance Technician on regular duty shall be reported to CalPERS as Hazard Premium Pay.
- 13.2 Special Response Team (S.R.T)  
An employee assigned as a member of the Special Response Team (S.R.T.) shall receive a five percent (5%) salary differential when involved in an active S.R.T. incident. If an employee is assigned as a member of the Barricaded Subjects Hostage Negotiation Team while on regular duty and not while on overtime, those hours worked as a S.R.T. member on regular duty shall be reported to CalPERS as Hazard Premium Pay.
- 13.3 Supervisor Special Assignment  
When a Police Sergeant is assigned to function as the Field Training Officer Supervisor, he or she shall receive a five percent (5%) salary differential while occupying that position. If an employee is assigned as the Field Training Officer Supervisor, while on regular duty and not while on overtime, this differential for hours worked on regular duty shall be reported to CalPERS as Supervisor Special Assignment Pay.



- 13.4 **Field Training Officer Special Assignment:**  
Employees assigned as Field Training Officers shall receive a ten percent (10%) differential during any calendar year when actually working as a Field Training Officer. If an employee is assigned as a Field Training Officer while on regular duty and not while on overtime, this differential for hours worked on regular duty shall be reported to CalPERS as Supervisor Special Assignment Pay.
- 13.5 **Hazard Premium Pay - Mental Health Crisis Intervention Pay**  
The City of Berkeley (City) and Berkeley Police Association (Association) agree that the parties may agree under this MOU provision that the City will provide Hazardous Premium Pay for particular hazardous duties and activities. At present, the City and Association have agreed that, effective the first full pay period after Council approval of this MOU, all sworn employees shall receive a Hazard Premium Pay called Mental Health Crisis Intervention Pay equal to 1.0% of base salary, which pay shall be provided on all hours the employee is in a paid status. This pay shall be in recognition of the fact that the City's sworn personnel are routinely and consistently exposed to uniquely hazardous conditions arising from law enforcement interactions with the mentally ill and are required to complete training intended to enhance sworn personnel's ability to perform the hazardous and specialized mental health related law enforcement duties which Berkeley's sworn personnel are consistently and routinely asked to perform, including arrests, potential arrests and addressing other mental health related disputes. Effective the first full pay period of January 2016, the amount of pay shall increase to 2.0% of base salary.
- 13.6 **Homicide Detail**  
A Police Sergeant assigned to the Homicide Detail shall receive a four percent (4%) salary differential. If a Police Sergeant is assigned to the Homicide Detail while on regular duty and not while on overtime, this differential for hours worked on regular duty shall be reported to CalPERS as Detective Division Special Assignment Pay. A Police Officer assigned to the Homicide Detail shall receive a three percent (3%) salary differential. If a Police Officer is assigned to the Homicide Detail while on regular duty and not while on overtime, this differential for hours worked on regular duty shall be reported to CalPERS as Detective Division Special Assignment Pay.
- 13.7 **Peace Officer Standards and Training (POST)**  
In addition to the salary set forth in the Exhibit "A" of this MOU, employees covered by this MOU who qualify under regulations promulgated by the California Commission on Peace Officer Standards and Training shall receive the following educational/training incentive compensation. To receive the Intermediate Certificate and/or Advanced Certificate differential pay below, employees must submit documents required by the Berkeley Police Department Professional Standards Division verifying POST eligibility, including but not limited to copies of college transcripts, proof of a college degree and other related forms. Failure of the employee to submit documents required by the Professional Standards Division shall delay the POST incentive pay eligibility until such time as the employee provides all required documentation.
- 13.7.1 **Intermediate Certificate:** Within thirty (30) working days of approval from the Berkeley Police Department Professional Standards Division of an Officers' eligibility for a Peace Officers Standards and Training Intermediate Certificate, the

employee shall receive a two percent (2%) differential to base salary and such payment shall be reported to CalPERS as Peace Officers Standards and Training Certificate Pay as a form of Educational Pay. Effective the first full pay period following Council approval of this MOU, this Intermediate POST Certificate differential shall increase to three percent (3%) of base salary. Effective January 1, 2016, this Intermediate POST Certificate differential shall increase to four percent (4%) of base salary. Effective July 1, 2016, this Intermediate POST Certificate differential shall increase to five percent (5%) of base salary.

13.7.2 **Advanced Certificate:** Within thirty (30) working days of approval from the Berkeley Police Department Professional Standards Division of an Officers' eligibility for a Peace Officers Standards and Training Advanced Certificate, the employee shall receive a two percent (2%) differential to base salary and such payment shall be reported to CalPERS as Peace Officers Standards and Training Certificate Pay as a form of Educational Pay.

13.7.3 An employee may simultaneously receive the Intermediate and Advanced Certificate differential for a total differential of four percent (4%), five percent (5%) following Council approval of this MOU, six percent (6%) effective January 1, 2016, and seven percent (7%) effective July 1, 2016.

#### **SECTION 14: BILINGUAL PREMIUM PAY**

The Chief of Police may make a Bilingual Premium Pay Special Assignment of an employee who is able to demonstrate verbal communication skills in a language other than English, including Braille and sign language, and who routinely and consistently utilizes these bilingual skills for the City of Berkeley. Candidates for the Bilingual Premium Pay Special Assignment will be selected in a manner similar to the manner used to select Field Training Officers. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay shall be a five percent (5%) to base pay, shall apply to all hours in a paid status and shall be reported to CalPERS as Bilingual Premium Special Assignment Pay.

#### **SECTION 15: LONGEVITY PAY**

Effective June 28, 2009, employees completing nineteen (19) years of service in a classification represented by the Association shall receive a five percent (5%) differential beginning with the anniversary date of beginning the twentieth (20<sup>th</sup>) year of service and shall apply to all hours in a paid status. This Longevity Pay shall be reported to CalPERS as Longevity Pay Incentive Pay.

#### **SECTION 16: SUPPLEMENTAL RETIREMENT INCOME PROGRAM**

Effective December 25, 1988, the City will pay two percent (2%) of the employee's regular annual salary for the first \$32,400 in salary, into a Supplemental Retirement Income Program.

## SECTION 17: HIGHER CLASS PAY, TEMPORARY APPOINTMENTS, PROVISIONAL APPOINTMENTS

### 17.1 Acting Assignment

When an employee occupying a position in any of the classifications covered by this Memorandum of Understanding is specifically assigned by the Chief of Police or his or her authorized representative to temporarily serve in a higher classification for a minimum of one (1) entire shift (either 8, 10 or 12.5 hours depending on the employee's shift schedule), said employee shall be paid at the lowest step of the higher classification which provides at least a five (5) percent differential or the lowest step of the higher classification to which the employee is assigned, whichever is greater. To be eligible for a higher class assignment the employee must meet the minimum qualifications, as outlined in the class description, and perform the duties of the higher classification. In no case, however, will an employee acting in a higher classification be paid in excess of the top step of the salary range of the higher class. In no instance shall an acting assignment last for more than thirty (30) consecutive days; any assignment over thirty (30) consecutive days shall be deemed a provisional assignment.

### 17.2 Temporary Vacancy

When a temporary vacancy is to be filled in a classification for which there is an existing eligibility list, the City shall attempt to make the temporary assignment from that list.

### 17.3 Provisional Appointment

An employee who holds a provisional appointment in a classification shall receive step increases in such classification as if the employee held a permanent appointment thereto.

### 17.4 Duration

Temporary and provisional assignments may be made up to six (6) months in any calendar year.

## SECTION 18: HOURS AND DAYS OF WORK

18.1 Subject to the terms of this MOU, hours and days of work shall be governed by rules established by the City Manager and the Chief of Police. The work schedule is attached as Exhibit "B" for illustrative purposes and is described as follows:

18.1.1 **4/10 Work Schedule:** Employees assigned to the 4/10 Work Schedule shall be assigned to begin work on Monday, Tuesday, Wednesday and Thursday. Employees assigned to this Work Schedule shall have a normal work week of four (4) consecutive ten (10) hour days. Scheduled days off shall be Friday, Saturday and Sunday.

18.1.2 **3/12.5 Work Schedule:** Employees assigned to the 3/12.5 Work Schedule shall be assigned to begin work on Friday, Saturday and Sunday. Employees assigned to this Work Schedule shall have a normal work week of three (3) consecutive twelve and one-half (12.5) hour days. Scheduled days off shall be Monday, Tuesday, Wednesday and Thursday. Employees assigned to this Work Schedule shall also work one additional ten (10) hour shift on either the first, second or third Thursday of each Fair

Labor Standards Act (FLSA) 28 consecutive day work period depending on the Team Assignment of the employee.

18.1.3 Either party may request to modify the work schedule after initial implementation and any modification shall be subject to the meet and confer process.

18.1.4 There may be some special assignments including, but not limited to Sergeants assigned to the Internal Affairs Bureau or the Sergeant assigned to the Professional Standards Division who work a 4/10 schedule from Tuesday through Friday with scheduled days off on Saturday, Sunday and Monday.

18.1.5 When an employee's schedule is changed from the 3/12.5 to the 4/10 schedule, the employee shall be given the option of working the additional four (4) hours or taking earned vacation or compensatory time to cover the pay period shortage.

#### 18.1.6 Daylight Savings Time

18.1.6.1 **Spring:** In the Spring when transitioning to Daylight Savings Time (DST), employees working during the one (1) hour transition from Standard Time to DST will be paid only for actual hours worked. Employees working on a shift which includes the one (1) hour transition may be granted an option by the Chief to work an additional hour or use compensatory time, floating holiday, or vacation to make up the lost work hour.

18.1.6.2 **Fall:** In the Fall when transitioning from DST, employees working during the one (1) hour transition will be paid for all hours worked including overtime and one-and-one-half (1½) times the straight-time rate of pay for hours worked in excess of the regular workweek as set forth in either Section 18.1.1 or 18.1.2 of this Understanding, or all hours worked in excess of 171 hours in a 28 consecutive day work period as provided in Section 207(k) of the Fair Labor Standards Act (FLSA).

#### 18.2 Shift Trades

The practice of trading of work shifts (where one Unit F employee trades a shift with another of the same rank) shall be limited as set forth in Police Department General Orders which include the following provisions:

18.2.1 Each Unit F employee shall be allowed no more than four (4) trades of shifts in any calendar month. Employees desiring in excess of four (4) trades of shifts must first seek and receive permission for additional trades of shifts from the Commanding Officer of the division involved.

18.2.2 Notwithstanding the foregoing, under no circumstances will employees be allowed to regularly or systematically trade shifts with one another in a manner that negates or converts the hours or days any employee is regularly scheduled to work (e.g., to work a four [4] day work week on a regular basis).

18.2.3 Permission for additional trades of shifts shall generally be granted if the request is supported by a bona fide reason and the request will not circumvent the requirements of Section 18.2.2 above.

18.2.4 In no event shall compensatory time off be transferred to compensate for a trade of shift by one employee for another.

### 18.3 Lunch Period

Employees may, upon clearance by the on-duty supervisor, extend their lunch period by no more than thirty (30) minutes in order to work out. Employees availing themselves of this opportunity will limit their workout within the Berkeley City limits and remain available and reachable by telephone during the entire period in the event of a specific need. As is the case with any lunch period, the needs of the City and Department take precedence.

## SECTION 19: OVERTIME/SHIFT EXTENSION

19.1 Employees of the rank of Lieutenant or below shall be entitled to receive overtime pay. No employee may work overtime or extend his or her shift without express prior approval of his or her supervisor. Time spent in a paid status but not actually worked (i.e., sick leave, vacation leave, workers' compensation, holiday time when receiving pay, when being represented, or other approved leaves with pay) shall be considered "time worked" for the purposes of this section. Unless specifically requested by a commanding officer, employees shall not work overtime on their regularly scheduled shift on days they would normally work. On days when they have taken paid time off for any reason other than workers' compensation, they are not automatically restricted from working overtime during those same days on shifts other than their own.

As set forth in Section 18.1 of this Understanding, employees at the rank of Police Lieutenant or below shall be assigned to work either a 4/10 Work Schedule or a 3/12.5 Work Schedule. Overtime is defined as all hours an employee is required to work in excess of the regular workweek as set forth in either Section 18.1.1 or 18.1.2 of this Understanding, or all hours worked in excess of 171 hours in a 28 consecutive day work period as provided in Section 207(k) of the FLSA.

19.1.1 Employees of the rank of Lieutenant or below shall be compensated for as follows:

- 19.1.1.1 The overtime rate applicable under this section shall be one and one-half (1½) times the straight-time rate based upon the hourly rate of the employee who works the overtime.
- 19.1.1.2 Whether an employee shall be compensated for overtime by compensatory time off or by payment shall be at the sole discretion of the employee's department director.
- 19.1.1.3 Flexing of shifts will only be used on a voluntary basis. Members shall notify the BPA before they flex their schedule.

- 19.1.1.4 **Work Week:** For the purpose of computing overtime, the workweek shall be defined as beginning at 12:01 a.m. Sunday and ending at 12:00 midnight Saturday.
- 19.2 Employees holding the rank of Captain shall be ineligible for overtime compensation. The practice of permitting Captains to receive overtime for special events such as U.C. Berkeley football games, the Fourth of July celebration, and for Federal Emergency Management Act (FEMA) disaster work is hereby discontinued.
- 19.3 Emergency On-Call Status  
An employee shall be paid or given compensatory time off for being placed on emergency on-call status as follows:
- 19.3.1 An employee who is placed on emergency on-call status on his or her regularly scheduled work day shall be paid for a minimum of one hour and at a one-quarter time rate (i.e., 0.25 multiplied by the hourly rate and multiplied by the number of hours placed on emergency on-call status).
- 19.3.2 An employee who is placed on emergency on-call status on his or her regularly scheduled day off shall be paid for a minimum of two hours and at a one-quarter time rate (i.e., 0.25 multiplied by the hourly rate and multiplied by the number of hours placed on emergency on-call status).
- 19.4 Compensatory Time Off  
Compensatory time off may be earned in lieu of overtime pay at the rate of one and one-half (1½) hours for each overtime hour worked up to a maximum, effective July 1, 1984, of one hundred twenty (120) hours in such compensatory time. Consistent with FLSA regulations, upon termination of employment, employees will be paid for the full amount of compensation for accumulated but unused compensatory time. Utilization of compensatory time shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of service, consistent with FLSA regulations.
- 19.5 Administrative Leave for Captains
- 19.5.1 Effective January 1 of each year, Captains shall be credited with forty (40) hours of Administrative Leave. Such leave shall be in lieu of overtime earned by individuals in the ranks of Lieutenant and below. After successful completion of six (6) months of initial employment, employees are able to use Administrative Leave. Administrative Leave which is not utilized during any calendar year will be credited to the individual's vacation balance at the end of the calendar year. All rules governing vacation balances and when vacation can be scheduled in Section 22 shall apply to Administrative Leave.
- 19.5.2 Persons appointed to the rank of Captain during the calendar year shall receive Administrative Leave prorated based on the number of pay periods remaining in the calendar year.
- 19.6 Any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

### 19.7 Emergency Overtime

An employee is guaranteed at least three (3) hours overtime when called to emergency overtime duty from his or her residence.

## SECTION 20: COURT TIME

### 20.1 Court Overtime

20.1.1 Court overtime is defined as that overtime worked in connection with an assigned appearance before any criminal or civil court, Police Review Commission meeting or Board of Inquiry, Department Board of Review, and any other specially approved appearance on behalf of another City department or commission.

20.1.2 Unless otherwise approved by a Commanding Officer, all court overtime shall be paid.

20.1.3 A sworn employee who makes an off-duty court appearance shall receive a minimum of four (4) hours overtime unless his or her scheduled duty reporting time, regular shift or overtime shift is less than four hours after the scheduled court appearance in which case the employee will receive overtime in the lesser amount.

20.1.4 Overtime spent conferring with the prosecuting attorney will be considered as court overtime and part of the court session only if the employee's presence is required in court after the conference.

20.1.5 For off-duty, out-of-town court appearances, travel constitutes court overtime and is determined by the round trip time from the Hall of Justice.

20.1.6 To receive court overtime credit, an employee shall submit an Extraordinary Duty Report.

20.1.6.1 Subpoena should be attached and case number indicated if either or both are available.

20.1.6.2 Report is to be completed by the employee and should specify the amount of time required for "testifying/conferring," "time waiting," or if "not needed."

20.1.6.3 The employee's supervisor shall review the report for accuracy and complete the lower boxed area, indicating the court paid overtime budget code, the Activity Code and the proper project designation.

### 20.2 Court Overtime/Telephone Stand-By

20.2.1 Sworn employees who are placed on telephone stand-by for the court will be compensated by earned compensatory time as follows:

- 20.2.1.1 **Duty Day:** One hour minimum compensatory time and hour for hour thereafter.
- 20.2.1.2 **Day Off:** Two hour minimum compensatory time and hour for hour thereafter.
- 20.2.2 To receive compensatory overtime credit for telephone stand-by, an officer shall submit an Extraordinary Duty Report.
  - 20.2.2.1 Subpoena should be attached and case number indicated if either or both are available.
  - 20.2.2.2 Report is to be completed by the officer and shall specify the case number and the name of the Deputy District Attorney placing him or her on telephone stand-by.

## SECTION 21: RECOVERY TRANSFER TIME

- 21.1 Recovery Time Transfer is that system whereby an employee grants time from earned compensatory time off, vacation leave or sick leave to another employee. Such transfer of time shall be limited to situations where the recipient of the transfer is, by reason of illness or injury, threatened with the loss of earnings due to his/her exhaustion of employment benefits. Such time transfer request must be in writing, and subject to the approval of the City Manager or designee. Such approval shall not be unreasonably denied. Such transfer shall be credited to the recipient at the donor's rate of pay. Recovery Transfer Time will not be used for industrial injuries or illnesses. The use or receipt of Recovery Transfer Time shall not preclude possible medical separation of the recipient employee. The City reserves the right to require medical verification by a qualified medical practitioner of the recipient employee's medical condition.
- 21.2 An employee may donate compensatory time off or vacation leave.
- 21.3 An employee may donate accrued but unused sick leave as Recovery Transfer Time subject to the following conditions:
  - 21.3.1 An employee may donate one hour of sick leave for each hour of compensatory time off and/or vacation leave time donated for Recovery Time Transfer. To donate sick leave hours beyond the number of hours of compensatory time off and/or vacation leave time, the employee will be charged two hours of sick leave for each hour of sick leave donated for use as Recovery Time Transfer.
  - 21.3.2 The employee donating the sick leave must maintain a sick leave balance of at least 120 hours after the donation of leave for Recovery Transfer Time.



ARTICLE 3 - LEAVES

SECTION 22: VACATION

- 22.1 All employees who have worked for the City six (6) months or more and have worked half-time or more in the preceding year shall be entitled to vacation leave.
- 22.2 The times during the calendar year at which an employee shall take vacation shall be determined by the Chief of Police or his or her designee in accordance with department policies with regard for the wishes of the employee and particular regard for the needs of service. With advance supervisory approval, vacations may be in increments of one (1) hour.
- 22.3 Employees shall be entitled to annual vacation leave as follows:

Years of Service	Vacation Accrual
The first (1) through third (3) years of service (except as provided in Sections 22.4 and 22.5 below)	80 work hours
Fourth (4) through eleventh (11) years of service (except as provided in Sections 22.4 and 22.5 below)	120 work hours
Twelfth (12) through seventeenth (17) years of service (except as provided in Sections 22.4 and 22.5 below)	160 work hours
Eighteenth (18) through twentieth (20) years of service (except as provided in Sections 22.4 and 22.5 below)	200 work hours
Twenty-first (21) and subsequent years of service (except as provided in Sections 22.4 and 22.5 below)	240 work hours

22.3.1 Employees shall accrue vacation leave at the following rates:

Vacation Hours Earned Per Year	Hours of Vacation Earned per Hour of Regularly Scheduled Work
90	0.0385
120	0.0577
160	0.0769
200	0.0962
240	0.1154

22.3.2 **Use of Vacation Leave:** Each employee shall be entitled to take during the first two (2) years of employment only such annual vacation leave as the employee earns: provided, however, that no employee with less than six (6) months of service shall be entitled to take earned vacation leave.

22.3.3 **Lateral Entry Vacation Accrual Rate at Time of Appointment:** Subject to the provisions of Section 22.1, an employee appointed through lateral entry shall accrue and take Vacation Leave commensurate with his or her experience as a sworn peace officer.

## 22.4 Calculation of Vacation for Part-Time or Intermittent Employees

For an employee who has worked on a part-time or intermittent basis, the actual years of service with the City shall be used for the purpose of computing length of service in determining eligibility for vacation as specified in Section 22.3.

**22.4.1 Pro-Ration of Vacation for Part-Time or Intermittent Employees:** Employees working on an intermittent or part-time basis who have worked half-time or more in the preceding calendar year without termination of employment shall be entitled to a prorated vacation leave based upon the actual years of service with the City and upon the actual amount of time worked in the preceding calendar year.

**22.4.2** For the purpose of computing length of service in determining eligibility for vacation, time spent on an extended military leave shall be counted as time spent in the service of the City.

## 22.5 Maximum Vacation Leave Accrual Carryover

Employees can carry over from one vacation year (see glossary) to the next no more than three hundred twenty (320) hours of earned vacation.

**22.5.1 Annual Vacation Leave Sell Back:** Once per year, an employee will have the option to sell to the City up to one hundred sixty (160) hours of accumulated vacation time. The employee shall notify the Department on a form provided by the Auditor that he or she is exercising this option no later than March 1 of any calendar year. The City will pay the employee for the purchased vacation hours by March 31 of the same calendar year.

**22.5.2 Excess Vacation:** Not later than October 1 of each vacation year, the City will notify each affected employee of the amount of the employee's earned vacation projected to exceed three hundred twenty (320) hours at the end of the vacation year. By October 31, those employees notified of projected excess vacation will submit to the Chief of Police a proposal for use of the projected excess vacation prior to the end of the vacation year. Such a proposal may include both vacation leave and "sell back" to the City.

**22.5.3** An employee who has attained maximum accumulation, and does not submit a proposal for use of excess vacation, may be required to take all the projected excess earned vacation or receive pay in lieu thereof, at the option of the City. Such time off shall be scheduled in accordance with the provisions of Section 22.2.

## 22.6 Return from Extended Unpaid Leave

An employee who has returned from extended military leave or any other extended leave of absence without pay or who has been reemployed or reinstated shall be entitled, during the calendar year in which the employee returns to City service, to a prorated vacation based upon the total years of service with the City and upon the total number of months of actual service with the City during the calendar year. For succeeding calendar years, vacation shall be as provided in Section 22.

**22.7** Any employee who is granted a leave of absence without pay and who is off the payroll for less than one hundred-sixty (160) consecutive hours shall be entitled to a full vacation. If

such an employee is off the payroll for the employee shall not earn vacation leave credit for each one hundred–sixty (160) consecutive hours that he or she is off the payroll. Vacation leave shall be accrued on hours worked or in a paid status exclusive of overtime.

## 22.8 Payment upon Death, Termination or Extended Leave

If, after six (6) months of continuous service, an employee dies, is terminated or is granted an extended military leave or other extended leave of absence without pay, such employee, or his or her estate shall be paid for accrued but unused vacation leave.

22.8.1 Upon death or termination, if the vacation balance is negative, for employees who received advanced vacation, such employee, or his or her estate, shall, on the same basis, reimburse the City or the City may deduct the balance due from the employee's salary due, accrued floating holidays, holiday pay due, compensatory time due or sick leave, in the listed order of priority.

22.8.2 Payment for excess of vacation leave shall be made in lump sum at the time of termination or death, as soon as possible.

## SECTION 23: HOLIDAYS

23.1 All employees in Representation Units E and F who are required to work on any of the hereinafter enumerated holidays, shall have the option of receiving compensation, in addition to their regular monthly salaries, either in the form of holiday pay or compensatory overtime. The holiday pay will be equivalent to the employee's regular hourly salary multiplied by the number of hours worked during such day, except that the sum of the hours compensated by holiday pay and hours taken as time off shall not exceed eight (8) for any single holiday; or the employee shall receive compensatory time off at the straight-time rate on the same basis. For purposes of overtime computation, holiday pay is not to be considered compensation for time worked. Employees may utilize accrued compensatory time off, vacation, floating holidays and/or administrative leave (if applicable) for the difference between 8 hours and the number of hours in their regularly scheduled shift.

23.2 In the event that any of the enumerated holidays fall on a day which is not a regularly scheduled workday, such employees shall, in addition to the regular salary which such employees receive, be paid for eight (8) hours for each such holiday at straight-time rate based upon their regular monthly salary or shall, at the discretion of the Chief of Police, be given eight (8) hours of compensatory time off at a straight-time rate.

23.3 Recognized holidays for employees in Representation Units E and F to which this section applies are as follows:

<ul style="list-style-type: none"> <li>• New Year's Day</li> <li>• Martin Luther King, Jr.s' Birthday</li> <li>• Washington's Birthday</li> <li>• Lincoln's Birthday</li> <li>• Malcolm X's Birthday</li> <li>• Memorial Day</li> <li>• Independence Day</li> <li>• Labor Day</li> </ul>	<ul style="list-style-type: none"> <li>• Indigenous People's Day</li> <li>• Veteran's Day</li> <li>• Thanksgiving Day</li> <li>• Day after Thanksgiving</li> <li>• Christmas Day</li> </ul> <p><i>(Any other special holiday as declared by the City Manager)</i></p>
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23.4 Floating Holidays

After successful completion of six (6) months of initial employment, employees shall be granted three (3) floating holidays, equivalent to eight (8) hours each, during the calendar year. The days selected shall be by mutual agreement between the employee and the Chief of Police or his or her designee. In the event mutual agreement cannot be reached, the time sought shall be added to his or her accrued vacation time. Employees may take floating holidays in one (1) hour increments. Employees who terminate employment within the first six (6) months of initial employment shall not be eligible for payout of any accrued but unused floating holidays.

23.5 Pro-Rated Holidays

A new employee or an employee returning from a long term leave of absence without pay will receive floating holidays on a pro-rated basis, according to the following schedule:

Date of Hire or Return	Floating Holiday Entitlement
January 1 - April 30	3
May 1 - August 30	2
September 1 - December 31	1

23.6 Employees shall receive specially declared holidays on the same basis as they now receive other holidays.

23.7 Eligibility

To be eligible for holiday pay, an employee must be on paid leave status on the employee's last regularly scheduled workday before the holiday.

**SECTION 24: SICK LEAVE**

24.1 Employees shall be entitled to take sick leave with full pay in case of sickness, disability, or serious illness of the employee or of members of the employee's immediate family in accordance with the provisions of Sections 24.2 to 24.7, inclusive.

#### 24.2 Sick Leave Accrual

Each employee shall be credited with one (1) eight-hour work day of sick leave with full pay for each month of service. Provided further that employees hired on or after September 11, 2012 shall accrue eight (8) hours of paid sick leave for each month of service. Employees hired before September 11, 2012 shall accrue sixteen (16) hours of paid sick leave for each month of service after the completion of twenty (20) years of service.

Actual accrual of sick leave will be based upon those days on which the employee was on the payroll and receiving pay.

24.3 An employee working on a part-time basis shall be entitled to use earned sick leave only on a pro rata basis; for example, if an employee works half-time the employee shall be paid for time off on sick leave on a half-time basis.

#### 24.4 Intermittent Employees Use of Sick Leave

An employee who works on an intermittent basis shall be entitled to use earned sick leave only for those days on which the employee would have worked if the employee had not been sick; provided, however, that an employee working on an intermittent basis who works only when called shall be entitled to use earned sick leave only when the employee becomes sick after reporting to work in response to such call.

#### 24.5 Notice Requirements

Except in the case of emergencies, in order to receive compensation while absent on sick leave the employee shall notify the Chief of Police or other personnel designated by the Chief of Police at least one hour prior to the start of the employee's daily duties.

#### 24.6 Sick Leave Program

Effective December 23, 2012, the following Sick Leave Program went into effect.

**24.6.1 Five (5) Year Payout to PORAC Trust:** If a sworn member of the Berkeley Police Department ("Employee") has an accrued sick leave balance on December 23, 2012 that exceeds 200 hours, one half of all those hours in excess of 200 shall be maintained in a separate account. The financial value of those hours shall be converted and deposited into the employee's retiree Peace Officers Research Association of California (PORAC) medical trust account over five successive years in equal installments commencing on January 1, 2013 to January 1, 2017. The conversion shall be at the Employee's rate of pay on December 23, 2012. The City may accelerate the payment of hours to be converted.

The remaining fifty percent (50%) of the sick leave balance in excess of 200 hours shall be credited into the employee's separate "catastrophic/service time" bank no later than February 1, 2013 up to a maximum of 500 hours.

**24.6.2 Annual Conversion to Cash:** At the end of each calendar year, if an employee has an accrued sick leave balance of 200 hours or more of sick leave, fifty percent (50%) of all hours accrued in excess of 200 hours shall be converted to a cash equivalent at the end of each calendar year. The annual cash conversion shall be calculated at the employee's hourly rate including additional pay such as POST Pay, Bilingual Pay and Longevity Pay then in effect at the end of the calendar year. The

annual cash conversion shall be limited to 50% of the hours an employee has accrued in excess of 200 hours as of December 31<sup>st</sup> of each year. The City shall pay the annual cash equivalent into an employee's retiree PORAC medical trust account on behalf of the employee member. Upon retirement, any sick leave hours that have not been converted onto an employee's PORAC medical trust account, used for the purpose of additional retirement service credit as provided in PERL Section 20965, or "catastrophic/service time" bank shall be forfeited.

The remaining fifty percent (50%) of accrued hours in excess of 200 hours, up to a maximum of 500 hours, shall be maintained in the employee's separate "catastrophic/service time" bank. These hours are available for the employee's use in the event that the employee has a catastrophic illness or injury and has exhausted all accrued sick leave hours and compensatory time off hours. At the time of the employee's retirement or termination, any sick leave balance in the catastrophic/service time bank may only be used for additional retirement service credit as provided in PERL Section 20965 and the employee cannot cash it out at retirement or separation.

**24.6.3 Catastrophic/Service Time Bank of Hours:** The catastrophic/service time bank of hours is available for use subject to the following conditions.

- 24.6.3.1 Employee or employee's dependent family member must be suffering from a catastrophic illness or injury. Catastrophic illness or injury means an unanticipated life threatening illness or injury, either for a permanent or temporary period anticipated to exceed thirty (30) working days, that results in the incapacity of an employee or the employee's dependent family member and by virtue of the illness or injury to the employee or the employee's dependent family member, the employee's ability to perform the essential functions of his or her usual and customary occupation is limited.
- 24.6.3.2 Employees may also utilize "catastrophic/service time" bank hours for the birth or adoption of a child.
- 24.6.3.3 Employee shall provide the City proof of catastrophic injury or illness from an authorized health care provider on a form to be provided by the City
- 24.6.3.4 The employee must have exhausted all of his or her available paid leave balances (except accrued vacation) and, as a result, will be placed on unpaid leave status unless the catastrophic/service time bank is utilized.

**24.6.4** Employee is prohibited from using the catastrophic/service time bank under the following circumstances:

- 24.6.4.1 Employee is prohibited from using the catastrophic/service time bank for any industrial injuries or illnesses that are covered by the California workers' compensation laws and regulations, except and

until the employee has exhausted all benefits under Labor Code Section 4850 and all the employee's available paid leave balances.

24.6.4.2 Employee is prohibited from simultaneously using the catastrophic/service time bank and receiving benefits under any Berkeley Police Association sponsored Long Term Disability benefit.

24.6.4.3 The employee is not permitted to extend employment into retirement through the use of catastrophic/service time.

24.6.4.4 Any balance in the catastrophic/service time bank at time of employee's retirement will not be cashed out. However, an employee may use any balance to purchase CalPERS additional service credit.

#### 24.7 Family Sick Leave

Sick leave shall not be considered a privilege which an employee may use at the employee's discretion but shall be allowed only in case of sickness or disability or in the case of serious illness of the employee or within the immediate family of the employee. Not more than fifteen (15) working days in any calendar year may be taken as sick leave because of illness of a member of the employee's immediate family, except for serious medical conditions covered under the provisions of Administrative Regulation 2.4-Family Care Leave, federal Family and Medical Leave Act. The immediate family of an employee, for the purposes of this section, shall include: dependent residing in the employee's household, spouse, son, daughter, parent and other relationships as determined by the City, such as domestic partner (see glossary).

#### 24.8 Sick Leave Bonus

Employees shall be entitled to receive an additional eight (8) hours of paid leave for every six (6) months of uninterrupted non-use of sick leave. Leave of absence for any reason other than Vacation Leave, Administrative Leave, use of Compensatory Time Off or Bereavement Leave, or partial day absences due to a prescribed follow-up physical therapy or medical appointment (Payroll Code M0) for a Workers' Compensation claim, disqualifies an employee for this bonus. This additional leave accrual is prorated for part-time employees. Not more than sixteen (16) additional hours per year may be achieved; this paid leave may be used for any leave purpose covered by this Understanding.

#### 24.11 Absenteeism Control System

The City may implement an absenteeism control system, which will include the detailed and ongoing recording of absences and counseling of employees regarding abuse, with management and supervisory personnel having the discretion to require medical verification in instances where abuse appears evident and to take disciplinary action as appropriate to correct patterns of abuse.

## SECTION 25: WORKERS' COMPENSATION

- 25.1 All employees shall be entitled to such compensation as may be allowed pursuant to the applicable provisions of the Workers' Compensation Insurance and Safety Act of the State of California (specifically Labor Code Sections 4850 et seq.).
- 25.2 No sick leave shall be allowed for time off for an injury incurred while working for another employer, provided that such injury is covered by the Workers' Compensation laws of the State of California or other provision for payment for time off because of such injury is made by such other employer. In the event such injury is not covered by the Workers' Compensation laws of the State of California and no other provision for payment for time off because of such injury is made by such other employer, sick leave in accordance with the provisions of Section 24 shall be allowed only if such outside employment has been approved by the City.
- 25.3 Workers' Compensation salary in lieu of temporary disability payments as provided in California Labor Code Section 4850 are reportable to CalPERS as compensation earnable for a period not to exceed one year. Any temporary disability benefits, which are coordinated with the employee's available leave accruals, paid after one year is not reportable to CalPERS as compensation earnable.

## **SECTION 26: FUNERAL LEAVE**

- 26.1 In the case of death within the immediate family of an employee such employee shall be entitled to remain absent from duty with pay in order to attend the funeral or memorial service for a period not exceeding three (3) consecutive working days, or, in the case of a funeral or memorial service conducted out of the State of California, for a period not exceeding five (5) consecutive working days. The immediate family of an employee, for the purpose of this section, shall be defined as: wife, husband, domestic partner, (see glossary), mother, father, sister, brother, child, grandmother, grandfather, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and grand-children. A working day for the purpose of this section is based on the actual number of hours an employee is normally scheduled to work (i.e., eight (8) hours; ten (10) hours; or twelve and a half (12.5) hours).
- 26.2 Leave of absence with pay because of death in an employee's immediate family is allowed provided the employee attends a funeral or memorial service during the time off, and such leave shall not be charged against vacation or sick leave which an employee may be entitled to but shall be in addition thereto.

In special cases, with the approval of the Chief of Police, the City Manager may grant a death leave to allow an employee to attend funeral or memorial services because of the death of a person not included within the definition of the immediate family.

In addition, employees may request, and the City will make reasonable efforts to accommodate requests, for employees to supplement funeral leave by using accrued vacation, compensatory time, or floating holidays.



## 26.3 Bereavement Leave Statement:

Any employee requesting funeral leave must submit a statement and provide documentation if possible, i.e., obituary or funeral home or church program or notice, that the family member meets the definition of “immediate family members” as provided in Section 26.1. In recognition that there may be situations where an employee is unable to provide funeral or memorial service documentation because there was no formal service, the employee must so note that on the statement confirming that the service occurred during the time period the employee was off work on funeral leave.

**SECTION 27: MILITARY AND MARITIME LEAVE**

Military and Maritime Leave shall be governed by the provisions of the Federal Uniformed Services Employment and Reemployment Rights Act (USERRA) and any regulations promulgated to implement the Act, and the California Military and Veteran’s Code. Employees will be granted a leave of absence without pay with appropriate seniority, pay, status and vacation as required by law for the purpose of fulfilling any required military obligation. If allowed by the USERRA and/or the State of California Military and Veteran’s Code, where the employee is entitled to receive his/her regular pay during the period of the military leave, military pay is to be deducted from the employee’s regular pay from the inception of the military leave.

**SECTION 28: FAMILY CARE LEAVE**

Administrative Regulation 2.4 (Family Care Leave) is intended to comply with the Family and Medical Leave Act of 1993 and the California Family Rights Act of 1991 as may be amended from time to time. A copy of Administrative Regulation 2.4 is attached to this Memorandum of Understanding for illustrative and convenience purposes. It is not the intent of the parties to incorporate Administrative Regulation 2.4 into this Memorandum of Understanding. The Association will be notified of any revisions to Administrative Regulation 2.4.

**SECTION 29: LEAVE OF ABSENCE WITHOUT PAY**

29.1 Upon request of the employee, the Chief of Police may grant a leave of absence to an employee within his or her department without pay not to exceed fifteen (15) working days. No leave without pay shall be granted for more than fifteen (15) working days, except upon the written request of an employee and approval of the City Manager. Failure on the part of an employee on leave to report promptly at its expiration shall be cause for discharge.

29.2 An employee must use all available compensatory and vacation leave, including banked vacation, in order to become eligible for an approved leave of absence without pay. In the event of illness, an employee must also exhaust sick leave prior to receiving authorization for leave without pay. However, in the event of an illness or injury requiring the use of sick leave, an employee has an option to notify the City in writing that he/she wishes to freeze the use of sick leave after thirty (30) calendar days prior to receiving authorization for leave without pay in order to take advantage of an Association sponsored Long Term Disability benefit.

29.3 In the event of a request for leave of absence for personal reasons (not related to sickness), an employee must exhaust all compensatory and vacation time available prior to receiving authorization for leave without pay.

**SECTION 30: JURY DUTY LEAVE**

An employee who is called or required to serve as a trial juror shall be entitled to be absent from duties or service with the City with pay during the period of such service, as defined in the glossary (Exhibit B) or while being present in court as a result of such call. Any employee, working any shift, shall be eligible for this benefit. Jury duty that does not occur during the employee's work shift but does occur on a scheduled work day, shall cause that employee's next scheduled work shift to be shortened by the number of hours spent on jury duty.

## ARTICLE 4 - HEALTH AND WELFARE BENEFITS

### SECTION 31: HOSPITAL-MEDICAL, DENTAL AND LIFE INSURANCE COVERAGE

#### 31.1 Medical Coverage

The City will pay 100% of the premium for the applicable (single, couple, family) Kaiser rate. Plans that are less expensive than or equal to the Kaiser plan shall be fully paid by the City. For coverage under more expensive plans the employee shall pay the difference through payroll deduction. If an employee chooses to complete and submit to the an Affidavit of Domestic Partnership and sign up for medical benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

The Understanding can be reopened on health plan topics by mutual consent. In addition, the Association agrees to meet with the City during the term of this MOU in a timely fashion following a City request, regarding whether the Association will agree to meet and confer regarding how the City can avoid potential 2018 ACA excise tax obligations and on a new and/or replacement health plan or plans and other methods to reduce the current cost of health benefits.

#### 31.2 Dental Coverage

The City shall provide a dental care program for employees. Dental benefits will remain at 90% coverage of the Bay Area Usual, Customary and Reasonable charges for the life of this Understanding. Effective January 1, 2002, the maximum annual coverage will increase to \$3,000 per calendar year and the lifetime limit on orthodontia will be increased to \$3,000. If an employee chooses to complete and submit to the an Affidavit of Domestic Partnership and sign up for dental benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

31.3 Should the City deem it feasible to provide the same level of benefits through another provider or to provide such benefits on a non-insured basis, it will notify the Association and, upon written request, will meet and confer on the matter.

#### 31.4 Life Insurance

The City shall provide term life insurance of \$100,000 for each employee that shall include a standard accidental death and dismemberment provision of a like amount. In addition, employees may purchase additional life insurance in increments of \$10,000 up to a maximum of \$300,000 at a rate offered by the City's insurance carrier and subject to any medical exam as required by the insurance carrier.

#### 31.5 Pro-Ration for Less Than Full-Time Employees

All career and grant-funded provisional employees working less than a full forty (40) hour week shall receive prorated rather than full fringe benefits and shall pay, by payroll deduction, the remainder of the health and dental insurance premiums.

#### 31.6 Cash In-Lieu

Effective the first full pay period following Council approval of this MOU, and for those employees who show proof of alternate medical coverage, the City will compensate the employee \$560.72 per month.

**SECTION 32: RETIREE MEDICAL COVERAGE**

32.1 Sick Leave Trust Fund

A retiree, with a sixty (60) day notice, may at any time request a lump sum payment of the balance in his or her Sick Leave Trust Fund. Upon the death of the retiree, any money in the account will be disbursed to the employee's estate.

32.2 Retiree Health Coverage

The City will establish an Internal Revenue Code Section 401(a) plan for the purpose of paying the benefit provided in this Section.

The City shall pay to the retiree or his or her surviving spouse an amount equivalent to the two party active Kaiser monthly medical insurance premium until the death of both. (See Exhibit Letter from Kaiser dated September 14, 2001 attached to this Memorandum of Understanding for illustrative and convenience purposes.) The maximum amount the City shall pay to the retiree or his or her surviving spouse is based on the following schedule:

Years of Service	Percentage to be Paid by the City
10 years of Service	City to pay an amount equal to 25% of the 2-party Kaiser plan rate
15 years of Service	City to pay an amount equal to 50% of the 2-party Kaiser plan rate
20 years of Service	City to pay an amount equal to 75% of the 2-party Kaiser plan rate
25 Years of Service	City to pay an amount equal to 100% of the 2-party Kaiser plan rate

**32.2.1 Payment:** If payment is made under the Code section 401(a) plan, the payment to be made on a monthly basis shall be made directly to the retiree, or if the retiree is deceased, to the surviving spouse. If payment is made under the retiree health premium assistance plan per Section 32.3, the payment to be made on a monthly basis shall be made directly to the provider who is providing retiree health coverage to the retiree or his or her surviving spouse (if spouse is eligible, per Section 32.5.2). The retiree or surviving spouse assumes full responsibility for the tax consequences for this benefit.

**32.2.2 Notification of Death:** The retiree or surviving spouse is exclusively responsible for notifying the City of a death of his or her spouse. Such notification must be reported in writing to the City by U.S. Postal Service addressed to: Director of Finance, City of Berkeley Finance Department, 2180 Milvia Street, Berkeley, CA. When both the retiree and surviving spouse die all payments under this Section shall cease.

**32.2.3 Notification of Change of Address:** The retiree or surviving spouse is exclusively responsible for notification to the City of his or her current mailing address. A change in mailing address must be reported in writing to the City by U.S. Postal Service addressed to: Director of Finance, City of Berkeley Finance Department,

2180 Milvia Street, Berkeley, CA. If the U.S. Postal Service returns payment checks for two consecutive months, the City will cease making payments under this Section. However, if the retiree and/or surviving spouse re-establishes contact with the City and notifies the City in writing of a new mailing address, the City shall resume making payments including arrears payments for the period when payment checks were undeliverable.

**32.2.4 Payments Commence 10 Years after Retirement Plan:** For employees retiring on or after January 1, 1989 through July 5, 1997, the City shall begin making payments to the retiree or his or her surviving spouse ten (10) years after the employee retires. No payments will be made under this Section until January 1, 1999. For the purposes of this Section, a “retiree” is anyone who separated from the City on or after January 1, 1989, is vested in CalPERS, has ten years of service as a sworn officer with the Berkeley Police Department and has reached the age of 50. However, a “retiree” is also anyone, regardless of age, who receives a disability or industrial disability retirement benefit from CalPERS and has at least ten (10) years of sworn service with the Berkeley Police Department.

**32.2.5 Payments Commence 5 Years after Retirement Plan:** For employees retiring on or after July 6, 1997, the City shall begin making payment to the retiree or his or her surviving spouse, or to the provider of retiree health care coverage through a newly established retiree health premium assistance plan, as applicable, five (5) years after the employee retires. No payments will be made under this Section until July 6, 2002. For the purposes of this Section, a “retiree” is anyone who separated from the City on or after July 7, 1997, is vested in CalPERS, has ten years of service as a sworn officer with the Berkeley Police Department and has reached the age of 50. However, a “retiree” is also anyone, regardless of age, who receives a disability or industrial disability retirement benefit from CalPERS and has at least ten (10) years of sworn service with the Berkeley Police Department.

**32.2.6 Payments Commence 2 Years after Retirement Plan:** Effective July 1, 2008 for employees retiring after July 1, 2007, the City shall begin making payments to or on behalf of the retiree or his or her surviving spouse two (2) years after the employee retires. The maximum amount the City shall pay to or on behalf of the retiree is based on the following schedule:

Years of Service	Percentage to be Paid by the City
10 years of Service	City to pay an amount equal to 25% of the 2-party Kaiser plan rate
15 years of Service	City to pay an amount equal to 50% of the 2-party Kaiser plan rate
20 years of Service	City to pay an amount equal to 100% of the 2-party Kaiser plan rate

For the purposes of this Section, a “retiree” is anyone who separated from the City on or after July 1, 2007, is vested in CalPERS, has ten years of service as a sworn officer with the Berkeley Police Department and has reached the age of 50.

However, a “retiree” is also anyone, regardless of age, who receives a disability or industrial disability retirement benefit from CalPERS and has at least ten (10) years of sworn service with the Berkeley Police Department.

**32.2.7 Overpayments:** In the event of an overpayment, the procedures set forth in Section 41 (Payroll Errors) of the Understanding shall apply to the recovery of overpayments under this Section, with adjustments as appropriate to reflect that retirees are no longer on the active payroll, so offsets or reductions must be made to future payments that would become due under the applicable plan providing benefits to the retiree or his or her surviving spouse.

### 32.3 Retiree Health Premium Assistance Coverage

Effective September 19, 2012, the City will cease making contributions to an Internal Revenue Code Section 401(a) plan for the purpose of paying the retiree health care benefit provided under this Section for any employees hired on or after that date who would otherwise have qualified for benefits under the terms described in this Section 32. Any employees hired on or after September 19, 2012, as well as any current employees who retire on or after such date, shall receive the benefits described in this Section 32.3 as a benefit provided by the City under a newly established retiree health premium assistance plan and related trust agreement. Any benefits payable to employees who have retired prior to such date or to their surviving spouses may continue to be made under the Internal Revenue Code Section 401(a) plan that was established for such purpose to the extent benefits are not provided for such retirees under the new retiree health premium assistance plan. Under the newly established retiree health premium assistance plan, benefits will be the same as previously provided under the 401(a) plan, except for different eligibility criteria and that payment under the 401(a) plan was made directly to the retiree or his or her surviving spouse, and under the new plan the City will pay the retiree health premium assistance amount to the provider who is providing retiree health coverage to the retiree or his or her surviving spouse (if spouse is eligible per Section 32.5.2. Upon the death of the retiree, the amount provided to an eligible surviving spouse will be an amount equivalent to the appropriate percentage of the single party active Kaiser monthly medical insurance premium amount, which will continue until the death of the eligible surviving spouse. The maximum amount the City shall pay towards coverage for the retiree or his or her surviving spouse, either directly or to a health care provider on his or her behalf, is based on the following schedule set forth in Section 32.5 et seq.

### 32.4 Amendment or Termination of 401(a) Plan

As provided under Section 32.2 (Retiree Health Coverage), the City established an Internal Revenue Code Section 401(a) plan for the purpose of paying the benefits for retirees and their surviving spouses provided under this Section 32 (Retiree Medical Coverage). Section 12 of that plan (Berkeley Police Supplemental Retirement Plan) provides that such plan may be amended or terminated in accordance with a Memorandum of Understanding between the City and the Association. The City and the Association have determined that it is desirable, to the extent legally permissible and administratively practicable, to offer benefits previously provided under that Berkeley Police Supplemental Retirement Plan through a retiree health premium assistance plan and related trust under Section 115 of the Internal Revenue Code. Additionally, the parties have agreed that the City may take reasonable steps to amend or terminate the Berkeley Police Supplemental Retirement Plan, or spin-off assets and liabilities under such Plan for certain covered participants into

a new section 401(a) plan that also may be amended or terminated, to the extent such actions are necessary or desirable to accomplish, in providing future retiree medical premium assistance benefits as described in this Section 32 (Retiree Medical Coverage) for some or all of the covered retirees and their surviving spouses through a newly established retiree health premium assistance plan and related trust.

### 32.5 Retiree Medical Coverage

For those employees who retire on or after September 19, 2012 and effective immediately upon the date of retirement, the City will assist in the payment of medical insurance premium payments for the retiree and/or surviving spouse/domestic partner by making payments directly to the medical insurance provider. Retirees shall be permitted at their discretion to enroll in non-City sponsored health plans. In that event, the City shall make medical insurance premium payments directly to the health insurance provider equal in value to the City sponsored health plan. The City shall not be responsible for any excess cost differentials associated with the direct payment of premiums to non-City sponsored plans. The City will only make payments through its third party administrator to provide medical insurance premium payments for an individual plan and will not make payments for a group plan. The retiree and/or surviving spouse or domestic partner will pay the administrative set up fee and the monthly administrative fee established by the third party administrator. No cash payments will be paid directly to the retiree and/or the retiree's spouse/domestic partner.

There shall be no cash in lieu payments made under this benefit.

32.5.1 For employees that retire on or after September 19, 2012 the City will discontinue the current practice of paying directly to the retiree the cash equivalent of the active two-party Kaiser rate. However, for those employees who retired before September 19, 2012, the City shall continue to make cash payments to these retirees under the MOU provisions in effect at the time of their retirement.

32.5.2 **Qualifying Spouse or Domestic Partner.** A retiree will receive the appropriate percentage of two-party coverage for a spouse or domestic partner that meets any of the following criteria ("Qualifying Spouse"): (1) the spouse or domestic partner of the retiree at the time of retirement; (2) for a retiree that did not have a spouse or domestic partner at the time of retirement, the initial spouse or domestic partner a retiree adds to his or her health plan after retirement; or, (3) for any retiree, a subsequent spouse or domestic partner if the previous spouse or domestic partner died. For all times that a retiree does not have a Qualifying Spouse, the City will only pay the appropriate percentage of single party premium for that retiree. If a retiree predeceases a Qualifying Spouse, the City will continue to pay the appropriate percentage of single party premium for that individual.

32.5.3 In the event that an employee retires and initially elects not to utilize the Berkeley retiree medical plan as described above, the employee may opt back into the Berkeley retiree medical plan during any open enrollment period with either single only coverage or two-party coverage, if applicable.



32.5.4 The City will comply with any lawfully executed Qualified Domestic Relations Order (QDRO) but under no circumstances will it provide retiree medical benefits to more than two persons.

32.5.5 In order to be eligible for the Retiree Health Premium Assistance Coverage a "Retiree" must meet all of the following criteria (note, this is different criteria than used for previous plans):

- 32.5.5.1 A person who is vested in CalPERS, and
- 32.5.5.2 Has reached the age of 50, and,
- 32.5.5.3 Has retired from the City at age 50 or thereafter, and
- 32.5.5.4 Has applied for and is receiving a pension from CalPERS at the time of retirement.

However, a "retiree" is also anyone, regardless of age, who receives a disability retirement benefit, either industrial disability or non-industrial disability, from CalPERS.

32.5.6 The maximum amount the City will contribute toward the payment of medical insurance premiums is based on the employee's years of service as a sworn member of the Berkeley Police Department at time of retirement. The retiree must have at least 10 years of service as a sworn member of the Berkeley Police Department to qualify for this benefit.

32.5.7 The maximum amount the City will contribute toward payment of the medical premium is based on the following schedule:

Years of Service	Percentage to be Paid by the City
10 Years of Service	City to provide medical premium assistance equal to 25% of either the single party or two party amount as determined below
15 Years of Service	City to provide medical premium assistance equal to 50% of either the single party or two party amount as determined below
20 Years of Service	City to provide medical premium assistance equal to 100% of either the single party or two party amount as determined below

There will be no pro-rating of years of service.

32.5.8 The City will assist the retiree and/or surviving spouse/domestic partner in the payment of the medical insurance premium as follows:

32.5.9 **Early Retirees who are not Medicare Eligible:** Beginning September 19, 2012, each month after the employee retires, the City will pay the health care service provider an appropriate percentage based on the chart in Section 32.5.7 of an



amount equal to \$1,200.00 per month for two party coverage for the retiree and a qualifying spouse/domestic partner or \$600.00 per month for single party coverage. Upon the death of either the retiree or the retiree's spouse, the City will only pay the appropriate percentage based on the chart in Section 32.5.7 of the single party rate to the provider on behalf of the surviving retiree or spouse/domestic partner. If there is no spouse/domestic partner at the time of retirement, the City shall only pay the single party rate. The retiree and/or surviving spouse/domestic partner will be responsible for payment of the difference between the amount the City contributes toward payment of the premium and the actual premium cost. The funds for this difference will come from the retirees CalPERS retirement account and the retiree must authorize such withdrawal of funds.

Beginning July 1, 2013 and effective each July 1 thereafter, the base rates the City contributes toward payment of the premium amount described in the preceding paragraph shall be increased by either the amount Kaiser increases the early retiree plan medical premium for that year, or 6%, whichever is less. The retiree and/or surviving spouse/domestic partner shall pay the difference between the amount the City contributes toward payment of the premium and the actual premium cost.

- 32.5.10 **Retirees who reach Medicare eligibility age:** Beginning September 19, 2012, for retirees who reach Medicare eligibility age, the City will pay the health care service provider the appropriate percentage based on the chart in Section 32.5.7 of an amount equal to \$765.80 per month for two-party coverage for the retiree and spouse/domestic partner or \$382.90 month for single party coverage. Upon the death of either the retiree or spouse/domestic partner, the City will only pay the appropriate percentage based on the chart in Section 32.5.7 of the single party rate to the health care service provider on behalf of the surviving retiree or spouse/domestic partner. If there is no spouse at the time of retirement, the City shall only pay the single party rate. The retiree and/or surviving spouse/domestic partner will be responsible for payment of the difference between the amount the City contributes toward payment of the premium and the actual premium cost. The funds for this difference will come from the retirees CalPERS retirement account and the retiree must authorize such withdrawal of funds.

Beginning July 1, 2013 and each July 1 thereafter, the base rates the City contributes toward payment of the premium amount described in the preceding paragraph shall be increased by either the amount Kaiser increases the retiree medical premium for that year, or 6% whichever is less. The retiree and/or surviving spouse/domestic partner shall pay the difference between the amount the City contributes toward payment of the premium and the actual premium cost.

Former employees who leave employment prior to age 50 and do not qualify as a "Retiree" under the definition above ("non-qualifying retiree") will not receive any funds from the City, either directly or indirectly, for payment of medical insurance premiums. However, a non-qualifying retiree shall be permitted to purchase health insurance from the retiree medical pool if **all** of the following criteria are met:

- 32.5.10.1 The former employees is vested in CalPERS, and

- 32.5.10.2 Has reached the age of 50, and,
- 32.5.10.3 Has applied for and is receiving a pension from CalPERS, and
- 32.5.10.4 The City sponsored group health plan permits the retiree to enroll in the retiree medical pool, and
- 32.5.10.5 The retiree pays all cost associated with enrolling and maintaining eligibility in the group health plan, including, but not limited to, the administrative set up fee and the monthly administrative fee established by the third party administrator.

**SECTION 33: SUPPLEMENTAL RETIREMENT PLAN**

Effective July 1, 2001 the City adopted a Supplemental Retirement Plan and Trust Agreement to provide supplemental retirement income and other benefits for eligible career benefited employees through the liquidation of termination pay.

## ARTICLE 5 - TERMS AND CONDITIONS OF EMPLOYMENT

### SECTION 34: PROBATIONARY PERIOD

#### 34.1 Police Officer

Original appointments from employment lists for the classification of Police Officer shall be tentative and subject to a probationary period of two (2) years of actual service.

**Completion of Probationary Period upon Return from Military Leave:** Probationary employees who are granted military leaves of absences shall complete the balance of their probationary period within a period of six (6) months following their return to City service. No provision of this Section 34 shall be interpreted to preclude the City from establishing new classifications which may require probationary periods of varying lengths.

**Field Training Officer Rating:** Probationary Police Officers will be rated daily/weekly while in the Field Training Officer (FTO) program, and then semi-annually thereafter.

#### 34.2 Other Probationary Periods

Original and promotional appointments to classes above the rank of Police Officer shall be tentative and subject to a probationary period of six (6) months of actual service and shall be completed within a one (1) year period.

#### 34.3 Provisional Appointments during Probationary Period

If, before completing the required probationary period, an employee is provisionally appointed to a higher class in the same or a related series of classes, the time served in such higher class shall be counted toward completion of the probationary period in the lower class.

#### 34.4 Completion of Probationary Period

If the service of the probationary employee has been satisfactory to the Chief of Police, the Chief of Police shall file with the Director of Human Resources a statement in writing to such effect and stating that the retention of such probationary employee in the service is desired. If such service has been unsatisfactory, the department head shall file with the Director of Human Resources such a statement, in writing, with the recommendation to the City Manager that the employee be rejected.

#### 34.5 Rejection during Probationary Period

During the probationary period, an employee may be rejected at any time without right of appeal or hearing except as provided by the procedures mandated by Government Code 3303 and 3304, as well as provided in Section 40.8.5 of this Understanding. An employee rejected from a position to which the employee has been promoted shall be reinstated to the position from which the employee was promoted unless charges are filed and the employee is discharged as provided in Section 37.

**SECTION 35: PROMOTION/EXAMINATION****35.1 Promotional Exams**

Insofar as practicable and consistent with the best interests of the service, all vacancies in the competitive service shall be filled by promotion from within the competitive service after a promotional examination has been given and a promotional list established.

**35.2 Tests and Applications**

Regular tests shall be given for all ranks including promotional ranks. Applications for Police Officer shall be accepted on a continuous testing basis. Tests for Sergeant, Lieutenant and Captain shall be given at least every two years.

**35.3** From the time that a promotional list no longer contains any names, 1) the City will make a conscientious effort to hold a written examination within ninety (90) days, but in any event will hold the examination within one hundred twenty (120) days; and 2) the City will announce the written examination at least sixty (60) days before the examination takes place.**35.4 Notice of Examinations**

Selection criteria shall be reflected on all examination announcements. All phases of each examination shall be listed in the examination announcement. A study list shall be included in each examination announcement. Each examination shall be announced no less than 60 calendar days in advance of the written test date.

**35.5 Open Competitive Examination**

If, in the opinion of the City Manager, the best interests of the service can be served by an open, competitive examination instead of a closed, promotional examination, and if there is not already a promotional list for the higher position, which list has not been abolished and from which the vacancy could be filled, then the City Manager may instruct the Director of Human Resources to call for applications for the vacancy and arrange for an open, competitive examination and for the preparation and publication of an eligibility list.

**35.6 Criteria for Promotion**

Employees who have qualified for promotional lists shall be considered for promotion based on the following factors: previous work performance, previous training and experience, merit (proven ability or accomplishment), seniority, current and previous special/temporary duty assignments held.

**SECTION 36: DEMOTION****36.1 City Manager Authority**

The City Manager may demote an employee who so requests it, or whose ability to perform required duties falls below standard, or for disciplinary purposes. No employee shall be demoted to a class for which the employee does not possess the minimum qualifications as determined by the Director of Human Resources.

### 36.2 Notice Requirements

Notice of the demotion shall be given the employee no later than two (2) weeks prior to the effective date of demotion, and a copy of said notice shall be filed with the Director of Human Resources. Any employee who has been demoted shall be entitled to receive a written statement of the reasons for such action.

### 36.3 Permanent Status

An employee with permanent status who is demoted shall assume permanent status in the class to which the employee is demoted.

### 36.4 Demotion to Vacant Position

Upon request of the employee, demotion may be made to a vacant position as a substitution for layoff. In such cases, the employee shall be restored to his or her former position without further examination whenever such position is again to be filled in accordance with the reemployment provisions in Section 57.

## **SECTION 37: SUSPENSION AND DISCHARGE**

### 37.1 30 Calendar Day Maximum Suspension

The City Manager may suspend an employee from his or her position at any time for just cause. Suspension without pay shall not exceed thirty (30) calendar days, nor shall any employee be penalized by suspension for more than thirty (30) calendar days in any one-year period.

### 37.2 Suspensions of 3 Days or Less

For just cause, the Chief of Police may suspend an employee for not more than three (3) working days for any one offense. Such suspension shall be reported immediately to the City Manager. At any step in the process of reviewing recommended disciplinary actions, the City Manager may elect to impose more severe discipline.

### 37.3 Discharge

An employee may be discharged at any time by the City Manager, but if the probationary period has been completed, then such discharge must be for a cause. Any employee who has been discharged shall be entitled to receive a written statement of the reasons for such action.

### 37.4 120 Day Limit on Imposition of Discipline

The City agrees that no disciplinary action against an employee covered by this Understanding, which action involves a loss or reduction of pay or discharge, shall be imposed unless such action is taken within one hundred twenty (120) calendar days after the date of the incident giving rise to the disciplinary action or within one hundred twenty (120) calendar days of the date the City has knowledge of the incident giving rise to the disciplinary action.

If a letter of advice or written reprimand is issued by the Department, neither the document nor any testimony offered by the Department or the City in an appeal process shall reference any time restrictions set forth in this section, nor reference any other discipline

that may have been considered, recommended or imposed, but for the time restrictions set forth herein.

If the November 2020 ballot measure amending the City Charter to create the Police Accountability Board is adopted by the voters, the 120 Day Limit on Imposition of Discipline as set forth in Section 37.4 of the MOU shall be amended as follows:

The City agrees that no disciplinary action against an employee covered by this Understanding, which action involves a loss or reduction of pay or discharge, shall be imposed unless such action is taken within two hundred forty (240) calendar days from the date of the City's discovery by a person authorized to initiate and investigation of an alleged act, omission or other misconduct unless a Government Code section 3304(d) exception applies.

- 37.5 Suspension of FLSA Exempt Employees  
Notwithstanding any of the above, FLSA exempt employees in the rank of Captain and above shall not be suspended except as permitted by the Fair Labor Standards Act.
- 37.6 All references in Sections 37.1 and 37.2 to "days" shall be calculated in terms of eight (8) hour equivalencies, unless otherwise provided.

### **SECTION 38: RESIGNATION**

An employee wishing to leave the competitive service in good standing shall file with the Chief of Police, at least two (2) weeks before leaving the service, a written resignation stating the effective date and reasons for leaving. The resignation shall be forwarded to the Director of Human Resources with a statement by the Chief of Police as to the resigned employee's service, performance and other pertinent information concerning the cause for resignation. Failure of the employee to give the notice required shall be entered on the service record of the employee and may be cause for denying future employment by the City. The resignation of an employee who fails to give notice shall be reported by the Chief of Police immediately. Resignations shall take effect on the last day of the pay period in which an employee works unless the City Manager determines that it is in the City's best interest to accept the resignation immediately.

### **SECTION 39: REINSTATEMENT**

A permanent or probationary employee who has resigned with a good record may be reinstated within two (2) years to the employee's former position, if vacant, or to a vacant position in the same or comparable class without further competitive examination. This section shall not be interpreted as a guarantee of reinstatement to an employee who has resigned with a good record and who requests reinstatement within two (2) years.

## ARTICLE 6 - GRIEVANCE AND APPEAL PROCEDURE

### SECTION 40: GRIEVANCE & DISCIPLINARY APPEAL PROCEDURE

- 40.1 A grievance is any dispute which involves the interpretation, application, claimed violation, or claimed noncompliance with the provisions of the Understanding between the City and the Association or with any City ordinance, rule, or regulation which may have been or may hereafter be adopted by the City to govern personnel practices or working conditions of City employees covered by the Understanding, including any rule, regulation, or resolution which may be adopted by the City Council which results from the meet-and-confer process. The grievance procedure discussed below shall be the dispute resolution mechanism applicable to employees covered by this Understanding.
- 40.2 A disciplinary appeal is the procedure established hereunder to afford an employee his or her due process rights. An employee may appeal the recommendation or imposition of discipline for demotion, pay reduction, suspension or discharge other than probationary discharge.
- 40.3 Grievance Procedure  
Grievances shall be processed in the following manner:
- 40.3.1 **Step 1:** Any employee who believes he or she has a grievance (and/or the employee's Association representative) may discuss the employee's complaint with the Chief of Police or with such subordinate management official as the Chief of Police may designate. Nothing in this Section precludes an employee from utilizing the chain of command to solve grievances and/or complaints. If the issue is not resolved within five (5) days, the employee (and/or the employee's Association representative) may elect to invoke the procedure hereinafter specified.
- 40.3.2 **Step 2:** Any grievance which has not been resolved by the procedures hereinabove set forth may be referred to the City Manager by the affected employee or by the Association within ten (10) working days of receipt of the decision at Step 1. Any such referral shall be in writing, and the specific issues involved shall be detailed in such referral, together with a statement of the resolution which is desired. The City Manager shall designate a representative to investigate the merits of the complaint and to meet with the complaining employee (and/or the employee's Association representative). The City Manager shall issue a written decision to the grievant and the Union within ten (10) working days of the meeting. This shall conclude Step 2 of the Grievance Procedure.
- 40.3.3 **Step 3:** If the Association is not satisfied with the City Manager's decision at Step 2 of the Grievance Procedure, the Association may require that the grievance be referred to an impartial arbitrator by notifying the City Manager within ten (10) days of the conclusion of Step 2. Either the Association or the City may require that the grievance be referred to an impartial arbitrator if for any reason forty-five (45) days have elapsed from the date upon which the grievance was received by the City Manager.

A list of five arbitrators shall be requested from the California State Mediation and Conciliation Services (SMCS). The impartial arbitrator shall be selected by either mutual agreement between the Association and the City Manager, or designee, or by each side taking turns striking a name from the arbitrator list with the question of which party shall strike first determined by a coin flip. The Association shall forward to the City the Association's portion of the SMCS fee within thirty (30) days of selection of the arbitrator. The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the Association and the City. Each party, however, shall bear the cost of its own presentation, including preparation and post-hearing briefs, if any.

#### 40.4 Arbitrator Decisions

Arbitrator decisions on matters properly before them which pertain to grievances as defined in Section 40.1 of this Understanding shall be in the forms of recommendations to the City Manager, who may, within five (5) days of receipt of said decision, reject said decision. In the event of said rejection, then, as to that particular grievance, the fees and expenses of the arbitrator and the court reporter shall not be shared by the Association, and full payment thereof shall be the sole responsibility of the City.

#### 40.5 Grievance of Affirmative Action Program

Any grievance which in any way affects the implementation of the City's affirmative action program shall not be subject to arbitration. The decision as to whether or not implementation of the affirmative action program is in any way involved shall be made at the sole discretion of the City Manager. If, in the City Manager's judgment, any grievance involves the affirmative action program, the Equal Employment Opportunity and Diversity Officer shall notify the Association to that effect in writing within seven (7) days of the date upon which the grievance is received in the Human Resources Department and in such notification refer to that section of the affirmative action program which is involved; provided, however, that such notice may come at any time prior to arbitration if additional factors come to the attention of the Equal Employment Opportunity and Diversity Officer on the basis of which he or she considers it appropriate to change his or her original determination.

40.6 No arbitrator shall entertain, hear, decide or make recommendations on any dispute unless the Association seeks a determination or if the dispute involves 1) the issue of unit determination; 2) a question of representation; 3) an aggrieved employee not in a classification of the units represented by the Association; or 4) non-punitive transfers, promotional decisions, and probationary employee terminations except as provided in Sections 34.5 and 40.8.5 et seq. of this Understanding.

#### 40.7 Compensation Grievances

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Director of Human Resources. In such cases no adjustment shall be retroactive for more than thirty (30) days from the date upon which the complaint was filed or thirty (30) days from the date when an employee may reasonably be expected to have learned of said claimed violation. Only complaints which allege that employees are not being compensated in accordance with the rules, regulations, and resolutions of the City Council or in accordance with the understandings contained in any memorandum agreement which has resulted from the meet-and-confer process shall be considered as



grievances. Any other matters of compensation are to be resolved in the meet-and-confer process and, if not detailed in the Memorandum of Understanding which results from such meet-and-confer process, shall be deemed withdrawn until the meet-and-confer process is next opened for such discussion.

#### 40.8 Disciplinary Appeals

Disciplinary Appeals shall be processed in the following manner:

40.8.1 **Step 1:** Except as provided for suspensions of not more than three (3) days as provided in Section 37.2, the imposition of a disciplinary demotion, pay reduction, suspension or discharge of an employee will be in the form of a written recommendation from the Chief of Police to the City Manager. For suspensions of not more than three (3) days, the Chief of Police may impose such discipline subject to the appeal procedures set forth hereunder. No disciplinary appeal involving the disciplinary demotion, pay reduction, suspension or discharge of an employee will be entertained unless it is filed in writing with the Chief of Police within five (5) days of the time at which the affected employee was notified of such action in writing.

40.8.2 **Step 2:** The affected employee may appeal the recommendation to impose discipline, or the imposition of discipline for suspensions of not more than three (3) days, to the Chief of Police or his or her designee. The affected employee shall be entitled to a personal conference with the Chief of Police or his or her designee or the affected employee may choose to make an appeal in written form. The Chief of Police or his or her designee shall communicate a decision in writing within ten (10) days after the completion of the personal conference with the affected employee or receipt of the written appeal. This shall conclude Step 2 of the Disciplinary Appeal Procedure.

40.8.3 **Step 3:** Any disciplinary appeal which has not been resolved by the procedures hereinabove set forth may be referred to the City Manager within five (5) days after conclusion of Step 2 by the affected employee or the Association. The City Manager shall designate a personal representative to meet with the affected employee and/or the employee's Association representative and hear the disciplinary appeal or the affected employee may choose to make an appeal in written form.. The City Manager's designee shall communicate a decision within twenty (20) days after the completion of the personal conference with the affected employee or, if the employee chooses to make an appeal in written form, receipt of the written appeal. If the City Manager's designee, in pursuance of the procedures outlined above resolves a disciplinary appeal as defined in Section 40.2 above, the City Manager's designee may order payment for lost time or wages or reinstatement with or without payment for lost time. This shall conclude Step 3 of the Disciplinary Appeal Procedure.

40.8.4 **Step 4:** If the Association is not satisfied with the City Manager's designee's decision at Step 3 of the disciplinary appeal procedure, the Association may require that the disciplinary appeal be referred to an impartial arbitrator by notifying the City Manager within ten (10) days of the conclusion of Step 3.

A list of five arbitrators shall be requested from the California State Mediation and Conciliation Services (SMCS). The impartial arbitrator shall be selected by mutual agreement between the Association and the City Manager or designee, or by each side taking turns striking a name from the arbitrator list with the question of which party shall strike first determined by a coin flip. The Association shall forward to the City the Association's portion of the SMCS fee within thirty (30) days of receipt of the City Manager's response.

The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the Association and the City. Each party, however, shall bear the cost of its own presentation, including preparation and post-hearing briefs, if any. Arbitrator decisions on matters properly before them which pertain to the disciplinary actions involving the suspension, demotion, pay reduction or discharge of an employee shall be final and binding on both parties.

40.8.5 Notwithstanding their probationary status, probationary employees may use the grievance process for disciplinary actions other than termination.

40.8.5.1 **Probationary Employees' Appeal of Discipline:** Notwithstanding his or her probationary status, a probationary employee has appeal rights for disciplinary action where the employee alleges that the City's action was for an illegal or discriminatory reason, such as the exercise of Association membership, political affiliation, or other constitutionally protected activities; provided, however, that any appeal by a probationary employee of rejection from probation alleging a violation of his or her rights under Title VII (42 U.S.C. Section 2000e, et. seq.) or the California Fair Employment and Housing Act (California Labor Code Section 12900 et. seq.) may be pursued as provided in the City's Affirmative Action program, which shall be specifically amended to allow probationary employees a right of appeal under that program. Nothing in this Section 40.8.5.1 is intended to preclude a probationary employee from seeking enforcement of rights through state and/or federal regulatory agencies or in courts of competent jurisdiction.

40.8.5.2 **"Lubey" Hearing:** A probationary employee who is terminated on grounds of misconduct may establish a formal record of the circumstances surrounding his or her termination, but is not entitled to a determination that his or her dismissal was for "just cause." Such a grievance shall terminate upon the conclusion of Section 40.8.3. The City Manager's decision at Section 40.8.3 is final and is not subject to further review.

#### 40.9 Days Defined

All references in this Section 40 to "days" shall mean calendar days unless otherwise provided.

#### 40.10 Waiver of Time Lines

The time lines contained in this Grievance and Disciplinary Appeal Procedure may be waived for a specific time period at any step in the Procedure with the mutual agreement of the parties.

## ARTICLE 7 - MISCELLANEOUS TERMS AND CONDITIONS

### SECTION 41: PAYROLL ERRORS

To ensure that system or other errors which affect an employee's pay are processed in an efficient and effective manner, the City shall notify the affected employee(s) as soon as practicable. Payroll errors detected by an employee shall, as soon as practicable, be communicated to the employee's Departmental Payroll Clerk. In the case of under payments, the Payroll Clerk shall submit the appropriate adjustments as soon as practicable.

Payroll errors identified by the Auditor will be communicated to the employee either directly by Auditor staff or through the Departmental Payroll Clerk. Under payments will be processed as soon as practicable.

In the event of an overpayment or underpayment, no adjustment shall be retroactive for more than the applicable statute of limitations. As to any overpayment, the Auditor's Office will determine a reasonable repayment schedule and inform the employee of the schedule directly, or through the Department Payroll Clerk. The affected employee shall be given an opportunity to discuss the schedule of repayment and, if necessary, to request an adjustment to the repayment schedule as a needed and reasonable accommodation. Factors considered in determining a reasonable accommodation for repayment of wages include, but are not limited to, the length of time the overpayment has occurred, the amount of the overpayment, the employee's normal salary, and other financial obligations of the employee.

In the event that the employee disputes the determination of the Auditor's Office as to a reasonable accommodation for repayment, the employee may appeal the Auditor's Office decision to the City Manager. The employee may appeal the decision of the Auditor's Office in writing within thirty (30) days of the Auditor's Office decision as to a repayment schedule. The City Manager, or his/her designee, shall meet with the affected employee and consider the matter for final determination. The City Manager's decision shall be issued no later than thirty (30) days from the date the affected employee met with the City Manager or his or her designee. The determination of the City Manager shall be final.

In the event that (1) the employee does not respond within 5 working days of being notified of the overpayment, or (2) mutual agreement on the repayment schedule is not achieved within 10 working days of the employee being notified of the overpayment, the Auditor's Office will proceed to implement a reasonable repayment schedule.

**SECTION 42: PERSONAL CONDUCT**

- 42.1 Employees shall follow the General Orders and Regulations of the Berkeley Police Department, as written and as they may be amended.
- 42.2 Off the Job Activities  
No employee shall be disciplined for off-the-job activities which do not affect his or her job performance.
- 42.3 Official Badge/Insignia  
No official or employee who wears a badge or other official insignia as evidence of his or her authority and identity shall permit such badge insignia to be used or worn by any other person of the same or another department, or otherwise to leave his or her possession, without approval except as to persons regularly and formally appointed by the City Manager to the position designated by the badge or insignia.

**SECTION 43: UNIFORMS**

- 43.1 Effective June 27, 2010, the annual uniform allowance shall be \$1,400. The uniform allowance is intended to cover uniform expenses incurred by the employee during the six months prior to the payment and shall be paid semi-annually in installments of equal amounts. However, the amount the City contributes toward the uniform allowance is subject to federal and state income tax withholding. The Uniform Allowance shall be reported to CalPERS as Special Compensation under authority of the statutory requirement provided in the Chapter 2 of Division 1 of Title 2 of the California Code of Regulations Subchapter 1, Article 5, Section 571(a)(5).
- 43.2 Effective June 29, 2008, in addition to the annual uniform allowance set forth in Section 43.1, employees assigned to the Special Response Team (S.R.T) shall be paid an annual uniform allowance of \$1,500. The S.R.T. uniform allowance is intended to cover uniform expenses incurred by the employee in the performance of training and duties related to this assignment and shall be paid annually in December for those members of the S.R.T. team who are members of the team on November 1<sup>st</sup> of any year. However, the amount the City contributes toward the S.R.T. uniform allowance is subject to federal and state income tax withholding. The S.R.T. Uniform Allowance shall be reported to CalPERS as Special Compensation under authority of the statutory requirement provided in the Chapter 2 of Division 1 of Title 2 of the California Code of Regulations Subchapter 1, Article 5, Section 571(a)(5).

43.3 Pro-Rated Uniform Allowance

Employees who are hired during the year or are absent from work by reason of leave without pay shall receive a reduced uniform allowance in accordance with the following schedule:

Absence of:	Percentage Reduction
3 months	25%
6 months	50%
9 months	75%
12 months	100%

43.4 Uniform and Equipment Committee

The Uniform and Equipment Committee will be charged with adopting specifications and regulations governing the wearing of uniforms and plain clothes. All components of the uniform are subject to the approval of the Chief of Police.

43.5 Rain Gear

Rain Gear specifications as currently listed in the Uniform/Equipment Specifications Manual under subsection XIX (e) will be updated to reflect optional rain gear (Jacket and Pants) that may be purchased at the employee’s expense for use during inclement weather.

**SECTION 44: SAFETY GLASSES**

The City's present safety glass program provides that the City will guarantee replacement of prescriptions broken in the line of duty, but it is understood that the City will be under no obligation to routinely provide safety glasses to every police officer simply desiring a pair.

**SECTION 45: SAFETY AND TRAINING**

45.1 Responsibility

Responsibility for developing training programs for employees shall be assumed by the City Manager. Such training programs may include lecture courses, demonstrations, assignment of reading matter or such other devices as may be available for the purpose of improving the efficiency and broadening the knowledge of municipal employees in the performance of their duties.

45.2 Special Training Courses

Participation in and successful completion of special training courses may be considered in making advancements and promotions. Evidence of such activity shall be filed with the Chief of Police.

45.3 Ammunition and Firing Range Program

The City shall provide the necessary amount of ammunition for employees for use in City-sponsored range programs. The Department will enforce requirements of regular employees participating in range programs. Employees who do not perform at a passing

standard will receive instruction and retake the test during the regularly scheduled range program. Employees who are not able to achieve the minimum standard within a reasonable period of time will be immediately assigned to work on an intensive basis with the range master who will evaluate the severity of the problem. Consistent inability to meet the standard may be cause for termination.

#### 45.4 Safety Programs

The City and the Association will make every effort to maintain excellent health and safety standards. No employee shall be required to perform work with unsafe equipment or perform duties that are not in compliance with safety procedures or protocols. To further these purposes, the City shall maintain an ongoing safety program which shall include committees comprised of representatives from the Association and appropriate supervisory personnel.

45.5 No employee shall be required to drive a vehicle, the mechanical condition of which is in violation of the Vehicle Code of the State of California.

### SECTION 46: USE OF AUTOMOBILES

The City Manager shall govern the use of City-owned automotive equipment and privately owned automobile equipment by such rules and regulations as he or she may establish. The mileage reimbursement will be equal to the amount established by the Internal Revenue Service, and will change as necessary to comply with the IRS standard mileage rate.

### SECTION 47: ANNUAL PHYSICAL EXAMINATION

47.1 Employees in the classifications of Police Officer, Police Sergeant, Police Lieutenant and Police Captain shall each year receive a City-paid mandatory physical examination ) physical examination based on the City's specification as to scope of examination and with the City's designated Occupational Medicine Provider.

47.2 As an alternative to receiving an annual physical examination with the City's designated Occupational Medicine Provider, an employee may provide verification that the employee received a physical examination consistent with the City's requirements as to the scope of examination with the employee's own personal physician. Employees who choose their own personal physician must notify Policy Personnel and training at least sixty (60) days prior to a deadline to be announced by the City to conduct the annual physical examination. Failure by the employee to meet the sixty (60) day notification deadline will result in the employee needing to receive the annual physical examination with the City's designated Occupational Medicine provider.

47.3 The City will not ask for, request or receive any confidential medical information from the medical professionals, their agents or contractors administering, conducting or participating in the annual examination described in this Section 47. The only information to be provided to the City will confirm whether the examination was administered.

**SECTION 48: ASSIGNMENTS FOR TEMPORARILY DISABLED EMPLOYEES**

48.1 **Employees on Workers' Compensation Leave:** The City may assign any employee on Workers' Compensation leave who is medically released to return to modified duty when feasible, to such work within the Police Department which is consistent with medical limitations as determined by the attending physician and the employee's skills and abilities at no reduction in the employee's regular rate of pay. Prior to changing the shift of a member who is medically released to return to work on modified duty, the Department shall make a reasonable and good faith effort to accommodate the member's personal/family scheduling for the duration of the period on modified duty. However, if the Department is not able to accommodate the member's personal/family scheduling for the period of the modified duty the Department is not precluded to change the member's shift.

48.2 Non-industrial Disabilities

48.2.1 The City may accommodate an employee disabled with a non-industrial disability by providing a modified work assignment. The City will periodically review such modified assignments in order to determine whether such assignments continue to meet the needs of the City.

48.2.2 The modified assignment may be in that employee's classification. To be eligible for such a modified assignment, the employee must initially, and subsequently at the request of the City, provide the Human Resources Department with a medical statement from his or her attending physician that clearly states the medical limitations and abilities of the employee and estimates when the employee will be able to return to a regular assignment. If modification of that assignment within that employee's classification does not serve the best interests of the City, other classifications may be considered, subject to the approval of the Director of Human Resources. Compensation will be provided at the level of the classification in which the temporarily disabled employee works during the disability. The employee must meet standards of satisfactory performance for the duration of the work assignment.

**SECTION 49: ANNUAL PERFORMANCE EVALUATION**

The City may implement a program of annual performance evaluation. Such evaluations shall be conducted by the employee's immediate supervisor and reviewed by additional levels of supervision. Each employee may make written comments on the evaluation which shall be made a part of the employee's personnel record.

**In Line of Duty Death Notification Package:** At this time, each employee shall be given an opportunity to update or fill out his or her "In Line of Duty Death Notification Package". This Package is to be maintained by the Administrative Captain in a sealed envelope and be opened only in the event of the officer's death.

**SECTION 50: RESERVE OFFICER FUNCTIONS**

50.1 Reserve officers shall not be regularly assigned to perform, police functions normally performed by a sworn officer working in a pay status (i.e., normal beat patrol, walking beats, normal detective functions, etc.). Reserve officers may be used by the Department to supplement police services, such as for additional staffing for special projects, in emergencies, for traffic or crowd control, in positions where they have been utilized previously, or in other short-term circumstances.



50.2 Special Events

Any outside requests for police services for special events shall be offered first to employees represented by the Association. Reserves can only be used for such events when the overtime, after being offered to regulars, does not sell within 48 hours of the event. In any event, minimal patrol division staffing levels will take priority over special events. Sponsored events traditionally staffed by reserved officers are not affected by this section. These sponsored events include the following which is provided for illustrative purposes:

<ul style="list-style-type: none"> <li>• Asian Pacific Heritage Fair</li> <li>• Berkeley Beer Festival</li> <li>• Berkeley Cycle Club</li> <li>• Berkeley Jazz Festival</li> <li>• Berkeley Kite Festival</li> <li>• Berkeley Unified School District Football Games</li> <li>• Berkeley Unified School District Youth Celebration</li> <li>• Cajun Music Festival</li> <li>• Cinco de Mayo</li> <li>• Civic Center Criterium</li> <li>• Earth Day Celebration</li> <li>• Elmwood Street Fair</li> </ul>	<ul style="list-style-type: none"> <li>• How Berkeley Can You Be?</li> <li>• Indigenous Peoples Day</li> <li>• Juneteenth</li> <li>• July 4th Fireworks</li> <li>• Jupiter Jam Concerts</li> <li>• Korean Day</li> <li>• Live Oak Park Faire</li> <li>• People’s Park Celebration</li> <li>• Solano Stroll</li> <li>• Telegraph Avenue Holiday Fair</li> <li>• Telegraph Avenue Street Fair</li> <li>• Triple Rock Beer Festival</li> <li>• 4th Street Bicycle Race</li> </ul>
<p><u>University of California Events (samples listed below)</u></p> <ul style="list-style-type: none"> <li>○ University of California Football events</li> <li>○ University of California Basketball Team Parade</li> <li>○ University of California dignitary visits</li> </ul>	

50.3 If the Association believes that reserve officers are being utilized inappropriately, it may meet with the Chief of Police or his or her designee to discuss such disputes or disagreements and to attempt to resolve any disputes or disagreements. Disputes regarding utilization of reserve officers shall not be subject to the grievance procedure.

**SECTION 51: CLEAN WORK SITE**

The City shall make every effort to maintain a clean work site with properly equipped lavatory and shower rooms.

**SECTION 52: WEIGHT ROOM**

The Association will enter into a lease with the City which provides for the Association to lease exercise equipment to the City for use by Police Department employees for the nominal charge of \$1 per year. The lease agreement will hold the Association harmless against any claims related to that equipment or its use. The City agrees to keep the weight room clean and maintain the equipment.

**SECTION 53: PHYSICAL AND PSYCHOLOGICAL EXAMINATIONS**

- 53.1 The City may require employees to submit to physical or psychiatric examinations by a City appointed physician where reasonable cause exists to believe that the employee is suffering from a physical or psychiatric condition which adversely impacts the employee's ability to perform his or her duties.
- 53.2 Whenever possible, an employee shall be advised in writing of the basis for the existence of "reasonable cause" and the grounds thereof before being directed to report to any such examination. In any case, such written notice is to be provided within 48 hours of such an examination.
- 53.3 Any psychiatric report to the City shall consist of the psychiatrist's ultimate conclusion as to the employee's fitness to serve and return to work date, if any. If the psychiatrist believes that the employee is not fit for duty he or she may also supply a brief non-intrusive analysis as it relates to the employee's ability to perform his or her duties. The psychiatrist shall respect the physician-patient privilege in all other regards and shall not, without the employee's written permission, release any other information, documents, reports or conclusions to the City.
- 53.4 Failure to report for a medical or psychiatric examination under this section may constitute grounds for discipline under Section 37.

**SECTION 54: YMCA MEMBERSHIP**

The City shall offer employees a low cost group membership in the Berkeley YMCA. The amount the City contributes toward the employee's monthly membership fee is subject to federal and state income tax withholding. The City of Berkeley or its Claims Administrator may not be liable for any injury which arises out of a City of Berkeley employee's participation in and use of a YMCA membership.

**SECTION 55: PARKING**

The City agrees to continue to provide 33 parking spaces for sworn employees. The parties recognize that construction in the downtown area will result in the relocation of the spaces from time to time. If relocation becomes necessary, the City agrees that all 33 spaces will remain within their current proximity. The parties recognize their mutual obligation to meet and confer and reach an agreement which meet the interests of each party.

## ARTICLE 8 - CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

### SECTION 56: PUBLIC EMPLOYEES' RETIREMENT SYSTEM

- 56.1 Participation  
The City shall continue participating under the Safety Members Plan of the California Public Employees' Retirement System (CalPERS).
- 56.2 "Classic Employees" Definition  
Classic Employees are defined as current employees and future employees who do not qualify as a "New Member" under the California Public Employees' Pension Reform Act of 2013 (PEPRA).
- 56.3 "New Members" Definition  
New Members are defined in the Public Employees' Pension Reform Act of 2013 (PEPRA), Government Code Section 7522.04(f).
- 56.4 CalPERS Retirement Formula for New Members as Defined Under the Public Employees' Pension Reform Act of 2013 (PEPRA)  
"New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the 2.7% at age 57 retirement formula with highest three (3) year average final compensation as set forth in PEPRA.
- 56.5 CalPERS Retirement Formula for Classic Employees Hired on or After November 27, 2012 (current employees and employees who do not qualify as "New Members" under PEPRA)  
Current employees or former City of Berkeley employees who were members of CalPERS while employed with the City and had membership with CalPERS prior to December 31, 2012 and who are rehired on or after November 27, 2012 and other employees who do not qualify as "new Members" under PEPRA shall be entitled to or continue to be entitled to the 3% at age 55 retirement formula as provided in Section 21363.1, with highest three years average final compensation as provided in Section 20037.
- 56.6 CalPERS Retirement Formula for Classic Employees Hired Before November 27, 2012  
Employees hired before November 27, 2012 shall continue to be entitled to the 3% at age 50 retirement formula as provided in Section 21362.2 (July 7, 2002), with highest One-Year Final Compensation as provided in Section 20042 (July 22, 1976).
- 56.7 Optional Benefits  
For both Classic and New Members, the City's contract with CalPERS shall include the following optional benefits:
- 56.7.1 Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (March 1, 1973).
- 56.7.2 Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).
- 56.7.3 Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988).

56.7.4 1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (March 1, 1973).

56.7.5 Third Level of 1959 Survivor Benefits as provided in Section 21573 (November 28, 1996).

56.7.6 Fourth Level of 1959 Survivor Benefits as provided in Section 21574 (October 15, 1998).

56.7.7 Pre-Retirement Optional Settlement 2 Death Benefit as provided in Section 21548 (November 6, 1998).

56.7.8 Military Service Credit as Public Service as provided in Section 21024 (November 6, 1998).

56.8 Classic Employees' Pension Contribution

Effective July 1, 1994, the City increased the base salary of employees by nine percent (9%). Employees then assumed and shall continue to assume an obligation to pay this 9% normal employee contribution retirement to CalPERS. Employees also contributed three percent (3%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis from July 1, 2012 through June 30, 2015. The City and Association agree that, effective January 1, 2016 employees will pay an additional 1% contribution to the City's CalPERS employer contribution rate via automatic payroll deduction. Effective July 1, 2016, employees will pay an additional 1% contribution to the City's CalPERS employer contribution rate via automatic payroll deduction. The City shall designate such payments to the City's CalPERS employer contribution rate as an Employer Pickup as defined by Section 414(h)(2) of the Internal Revenue Code.

56.9 New Members' Pension Contributions

New Members hired on or after January 1, 2013, shall pay 50% of the normal share of cost required by PEPR. The City and Association agree that, effective January 1, 2016, employees will pay an additional 1% contribution to the City's CalPERS employer contribution rate via automatic payroll deduction. Effective July 1, 2016, employees will pay an additional 1% contribution to the City's CalPERS employer contribution rate via automatic payroll deduction. The City shall designate such payments to the City's CalPERS employer contribution rate as an Employer Pickup as defined by Section 414(h)(2) of the Internal Revenue Code.

## ARTICLE 9 - LAYOFF PROCEDURE

### SECTION 57: LAYOFF POLICY

This layoff policy for the City of Berkeley is intended to provide the maximum employment protection to the City staff should a layoff become necessary. The policy also aims to minimize the impact such a layoff might have on the City's affirmative action accomplishments.

#### 57.1 Announcement of Layoff

57.1.1 The City Council, City Manager, and the Chief of Police shall make every reasonable effort to manage and budget the City's resources effectively and to plan for the delivery of City services in a manner which will avoid the necessity to layoff career City employees. If a reduction in the work force for more than thirty (30) calendar days is necessitated by, but not limited to, a material change in duties and organization, adverse working conditions, return of employees from leaves of absence, or shortage of work or funds, the City Manager shall notify the Director of Human Resources of the intended action and the reason for the layoff.

57.1.2 Immediately following a decision which may involve the potential layoff of career employees, the City Manager shall freeze all current vacancies in the Police Department service in similar and related classifications to those likely to be targeted for layoff, as well as all related full-time, benefited, or temporary (see glossary) positions which are expected to last six (6) months or more, and notify the department head that such current and anticipated vacancies will be frozen until further notice in order to implement the provisions of Section 57.6.

#### 57.2 Seniority Service Date

57.2.1 All service of persons in the employ of the City shall be counted toward the establishment of an employee's City seniority service date, including, for example, permanent, probationary, provisional, temporary (full-time and intermittent), seasonal, and exempt employment, as well as leaves of absence for obligatory military service while an employee with the City. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the City seniority service date. Time off, or vacation or compensatory time forfeited in lieu of time off, as a result of formal disciplinary action will be subtracted from the rank seniority service date, however, such date(s) shall not affect any employee's date(s) relative to bidding for shifts or vacation.

57.2.2 All service of persons in the employ of the City in a promotional rank above the entry-level rank shall be counted toward the establishment of an employee's rank seniority service date including only probationary and permanent service as well as leaves of absence for obligatory military service while an employee of the City. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the rank seniority service date. Time off as a result of disciplinary action will be subtracted from the rank seniority service date.

57.2.3 All time spent in an appointed rank shall be credited to the employee's service in the employee's permanent rank. In computing both City and rank seniority, all time spent on paid leaves of absences shall be included, and all time spent on unpaid leaves of absence in excess of two consecutive payroll periods shall be excluded.

57.2.4 The Human Resources Department will maintain up-to-date and current City and rank seniority service dates for all City employees holding probationary and permanent appointments.

### 57.3 Establishment of Seniority Lists

57.3.1 Whenever a layoff of one or more career employees becomes necessary, as defined above, such layoffs shall be made according to City-wide classification seniority lists. Upon receiving notification that the City Manager must proceed with a possible reduction in the work force and following receipt of information concerning the specific positions, programs, and departments involved, the Human Resources Department will immediately establish separate probationary and permanent seniority lists for each classification targeted for layoff.

57.3.2 The names of all City employees holding permanent and probationary appointments in a given classification will be listed on the appropriate list in descending order by City seniority service date in the entry-level position and by rank seniority service date in promotional positions. Except as provided in Section 57.4 below, employees on all lists shall be laid off on the basis of their seniority service dates (i.e., employees with the least amount of total service shall be laid off first). All emergency, temporary, and provisional employees working in classifications similar to those identified for layoff must be terminated prior to the layoff of probationary or permanent employees. Employees on the probationary seniority list for a specific classification will be laid off prior to employees on the permanent seniority list for that class.

57.3.3 Probationary or permanent employees temporarily acting out of classification and holding a provisional appointment in another classification will only be listed on a seniority list of the class in which they hold permanent or probationary status targeted for layoff.

57.3.4 If two (2) or more employees on a seniority list have identical seniority service dates, the tie shall be broken based on established departmental procedures for awarding commission numbers in such instances.

### 57.4 Employee Retreat Rights

57.4.1 Before an employee with permanent or probationary status may be released from employment with the City of Berkeley, the Human Resources Department must consider the employee's right to retreat to lower-level classifications through which he or she was originally promoted or any subsequently created intermediate-level career classification series. Retreat rights shall also extend to employees who have not previously been promoted through a classification but for whom the classification is a natural progression or beginning in the classification series.

57.4.2 In the process of retreating, the rank seniority date list shall be utilized. Employees with the least amount of rank seniority shall retreat first; provided, however, that a retreat from any rank below the employee's current rank shall be based on a rank seniority date which is derived from a combination of all credited service in the rank to which the employee has retreated and all credited service in higher ranks held on a probationary or permanent Identification Expert will be available only to employees who have previously held such ranks on a permanent or probationary basis. There shall be no retreat rights to appointed ranks or positions.

57.4.3 If an employee is qualified for retreat into more than one classification with comparable salary ranges or if a vacancy exists in a classification to which an employee is entitled to retreat, the options shall be discussed with the employee, and due consideration shall be given to the employee's preferences. However, it is the prerogative of the City Manager to determine the final placement offer to the employee.

57.4.4 The retreating employee has a right to be retained in the highest salary range possible which is equal to or less than his or her present salary range. An employee involved in layoff does not have a right of mandatory placement to positions with a higher salary range, i.e., promotion.

## 57.5 Employee Notification

57.5.1 Emergency, temporary, intermittent, seasonal, etc., employees shall be notified individually, in writing, of pending layoff as soon as possible, but no definite time period is required. However, at least two (2) weeks notification is desirable, if possible.

57.5.2 Provisional employees shall be notified individually, in writing, of pending layoff as soon as possible, with no less than fifteen (15) calendar days notification if targeted for release or reassignment.

57.5.3 Permanent, probationary, and career-exempt employees should be notified individually, in writing, of pending layoffs as soon as possible, with no less than thirty (30) calendar day notification if targeted for release, reassignment, or retreat. Notice to an employee absent from work for any reason shall be sent by United States Mail, return receipt requested.

If an employee fails to accept a bona fide offer of reassignment or retreat in writing within five (5) calendar days after receipt of the offer, the employee forfeits further right to employment retention. Acceptance of a reassignment or retreat does not remove the right of appeal under Section 57.9.

## 57.6 Flexible Placement Program

57.6.1 In order to minimize the negative impact of a layoff, the City Manager will, as previously stated in Section 57.1, impose a city-wide freeze on all appropriate

vacancies as soon as it has been determined that a layoff of career City employees may be necessary.

57.6.2 Following the release of all emergency, temporary, and provisional employees in classes similar to those targeted for layoff and as soon as employees targeted for layoff or retreat have been identified and the provisions under Section 57.3 and 57.4 have been carried out, the Human Resources Department will review and identify the frozen vacant classifications into which employees ultimately targeted for layoff may be placed on the basis of total experience and education. In making this decision, a waiver of minimum qualification standards and/or the substitution of related experience and education may be made with an understanding on the part of management and supervisory personnel that adequate on-the-job training, which can be completed within no more than six (6) months, will be provided to facilitate job adjustment and to compensate for the waiver of qualification standards, if that has occurred.

57.6.3 Assignments under the Flexible Placement Program shall be limited to positions in the same or lesser salary range as the classification from which the employee is to be laid off.

57.6.4 Offers to positions under the Flexible Placement Program shall be made according to City seniority service date and in accordance with the probationary and permanent seniority list certification process outlined in Section 57.3. All offers and placements made under this provision of the layoff policy shall be documented in detail, with records available for audit and review at all times.

57.6.5 If an employee fails to accept a bona fide written offer of an alternative job within five (5) calendar days after receipt of the offer, he or she forfeits further rights to employment retention. Acceptance of an alternative job under the Flexible Placement Program in no way jeopardizes an employee's standing on the reemployment priority lists on which his or her name has been placed in accordance with Section 57.7.

## 57.7 Reemployment Lists

57.7.1 The names of all probationary and permanent employees released or retreated from positions in the competitive service as a result of layoff or retreat must be placed on reemployment priority lists for those classifications from which the employee was removed, as well as all other classifications to which they have retreat rights in accordance with Section 57.4.

57.7.2 The reemployment priority list for employees who were laid off shall remain in effect for three (3) years. Said list shall remain in effect indefinitely for employees who were retreated.

57.7.3 Departments with vacancies in any classification for which there is an active reemployment priority list must use the reemployment priority list to fill their positions and may not use any other recruitment or appointment method to fill a vacancy until appropriate reemployment lists have been exhausted.



56.8.4 When a vacancy occurs in a class for which there is a reemployment priority list, the name of the employee on the appropriate reemployment priority list with the highest seniority date shall be certified to the selecting official. Employees so certified from the reemployment priority list must be appointed to the existing vacancy.

57.7.5 If a former employee fails to accept a bona fide written offer of reemployment within five (5) calendar days, his or her name will be removed permanently from the reemployment priority list from which the offer was made. Failure to accept an offer to reemployment to the class with the highest salary range for which the employee is eligible for reemployment will result in automatic removal from all reemployment priority lists. However, the employee may decline (or accept) reemployment to lower salary range classifications without jeopardizing his or her standing on the reemployment priority list for the classification from which he or she was original terminated.

57.7.6 Upon reappointment to the classification from which the employee was originally separated or demoted, the employee has the right to be placed at the step of the salary range which the employee held at the time of layoff or demotion.

#### 57.8 Career-Exempt Employees

Only those employees holding full-time, benefited, exempt positions who, in the past, have achieved permanent status and have been continuously employed without a break in service between their career and exempt appointment, have the right to retreat to previously held career classifications, placement on the reemployment priority lists, and all other provisions governing layoff procedures. For the purpose of layoff, such employees shall be referred to as "career-exempt."

#### 57.9 Appeal Procedures

Any permanent, probationary, or career-exempt employee who is laid off, demoted, or reassigned as a result of layoff and who believes that the layoff procedure has been administered in violation of the terms of this agreement as it pertains to the employee's case may appeal the action under the grievance procedure, including that provision relating to non-disciplinary arbitration. In addition, employees may at all times before, during, and subsequent to layoff review all records, including seniority lists, reemployment priority lists, documentation pertaining to appointments under the Flexible Placement Program, etc., which pertain to their classification and their rights under the provisions of the layoff policy.

#### 57.10 Audit

57.10.1 On an annual basis, the City Manager's Office shall order an audit by an outside auditor of all vacant positions filled in each department and authorized positions which have not been filled to determine whether the vacancies occurred in classifications for which reemployment priority lists were in existence and, if so, whether the appointments made by the selecting official were in accordance with the procedures outlined in Section 57.7. In the event vacancies for which reemployment priority lists are in existence remain unfilled, the auditor shall offer an opinion as to whether or not the reasons for leaving the positions vacant appear

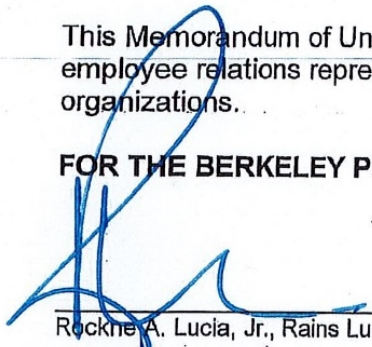
to be legitimate. A report of the audit must be transmitted to the City Manager and the City Council.

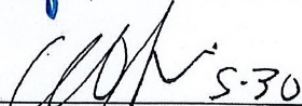
- 57.10.2 If it is determined that a vacancy has been filled by a non-reemployment priority list eligible in a classification for which a reemployment priority list existed which included available applicants at the time, the former employee with reemployment rights shall be hired and given retroactive pay from the date that the vacancy occurred. The employee who was originally to fill the vacancy shall continue to be retained in City employment.

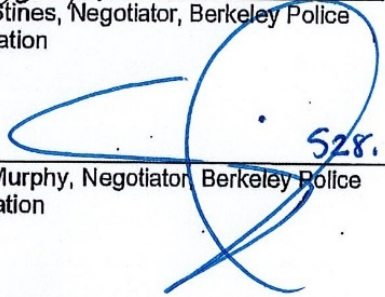
SIGNATURE PAGE

This Memorandum of Understanding is executed this 31st day of July, 2018, by the employer-employee relations representatives whose signatures appear below for their respective organizations.

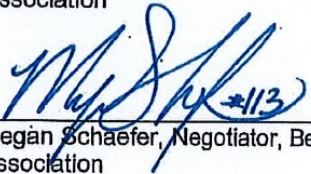
FOR THE BERKELEY POLICE

  
Rockne A. Lucia, Jr., Rains Lucia Stern, PC

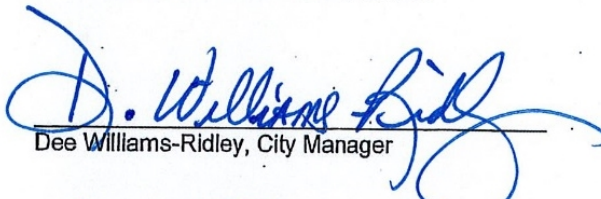
 5-30  
Chris Stines, Negotiator, Berkeley Police Association

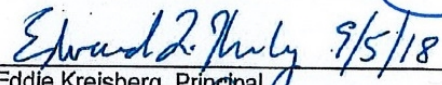
 528.  
Emily Murphy, Negotiator, Berkeley Police Association

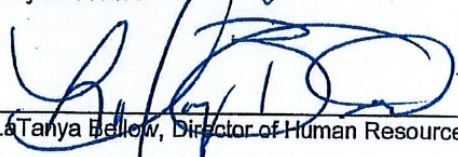
Daniel Breaux, Negotiator, Berkeley Police Association

 \*113  
Megan Schaefer, Negotiator, Berkeley Police Association

FOR THE CITY OF BERKELEY

  
Dee Williams-Ridley, City Manager

 9/5/18  
Eddie Kreisberg, Principal Meyers I Nave

 9/5/18  
LaTanya Bellow, Director of Human Resources

  
Andrew Greenwood, Police Chief 9/19/18

 9-5-18  
Margarita Zamora, Employee Relations Manager

**EXHIBIT A**

<b>Hourly Salary Schedule as of January 1, 2018</b>					
	STEP	STEP	STEP	STEP	STEP
CLASSIFICATION TITLE	A	B	C	D	E
Police Captain	78.8681	81.5017	84.1952	87.0244	89.9210
Police Lieutenant	68.8383	71.1109	73.4734	75.8959	78.4393
Police Officer (Steps A-E)	45.5287	47.6427	49.8625	51.4803	53.1432
Police Officer (Steps F-G)	54.8888	56.6644			
Police Sergeant	57.4016	59.2828	61.2317	63.2556	65.3473

<b>Hourly Salary Schedule as of August 12, 2018 (Four Percent (4%) Wage Increase)</b>					
	STEP	STEP	STEP	STEP	STEP
CLASSIFICATION TITLE	A	B	C	D	E
Police Captain	82.0228	84.7618	87.5630	90.5054	93.5178
Police Lieutenant	71.5918	73.9553	76.4123	78.9317	81.5769
Police Officer (Steps A-E)	47.3498	49.5484	51.8570	53.5395	55.2689
Police Officer (Steps F-G)	57.0844	58.9310			
Police Sergeant	59.6977	61.6541	63.6810	65.7858	67.9612

<b>Hourly Salary Schedule as of July 16, 2019 (Four Percent (4%) Wage Increase)</b>					
	STEP	STEP	STEP	STEP	STEP
CLASSIFICATION TITLE	A	B	C	D	E
Police Captain	85.3037	88.1523	91.0655	94.1256	97.2585
Police Lieutenant	74.4555	76.9135	79.4688	82.0890	84.8400
Police Officer (Steps A-E)	49.2438	51.5303	53.9313	55.6811	57.4797
Police Officer (Steps F-G)	59.3678	61.2882			
Police Sergeant	62.0856	64.1203	66.2282	68.4172	70.6796

<b>Hourly Salary Schedule as of January 12, 2020 (One Percent (1%) Wage Increase)</b>					
	STEP	STEP	STEP	STEP	STEP
CLASSIFICATION TITLE	A	B	C	D	E
Police Captain	86.1567	89.0338	91.9762	95.0669	98.2311
Police Lieutenant	75.2000	77.6826	80.2635	82.9099	85.6884
Police Officer (Steps A-E)	49.7362	52.0456	54.4706	56.2379	58.0545
Police Officer (Steps F-G)	59.9615	61.9011			
Police Sergeant	62.7065	64.7615	66.8905	69.1014	71.3864

## EXHIBIT B

**4.10/3.12 74 OFFICER DEPLOYMENT - 18 BEATS**

AREA 1 Lieutenant	AREA 2 Lieutenant	AREA 3 Lieutenant	AREA 4 Lieutenant		
<b>TEAM 1</b>	<b>TEAM 2</b>	<b>TEAM 3</b>	<b>TEAM 4</b>	<b>TEAM 5</b>	<b>TEAM 6A</b>
DAY SHIFT 0600-1600 Mon, Tue, Wed, Thu <i>(2 Officers Early Out @ 0630)</i>	EARLY SWING 1100-2100 Mon, Tue, Wed, Thu	LATE SWING 1530-0130 Mon, Tue, Wed, Thu <i>(Thur 2 Officers Late Out @ 1630)</i>	NIGHT SHIFT 2030-0630 Mon, Tue, Wed, Thu	DAY SHIFT 0600-1830 Fri, Sat, Sun <i>(2 Officers Early Out @ 0630)</i>	SWING SHIFT 1130-0000 Fri, Sa, Sun
Sergeant Sergeant	Sergeant Sergeant	Sergeant Sergeant	Sergeant Sergeant	Sergeant Sergeant	Sergeant
BEAT	BEAT	BEAT	BEAT	BEAT	BEAT
Officer 2	Officer 1	Officer 2	Officer 1	Officer 2	Officer 1
Officer 4	Officer 3	Officer 4	Officer 3	Officer 4	Officer 5
Officer 6	Officer 5	Officer 6	Officer 5	Officer 6	Officer 9
Officer 8	Officer 7	Officer 8	Officer 7	Officer 8	Officer 13
Officer 10	Officer 9	Officer 10	Officer 9	Officer 10	Officer 17
Officer 12	Officer 11	Officer 12	Officer 11	Officer 12	
Officer 14	Officer 13	Officer 14	Officer 13	Officer 14	
Officer 16	Officer 15	Officer 16	Officer 15	Officer 16	
Officer 18	Officer 17	Officer 18	Officer 17	Officer 18	
Officer SW	Officer SW	Officer SW	Officer SW	Officer SW	
Officer SW					
					<b>TEAM 6B</b>
					1400-0230 Fri, Sat, Sun
					Sergeant
					Officer 3
					Officer 7
					Officer 11
					Officer 15
					Officer SW
					Officer SW
Minimum Staffing (9)	Minimum Staffing (8)	Minimum Staffing 8	Minimum Staffing (9)	Minimum Staffing (9)	Minimum Staffing 6A (4) Minimum Staffing 6B (4)
Training 1st Thu	Training 2nd Thu	Training 4th Fri	Training 3rd Thu	1st Thu TM1 Backfill Training 1st Thu	2nd Thu TM2 Backfill Training 2nd Thu
					3rd Thu TM4 Backfill Training 3rd Thu

## EXHIBIT C

### GLOSSARY

**Allocation:** The assignment of a single position to the proper class in accordance with the duties performed, and the authority and responsibilities exercised.

**Classification (class):** A group of positions sufficiently similar in respect to their duties and responsibilities that: (a) the same descriptive title may be used with clarity to designate each position allocated to the class; (b) the same minimum requirements as to education, experience, knowledge, ability and other qualifications may be required of all incumbents; (c) the same tests of fitness may be used to choose qualified employees and, (d) the same schedule of compensation can be made to apply with equity under the same employment conditions.

**Career Employee:** An employee who is appointed to a position in the competitive service and who has a probationary or permanent appointment with the City of Berkeley.

**Continuous Testing:** An examination process in which applications are accepted on a continuous basis, not subject to a closing date with a viable list maintained at all times.

**Demotion:** The movement of an employee from one class to another class having a lower maximum rate of pay.

**Domestic Partner:** A person residing with and sharing the common necessities of life with a City of Berkeley employee, where both intend to continue this arrangement indefinitely. They are unmarried; at least eighteen (18) years of age; not related by blood closer than would bar marriage in the State of California, and mentally competent to consent to contracts.

**Employee:** A person who has been legally appointed under the City of Berkeley Personnel Ordinance and the Personnel Rules and Regulations, who is on the City payroll and whose employment has not been terminated and whose position is included in this representation unit.

**Flexing of Shifts (aka Offsetting of Overtime):** Changing of hours of work to avoid the payment of overtime.

**Full-Time:** An assignment of forty hours per week; a full-time employee works an assignment of forty hours per week or a combination of assignments totaling forty hours per week.

**High Risk Classifications:** A group of positions whose duties and responsibilities present: (a) significant probability or chance of injury, damage or loss of life; (b) exposure to risk and; (c) ability to incur the risk.

**Impasse:** "Impasse" means that the City and the Association have a dispute over matters within the scope of representation and have reached a point in meeting and negotiating over the dispute at which their differences in positions are so substantial or prolonged that future meetings would be futile.

**Jury Duty Period:** The period of time from which an employee appears in court as required by law to serve on an inquest jury or trial jury until such time as the employee is discharged from such

service by the court. "Jury Duty Period" expressly covers only that period of time spent by the employee in service of the court as a juror and does not include any time spent in court by the employee as a result of being a party to the action, being a witness to the action, or being subpoenaed to testify in the action.

**Lateral Entry:** Recruitment and selection status of candidates who have successfully completed P.O.S.T. academy training and meet the minimum requirement for Police Officer-Lateral classification.

**Position:** A grouping of duties and responsibilities which constitute a single assignment which is in a classification covered by this Memorandum of Understanding.

**Promotion:** The movement of an employee from one class to another class having a higher maximum rate of pay.

**Promotional Examination:** An examination for promotion to a class in the competitive service in which participation is limited to current employees with permanent status and/or to former permanent or probationary employees who are on current mandatory reemployment lists of layoff.

**Provisional:** A career employee who is temporarily serving in a higher level or unclassified position as a temporary assignment, pending examination, classification, or in the absence of the permanent incumbent.

**Reclassification:** Reallocation of a position from one classification to another classification based upon consideration of the kind and level of assigned duties and responsibilities.

**Reemployment:** Reappointment of a former probationary or permanent employee to a vacant position who has been laid off under Section 55.7 of the Layoff section in this Understanding.

**Regular Hourly Salary:** The Regular Monthly Salary multiplied by twelve (12) months and divided by 2080 annual work hours.

**Regular Monthly Salary:** The base pay for a classification (as included in Exhibit A of this Understanding).

**Reinstatement:** Appointment to a vacant position of a former probationary or permanent employee, within two years of the termination date, without obtaining new eligibility through examination. Reinstatement is not mandatory and a former employee must request consideration in writing. Eligibility for reinstatement is no guarantee of appointment and former probationary employees who did not obtain permanent status must complete their probationary period in accordance with Section 32.

**Rejection (Probation):** The separation of any employee from the service before the completion of the probationary period.

**Release Time:** Paid time off permitted employees, during their scheduled hours of work, to perform Association activities as provided by this Memorandum of Understanding. This paid time off is in addition to the employee paid leave and is subject to the conditions of the applicable sections of this Understanding.

**Termination:** The separation of an employee from the service of the City. Termination may include death, discharge, layoff, resignation, retirement, and work completion.

**Transfer:** The movement of any employee from one position to another within the same class in another department or the movement of an employee from one class to another class having a comparable level of duties and responsibilities and the same maximum rate of pay.

**Vacation Year:** A period that annually commences at the close of the last City pay period for which the payday falls in March. For example, if paychecks were issued on March 27 to pay employees for the pay period running from March 8 until March 21, the next vacation year would commence on March 22.

**Y-Rate:** An employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary or occupying a position in a class the salary rate or range for which is reduced, shall continue to receive his or her present salary. Such salary shall be designated as a Y-rate and when that employee vacates this position, it shall be filled in accordance with new salary range established. Y-rating shall not apply to employees who are demoted for just cause, including unacceptable level of performance, or as a result of demotion under the provisions of the Layoff policy.



**Tentative Agreement re: Extension Agreement**

**Between**

**City of Berkeley**

**And**

**Berkeley Police Association**

The City of Berkeley (“City”) and the Berkeley Police Association (“BPA”; collectively “the Parties”), hereby agree to extend the July 1, 2017 to June 30, 2020 Memorandum of Understanding (“MOU” or “Agreement”) for a period of one year, until June 30, 2021, with no change in compensation or terms, except as set forth below:

- If the November 2020 ballot measure amending the City Charter to create the Police Accountability Board is adopted by the voters, the 120 Day Limit on Imposition of Discipline as set forth in Section 37.4 of the MOU shall be amended as follows:
  - “The City agrees that no disciplinary action against an employee covered by this Understanding, which action involves a loss or reduction of pay or discharge, shall be imposed unless such action is taken within two hundred forty (240) calendar days from the date of the City’s discovery by a person authorized to initiate and investigation of an alleged act, omission or other misconduct unless a Government Code section 3304(d) exception applies.”
- The Parties agree to meet and confer during the term of this Extension Agreement on any revisions to laws, ordinances, rules, general orders and charter amendments within the mandatory scope of bargaining or, to the extent that such matters are not within the mandatory scope of bargaining, to informally consult upon the request of the Union to receive input regarding the impact of such changes.
- The parties agree to meet at least quarterly to discuss changes in the City’s financial condition.
- This agreement shall be subject to ratification by the BPA and the City Council.
- The Parties agree to work cooperatively to negotiate the rules of procedure governing the conduct of the Police Accountability Board with the goal of completing negotiations no later than June 30, 2021.

The purpose of this extension agreement is to permit additional time to assess the financial effects of the COVID-19 epidemic on the City prior to negotiating a successor MOU. Upon mutual agreement, the Parties can further extend the MOU for another year with no additional changes to terms, except that, in the second year, the Union shall have the option to reopen on up to two non-economic issues.

IN WITNESS WHEREOF, the parties hereto have executed this Extension Agreement on June \_\_\_\_, 2020.

**For the City of Berkeley:**

**For the Berkeley Police Association:**

Signed/Dated: \_\_\_\_\_

Signed/Dated: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dee Williams-Ridley, City Manager

Emily Murphy, President

Signed/Dated: \_\_\_\_\_

Signed/Dated: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

LaTanya Bellow, Director of Human Resources

Scott Salas, Vice President

Signed/Dated: \_\_\_\_\_

Signed/Dated: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Andrew Greenwood, Chief of Police

Daniel Morales, Board Director

Approved as to form by:

Approved as to form by:

\_\_\_\_\_

\_\_\_\_\_

Jonathan V. Holtzman

Rockne Lucia





Office of the City Manager

CONSENT CALENDAR  
July 30, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: LaTanya Bellow, Director of Human Resources

Subject: Memorandum of Understanding: SEIU Local 1021 Community Services Unit And Part-Time Recreation Leaders Association

RECOMMENDATION

Adopt a Resolution approving a one (1) year extension to Memorandum of Understanding (hereafter referred to as “MOU”) with SEIU Local 1021 Community Services Unit And Part-Time Recreation Leaders Association (hereafter referred to as the “Union”) with a term of June 27, 2020 through June 26, 2021; authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the extended MOU with no changes in compensation except for economic items related to the COVID-19 epidemic; and authorizing the City Manager to make non-substantive edits to the format and language of the Memorandum of Understanding in alignment with the tentative agreement, and conforming to legal requirements.

FISCAL IMPACTS OF RECOMMENDATION

The terms of the new MOU provide for no wage increase for the period of the one-year extension in response to the financial effects of the COVID 19 pandemic. There is a modest cost related to additional COVID 19 leave for employees in this bargaining unit who were required to report to a City workplace for the period of March 17, 2020 – June 1, 2020. The funding for this agreement comes from the general fund and other funding sources.

CURRENT SITUATION AND ITS EFFECTS

The City’s labor contract with the Union expired. In an effort to reach agreement on a successor MOU, representatives of the City and representatives of the Union held approximately seven negotiating sessions beginning in May of 2020. The parties reached an extension agreement with no substantive change on all outstanding economic (aside from COVID-19 related issues), and non-economic issues on July 1, 2020.

While the labor contract expired on June 27, 2020, the laws governing collective bargaining agreements provide that the terms and conditions set forth in the expired contract remain in full force and effect until modified through the collective bargaining

process. The collective bargaining process has now been completed and the parties have reached tentative agreement on all outstanding issues. The Union is scheduled to ratify the tentative agreement by a vote.

**BACKGROUND**

There are approximately 458 employees represented by the Union in seven (7) representational units: G-1, G-3, I-A, I-B, L, R-1, and R-2.

The major provisions of the new labor contract are as follows:

<b>Section</b>	<b>Change</b>
8 Term Duration	ADDITIONAL LANGUAGE: Parties agree to a one-year term ending on June 26, 2021.
52.13 Additional Language on Layoffs for the Term of the MOU	NEW LANGUAGE: The City recognizes the important role that the employee workforce plays in delivering public services; therefore, during the term of this Agreement the City agrees to not layoff any represented career employees. However should the City determine that its expenditures exceed its revenues during the term of this Agreement, the City may notice the Union in writing and the Union shall meet and confer over one-time cost savings and alternatives such as furloughs, union-directed VTO, etc. Nothing in this section requires the City to retain positions (filled or vacant) where state, federal or grant funding has been reduced or eliminated and would require the City to backfill such positions. All other MOU provisions on Layoffs remain unchanged.
9.22 Living Wage	NEW LANGUAGE: The City agrees to pay each of its direct employees an hourly wage of no less than \$18.33 effective the first full pay period in January 2021. The City agrees to pay each of its direct employees an hourly wage of no less than \$19.33 effective the first full pay period in June 2021. If the Living Wage increases beyond \$19.33, as outlined in the Berkeley Municipal Code effective July 2021, the City shall implement the increases the first full pay period in September 2021 and July 1st of each year thereafter.
8.1 Limited Re-Opener	If during the fiscal year 2020 -2021 the City reaches agreement with another bargaining unit or extends to unrepresented employees to confer an across the board Cost of Living Adjustment (COLA) increase and/or an additional City contribution towards medical premiums, the City agrees to a limited reopener to meet and confer with SEIU on these increases.

Section	Change
10.1 Temporary Appointment Duration	NEW LANGUAGE: No employees shall hold a provisional appointment in the same position for more than 12 months. The City Manager may extend the provisional appointment beyond this 12- month limitation with the mutual agreement of the parties.
19.13 Additional City Emergency Paid Sick Leave Allocation	NEW LANGUAGE: The City shall provide an additional 80 hours of emergency paid sick leave to be used for COVID-19 related reasons as listed in the Emergency Paid Sick Leave Act. Part-time employees receive a prorated number of hours. In order to use this additional City emergency paid sick leave, the employee must first exhaust all hours that they received under the Emergency Paid Sick Leave Act. The City will use a specific pay code for this additional emergency paid sick leave and these additional hours will be available until June 30, 2021. These additional 80 emergency paid sick leave hours shall have no cash value and may not be used towards any CalPERS retirement service credit as outlined in section 47.8.5 of the Community Services MOU.
18.8 Additional Floating Holidays	<p>NEW LANGUAGE: For employees who were required to remain in the workplace from March 17, 2020 – June 1, 2020, the City will provide 8 hours of floating holidays for every 40 hours of regularly scheduled hours worked in the workplace up to a maximum of 32 hours of floating holiday. The City will credit these floating holiday hours in the first full pay period after adoption of the MOU. The following classifications which, due to the nature of the assignment, require backfill, employees will be paid a stipend in the amount of the earned floating holiday hours up to a maximum of 32 hours the first full pay period in August 2020:</p> <p>Solid Waste Drivers, Solid Waste Workers, Long Haul Drivers, Community Services Officer, Public Safety Dispatchers I/II, and Supervising Public Safety Dispatchers.</p> <p>City will use a specific pay code for these additional floating holiday hours will be available until June 30, 2021. These additional 32 hours of floating holiday shall have no cash value and may not be used towards CalPERS retirement service credit as outlined in section 47.8.5 of the CSU &amp; PTRLA MOU.</p>

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Representatives of the City worked within policies set by the City Council for guiding contract negotiations and staff met with the City Council in closed session to discuss and receive the policy direction and economic authority to settle this contract. The overall settlement must be within the City's ability to pay based on projected revenue as well as demands for services across the spectrum of programs the City provides the community. The proposed changes to the MOU are consistent with City Council's direction to staff and is fair and equitable to the members of the Union.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

LaTanya Bellow, Director of Human Resources, Human Resources, 981-6800

Attachments:

1: Resolution: Memorandum of Understanding: SEIU Local 1021 Community Services Unit & PTRLA and Rescinding Resolution No. 68,625 and 68,626 N.S.

Exhibit A: Memorandum of Understanding between the City of Berkeley and SEIU Local 1021 Community Services Unit & PTRLA (Edited Version)

Exhibit B: Memorandum of Understanding between the City of Berkeley and SEIU Local 1021 Community Services Unit & PTRLA  
(Clean Version)

Exhibit C: Tentative Agreement between the City of Berkeley and SEIU Local 1021 Community Services Unit & PTRLA



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

MEMORANDUM OF UNDERSTANDING: SEIU Local 1021 Community Services  
Unit & PTRLA

WHEREAS, the City is obligated under the provisions of California Government Code Section 3500 – 3510, commonly referred to as the Meyers-Milias-Brown Act, to meet and confer in good faith and attempt to reach agreement with representatives of recognized bargaining units on matters within the scope of representation including, but not limited to wages, hours and other terms and conditions of employment; and

WHEREAS, representatives of the City and the SEIU Local 1021 Community Services Unit & PTRLA have met and conferred in good faith and have reached agreement on a new Memorandum of Understanding that incorporates all changes and modifications in wages, hours and other terms and conditions of employment agreed to by the parties.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute the new Memorandum of Understanding for the period June 27, 2020 through June 26, 2021 with SEIU Local 1021 Community Services Unit & PTRLA, including changes in certain benefits on dates specified in the Memorandum of Understanding which is attached hereto, made a part hereof and marked Exhibit B.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute and implement said Memorandum of Understanding including all changes in wages, hours, and other terms and conditions of employment. A fully executed original of said contract is filed in the Office of the City Clerk.

Exhibits

- A: Memorandum of Understanding between the City of Berkeley and SEIU Local 1021 Community Services Unit & PTRLA  
(Edited Version)
- B: Memorandum of U SEIU Local 1021 Community Services Unit & PTRLA  
(Clean Version)
- C: Tentative Agreement between the City of Berkeley and SEIU Local 1021  
Community Services Unit & PTRLA





# Memorandum Agreement

between

City of Berkeley

and

Service Employees International Union  
Local 1021

Community Services  
&

Part-Time Recreation Leaders Association

October 21, 2018 June 27, 2020 to June 26,  
20202021

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RESOLUTION NO. 68,625 N.S.

MEMORANDUM AGREEMENT: SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1021 COMMUNITY SERVICES AND PART-TIME RECREATION LEADERS ASSOCIATION

WHEREAS, the City is obligated under the provisions of California Government Code Section 3500 – 3510, commonly referred to as the Meyers-Milias-Brown Act, to meet and confer in good faith and attempt to reach agreement with representatives of recognized bargaining units on matters within the scope of representation including, but not limited to wages, hours and other terms and conditions of employment; and

WHEREAS, representatives of the City and the Service Employees International Union Local 1021 Community Services and Part-Time Recreation Leaders Association have met and conferred in good faith and have reached agreement on a new Memorandum Agreement that incorporates all changes and modifications in wages, hours and other terms and conditions of employment agreed to by the parties.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute the new Memorandum Agreement for the period October 21, 2018 through June 27, 2020 with the Service Employees International Union Local 1021 Community Services and Part-Time Recreation Leaders Association, including changes in certain benefits on dates specified in the Memorandum Agreement which is attached hereto, made a part hereof and marked Exhibit A.

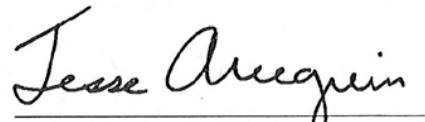
BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute and implement said Memorandum Agreement including all changes in wages, hours, and other terms and conditions of employment. A fully executed original of said contract is filed in the Office of the City Clerk.

The foregoing Resolution was adopted by the Berkeley City Council on October 16, 2018 by the following vote:

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

Noes: None.

Absent: None.

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

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

RESOLUTION NO. 68,626-N.S.

APPROVING A NEW CLASSIFICATION AND SALARY RESOLUTION FOR SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1021 COMMUNITY SERVICES AND PART-TIME RECREATION LEADERS ASSOCIATION AND RESCINDING RESOLUTION NO. 67,483-N.S.

WHEREAS, the City Council has approved a new Memorandum Agreement (twenty months) with Service Employees International Union Local 1021 Community Services and Part-Time Recreation Leaders Association which includes salary increases; and WHEREAS, it is necessary for the City Council to adopt a new Classification and Salary Resolution to reflect the salary adjustments reflected in the new Memorandum Agreement.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley adopts a new Classification and Salary Resolution for employees in Representation Units G-1 (career and non-career health, welfare and social service occupations); G-3 (career and non-career professional nursing classification); I-A (career supervisory library employees); I-B (career non-supervisory library employees including all Library Aides); I-D (non-career Library Page); L (career and non-career, miscellaneous and administrative employees); R-1 (career benefitted, part-time Recreational); and R-2 (non-career, non-benefitted, part-time Recreational) effective October 21, 2018 through June 27, 2020 to incorporate changes to the salary schedule as shown in Exhibit A (October 21, 2018); and Exhibit B (October 20, 2019) attached hereto and made a part thereof.

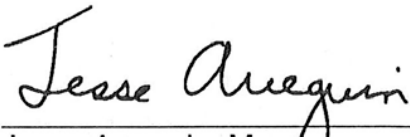
BE IT FURTHER RESOLVED that Resolution No. 67,483-N.S. is hereby rescinded.

The foregoing Resolution was adopted by the Berkeley City Council on October 16, 2018 by the following vote:

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

Noes: None.

Absent: None.

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

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

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City of Berkeley

SEIU Local 1021 Community Services & PTRLA

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## **ARTICLE 1 - ADMINISTRATION**

### **SECTION 1: PREAMBLE**

This Memorandum Agreement is entered into pursuant to the Meyers-Miliias-Brown Act (Government code, Sections 3500-3511, as amended) and has been jointly prepared by the parties.

The City Manager is the representative of the City of Berkeley, hereinafter referred to as "the City," in employer-employee relations as provided in Resolution No. 43,397-N.S. adopted by the City Council on October 14, 1969.

Service Employees International Union (SEIU) Local 1021, hereinafter referred to as "the Union", is the recognized employee organization for representation Units G-1 (career and non-career health, welfare and social service occupations), G-3 (career and non-career professional nursing classifications), I-A (career supervisory library employees), I-B (career non-supervisory library employees including all Library Aides), L (career and non-career, miscellaneous and administrative employees), R-1 (career benefited, part-time Recreational) and R-2 (non-benefited, part-time Recreational). The employee positions in the Representation Units referred to above are set forth in Section 5. The Union is recognized as the sole representative of employees in positions assigned to these units.

The parties have met and conferred in good faith regarding wages, hours, and other terms and conditions of employment of the employees whose positions are within Representation Units G-1, G-3, I-A, I-B, L [CSU0] R-1 and R-2 [CSPT] and have freely exchanged information, opinions and proposals. The parties have endeavored to reach agreement on all matters relating to employment conditions and employer-employee relations. Those provisions of this Memorandum Agreement applicable to non-career employees in Units G-1, G-3, L [CSU0], R-1 and R-2 [CSPT] are set forth in Exhibit A attached, and are incorporated as part of this Agreement.

Library and Rent Board employees working in classifications covered by this agreement shall have the same terms and conditions of employment as other City employees covered by this Memorandum Agreement except as specifically modified by this agreement.

This Memorandum Agreement shall be presented to the City Council, Rent Board, and Board of Library Trustees as the joint recommendation of the undersigned.

### **SECTION 2: RECOGNIZED EMPLOYEE ORGANIZATION**

#### **2.1 Representation**

The Union is the exclusive representative of all employees within Representation Units G-1 (career and non-career health, welfare and social service occupations), G-3 (career and non-career professional nursing classifications), I-A (career

supervisory library employees), I-B (career non-supervisory library employees including all Library Aides), L (career and non-career miscellaneous, administrative employees), R-1 (career benefited, part-time Recreational) and R-2 (non-benefited, part-time Recreational) and shall continue to be recognized as such unless the Union is no longer certified as the recognized employee organization for employees in Representation Units G-1, G-3, I-A, I-B, L, R-1 and R-2.

## **2.2 City Management**

The City management retains all traditional rights and responsibilities for the operation of the City.

## **SECTION 3: NO DISCRIMINATION**

The City and Union agree that they will not discriminate against employees based on race, creed, color, ethnicity, ancestry, religion, political affiliation, gender, sexual orientation, age, national origin, marital or domestic partner status, gender identity or gender expression, parental status, pregnancy, disability or medical condition, Acquired Immune Deficiency (AIDS/HIV) or AIDS related condition, or any other status protected by applicable state or federal law, or protected Union activity. Furthermore, the City and Union agree to comply with all applicable federal, state and local laws pertaining to non-discrimination and equal employment opportunity.

The City of Berkeley Harassment Prevention Policy and Sexual Harassment Policy, as may be amended from time to time to comply with applicable state or federal law, is available on-line on the City's IntraWeb at <http://www.ci.berkeley.ca.us/>, in the Department of Human Resources, or by contacting the City's Equal Employment Opportunity and Diversity Officer.

## **SECTION 4: UNION SECURITY**

The City by Resolution No. 68,479-N.S. supports the freedom of all employees to exercise their rights to a voice and dignity on the job through joining together in strong unions.

### **4.1 Authorization of Payment of Dues**

Upon written certification from the Union that it has and will maintain a payroll deduction form for an employee, the City will deduct from the employee's pay the appropriate dues and contributions as established.

### **4.2 Deduction of Union Dues**

**4.2.1** Upon written notification by the Union, the City shall deduct, once monthly, the regular and periodic Union dues, voluntary COPE contributions, or insurance premiums as may be specified by the Union. Employees may change union

insurance deductions no more than twice in any one (1) year period for each policy. Such deductions, together with a written statement of the names and amounts deducted, shall be forwarded promptly by the Union office to the City's designated representative. COPE deductions, and any special membership assessments as may be specified by the Union under the authority of an authorization card furnished by the Union and signed by the unit member.

**4.2.2** Such deductions shall continue unless the employee revokes authorization with the terms of the Union's authorization form and shall terminate in accordance with the procedure in 4.2.3 below.

**4.2.3** Changes to dues and union insurance premiums shall be processed with the same month if received in writing by the City's payroll representative prior to 5:00pm on the 3<sup>rd</sup> day of the same month. Any changes to deductions received in writing by the union after the 3<sup>rd</sup> of the month shall be processed in the following month.

**4.2.4** The City shall remit to the Union the dues and contribution in accordance with the Union's monthly written report submitted to the City along with a report confirming the deductions consistent with the Union's written report.

**4.2.5** The Union shall provide the City at least 2 months' notice of any change in the Union's dues deduction and dues procedures affecting more than 30% of the bargaining unit.

**4.2.6** The Union shall not provide the City a copy of the employee's authorization unless a dispute arises about the existence or terms of the authorization and/or change in deductions requested by the employee.

#### **4.3 Indemnification**

The Union shall indemnify and hold the City harmless from any and all claims made by the employee, including but not limited to, demands, fees, reimbursements, suits, judgments, awards, penalties, court costs and attorneys' fees, or any other action arising from compliance with any provision of Section 4.0 or Section 4.2. The City shall promptly provide notice to the Union regarding such claims.

**4.4** The City shall not deter or discourage employees or applicants from voluntarily authorizing the Union to deduct dues and insurance deductions.



#### 4.5 Reports

The Human Resources Department shall furnish the Union, on a monthly basis, with the name, employee number, date of hire to the unit, salary, classification, work location and home address, work email and personal email and personal cell phone number, if provided by the employee, of all employees who enter the bargaining unit and are subject to this agreement. This shall apply to new hires, returnees from unpaid leaves of more than 30 days, and employees promoted, demoted, or transferred into the bargaining unit.

The City shall furnish the Union, on a monthly basis, with the name, effective date and reason of employees who terminate their employment with the City or who leave the bargaining unit. In addition, the City shall furnish the Union with the name, effective date and duration of any employee granted a leave of absence more than 30 days from her/his employment with the City.

A list of all employees in represented classes shall be provided to the Union each month.

#### 4.6 New Hire Information

The City shall print 275 copies of the Agreement and have it ready for distribution within 90 days of final ratification. .

#### 4.7 Orientation Meetings

A representative of the Union will be given sixty (60) minutes of Union release time per quarter per calendar year to provide information on the Union to employees represented by the Union. The Union shall notify the City of the date, time and location of the quarterly orientation meetings at least one (1) month in advance of the meetings to ensure that departmental managers are able to release employees to attend quarterly orientation meetings. The City shall notify the Union of new employees when they are hired. The Union will provide the City with the names of those employees the Union expects to attend the quarterly meetings at least two (2) weeks in advance of the meeting. Employees attending orientation will also be given sixty (60) minutes of Union release time to attend the scheduled orientation.

#### 4.7.1 New Employee Orientation

This provision shall apply to new hire employees appointed to classifications covered by this agreement and to existing employees newly appointed to classifications covered by this agreement.

4.7.1.1 **Onboarding:** The parties acknowledge that the City provides a new employee orientation (onboarding) to each new employee hired by the City. As such, the Union will be provided with not less than 10 calendar days' advanced notice of the time, date, and location of the onboarding of any new employee represented by the Union. The Union will be given 30- minutes at the start of the new

employee onboarding in a room designated by the City for no more than one (1) representative to present Union membership information. The City representative will excuse him or herself during the Union portion of the onboarding. The Union agrees in its portion of the onboarding not to engage in speech that could cause disruption or material interference with City activities.

The City will provide 30 minutes of Union Release Time to the Union representative presenting the Union membership information during the scheduled onboarding. The Union shall provide the Union representative's immediate supervisor with the Union representative's name at least five (5) days prior to the onboarding. The Union representative shall be released for this purpose unless unusual operation needs interfere with such release in which case the Union representative's immediate supervisor will provide a written explanation of why release could not be approved. If the Union representative is not released due to department operational needs, the Union representative may arrange an alternative date and time to meet with the newly hired employee within the first two (2) weeks of employment, subject to the 30-minutes onboarding and Union Release Time requirements as stipulated above.

#### 4.7.1.2

**Information Provided:** On a quarterly basis (March, June, September, and December), the City will provide the Union with a digital file via email to the email address designated by the Union. The Union acknowledges and understands that the City is working diligently and in good faith to update its contact information database functionality to incorporate all the fields of contact information listed below. As a result, the City may not initially be able to provide the employee's work telephone number, personal phone number, and personal email address until the completion and implementation of the City's new Enterprise Resource Management Application (ERMA) system.

The City will provide the Union with the following information on file, to the extent the City has it on file:

- Name
- Job Title
- Department
- Work Location
- Home telephone number
- Home address
- Personal cellular telephone number (new hires hired on or after October 1, 2017)
- Work telephone number (*upon implementing ERMA*)
- Personal email addresses on file with the City (*upon*

*implementing ERMA)*

Notwithstanding the foregoing, limited to the express purpose of the requirements of Government Code section 3558 only, an employee may opt out via written request to the City (copy to the Union) to direct the City to withhold disclosure of the employee's: Home address; home telephone number; personal cellular telephone number; personal email address; and date of birth.

**4.8 Elected Official/Steward Leave Without Pay**

A leave of absence without pay requested in writing at least 30 days in advance shall be granted at the request of an employee who is an elected official or steward of the Union for the purpose of employee's attending a training course sponsored by the Union. By mutual agreement the 30-day time period may be waived. The maximum duration of such leave shall not exceed two (2) consecutive full payroll periods in a calendar year. Conditional upon prior approval of the course content and upon receipt of certification of completion, the City shall reimburse the employee for up to one half of his/her time spent in such training at the employee's permanent rate of pay, not to exceed twenty hours of paid leave in a calendar year.

**4.9 Union Member Leave**

A leave of absence may be permitted to members of the unit to participate in union projects or internships. Such leave shall be at the discretion of management. The Union shall reimburse the City for salary and associated benefits. The typical duration of these leaves shall be for one to four weeks.

**SECTION 5: UNION REPRESENTATIVES****5.1 Attendance at Meetings**

The City shall allow representatives of the Union reasonable time off from work, without loss of compensation or other benefits to represent its members in disputes which involve the interpretation or application of those rules, regulations, and resolutions which have been or may hereafter be adopted by the City Council, to govern personnel practices and working conditions, including such rules, regulations, and resolutions as may be adopted by the City Council to effect Memorandum Agreements which may result from the meeting and conferring process, and to represent its members in meeting and conferring in good faith for amendments to this Agreement in the future, subject to the conditions set forth in Sections 5.2 (Negotiations) and 5.3 (Notification).

All release time shall be recorded on time sheets and time cards, with the appropriate code.

Union representatives' workload will be adjusted on the basis of approved release time. Where required, a department head may request budget replacement for this workload adjustment to provide for completion of the authorized workplan.

## **5.2 Negotiations**

With respect to the negotiation --process to develop a subsequent Agreement or revision to this Agreement, ten (10) Union representatives shall be the maximum number of employees who will be allowed concurrent time off. In disputes as defined in Section 5.1, the maximum number allowed concurrent time off shall be two (2), in addition to the grievant. For all other matters, where the participation of the Union is agreed to, the Union may designate one representative from each Unit up to a maximum of six (6).

## **5.3 Notification**

Union representatives shall advise their supervisors at the earliest possible time and, except in emergency cases, no later than 24 hours in advance before leaving their work assignments. In emergency situations which require the immediate attention of said representative, the representative shall notify a supervisor, who is out of the bargaining unit, prior to leaving work. In all cases the Union representative shall notify the supervisor upon his/her return to work. It is understood that representatives will not leave their work assignments without the approval of the supervisor and that such approval shall not be unreasonably denied.

The representatives shall inform their supervisor of their location during release time.

## **5.4 Bulletin Boards**

The City shall provide bulletin board space for Union use at each of its work centers where covered employees are regularly employed.

## **5.5 Field Representative**

The Union's field representative shall be permitted to enter work areas where its members are employed during normal working hours for the purpose of ascertaining whether the terms of this Agreement are being observed, to observe job conditions under which its members are employed, and to assist in adjusting grievances. The Union field representative shall notify the department head or other designated supervisor at the earliest possible time, and at least upon entering such work areas, and shall not interfere with or interrupt the conduct of work in such areas. The Union field representative may confer with employees, including designated Union representatives or stewards.

## **5.6 Employee Release Time**

Reasonable release time without loss of compensation will be provided to an employee for the purpose of appearing at a grievance proceeding when he or she is the principal in such grievance proceeding, provided that the notice requirements set forth in Section 5.3 (Notification) are met.

**5.7 Employee Witness**

An employee called as a witness in a grievance proceeding shall be given reasonable release time without loss of compensation, provided that his/her release from duty will not adversely affect the operation of his/her department or unit. When such employees desire release time, they must comply with the notice requirements set forth in Section 5.3 (Notification).

**5.8 List of Representatives**

The Union will provide the City with a list of all Union representatives, stewards, and field representatives, and such list shall be kept current.

**5.9 Use of City Facilities**

The Union shall be allowed to utilize City facilities for regular meetings on the same basis as every other non-City organization. In accordance with the policy, the Union will be allowed to utilize the Milvia employee's lounge for its monthly meetings subject to whatever conditions are imposed upon all other non-City organizations and so long as there is no conflict with City activities or use of that facility. Should the City, in its discretion, have to discontinue the Union's regular use of the Milvia facility, it will notify the Union. The Union will be allowed to utilize the Central Library Staff Room for meetings so long as the Director of Library Services or her/his designee determines there is no conflict with City/Library activities or use of that facility. The Union will be allowed to utilize a recreation facility room selected by the City for meetings so long as the Recreation Program Director or his or her designee determines there is no conflict with City / Recreation activities or use of that facility. The Union shall notify the City in advance of the dates and times of its meetings.

**5.10 City Manager Monthly Meetings**

Monthly meetings shall be held between the Union and the City Manager, the Executive Director of the Rent Board and the Director of Library Services. Release time shall be granted for up to eight (8) Union officials. Agendas for such meetings shall be set one week in advance between representatives of the Union and the City Manager the Executive Director of the Rent Board and the Director of Library Services or their designees. Meetings within departments may be held at the request of either the department head or the Union. The number of attendees and frequency of meeting may be adjusted by mutual agreement.

**5.11 Agreement Orientation Sessions**

The Union and the City will conduct orientation sessions on the Agreement at least once during the term of the contract. A special session for stewards and supervisors shall also be provided. The Union will designate two representatives to work with Human Resources to do the orientations.

**5.12 Possible Grievance Release Time**

The City will provide release time up to one (1) hour to Union members to meet with a Union representative for the purpose of discussing a possible grievance.

Such time may be extended by mutual agreement between the City and the Union. The member shall contact the Chapter President or Chief Steward or other designees who will then contact the supervisor/department director to notify the City of the necessity for the meeting. The release time shall be granted within 24 hours of the request subject to operational necessity.

**5.13 Steward Council**

The City will provide release time for Union Stewards to attend monthly Steward Council meetings and training sessions. Each Steward shall receive a maximum of four (4) hours per month to attend the meeting. A maximum of twenty-five (25) Stewards shall be released to attend the meeting. The Chapter President or Chief Steward will notify Human Resources in writing at least two (2) weeks in advance with the names of the Stewards attending the monthly meeting. In event there are conflicts in a work schedules that may create problems with a designated Steward attending the meeting, the Chapter President or Chief Steward will work with the affected department supervisor to schedule Steward attendance in a manner which minimizes the disruption of the work.

**5.14 Investigatory Meetings**

Unless otherwise stated, only two (2) Union Representatives shall be allowed time off to attend investigatory meetings.

**5.15 Union Business Release Time**

Community Services Unit and the Part-Time Recreation Leaders Association

The CSU and PTRLA Units will be entitled to up to two-hundred and forty (240) hours of paid leave of absence each calendar year to be granted collectively to employees in the Community Services Unit and the Part-Time Recreation Leaders Association who are designated elected officials or stewards of the Union, subject to prior approval by employee's Department Head, to attend seminars, conferences, or conventions away from the job site. The Department Head may, in his or her discretion, approve additional Union requests. Time spent on such Union business will be recorded with the appropriate code on time sheets. A maximum of forty (40) hours of the 240 hours may be used by PTRLA members.

**SECTION 6: SEPARABILITY OF PROVISIONS**

In the event that any provisions of this Agreement are declared by a court of competent jurisdiction to be illegal or unenforceable, that provision of this Agreement shall be null and void, but such nullification shall not affect any other provisions of this Agreement, all of which other provisions shall remain in full force and effect.

Upon such nullification, at the written request of either party, the City and the Union will meet and confer in a good-faith effort to reach mutual agreement on substitute provisions for such parts or provisions rendered or declared illegal or unenforceable.

**SECTION 7: FINALITY OF RECOMMENDATIONS**

The recommendations set forth herein are final. No changes or modifications shall be offered, urged, or otherwise presented by the union or the City Manager prior to July 27, 2020; provided, however, that nothing herein shall prevent the parties to this Agreement from meeting and conferring and making modifications herein by mutual consent.

**SECTION 8: DURATION**

This Agreement covers the period of October 21, 2018 through June 27, 2020. This Agreement shall be effective after Union ratification and approval by the City Council except for those provisions which have been assigned other effective dates as herein set forth, and shall remain in full force and effect to and including June 27, 2020. New negotiations shall commence no later than sixty (60) days prior to the expiration date of this Agreement. This Agreement and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at midnight June 27, 2020.

## **ARTICLE 2 - SALARIES, HOURS OF WORK AND COMPENSATION ISSUES**

### **SECTION 9: SALARIES**

Effective the first pay period after ratification and Council approval on its regular agenda, the salary ranges for those classifications covered by this Agreement will receive a salary increase of three percent (3%).

Effective the first full pay period after Union ratification and Council approval on its regular agenda, each full time employee on paid status as of approval by Council will receive a one-time lump sum payment of \$1750.00 prorated for less than full time employees, minus applicable local, state, and/or federal taxes. Hourly non-benefited employees on paid status will receive a one-time lump sum payment of \$100.00 minus applicable local, state, and/or federal taxes. The parties agree that this lump sum provision does not create or bind the City to any precedent or past practice.

Effective the second full pay period in October 2019, the salary ranges for those classifications covered by this Agreement will receive a salary increase of two percent (2%).

Effective the first full pay period after Union ratification and Council approval at its regular meeting the hourly salaries for the classifications of Library Page and Sports Monitors will be increased to \$18.00 per hour and remain at \$18.00 per hour for the duration of the contract.

#### **9.1 Confidential Classifications**

When any of the classifications named in Exhibit "A" of this Agreement are assigned to the following department/divisions, they are designated as confidential and are not represented by a recognized employee organization: City Manager - Administration, City Attorney, Human Resources, and Library - Administration.

#### **9.2 Salaries**

Employees occupying a position in the competitive service shall be paid a salary or wage within the range established for that position's class as set forth in Exhibit A of this Agreement as provided in Section 10.1 et seq. and considering Section 48.7 (Hourly Rated Employees in Lieu of CalPERS). The minimum rate for the class shall apply to employees upon original appointment to the position, unless the City Manager or his or her designee approves appointment at a higher step. The reasons for such decision shall be sent to the Union upon request. Transfers shall not affect an employee's salary rate. Employees appointed to any of the positions set forth in Exhibit A of this Agreement as provided in Section 10.1 et seq. and considering Section 38.7 (Hourly Rated Employees in Lieu of CalPERS), and employed or working on a part-time basis, shall be paid in proportion to the time worked and described in their appointment.



**9.3 Maximum Salary Rate**

No salary advancement shall be made so as to exceed the maximum rate established for the class to which the advanced employee's position is allocated. Advancement shall be in accordance with the compensation plan of the City, provided that step increases within the salary range shall occur on the anniversary date of the appointment.

An employee's pay increase shall not be affected by any leave of absence without pay if the employee is off the payroll for less than one hundred sixty consecutive hours. If the employee is off the payroll, one hundred sixty consecutive hours or more the total amount of time off shall be made up before the employee shall be entitled to such pay.

**9.4 Step Increase for Unit R-2 Employees**

When an employee in Unit R-2 has worked one thousand forty (1040) satisfactory hours without terminating his or her service with the City or being terminated from his or her service with the City, such employee shall be moved to the next higher salary step within his or her present classification on the first day of the payroll period following completion of said one thousand forty (1040) hours.

Non-career Unit R-2 employees who become Career Unit R-1 employees will receive their step increase following their appointment to career status after completing the 1040 hours. Subsequently, they will receive step increases on an annual basis from the date of the above increase.

Employees shall receive no more than one (1) step increase in any year.

**9.5 Workers' Compensation for Unit R-2 Employees**

An R-2 employee who is entitled to Workers' Compensation by reason of a job-related injury shall receive up to twelve (12) hours per week credit for time lost by reason of such injury for purposes of the one thousand forty (1040) hours progression only. Lesser credit shall be given to employees who average fewer than twelve (12) hours of work per week based on such actual average.

**9.6 Y-Rate**

An employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary, or occupying a position in a class the salary rate or range for which is reduced, shall continue to receive his/her present salary. Such salary shall be designated as a "Y" rate. When an employee on a Y rate vacates his/her position, subsequent appointments to that position shall be made in accordance with Section 9.4 (Salaries).

**9.7 Pay Frequency**

Payment of salaries herein established shall be bi-weekly. Each pay period shall begin at 12:01 a.m. Sunday to and including 12:00 midnight Saturday two weeks

following. Each payment shall be made not later than the Friday following the ending of each payroll period and shall include payment for all earnings during the previous payroll period. The City will initiate a program for electronic deposit of payroll checks with banks and credit unions whenever possible.

**9.8 Step Increases**

Step increases shall be effective, for payroll purposes only, on the first day of the pay period nearest the date an employee is entitled to a step increase (anniversary date or 1040 hours).

**9.9 End of Year Pay Period**

For all salary and benefit purposes, the parties agree that the last day of the last pay period ending in the calendar year shall be the end of the year. For excess leave only, the end of the year shall be treated as the last pay period nearest March 31.

**9.10 Effective Date of Salary and Benefit Adjustments**

The City and the Union agree that all future general salary and benefit adjustments shall become effective on the first day of a pay period, unless otherwise mutually agreed.

**9.11 Equity Studies**

A list of 13 comparison jurisdictions is established for the purpose of salary equity studies: Alameda County, Concord, Contra Costa County, Daly City, Fremont, Hayward, Oakland, Palo Alto, Richmond, San Francisco, San Jose, San Mateo, and Santa Clara County. If at least eight matches are not found for a classification after polling this entire list other jurisdictions may be added as required by agreement between the parties. For Health classifications only, the following jurisdictions shall be surveyed: Alameda County, Contra Costa County, San Francisco, San Mateo County, Santa Clara County, Marin County, Sonoma County, and Solano County.

**9.12** During the term of this Agreement, the City agrees to conduct classification studies on the following classifications: Building Inspector; Housing Inspector; Recreation Activity Leader; and the Management Analyst series represented by this Memorandum Agreement.

**9.13 ICC Differentials**

9.13.1 Payment of Differential for Obtaining and Maintaining ICC Certifications: Effective November 20, 1994, an employee in one of the classifications named below shall receive a differential to base salary for obtaining and maintaining a valid certification(s) issued by the International Code Council (ICC) or equivalent as determined by the building official. In order to obtain and maintain the differential to base salary, the employee will

submit the original certification to the appropriate departmental supervisor who will verify the certification and return it to the employee.

The duration of the differential will correspond to the duration of the ICC certification or equivalent as determined by the building official. The employee is responsible for submitting documentation of renewal of the appropriate ICC certification or equivalent as determined by the building official in order to maintain the differential.

Payment of the differential will be effective at the beginning of the first pay period after the employee submits the ICC certification or equivalent as determined by the building official for verification. The employee shall receive the certification based on the specific certification or equivalent as determined by the building official regardless of the order the certification is obtained.

- 9.13.2 **Certified Access Specialist (CASp) Certificate for Senior Building Plans Examiner, Building Plans Examiner, Senior Building Inspector, Building Inspector (Certified) and Building Inspector:** An employee in the classifications of Senior Building Plans Examiner, Building Plans Examiner, Senior Building Inspector, Building Inspector (Certified), or Building Inspector shall receive a differential to base salary of three percent (3%) under this section. The differential provided under this section shall not be subject to the maximum differential to base salary as provided in Section 10.17.3 below.
- 9.13.3 **Senior Building Plans Examiner, Building Plans Examiner, Senior Building Inspector, Building Inspector (Certified) and Building Inspector:** An employee in the classification of Senior Building Plans Examiner, Building Plans Examiner, Senior Building Inspector, Building Inspector (Certified) or Building Inspector shall receive a maximum differential to base salary of four percent (4%) under this section.
- 9.13.3.1 ICC Electrical Inspection Certificate or equivalent as determined by the building official - 3%
- 9.13.3.1.1 Employees currently receiving a four percent (4%) differential for possession of a valid ICC Electrical Inspection Certificate or equivalent as determined by the building official will continue to receive the four percent (4%) differential for as long as they remain in either the classification of Senior Building Plans Examiner, Building Plans Examiner, Senior Building Inspector, or Building Inspector and continue to possess a valid ICC Electrical Inspection Certificate or equivalent as determined by the building official.

- 9.13.3.2 ICC Mechanical Inspection Certificate - 1%
  - 9.13.3.2.1 Employees in the classification of Senior Building Plans Examiner or Building Plans Examiner currently receiving a one and one-half percent (1½%) differential for possession of a valid ICC Mechanical Inspection Certificate or equivalent as determined by the building official will continue to receive the one and one-half percent (1½%) differential for as long as the remain in the classification of Senior Building Plans Examiner or Building Plans Examiner and continue to possess a valid ICC Mechanical Inspection Certificate or equivalent as determined by the building official.
- 9.13.3.3 ICC Plumbing Inspection Certificate or equivalent as determined by the building official - 1%
- 9.13.3.4 ICC Accessibility Inspector/Plans Examiner Certificate or equivalent as determined by the building official - 1%
- 9.13.3.5 ICC Plans Examiner Certificate or equivalent as determined by the building official - 1%
- 9.13.4 The City will pay the cost of the ICC or equivalent examinations for each new certificate listed above that the employee obtains and for the cost of the successful recertification.
- 9.13.5 **Bonus:** After December 1, 1998, once the employee has reached the maximum four percent (4%) or equivalent differential payment limit as provided in Sections 9.17.3.1 through 9.17.3.5, the City will pay an employee a one-time bonus of \$600 for each new certificate or equivalent as determined by the building official listed above that the employee has attained through examination. This provision will only apply to ICC certificates or equivalent as determined by the building official as notated in Sections 9.17.3.1 through 9.17.3.5 obtained while in the employ of the City of Berkeley. Employees receiving the CASp differential noted in Section 9.17.2 shall not be eligible for the bonus as provided in this Section 9.17.5 (Bonus). If an employee moves to a classification other than those listed in Sections 9.17.2 and 9.17.3, the differential to base salary discussed in this section shall terminate and the certification differential shall not be used as a part of base salary for the purpose of future salary adjustments. If the International Code Council or equivalent certifying agency as determined by the building official changes the requirements of any of the certifications listed above and this change affects an employee in one of the classifications listed above, the parties agree to meet and confer on the

impact of the change but only to the extent of the change promulgated by ICC or the equivalent certifying agency.

9.13.6 **Housing Inspector and Permit Specialist:** An employee in the classification of Housing Inspector or Permit Specialist shall receive a maximum differential to base salary of eight percent (8%) under this section.

9.13.6.1 ICC or equivalent as determined by the building official Building Inspection Certificate - 4%

9.13.6.2 ICC or equivalent as determined by the building official Building Plans Examiner Certificate - 4%

9.13.6.3 ICC or equivalent as determined by the building official Electrical Inspection Certificate - 3%

9.13.6.4 ICC or equivalent as determined by the building official Mechanical Inspection Certificate - 1%

9.13.6.5 ICC or equivalent as determined by the building official Plumbing Inspection Certificate - 1%

9.13.6.6 ICC or equivalent as determined by the building official Accessibility Inspector/Plans Examiner Certificate - 1%

9.13.6.7 ICC or equivalent as determined by the building official Plans Examiner Certificate - 1%

9.13.6.8 For the classification of Housing Inspector - ICC or equivalent as determined by the building official Rehabilitation and Conservation Inspection Certificate - 2%

9.13.6.9 Effective June 29, 2008, for the classification of Permit Specialist - ICC or equivalent as determined by the building official certificate as a Permit Technician Certificate – 4%.

9.13.7 **Housing Inspector (Certified):** An employee in the classification of Housing Inspector (Certified) shall receive a maximum differential to base salary of four percent (4%) under this section.

9.13.7.1 ICC or equivalent as determined by the building official Electrical Inspection Certificate - 3%

9.13.7.2 ICC or equivalent as determined by the building official Mechanical Inspection Certificate - 1%

- 9.13.7.3 ICC or equivalent as determined by the building official Plumbing Inspection Certificate - 1%
- 9.13.7.4 ICC or equivalent as determined by the building official Accessibility Inspector/Plans Examiner Certificate - 1%
- 9.13.7.5 ICC or equivalent as determined by the building official Light Commercial Combination Inspection Certificate - 1%
- 9.13.7.6 ICC or equivalent as determined by the building official Rehabilitation and Conservation Inspection Certificate - 2%
- 9.13.7.7 ICC or equivalent as determined by the building official Housing Inspection Certificate – 2%
- 9.13.8 **Payment of Examinations:** The City will pay the cost of the ICC or equivalent examinations for each new certificate listed above that the employee obtains and for the cost of the successful recertification.
- 9.13.9 **Bonus:** After December 1, 1998, once the employee has reached the maximum four percent (4%) ICC or equivalent differential payment limit, the City will pay an employee a one-time bonus of \$600 for each new ICC or equivalent certificate listed above that the employee has attained through examination. This provision will only apply to ICC or equivalent certificates obtained while in the employ of the City of Berkeley.

If an employee moves to a classification other than those listed above, the differential to base salary discussed in this section shall terminate and the certification differential shall not be used as a part of base salary for the purpose of future salary adjustments. If the International Code Council or equivalent certifying agency as determined by the building official changes the requirements of any of the certifications listed above and this change affects an employee in one of the classifications listed above, the parties agree to meet and confer on the impact of the change but only to the extent of the change promulgated by ICC or equivalent certifying agency.

- 9.13.10 **Fire and Life Safety Plans Examiner and Senior Building Plans Examiner:** Effective June 29, 2008, an employee in either the classification of Fire and Life Safety Plans Examiner or Senior Building Plans Examiner shall receive a differential of four percent (4%) to base salary who possess and maintain a valid ICC or equivalent as determined by the building official certificate as a Fire Plans Examiner Certificate.

**9.13.11 Hazardous Materials Specialist II:**

- 9.13.11.1 Employees who are hired or promoted into the classification of Hazardous Materials Specialist II on or after September 1, 2005 must

first obtain and maintain all necessary certifications and any other International Code Council (ICC) certifications, or equivalent certifications, as required to perform their job responsibilities and as a condition of continued employment.

- 9.13.11.2 Incumbent Hazardous Materials Specialist II employees who do not possess valid ICC certifications for programs specified in Chapter 6.11 of Division 20 of the California Health and Safety Code are not required to comply with the terms and conditions in the preceding paragraph. Effective September 1, 2005, Hazardous Materials Specialist II's, who successfully obtain valid certification as a California Underground Storage Tank (UST) Inspector or future certifications, must maintain the certifications as a condition of continued employment.
- 9.13.11.3 A salary differential for Hazardous Materials Specialist II of two percent (2.0%) of the base rate will be paid to all employees who possess valid certificates necessary for conducting their job.
- 9.13.11.4 New state-mandated certifications may be added as necessary. Hazardous Materials Specialist II's who do not receive the new certification will no longer receive the above 2.0% differential.
- 9.13.11.5 The classification specification for Hazardous Materials Specialist II is modified to reflect the requirement that possession and maintenance of all certifications necessary for conducting inspections specified in Chapter 6.11 of Division 20 of the California Health and Safety Code and storm water inspections are a condition of continued employment.
- 9.13.11.6 The City will move to terminate an employee who fails to maintain the ICC certifications. Hazardous Materials Specialist II's who fail to maintain the certifications will be given reasonable time to recertify.

**9.18 Supervising Library Assistant**

Effective the first full pay period following SEIU Local 1021 CSU & PTRLA ratification and Council approval of this MOU on its regular agenda in accordance with Brown Act, Step E of the Supervising Library Assistant classification shall be increased by three and two-tenths percent (3.2%).

**9.19 Senior Permit Specialist**

Effective the first full pay period following SEIU Local 1021 CSU & PTRLA ratification and Council approval of this MOU on its regular agenda in accordance with Brown Act, Step E of the Senior Permit Specialist classification shall be increased by two percent (2%).

**9.20 Venipuncture Educational Incentive Pay**

Upon written agreement by SEIU Local 1021 Community Services & Part-Time Recreation Leaders Association, and adoption by the Personnel Board of the revisions to the Community Health Worker Specialist and Senior Community Health Specialist classification specifications, effective the first full pay period following Council approval of a successor MOU, incumbents in the classifications of Community Health Worker Specialist and Senior Community Health Specialist, who are required to possess a certificate to perform venipuncture for blood samples as a condition of employment and who are regularly assigned to perform such venipuncture duties, shall be eligible to receive a five percent (5%) differential. This salary differential shall be reported to CalPERS as an Educational Incentive Pay.

The classification specifications for Community Health Worker Specialist and Senior Community Health Specialist are modified and agreed upon by the parties as attached.

Moreover, the three (3) incumbents as of November 20, 2015 in the Senior Community Health Specialist classification shall not be required to perform the venipuncture duties as a condition of employment. In addition, the Senior Community Health Specialist who is performing venipuncture duties shall be required to continue to perform said duties for three months following Council approval of a successor MOU. Furthermore, the Union agrees to withdraw the grievance pending arbitration (1021CSU-14-02).

**9.20.1 Payment of Examinations:** The City will pay the cost of the venipuncture certificate and for the cost of the successful recertification for employees who are regularly assigned to perform venipuncture duties.

**9.21** Effective the first full pay period after Union ratification and Council approval at its regular meeting the hourly salaries for the classifications of Library Page and Sports Monitors will be increased to \$18.00 per hour and remain at \$18.00 per hour for the duration of the contract.



## SECTION 10: HIGHER CLASSIFICATION AND TEMPORARY APPOINTMENTS

### 10.1 Temporary Appointment Duration

Except as provided in Section 10.2 (Backfilling Temporarily Vacated Position), any temporary appointment made shall be limited to six (6) months. However, temporary appointments may be made or extended to a limit of twenty-five (25) months with the mutual agreement of the parties. If the parties do not mutually agree to extend a temporary beyond six (6) months to a maximum of twenty-five months, such extension may be approved by the City Council after review by the Personnel Board for extension up to twenty-five (25) months. However, temporary appointments resulting from workers compensation, parental leave, or other authorized leaves of absence, shall be limited to the term of the leave but not in any case exceed twenty-five (25) months. No employee shall hold a provisional appointment in the same position for more than 12 months. The City Manager may extend the provisional appointment beyond this 12-month limitation with the mutual agreement of the parties.

### 10.2 Backfilling Temporarily Vacated Position

It is agreed that temporary appointments, pending the establishment of an eligibility list, will be made expeditiously. If a career employee -is temporarily assigned to another career position, the position temporarily vacated by the career employee may be backfilled on a temporary provisional basis for the period the career employee works temporarily assigned to another career position.

### 10.3 Fringe Benefits for Employees in Temporary Positions

Non-career employees appointed to temporary positions may be eligible for fringe benefits if the duration of the temporary appointment is expected to be six (6) months or longer and funding is available. Career employees temporarily filling a vacant position at the same or higher salary level shall continue to receive fringe benefits. Employees on mandatory reemployment lists as a result of layoffs who are reemployed to fill temporary positions, who had career status at the time of their layoff, shall resume receiving the level of health, dental and life insurance benefits paid by the City at the time of their lay-off in addition to prorated leave benefits. Such employees who are reemployed for periods of 180 days or more shall additionally resume career status.

### 10.4 Temporary Vacancy

When a temporary vacancy is to be filled in a classification for which there is an existing eligibility list, the City shall attempt to make the temporary appointment from that list. Provided there are City employee applicants meeting the minimum qualifications, temporary vacancies of greater than 90 days shall be filled by existing City of Berkeley employees from existing eligibility and/or transfer lists except as otherwise provided in Section 52 (Layoff). When the employee completes the temporary appointment, the employee would then return to his/her former classification at the appropriate pay level. The employee shall suffer no loss of seniority in his/her classification as a result of filling a temporary vacancy. The City does not guarantee a permanent promotion to the employee working in a temporary appointment. Employees shall indicate availability for temporary

appointments on an employment application. Employees may update their existing application forms to indicate their availability for future temporary appointments.

**10.5 Maximum Consecutive Temporary Appointment**

An employee may hold more than one type of temporary appointment within a calendar year. Consecutive appointments of a non-career employee as provided in Sections 10.1 (Temporary Appointment Duration) and 10.2 (Backfilling Temporarily Vacated Position) may not exceed twenty-five (25) months.

**10.6 Filling of Positions through Competitive System**

Any position, regardless of its funding source, shall be filled through the competitive system if the position is expected to last one year or more.

**10.7 Working in Higher Classification**

The Department Heads will work all employees within their career classification. The departments may assign an employee to work temporarily in a higher classification. Such assignments shall be in writing and shall indicate the reasons, length and duties of the assignment. Assignments over one week shall be approved in advance by the City Manager, Director of Library Services, or their designees. To be eligible for temporary assignment to a higher classification, the employee must work a minimum of one day, meet all of the minimum qualifications, and perform the duties of the higher classification. Employees meeting these requirements will be compensated at the lowest step of the higher classification which provides at least a five percent (5%) increase in salary. Excluded from this provision are all employees whose job classifications regularly include assuming administrative and/or supervisory responsibilities in the absence of another, e.g. Assistant Department Heads.

**10.8 Training for Supervisory Position**

For training purposes, employees not meeting all of the minimum qualifications for a supervisory position may be temporarily assigned for a minimum of one week (five consecutive working days), to perform the duties of supervisor and will receive a five percent (5%) increase in their current base salary rate listed in Exhibit A and Exhibit B.

**10.9 Notification of Change in Classification Duties and Responsibilities**

Whenever a need for a change in the duties and responsibilities of any position occurs in which matters of classification may be involved, the Department Head in whose department the position is located shall notify the City Manager through the Human Resources Department of that fact and the Union will be so advised by the Director of Human Resources.

### **10.10 Notification of New Classification**

The City shall notify the Union and upon written request discuss in advance the establishment of new career classifications if the work is related to work performed by classifications in Units G-1, G-3, I-A, I-B, L, R-1 and R-2. This procedure shall also be applicable to the reclassification of positions presently in such units.

### **10.11 Desk Audits**

Upon request of the employee or his/her Department Head, the Human Resources Department shall, within ninety (90) days if possible, audit the position of the employee to determine if he/she is working out of classification. If the audit determines that the employee has been working in the higher class, the employee shall receive back pay to the date of the beginning of the closest pay period that the position description questionnaire was received by the employee's supervisor. In the event the City reclassifies a position from a lower level classification to a higher level classification, an incumbent occupying such position shall be reclassified without competitive examination provided s/he has performed the duties of the new class for one year and has not received an unsatisfactory evaluation during that period. All other employees shall pass an examination for the higher class and shall serve the normal probationary period. There will be a maximum of one (1) audit in a twelve (12) month period unless the employee is assigned to a different job in which case there may be a second audit in a twelve (12) month period. This section is not applicable to salary equity reviews when the assignment fits within the existing classification.

Reclassification or reallocation of positions shall not be used as a mechanism, the sole purpose of which is to improperly circumvent the provisions of this Agreement, including provisions relating to layoff, transfer, demotion or promotion. Upon request, the City will provide the Union with a written yearly report of all audits requested and performed. The City shall provide, upon request, for information only, the status (expiration date) of all existing eligible lists for Local 1021 and Local 1 classifications.

### **10.12 Temporary Appointments Notification**

Temporary appointees will be advised that they are hired on a temporary basis and will be provided with an offer letter setting forth the terms of their employment.

### **10.13 Continuous Eligibility**

- 10.13.1 **For Career Employees:** Any employee maintaining permanent or probationary status in any classification may qualify for continuous eligibility for classifications in which his/her name appears on the eligible list. Employees who qualify for continuous eligibility will remain on the eligible list in their relative standing without being required to compete in subsequent examinations. Employees will be required to submit to the Human Resources Department an updated application within the announced filing period for a specific position. Continuous eligibility is

based on persons meeting the minimum requirements for the classification. Continuous eligibility does not preclude the employee from taking subsequent tests to attempt to improve his or her standing.

At such time as new eligibility standards are introduced, employees will be notified by the Human Resources Department that they must pass a new examination in order to remain on the eligible list. Continuous eligibility shall be administered by the Director of Human Resources according to procedures established by the Director of Human Resources.

- 10.132 **For Temporary/Intermittent Employees:** Any employee continuously appointed as a temporary/intermittent employee from an eligible list shall remain eligible for probationary appointment to career positions within that classification for the duration of the temporary/intermittent employment without renewing eligibility on subsequent eligible lists.

## **SECTION 11: CONTRACTING OUT**

For the purpose of preserving work and job opportunities for employees covered by this agreement, the employer agrees that no work or service of the kind, nature, or type presently performed by members of this bargaining unit shall be subcontracted prior to meeting and conferring with the Union in an effort to find alternatives.

The Union shall be provided notice of any proposed contracts with outside vendors for services with the City. Additionally, the City shall provide the Union with notice of a Request for Proposals for outside services. Such notice shall be provided when the Contract Management System or Request for Proposal number is assigned. Notification shall be provided through an electronic notification system.

## **SECTION 12: HOURS AND DAYS OF WORK**

### **12.1 Rules**

Hours and days of work shall be governed by rules established by the City Manager. At the present time, for a full-time employee, the normal workday shall consist of eight (8) hours, and the normal workweek shall consist of forty (40) hours, unless otherwise provided. However, employees in work units that provide a six (6) or seven (7) day operation may be required to flex their work schedule based on the needs of the work unit, except in the Library Department. Flexing of work schedule will be assigned on the basis of inverse seniority unless more senior employees prefer to accept such work. The required flexing of work schedules will be on a day-for-day basis. When an employee is required to work on a regularly scheduled day off, the department will provide that employee with an alternative day off in the same work week when the required flexing occurs.

## 12.2 Flexible Work Schedule

Employees may request variable working hours such as, but not limited to, 10 hours a day, four days a week, job sharing, and working under a flexible arrangement. Flexible scheduling may also include the option of a one-half hour lunch break. This option shall be available in all departments in the City and will be considered seriously if all City functions within units can be accomplished through flexible scheduling.

## 12.3 Work Week

The workweek will begin at 12:01 a.m. Sunday and end at Saturday midnight. Regular days off will be considered to be Saturday and Sunday except in those programs with six or seven day operations.

## 12.4 Lunch and Rest Periods

As approved by the Department Head, lunch periods shall be a minimum of one-half hour to a maximum of one hour. Employees shall receive a rest break of fifteen (15) minutes during each four-hour shift. For each additional hour of work time, the employee shall receive an additional five (5) minutes of rest break.

Whereas, for R-1 and R-2 employees, lunch and/or rest breaks cannot be taken because of program constraints, the employee will be paid for the time worked during such lunch and rest periods. Time paid for rest breaks will not be counted as regular scheduled work hours, i.e., if an employee works from 9:00 a.m. to 4:00 p.m., the employee should be paid from 9:00 a.m. to 4:30 p.m.

## 12.5 Sunday and Graveyard Shifts

Regularly scheduled Sunday shifts and "graveyard" shifts, as defined in Section 14, shall be for eight (8) consecutive hours including up to one-half ( $\frac{1}{2}$ ) hour for lunch.

## 12.6 Shift Assignments

Within a given classification, shift assignments shall first be offered to employees by classification seniority on a voluntary basis. In the event shift assignments are not filled voluntarily, such assignments will be made on the basis of inverse classification seniority. Within a Library department or unit, shift assignments shall be made on a rotational basis so that the least desirable shifts can be shared as equally as possible.

### 12.6.1 Types of Shifts:

- a. **Swing** shift means authorized work schedules regularly assigned in which four (4) hours or more worked are between the hours of 5:00 p.m. and 12:00 midnight of each workday.

- b. **Night** shift means authorized work schedules regularly assigned in which fours (4) hours or more worked are between the hours of 12:00 midnight and 7:00 a.m. of each workday.
- c. **Day** shift means any authorized work schedules assigned except swing or night shifts as defined in this section.

### 12.7 Library Flex Time

Employees who are working during hours of the Board of Library Trustees (BOLT) meeting may request flex time consistent with Library policy as set forth in Library Administrative Regulation 2.11 (Flexitime/Alternate Work Schedules Policy and Guidelines) to attend the meeting. The Library shall use its best efforts to grant such requests from at least one (1) branch library employee for each meeting.

### 12.8 Daylight Saving Time

12.8.1 **Spring:** In the Spring when transitioning to Daylight Saving Time (DST), employees working during the one (1) hour transition from Standard Time to DST will be paid only for actual hours worked. Employees working on a shift which includes the one (1) hour transition may be granted an option by the Department Head or his or her designee, to work an additional hour or use compensatory time, floating holiday, or vacation to make up the lost work hour.

12.8.2 **Fall:** In the Fall when transitioning to DST, employees working during the one (1) hour transition will be paid for all hours worked including overtime at one and one-half (1½) times the straight-time rate of pay for hours worked in excess of the regular workweek as set forth in Section 13 of this Agreement.

## SECTION 13: OVERTIME

Employees required to work in excess of their basic workweek shall be compensated for such overtime services as follows:

### 13.1 Overtime

The straight-time workweek shall consist of forty (40) hours, five (5) days per week, unless otherwise agreed between the employee and the City. If the employee is required to work in excess of forty (40) hours in any one work week or eight (8) hours in any one workday, the employee shall be paid at the rate of time and one-half the employee's regular rate for all hours over eight (8) in a day or forty (40) in a week, except that if the employee works over twelve (12) hours in a workday, the employee shall be paid at the rate of two times the employee's regular rate of pay. These provisions shall not result in pyramiding of overtime and shall not apply to employees who voluntarily work under a flex-schedule arrangement which

requires more than eight (8) hours per day. Leave without pay shall not be considered hours worked for the purpose of computing overtime compensation.

**13.2 Department Head Discretion**

Whether an employee shall be compensated for overtime by compensatory time off or by payment shall be at the sole discretion of the employee's Department Head.

13.2.1 Mandatory Overtime: when an employee is directed to work in excess of his or her basic work week, the employee shall be paid at the rate of one and one-half (1½) times the employee's regular rate of pay. Based on the needs of the work unit, the manager may offer the employee being directed to work overtime the option of earning Compensatory Time in lieu of overtime pay, subject to the maximum accumulation requirement in Section 13.7 (Compensatory Time Off).

**13.3 Final Compensation**

In the event that an employee resigns or is terminated, the employee shall be entitled to compensation for his or her accumulated overtime.

**13.4 Workweek**

For the purpose of computing overtime, the workweek shall be defined as beginning at 12:01 a.m. Sunday and ending at 12:00 midnight Saturday.

**13.5 Emergency Call Back**

Employees who are called into work outside their normal work schedule shall be paid overtime compensation for actual time worked. The minimum time for which such overtime compensation shall be paid shall be four (4) hours. If such overtime work is performed prior to the beginning of the regularly scheduled work period and overtime continues into the regularly scheduled work period without a break in service, compensation shall be paid only for the actual time worked.

**13.6 Standby Pay**

Standby service shall mean being available for service outside of regular working hours at any time when called. Employees may be assigned to standby service and the City shall compensate employees thus assigned on an hourly rate as provided below. If an employee assigned to standby service is not available when called or is unable or fails for any reason to perform the service when called, the employee shall not receive the standby pay provided for herein. An employee will not be assigned to standby service if the employee is on vacation leave, sick leave, compensatory time off, off work on a floating holiday, on workers' compensation leave or other leave, or when on a modified duty assignment.

Days of the Week	Hourly Rate of Pay
Monday, Tuesday, Wednesday, Thursday, Friday	\$4.09 per hour
Saturday, Sunday, or any Holiday named in Sections 18.1.1 through 19.1.13 regardless of the day of the week	\$5.43 per hour

### 13.7 Compensatory Time Off

Compensatory time off may be earned in lieu of overtime pay at the rate of one and one-half (1½) hours for each overtime hour worked up to a maximum of sixty (60) hours of such compensatory time. Accumulation of compensatory time off in excess of sixty (60) hours may be allowed at the discretion of the Department Head. Compensatory Time Off cannot be used in the same pay period it is accrued. Utilization of compensatory time shall be determined by the Department Head with due regard for the wishes of the employee and particular regard for the needs of the service. As used herein, sixty (60) hours of compensatory time is equal to ninety (90) hours of time off work. In the event of layoff, termination, or transfer the employee shall be compensated for all compensatory time accrued but still unused.

### 13.8 Natural Disaster/Declared Emergency

If an emergency is declared by the City, county, state or national authority:

- 138.1 If an employee is called outside of normal working hours, the employee gets time and one half (1½) the normal rate of pay for the first whole shift regardless of the number of hours worked. If the employee is not called from home the regular rules apply (i.e., overtime for hours worked above eight in a day).
- 138.2 Thereafter: the first eight hours at regular rate and 7½% for hours worked between 5:00 p.m. and midnight; 10% for hours worked from midnight to 7:00 a.m. For hours greater than eight in a shift, the employee gets time and one half (1½) the normal rate of pay but no shift differential on those hours above eight.

## SECTION 14: SHIFT DIFFERENTIAL

### 14.1 Shift Differential

- 14.1.1 Swing Shift: Employees who regularly work on a full shift of eight (8) hours or more on swing shift as defined in Section 12.6.1 (Types of Shifts), which includes four (4) hours or more between the hours of 5:00 p.m. and 12:00 midnight, shall be paid their regular salary plus seven and one-half percent (7½%) of their monthly salary per month.
- 14.1.2 Night Shift: Employees who regularly work a full shift of eight (8) hours or more on night shift as defined in Section 12.6.1 (Types of Shifts), which includes four (4) hours or more between the hours of 12:00 midnight and 7:00 a.m., shall be paid their regular salary plus ten percent (10%) of their monthly salary per month, provided that in the case of any employee who is regularly assigned to night-shift work for less than an entire work week,



the additional payment shall be made only for the portion of the work week worked on the night-shift assignment.

**14.2 Sunday Shift for Career Library Employees**

For career library (including Library Aides) only, employees who work a shift entirely on Sunday of less than 8 hours shall receive a differential of ten percent (10%) of their regular hourly rate for those hours actually worked.

**14.3 Sunday Shift for R-1 and R-2 Employees**

R-1 and R-2 employees (excepting Sports Officials) who are required to work a shift entirely on Sunday of less than eight (8) hours (or for special events such as civic festival on a Sunday) shall receive a differential of ten percent (10%) of their regular hourly rate for those hours actually worked.

**SECTION 15: PREMIUM PAY**

**15.1 Library-Supervisor-In-Charge**

When a non-supervisory library employee is required to be the "Library-Supervisor-In-Charge" at the Central Library, s/he shall receive a differential of five percent (5%) above the regular hourly wage for all time in which such work is performed.

**15.2 Bilingual Premium Pay**

152.1 An employee who is required as an essential part of his or her job to provide non-English language services, including Braille and sign language, routinely and consistently as part of his or her regular job assignment as determined by the City will receive a Bilingual Premium Pay Differential of five percent (5%). The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of five percent (5%) will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

152.2 An employee who is required as an essential part of his or her job to provide non-English language services, including Braille and sign language, will receive a Bilingual Premium Pay Differential of two percent (2%). The criteria for receiving the differential will be: a) when assigned by management, or b) at the request of the employee with the supervisor's agreement, or, c) after a job audit and who must utilize these skills on an occasional basis. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of two percent (2%) will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked

on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

- 15.2.3 **Competency:** The bilingual premium will not be applicable under any circumstances except to an employee who possesses second language competency. Management reserves the right to test for second language appropriate competency prior to a Bilingual Premium Pay Differential.

### 15.3 Longevity Pay

Effective June 28, 2009, employees completing twenty-four (24) years of service shall receive a three percent (3%) differential beginning with the anniversary date of beginning the twenty-fifth (25<sup>th</sup>) year of service and shall apply to all hours in a paid status. This Longevity Pay shall be reported to CalPERS as Longevity Pay Incentive Pay.

### 15.4 Senior Information Systems Specialist Educational Incentive

An employee in the Senior Information Systems Specialist classification who obtains and maintains a valid Cisco Certified Network Associate (CCNA) certificate shall receive a two percent (2%) differential to his or her base salary. An employee in the Senior Information Systems Specialist classification who obtains and maintains a valid Microsoft Certified Systems Engineer (MCSE) certificate shall receive a four percent (4%) differential to his or her base salary. The specific certifications referenced in this Section (CCNA and MCSE) are subject to change as modifications to the City's technical infrastructure change. This salary differential shall be reported to CalPERS as Educational Incentive Pay.

### 15.5 Recreation Activity Leaders Personal Care Services Differential

Recreation Activity Leaders assigned to work with disabled children in the Inclusion Program and who provide personal care services (i.e., toileting, etc.) to those children shall receive a six and one-half percent (6.5%) differential for those hours worked in the program. The differential shall be reported to CalPERS as Hazard Premium Special Assignment Pay.

The classification specification for Recreation Activity Leader will be modified to include personal care as a duty to which employees may be assigned. The Union shall be provided copies of the proposed change to the classification specification prior to implementation.

## SECTION 16: PAYROLL ERRORS

To ensure that system or other errors which affect an employee's pay are processed in an efficient and effective manner, the City shall notify the affected employee(s) as soon as practicable. Payroll errors detected by an employee shall, as soon as practicable, be communicated to the employee's Departmental Payroll Clerk. In the case of under payments, the Payroll Clerk shall submit the appropriate adjustments as soon as

practicable. Payroll errors identified by the Auditor will be communicated to the employee either directly by Auditor staff or through the Departmental Payroll Clerk.

Under payments will be processed as soon as practicable after they are brought to the attention of the Auditor's Department. If the employee is paid less than 80% of base salary as a result of an underpayment in the then-current pay period, the City shall process the underpayment within three business days after notification to the departmental payroll clerk and approval of the supervisor. All other underpayment adjustments will be processed on the next pay check.

In the event of an overpayment, the Auditor's Office will determine a reasonable repayment schedule and inform the employee of the schedule directly, or through the Department Payroll Clerk. Before a repayment schedule is implemented the affected employee shall be given an opportunity to discuss the schedule of repayment and to request an adjustment to the repayment schedule as a needed and reasonable modification. In the event that (1) the employee does not respond within 10 working days of receiving written notice of the overpayment, or (2) mutual agreement on the repayment schedule is not achieved within 20 working days of the employee receiving written notice of the overpayment, the Auditor's Office will proceed to implement a reasonable repayment schedule consistent with the requirements of this section. Factors considered in determining whether a requested modification of a repayment schedule is reasonable include, but are not limited to, the length of time the overpayment has occurred, the amount of the overpayment, the employee's normal salary, and other financial obligations of the employee.

Generally, overpayment shall be recaptured at least at the rate at which the overpayment occurred. Overpayment shall not be recaptured at a more rapid rate than the rate at which the overpayment occurred, except (1) by permission of the affected employee, or (2) if the repayment amount per pay period would otherwise be less than five percent (5%) of gross base salary each pay period, or, (3) the overpayment was of \$99 or less, in which case it must be recouped in one lump sum. However, should an employee with a repayment schedule leave the employ of the City before repaying the City the full amount of any overpayment, the outstanding debt shall be deducted from any salary and leave balances for which the employee would otherwise be paid upon separating from the City. Where an employee requests and the City concludes that s/he has justified a modified repayment schedule, the City may, in its sole discretion, permit exceptions to these standards.

The City and the Union agree that the City is authorized to recover any salary overpayment made to the employee from the employee's wages, except that the City shall not attempt to recover overpayments which would be barred by a four year statute of limitations in a court action for their recovery. However, once a repayment schedule is implemented, the City will retain the right to recover the full amount of the overpayments covered by the schedule, and the limitations period for those overpayments shall be tolled for the duration of the repayment schedule.

Nothing in this policy shall prevent the City from taking such other or additional action, such as a lawsuit, as is appropriate and necessary to recover overpayments to employees.

## **ARTICLE 3 - LEAVES**

### **SECTION 17: VACATION**

#### **17.1 Entitlement**

All employees who work with the City shall be entitled to use vacation leave (Library Aides: see Section 51).

#### **17.2 Vacation Approval**

The times during the calendar year at which an employee shall take vacation shall be determined by the Department Head with due regard for the wishes of the employee and particular regard for the needs of the service. Wherever practical, employees in Units G-1, G-3, L, and R-1 working in the same classifications within a division shall be given preference of vacation time by seniority. If the City cannot allow the vacation that the employee requested, the employee, with the Department Head's approval (if the service permits), may take vacation at another mutually agreed upon time during the same calendar year. If the requirements of the service are such that a Department Head cannot permit an employee within the department to take an annual vacation leave, or any part of such leave within a particular calendar year, the City Manager/Director of Library Services may permit the employee to take the deferred vacation during the following year.

With advance supervisory approval, vacations may be taken in increments of one (1) hour.

The City may revise vacation accumulation provisions in order to standardize accounting procedures without effect on the amount of employees' vacation; subject to review and comment by the Union.

#### **17.3 Accrual**

Employees shall be entitled to vacation leave as follows (except as provided in Sections 17.4 (Accrual, Use, and Limitations for Employees), 17.5 (Effect of Holidays Upon Vacation Leave), 17.9 (Public Health Classifications Vacation Accrual), 17.10 (Mental Health Classifications Vacation Accrual), 17.11 (Library Classifications Vacation Accrual), and 17.12 (Vacation Without Pay) below).

<b>Years of Service</b>	<b>Authorize Annual Vacation (in work weeks)</b>	<b>Vacation Leave Credits (in workdays per month of service)</b>	<b>Vacation Leave Credits (in hours earned per month of service)</b>
First through third years of service	2 work weeks	0.833	6.667
Fourth through eleventh years of service	3 work weeks	1.25	10

Years of Service	Authorize Annual Vacation (in work weeks)	Vacation Leave Credits (in workdays per month of service)	Vacation Leave Credits (in hours earned per month of service)
Twelfth through seventeenth years of service	4 work weeks	1.667	13.333
Eighteenth through twenty-fourth years of service	5 work weeks	2.083	16.667
Twenty-fifth and subsequent years of service	6 work weeks	2.5	20

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Each employee, during that portion of the calendar year in which the employee was originally appointed and during the next succeeding calendar year, shall be entitled to vacation leave credits at the rate of .833 work days for each calendar month of service.

17.4.1 Employees shall be entitled to pro-rata vacation leave credits for each hour the employee either works or is paid. An employee who is on unpaid status shall not accrue vacation benefits for the period the employee is not working and is not receiving pay.

17.4.2 During the first two calendar years of employment, employees shall be entitled to take only such annual vacation leave as the employee earns. After two years of service, employees may request, and upon approval, take up to a maximum of two weeks of their annual vacation, in advance of actual earning. Approval of requests for advance vacation shall be solely at the discretion of management.

17.4.3 For an employee who has been on leave of absence without pay for a total of six (6) months or more or who has left employment and subsequently reemployed, the actual years of service with the City shall be used for the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5), and six (6) weeks' rate.

17.4.4 For the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5), or six (6) weeks' rate, time spent on extended military leave shall be counted as time spent in the service of the City.

**17.5 Effect of Holidays upon Vacation Leave**

In the event one or more municipal holidays fall within a vacation leave, such holidays shall not be charged as vacation leave, and the vacation leave shall be extended accordingly. The provisions of this Section shall not apply to those

positions in which holidays, due to the necessities of public health and safety, are normal working days.

#### **17.6 Maximum Vacation Accumulation**

Employees may defer vacation earned up to a maximum cumulative total of eight (8) weeks. An employee who has attained maximum accumulation may be required to take all excess earned vacation. Not later than October 1 of each year, the City will advise employees who have attained a maximum accumulation of vacation whether such excess earned vacation must be scheduled as time off prior to March 31. Such time off shall be scheduled in accordance with the provisions of Section 17.2 (Vacation Approval). Accumulated vacation may not be used immediately prior to retirement in order to extend the date of retirement, but shall instead be paid out in full upon retirement.

The City shall require all employees to reduce their accrued vacation balances to no more than 320 hours, as of the last pay period in February of each year of this Agreement. To effectuate the requirement that employees not accrue more than 320 hours vacation leave, the parties agree that not later than November 15 of each year of this Agreement, the City will provide the Union and Department Heads with a report identifying all employees who have accrued two hundred and eighty (280) hours of vacation leave and appear in danger of exceeding the 320 hour limit. Employees who have accrued 280 hours of vacation leave, as of that date, will be advised by their supervisor that they must take vacation leave to reduce their vacation leave accrual by February of the following year.

Supervisors should be flexible in granting employee vacation requests to those employees above, or approaching the 320 hours limit, and further, that with regard to employees who are in danger of exceeding the 320 hour limit, no vacation request by such an employee shall be unreasonably denied. If an employee who is in danger of exceeding the 320 hour limit fails by December 31 of each year of this Agreement to schedule a vacation to be taken before the last pay period in February of each year of this Agreement, the City has the authority to direct the employee to go on vacation leave to reduce the employee's accrued vacation.

If, due to operational necessity, a department head denies an employee vacation leave and does not provide the employee with an alternate vacation date, and as a result causes the employee to exceed the 320 vacation leave limit, said employee shall nonetheless be entitled to use that vacation leave in the next calendar year to the extent necessary to reduce their accrued vacation to not more than 320 hours.

**17.7 Return from Leave**

An employee who has returned from extended military leave or any other extended leave of absence without pay or who has been reemployed or reinstated shall be entitled, during the calendar year in which the employee returns to the City service, to a prorated vacation based upon the total years of service with the City and upon the total actual service with the City during the said calendar year. For succeeding calendar years, vacation shall be as provided in this Section 17 (Vacation).

**17.8 Computation of Vacation Leave upon Termination, Extended Military Leave or Other Extended Leave of Absence Without Pay**

If after six (6) months of continuous service, an employee is terminated, or is granted an extended military leave or other extended leave of absence without pay, such employee or his/her estate shall be paid for vacation credits in excess of the actual amount of vacation leave taken or such employee or his/her estate shall reimburse the City for the actual amount of vacation leave taken in excess of vacation leave credits as the case may be.

Upon termination, extended military leave or other extended leave of absence without pay, vacation leave credits shall be totaled, and the actual amount of vacation leave taken, including any that may have been taken during the year in which the termination, extended military leave or other extended leave of absence without pay occurs, shall be deducted from the total credits. If the credits exceed the actual amount of vacation leave taken, such employee or his/her estate shall be paid for the excess of the credits on the basis hereinafter set forth. If the actual amount of vacation leave taken exceeds the credits, such employee or his/her estate shall reimburse the City on the same basis.

The basis for such payment by the City or for such reimbursement to the City shall be as follows:

The employee's monthly salary at date of termination, extended military leave or other extended leave of absence without pay, divided by thirty (30) and multiplied by the excess of credits over vacation leave actually taken or excess of vacation leave actually taken over credits, as the case may be.

At the time of termination, extended military leave or other extended leave of absence without pay, or as soon thereafter as possible, payment for excess of vacation leave credits shall be made in a lump sum. An employee may elect to use excess vacation leave credits prior to termination, extended military leave or other extended leave of absence without pay, to the extent permitted by this Section, and receive a lump sum payment for the balance of vacation leave credits, if any. An employee or his/her estate shall not be paid for vacation leave credits in excess of eight (8) calendar weeks. Notwithstanding the foregoing, accumulated but unused vacation credit at the time of retirement shall be paid off in a lump sum.

**17.9 Public Health Classifications Vacation Accrual**

The authorized annual vacation leave for employees occupying positions in the classifications listed in this Section 17.9 shall be entitled to vacation leave as noted herein:

<b><u>Job Code</u></b>	<b><u>Title</u></b>
95070	Community Health Worker
95370	Community Health Worker Specialist
34050	Licensed Vocational Nurse
24700	Mid-Level Practitioner
24020	Public Health Nurse
24760	Psychiatrist
24030	Registered Nurse
95390	Senior Community Health Worker Specialist
24010	Senior Public Health Nurse

<b>Years of Service</b>	<b>Authorize Annual Vacation (in work weeks)</b>
1 <sup>st</sup> through 2 <sup>nd</sup> years of service	2 work weeks
3 <sup>rd</sup> through 5 <sup>th</sup> years of service	3 work weeks
6 <sup>th</sup> through 17 <sup>th</sup> years of service	4 work weeks
18 <sup>th</sup> through 24 <sup>th</sup> years of service	5 work weeks
25 <sup>th</sup> and subsequent years of service	6 work weeks

**17.10 Mental Health Classifications Vacation Accrual**

The authorized annual vacation leave for employees occupying positions in the classifications listed in this Section 17.10 shall be entitled to vacation leave as noted herein:

<b><u>Job Code</u></b>	<b><u>Title</u></b>
94040	Assistant Mental Health Clinician
24110	Clinical Psychologist
24450	Mental Health Clinician
24520	Mental Health Clinician II
24460	Psychiatric Social Worker I
24410	Psychiatric Social Worker II
24530	Senior Mental Health Clinician
24130	Senior Psychiatric Social Worker

<b>Years of Service</b>	<b>Authorize Annual Vacation (in work weeks)</b>
1 <sup>st</sup> through 4 <sup>th</sup> years of service	2 work weeks
5 <sup>th</sup> through 17 <sup>th</sup> years of service	4 work weeks
18 <sup>th</sup> through 24 <sup>th</sup> years of service	5 work weeks
25 <sup>th</sup> and subsequent years of service	6 work weeks



**17.11 Library Classifications Vacation Accrual**

The authorized annual vacation leave for employees occupying positions in the classifications listed in this Section 17.11 shall be entitled to vacation leave as noted herein:

<b><u>Job Code</u></b>	<b><u>Title</u></b>
26070	Automation Librarian
26050	Librarian I
26040	Librarian II
26060	Senior Librarian
26030	Supervising Librarian

<b>Years of Service</b>	<b>Authorize Annual Vacation (in work weeks)</b>
1 <sup>st</sup> through 11 <sup>th</sup> years of service	3 work weeks
12 <sup>th</sup> through 17 <sup>th</sup> years of service	4 work weeks
18 <sup>th</sup> through 24 <sup>th</sup> years of service	5 work weeks
25 <sup>th</sup> and subsequent years of service	6 work weeks

**17.12 Vacation Without Pay**

Upon written request to the Department Head, employees will be granted up to seven (7) consecutive calendar days without pay to be used as additional vacation, provided that such request may be denied at the discretion of the Department Head by reason of adverse staffing impact (including workload considerations).

**SECTION 18: HOLIDAYS**

**18.1 Recognized Holidays**

Recognized holidays for career employees in Representation Units G-1, G-3, I-A, I-B, L, and R-1 shall be:

- 18.1.1 New Year's Day
- 18.1.2 Martin Luther King Jr.'s Birthday - observed on the third Monday in January
- 18.1.3 Lincoln's Birthday - deferred to Christmas Eve Day for Units I-A and I-B only
- 18.1.4 Washington's Birthday - observed on the third Monday in February
- 18.1.5 Malcolm X's Birthday - observed on the Monday or Friday nearest May 19
- 18.1.6 Memorial Day - observed on the last Monday in May
- 18.1.7 Independence Day
- 18.1.8 Labor Day - observed on the first Monday in September
- 18.1.9 Indigenous Peoples Day - observed on the second Monday in October
- 18.1.10 Veterans Day
- 18.1.11 Thanksgiving Day
- 18.1.12 The day after Thanksgiving Day
- 18.1.13 Christmas Day

**18.2 Floating Holidays**

Employees in the competitive service who have worked for the City six (6) months or more shall be granted three (3) floating holidays each calendar year. In the first calendar year of employment, employees shall be granted pro rata floating holidays as follows:

Hired January 1 - April 30	3 days
Hired May 1 - August 31	2 days
Hired September 1 - December 31	1 day

**18.3 Use of Floating Holidays**

The days selected shall be by mutual agreement between the employee and the Department Head (or his/her designee). Employees may take floating holidays in one hour increments. In the event mutual agreement cannot be reached on the selection of floating holidays, the employee shall have one (1) or two (2) or three (3) days added to his/her accrued vacation time. Employees who terminate employment within the first six (6) months of initial employment shall not be eligible for payout of any unused floating holidays.

**18.4 Holidays for Employees with Schedules other than Monday through Friday**

Employees whose workweek is Monday through Friday shall be allowed all holidays with pay which fall within such work week. Those employees whose work week is other than Monday through Friday shall be entitled to the same number of holidays, with pay, during each calendar year as are allowed to employees whose work week is Monday through Friday, and the procedure for allowing these holidays shall be established by the City Manager. The provisions of this Section 18.4 are not applicable to intermittent employees.

**18.5 Work on a Holiday**

An employee required to work on any day which is a holiday for employees whose work is Monday through Friday shall be paid for the number of hours worked during such day at the rate of one and one-half (1½) times the straight-time rate, based upon the employee's regular monthly salary, or shall be granted compensatory time off in any amount equal to one and one-half (1½) times the number of hours worked on such holiday. The hours worked on such a holiday and paid at the rate herein provided shall not be credited in computing the hours worked in the week for overtime purposes.

The holiday pay provided for shall be in addition to an employee's regular salary. In the event that the time worked on such a holiday also includes overtime, as provided in Section 13 (Overtime) of this Memorandum Agreement, payment will be made for the hours worked either as overtime under said Section 13 (Overtime), or as holiday pay under this Section 18 (Holidays), but will not be made under both Sections.

**Sections.18.6 Holiday for Part-Time Employees**

Regularly scheduled part-time employees working 20 hours or more per week shall be entitled to holiday pay on a pro-rata basis (Library Aides see Section 45).

In the event that a holiday occurs on the employee's regular scheduled day off, the employee shall receive holiday pay on a pro-rata basis or the employee, at his/her option, shall be permitted to accrue the hours for use as paid time off. Such hours shall be reported as Holiday Compensatory Time Straight (Payroll Code HC). The amount of leave accrued under this section shall be limited to twenty (20) hours. An employee shall notify his or her supervisor at least two (2) weeks prior to the holiday regarding the selection of pay or the accrual of hours. Scheduling of accumulated time off shall be coordinated between the employee and his/her supervisor.

In the event that a holiday occurs on a day the employee is normally scheduled to work, the employee will receive holiday pay on a pro-rata basis and, if the employee's normal hours for that day exceed the holiday pay, the employee will be provided the option of working additional hours in the workweek or using accumulated paid time off to equal his/her normal schedule. The employees will notify his or her supervisor at least two (2) weeks prior to the holiday regarding his or her choice to work or use accumulated time off.

**18.7 Paid Status**

In order to be eligible for holiday pay, an employee must be on paid leave status on his or her regularly scheduled workday before the recognized holiday.

**SECTION 19: SICK LEAVE**

**19.1 Eligibility**

Any employee shall be entitled to take sick leave with full pay in case of sickness, disability, or serious illness within the immediate family of the employee in accordance with the provisions of Section 20.2 (Accrual) and 20.7 (Leave Without Pay), inclusive.

**19.2 Accrual**

Each employee shall be credited with one (1) working day of sick leave with full pay for each month of service. For the purposes of Section 20 (Sick Leave), a month of service shall mean thirty (30) consecutive calendar days during which the employee is working or receiving pay in the case of employees working on a full-time or part-time basis, and shall mean 173 hours of work in the case of employees working on an intermittent basis.

### 19.3 Part-Time Accrual

An employee working on a part-time basis shall be entitled to use earned sick leave only on a pro rata basis; for example, if an employee works half-time the employee shall be paid for time off on sick leave on a half-time basis.

**Intermittent:** An employee who works on an intermittent basis shall be entitled to use earned sick leave only for those days on which the employee would have worked if the employee had not been sick; provided, however, that an employee working on an intermittent basis, who works only when called, shall be entitled to use earned sick leave only when the employee becomes sick after reporting to work in response to such call.

### 19.4 Maximum Accumulation

Such sick leave as provided in Section 20.2 (Accrual), when not used shall be cumulative. The accumulated unused period of sick leave shall not exceed two hundred (200) working days regardless of the length of service. When the maximum has been reached, and thereafter part of the maximum has been used, the number of accumulated sick days may be brought back up to maximum at the applicable rate provided in Section 20.2 (Accrual).

**Payment upon Retirement/Termination 20-28 Years of Benefitted Service:** All accumulated sick leave shall be canceled when an employee terminates or is terminated, except as provided below for employees hired on or before June 30, 2013. For employees hired on or before June 30, 2013 who retire or voluntarily terminate with a vested pension, and with at least twenty (20) and not more than twenty-eight (28) years of service shall be entitled to receive payment at retirement or termination with a vested pension of thirty eight percent (38%) of accumulated sick leave but not, in any event, more than their stated fractional amount of the two-hundred (200) day maximum accumulation. Employees who voluntarily separate from service with a vested pension and at least twenty-eight (28) years of benefitted City of Berkeley service shall be entitled to receive payment in an amount equal to fifty percent (50%) of their accrued sick leave days up to a maximum of two hundred (200) unused sick leave days.

**Permanent Disability:** Any employee hired on or before June 30, 2013 and retiring on permanent disability arising out of and incurred in the course and scope of his/her employment with the City shall be entitled to receive payment at retirement for thirty-eight percent (38%) of accumulated unused sick leave days, but not, in any event, more than thirty-eight percent (38%) of the two hundred (200) day maximum accumulation. Employees retiring on permanent disability arising out of and incurred in the course and scope of their employment with the City with at least twenty-eight (28) years of benefitted service shall be entitled to receive payment in an amount equal to 50% of their accrued sick leave days up to a maximum of two hundred unused sick leave days.

**Annual Sick Leave Payout:** Employees hired on or before June 30, 2013 who regularly work one-half ( $\frac{1}{2}$ ) time or more and who have attained the two hundred (200) day maximum sick leave accumulation shall be entitled to receive payment for one-third ( $\frac{1}{3}$ ) of the first twelve (12) days of sick leave, or if earning sick leave at the rate of two (2) working days for each month of service, one-third ( $\frac{1}{3}$ ) of the first twenty-four (24) days of sick leave, for which they become eligible, do not use and would otherwise forfeit because of the two hundred (200) day maximum limitation. Determination of eligibility for such payment shall be made on an annual calendar-year basis, and payment shall be made not later than January 22 of the following year. Such payment shall be made at the employee's salary rate in effect on the preceding December 31 and shall be made only in units of whole days, and will not be made for any fraction of a day.

**Sick Leave after Reemployment:** Accumulated sick leave which has been canceled by reason of an employee's layoff in accordance with Section 53 (Layoff) shall be credited back to such employee if the employee returns to City employment within three (3) years of such layoff.

#### 19.5 Purpose of Sick Leave

Sick leave shall not be considered as a privilege which an employee may use at the employee's discretion, but shall be allowed only in case of sickness or disability of the employee or in the case of serious illness within the immediate family of the employee. Not more than fifteen (15) working days (120 hours prorated for part-time benefited employees) in any calendar year may be taken as sick leave because of the illness of a member of the employee's immediate family. The immediate family of an employee, for the purpose of this Section, shall be defined as: a dependent residing in the employee's household or parent, spouse, child, legal guardian or ward, grandparent, grandchild, register domestic partner, or sibling. If the employees has no spouse or registered domestic partner, the employee may designate one person as to whom the employee may use paid sick leave to aid or care for the person. The opportunity to make such a designation shall be extended to the employee no later than the date on which the employee worked 30 hours after paid sick leave gains to accrue pursuant to Section 20.2 and 20.3 above. There shall be a window of ten (10) work days for the employee to make this designation. Thereafter, the opportunity to make such a designation, including the opportunity to change such designation previously made, shall be extended to the employee on an annual basis during open enrollment for medical benefits.

**Effect of Outside Employment on Sick Leave:** No sick leave shall be allowed for time off for an injury incurred while working for another employer, provided that the injury is covered by the Workers' Compensation laws of the State of California, or other provision for payment for time off because such injury is made by the other employer. In the event such injury is not covered by the Workers' Compensation laws of the State of California, and no other provision for payment for time off because of such injury is made by the other employer, sick leave in accordance

with the provisions of this Section shall be allowed only if such outside employment has been approved by the City.

**19.6 Notification**

Except in emergencies and where reliable reporting procedures are in place, in order to receive compensation while absent on sick leave, the employee shall notify his/her supervisor within one (1) hour after the time set for beginning his/her daily duties or as may be approved by the Department Head.

Leave for non-emergency doctor's appointments shall be requested in advance.

The City, the Library and the Rent Board may require that employees give notice, where reliable reporting procedures are in place, prior to the beginning of their scheduled shift in order to be eligible for sick leave. This requirement shall be applied equitably.

**19.7 Leave Without Pay**

An employee who is granted a leave of absence without pay and is otherwise off the payroll shall not earn sick leave credit.

**19.8 Control**

The City may establish a reasonable program for the control of abuse of sick leave and absenteeism, subject to Union review and comment.

**19.9 Sick Leave Bonus**

For every six (6) months of perfect sick leave attendance after July 1, 1987, the employee will receive eight (8) hours of bonus time. This bonus time will be prorated for part-time employees. Such bonus time can be used for any leave purpose covered by this Agreement. Such bonus time shall be counted as vacation leave credits for purposes of determining eligibility for carry-over and cash payments.

**19.10 Voluntary Leave Exchange for Catastrophic Illness**

19.10.1 **Recovery Transfer Time:** Recovery Time Transfer is that system whereby an employee grants time from earned compensatory vacation leave or sick leave to another employee. Such transfer of time shall be limited to situations where the recipient of the transfer is, by reason of illness or injury, threatened with the loss of earnings due to his/her exhaustion of employment benefits. Such time transfer request must be in writing, and subject to the approval of the City Manager/Director of Library Services/Executive Director of the Rent Board. Such approval shall not be unreasonably denied. Such transfer shall be credited to the recipient at the donor's rate of pay. Recovery Transfer Time will not be used for industrial injuries or illnesses. The use or receipt of Recovery Transfer Time shall not preclude possible medical separation of the recipient employee. The City

reserves the right to require medical verification by a qualified medical practitioner of the recipient employee's medical condition. The City may transfer an employee receiving Recovery Transfer Time into another position in the same classification.

19.10.2 **Vacation and Compensatory Time:** An employee may donate earned compensatory time off or vacation leave.

19.10.3 **Sick Leave:** An employee may donate accrued but unused sick leave as Recovery Transfer Time subject to the following conditions:

19.10.3.1 The employee donating sick leave must maintain a sick leave balance of at least 120 hours after the donation of leave for Recovery Transfer Time. An employee donating sick leave coincidentally with terminating employment with the City shall be limited to a sick leave donation of no more than forty (40) hours regardless of the sick leave donation option(s) used.

19.10.3.1.1 An employee may donate compensatory time off and/or vacation leave time; or

19.10.3.1.2 An employee may donate up to forty (40) hours of sick leave per calendar year and be charged hour per hour for each hour of sick leave donated; or,

19.10.3.1.3 After the first forty (40) hours of sick leave are donated, an employee may donate sick leave but the employee will be charged two hours of sick leave for each hour of sick leave donated for use as Recovery Transfer Time.

### 19.11 401(a) Termination Savings Plan

The City has established an Internal Revenue Code Section 401(a) plan and trust agreement to address the liquidation of sick leave at time of retirement and has received a Determination Letter and a Private Letter Ruling on the plan and trust agreement. This provides employees with an irrevocable option to defer accrued but unused sick leave at time of retirement into a 401(a) plan or be paid out the balance of the accrued but unused sick leave less withholding of applicable federal and state taxes.

### 19.12 Family Friendly and Environment Friendly Workplace

The City shall comply with the applicable provisions of the Berkeley Family Friendly and Environmental Friendly Workplace Ordinance 13.101 to members of this bargaining unit. As such, employees may request variable working hours such as, but not limited to, 10 hours a day, four (4) days a week, flexing start and end times, and working under a flexible arrangement. Management may approve, in advance, an employees' request to temporarily flex their work schedule between

the hours of 6:00 a.m. and 8:00 p.m. on a particular day, or over a specific period of time, by adjustment to the employee's start time and end time, or lunch break. Any denial of an employee's request for flexible scheduling shall explain the denial in a written response that sets out a business reason for the denial.

## **SECTION 20: WORKERS' COMPENSATION LEAVE AND SALARY CONTINUATION**

### **20.1 Workers' Compensation**

Workers' compensation payments shall commence, in accordance with State law, on the fourth day following injury, unless the employee is hospitalized, ("Hospitalized" meaning confinement), in which case payment commences on the first day of injury. Employees whose disability requires absence of more than 21 days will receive retroactive compensation, both pay and leave, for the three-day waiting period. Employees shall be on administrative leave with pay for the initial three (3) days. Such leave shall not be deducted from the employee's leave balance.

### **20.2 Salary Continuation**

Payments under the workers' compensation law for temporary disability or a recurrence thereof arising out of and in the course of employment shall be paid for a period not to exceed 365 days at a maximum payment of the employee's pre-disability pay, but shall not exclude any salary adjustments to which the employee is entitled. Thereafter, the employee will continue to receive only the temporary disability payments provided under State law and the City will cease to pay the difference. However, salary continuation payments above the statutorily required temporary disability payments shall not be reported by the City to CalPERS as compensation.

### **20.3 Salary Continuation Calculation (Gross/Net) Pay**

The City shall continue to calculate salary continuation at pre-disability gross pay. The City may calculate salary continuation payments at pre-disability net pay at such time when they develop the capacity to administer it equitably. Any change in calculation shall not reduce employee's combination of disability payments and salary continuation payments below employee's pre-disability net pay.

The change in calculation shall not affect employees who are off the job with a work-related injury prior to the new calculation method being implemented.

## **SECTION 21: BEREAVEMENT LEAVE**

### **21.1 Benefit and Covered Individuals**



In the case of death within the immediate family of an employee, the employee shall be entitled to remain absent from duty with pay in order to grieve the passing of a loved one, for a period not to exceed three (3) working days, or, in the case of attending a service outside the State of California, for a period not exceeding five (5) working days. Bereavement leave need not be taken in consecutive days but shall be taken within twenty (20) days of the death of the immediate family member. The immediate family of an employee, for the purpose of this Section, shall be defined as: spouse, domestic partner, child, parent, sibling, grandparent, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchildren, aunt, uncle, or dependent.

Bereavement Leave shall not be charged against vacation or sick leave to which an employee may be entitled, but shall be in addition thereto. Employees may request, and the City will make reasonable efforts to accommodate requests, for employees to supplement bereavement leave by using accrued vacation, compensatory time, or floating holiday. All accrued leave (and/or sick leave, if applicable) shall be utilized prior to taking a leave of absence without pay.

In special cases, with the approval of the Department Head, the City Manager or in the Library, the Director of Library Services may grant a death leave to allow an employee to attend funeral or memorial services because of the death of a person not included within the definition of the immediate family. This leave shall not be unreasonably denied.

In order to be eligible for Bereavement Leave as noted above, employees are required to complete and submit the City of Berkeley Bereavement Leave Statement as provided in the City policy. Employees shall not be required to provide an obituary.

## **21.2 Bereavement Leave for Part-Time Employees**

An employee working on a part-time basis shall be entitled to use bereavement leave only on a pro rata basis.

## **SECTION 22: MILITARY AND MARITIME LEAVE**

Military and Maritime Leave shall be governed by the provisions of the Federal Uniformed Services Employment and Reemployment Rights Act (USERRA) and any regulations promulgated to implement the Act, and the California Military and Veteran's Code.

## **SECTION 23: FAMILY CARE LEAVE**

The City's Family Care Leave policy, as of June 1995, is contained in Administrative Regulation (A.R.) 2.4 (attached as Appendix C). The Union will be notified of any revisions to A.R. 2.4 (Family Care Leave).

## **SECTION 24: LEAVE OF ABSENCE WITHOUT PAY**

### **24.1 Approval**

Upon request of the employee, a Department Head may grant to an employee within his/her department leave of absence without pay for a period not to exceed thirty (30) working days. No leave without pay shall be granted for more than thirty (30) working days except upon the written request of an employee and approval of the City Manager or his or her designated representative or Director of Library Services for Library employees. Failure on the part of an employee on leave to report promptly at its expiration shall be cause for discipline up to and including discharge.

- 24.1.1 In the event of illness, an employee must exhaust all available sick leave prior to receiving authorization for leave without pay.
- 24.1.2 The City shall not unreasonably deny a request for medical leave as Authorized Leave Without Pay for Part-Time benefitted employees who work or are compensated for a minimum of 1,040 hours, when the employee is suffering from a serious medical condition or must care for a family member with a serious medical condition.
- 24.1.3 In the event of a request for leave of absence for personal reasons (not related to sickness), an employee must exhaust all compensatory and vacation time available, prior to receiving authorization for leave without pay.
- 24.1.4 Accrual of sick leave credits and/or vacation benefits for an employee on leave without pay shall be as provided in Sections 17 (Vacation) and 20 (Sick Leave).

## **24.2 Right to Return**

An employee shall have the right to return to their classification upon return from an approved leave without pay.

## **24.3 Sabbatical Leave**

After eight (8) consecutive years of employment with the City, an employee may apply for a sabbatical leave without pay of up to six (6) months. Sabbatical leave is not intended to be used for the six-month period immediately prior to retirement. Such leave may be granted by the appropriate authority upon the recommendation of the employee's department head but such leave shall not be unreasonably denied. However, the department head will deny sabbatical leave requests for the period immediately prior to retirement. There shall be no requirement that the employee exhaust paid leave balances prior to such sabbatical leave. Life and Health insurance shall be paid by the City for the duration of an approved Sabbatical Leave. For employees who fail to return to work at the expiration of the approved Sabbatical Leave or fail to return for the equivalent amount of time he or she was approved for Sabbatical Leave, such employee shall reimburse the City or the City may deduct the cost of the Health and Life Insurance premiums paid by the City on behalf of the employee from the employee's payout of their accrued leave balance due at termination.

## **SECTION 25: JURY DUTY LEAVE**

An employee who is called or required to serve as a juror shall be entitled to be absent from duties or service with the City with pay during the period of such service or while necessarily being present in court as a result of such call, provided the employee provides proof of such call. The employee will keep any payment received for jury service including mileage reimbursement. Employees are required to submit a written proof of jury duty service issued by the Court Clerk.

On dates when required to be physically present at a court facility for jury service, an employee shall be entitled to be absent from work with pay, whether or not hours of jury service on that date correlate exactly with scheduled work hours. The employee shall be responsible for notifying his or her supervisor of impending jury service as soon as possible and for providing proof of attendance at the court to his or her supervisor.

## **SECTION 26: DOMESTIC VIOLENCE LEAVE**

The City will comply with the provisions of California Labor Code Section 230(c), which provides that victims of domestic violence, as defined in Section 6211 of the Family Code, may take time off from work to obtain or attempt to obtain relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of a domestic violence victim or his or her child. The City will comply with the provisions of California Labor Code Section 230.1, which

provides that an employee who is a victim of domestic violence, as defined in Section 6211 of the Family Code, will not be discharged or discriminated or retaliated against for taking time off from work to attend to any of the following:

**26.1 Medical Attention**

To seek medical attention for injuries caused by domestic violence.

**26.2 Services**

To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence.

**26.3 Counseling**

To obtain psychological counseling related to an experience of domestic violence.

**26.4 Safety**

To participate in safety planning and take other actions to increase safety from future domestic violence, including temporary or permanent relocation.

**26.5 Use of Leave**

The employee may use vacation leave, floating holiday time or compensatory time off for the purposes described above. The employee will give his or her supervisor reasonable advance notice of his or her intention to take Domestic Violence Leave unless advance notice is not feasible. When an unscheduled absence occurs, the City will not take action against the employee if the employee, within a reasonable time after the absence, provides a certification to his or her supervisor. The certification will be sufficient in the form of any of the following:

26.5.1 A police report indicating the employee was a victim of domestic violence.

26.5.2 A court order protecting or separating the employee from the perpetrator of an act of domestic violence, or other evidence from the court or prosecuting attorney that the employee has appeared in court.

26.5.3 Documentation from a medical professional, domestic violence advocate, health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence.

**26.6 Confidentiality**

To the extent allowed by law, the City shall maintain the confidentiality of any employee requesting domestic violence release time.

## **ARTICLE 4 - HEALTH AND WELFARE BENEFITS**

### **SECTION 27: HOSPITAL-MEDICAL AND DENTAL COVERAGE**

#### **27.1 Medical Coverage**

The City shall pay for the cost of health insurance coverage for employees, spouse/domestic partner and dependents who have such coverage under any group health insurance plan authorized by the City Council, regardless of the funding source for their position. The maximum amount the City shall be required to pay for medical insurance premiums shall be the applicable Kaiser rate (i.e., single party, two party, or family) regardless of the City sponsored health plan selected by the employee. The present level of the health plan benefits described above shall be maintained at City expense.

**Domestic Partnership Taxation:** If an employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for medical benefits for his or her domestic partner, the employee may be subject to federal and state income tax withholding.

**Part-Time Employees:** Effective July 1, 2008, the City will pay 75% of the cost of the medical plan which is fully paid for full time employees for those part time employees who work 20 to 29 hours per week. The City will pay 100% of the cost of the medical plan which is fully paid for full time employees for those part time employees who work 30 or more hours per week.

#### **27.2 Meet & Confer**

The Parties agree to meet and confer commencing no sooner than January 1, 2017. This negotiation shall be on methods to contain or reduce the City health benefit costs and/or preventing that the City be required to pay any penalties associated with the Excise Tax, including but not limited to a new and/or replacement health plan. This meet and confer process will be subject to normal rules of collective bargaining, including applicable impasse, strike or lockout procedures.

#### **27.3 Health Premium Overpayment Recovery**

If the City under deducts an employee's medical co-payment, the amount owed by the employee shall be paid back in monthly increments by the same amount as the undercharge, over the same number of months, unless the employee agrees to an alternative arrangement.

**Dependent Coverage:** The City agrees to extend all medical, dental and orthodontia benefit coverages to dependents of City employees up to the date of their 26th birthday.

**27.4 Dental Coverage**

The City shall provide a dental care program for employees. The Dental Program shall be maintained at City expense, to provide 90% co-insurance for the employee and employee's dependents, for the duration of this Agreement. Effective January 1, 1995, the Dental Program shall be improved at City expense to increase the lifetime orthodontic coverage from \$1,000 to \$2,000 and to increase the Dental Program annual coverage from \$1,000 to \$2,000. If an employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for dental benefits for his or her domestic partner, the employee may be subject to federal and state income tax withholding.

**27.5 Dental Insurance In-Lieu Payments**

For those employees who show proof of alternate dental insurance coverage, the City will compensate the employee \$61.64 per month, prorated for less than full-time employees. This benefit shall be frozen at this amount through the term of this Agreement.

**27.6 Maintenance of Plans**

In the absence of agreement between the City Manager and the Union to effect a new program, the City agrees to maintain the present hospital-medical and dental plans for the duration of this Agreement as specified above.

Before the City acts to change an insurance carrier during the term of this Agreement, the City shall give the Union thirty (30) days notice of its intention to change carriers and shall, upon written request, meet with the Union to discuss the reasons for such change. The final determination of insurance carriers shall be in the sole discretion of the City.

**27.7 Notice**

The City shall give advance notice to any employee who resigns, is terminated or is on a leave of absence, as to what is necessary to keep the Health Plan in force without a break in coverage.

**27.8 Health Insurance In-Lieu Payments Effective May 22, 2016**

Effective May 22, 2016, for employees who show proof of alternate medical coverage, the City will compensate the employee \$576.00 per month, prorated for less than full time benefitted employees. Effective upon ratification of the 2015 Memorandum Agreement, Library employees who continue to receive the amount in effect as of July 1, 2008, shall remain in effect through December 31, 2016. Effective January 1, 2017, Library employees under this Section shall receive \$576.00 per month, prorated for less than full-time benefitted employees.

**27.9 Effective Date of Benefits**

New medical and dental benefits shall begin the first day of the calendar month following the date of hire, and end the last day of the month an employee is in pay status.

**27.10 Flexible Spending Account**

The City shall establish an Internal Revenue Code Section 125 Flexible Spending Account that allows an employee to elect pre-tax deductions from salary for the purpose of paying allowable medical expenses. Such plan shall be established no later than November 1, 2008.

**SECTION 28: GROUP LIFE INSURANCE**

The City shall provide group life insurance, by a carrier of the City's choice, in the amount of \$50,000 for each employee that shall include the standard accidental death and dismemberment provision of a like amount.

Life insurance shall become effective the first day of the calendar month following appointment, and shall continue until the last day of the last calendar month in a pay status.

In addition, employees may purchase additional life insurance in increments of \$10,000 up to a maximum of \$300,000 at a rate offered by the City's insurance carrier and subject to any medical exam as required by the insurance carrier.

**SECTION 29: DEPENDENT CARE**

The City has established a Dependent Care Plan under Internal Revenue Code Sections 125 and 129 to allow employees to designate a specific amount of salary, consistent with applicable law, to be redirected to pay for dependent care costs prior to withholding of taxes.

**SECTION 30: RETIREE MEDICAL COVERAGE**

The City and Union have agreed that the City will make available retiree health insurance coverage under certain terms and conditions described below. The retiree medical benefit described below is the plan tentatively agreed to during multi-union bargaining during the summer of 1998. The terms and conditions of this benefit shall be set forth in a separate document which shall contain a full plan description and shall control the administration of the retiree medical plan.

The City will begin to provide the retiree medical coverage set forth in this section on June 28, 1998. An employee's entitlement to any and all benefits provided by the City under this retiree medical cover plan are subject to the funding limitations set forth in subsection 31.8 (City Funding of Retiree Health Benefit).

**30.1: Amendment of Retiree Health Premium Assistance Plan V, effective June 28, 1998, Restated and Amended effective March 22, 2011.**

Employees who retire on or after June 21, 2015, shall be permitted, at their discretion, to enroll in non-City sponsored health plans. After Council approval of the successor Memorandum of Understanding, the City shall amend the Retiree Health Premium Assistance Plan V (For Service Employees International Union, Local 1021 Community Services & Part-Time Recreation Leaders Association) as soon as practicable to allow enrollment in non-City sponsored health plans. In the event a retiree elects to enroll in a non-City sponsored health plan, the City shall make medical insurance premium payments directly to the health insurance provider in an amount equal to what the City would contribute to the City sponsored health plan. Retiree shall be solely responsible for all aspects of the requirements to enroll in a non-City sponsored health plan and maintain eligibility for such a plan; the City's sole obligation is to pay the medical insurance premium contribution required under this section, as directed by the retiree to a non-City sponsored health plan. The City shall not be responsible for any excess cost differentials associated with the direct payment of premiums to non-City sponsored plans. The City will only make payments through its third party administrator to provide medical insurance premium payments for an individual plan and will not make payments for a group plan. The retiree and/or surviving spouse or domestic partner that enroll in non-City sponsored health plans shall be solely responsible for paying the administrative set up fee, the monthly administrative fee, and/or any other fees established by the third party administrator, and said fees will be deducted directly from the retiree's monthly contribution. No cash payments will be paid directly to the retiree and/or the retiree's spouse/domestic partner. There shall be no cash in lieu payments made under this benefit.

The City and the Union agree that the City will also amend the Retiree Premium Assistance Plan V to allow eligible retirees who retired on or after June 21, 2015 to enroll in a non-City sponsored health plan.

The City agrees to meet and confer with SEIU, no later than January 1, 2019, regarding the reimbursement process of medical insurance premiums for the Retiree Health Assistance Plan for retiree and/or spouse/domestic partner until the death of both.



**30.2 Eligibility**

An employee is eligible for the retiree health insurance coverage set forth in subsection 30.3 (Pre Age 65 Retiree Health Insurance) below if he/she meets all the following criteria:

- 31.2.1 retires on or after June 28, 1998,
- 31.2.2 is vested with CalPERS,
- 31.2.3 has at least eight (8) years of CalPERS qualifying service with the City,
- 31.2.4 is at least age 55.

**30.3 Pre Age 65 Retiree Health Insurance**

Beginning June 28, 1998, the City shall make available health insurance coverage to the employee and his/her spouse or domestic partner. The City will pay on the employee's behalf no more than \$166.26 per month for an employee electing single party health coverage and no more than \$332.52 per month for an employee electing two-party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the following chart:

<b>Years of CalPERS Qualifying Service</b>	<b>Percent of City Contribution</b>
8	30%
9	40%
10	50%
11	58%
12	66%
13	74%
14	82%
15	90%
16	92%
17	94%
18	96%
19	98%
20	100%

The employee will pay the difference between the City's monthly contribution and the actual monthly insurance premium charged by the health plan he/she has elected for retiree medical coverage. If during the term of this Agreement, the premiums for such health insurance are increased, the amount the City contributes shall increase no more than 4.5% above the previous year's contribution. No increases in the amount the City contributes shall occur before July 1, 1999. Thereafter, any increase in the amount contributed by the City will occur on July 1 each year thereafter.

**30.4 Retiree Benefits for Employees Age 65 and Over**

Once an employee or retiree reaches age 65, he or she is eligible for Medicare. As a result his/her eligibility for the retiree medical benefits set forth in subsection 30.3 (Pre Age 65 Retiree Health Insurance) ceases. On reaching age 65, the City will make available health insurance coverage in addition to Medicare. When an employee or retiree reaches age 65, the City will contribute no more than \$16.17 per month on the employee's behalf for single party health insurance coverage and no more than \$32.34 per month for two-party health coverage. If during the term of this Agreement, the premiums for such health insurance are increased, the amount the City contributes shall increase no more than 4.5% above the previous year's contribution.

The City will take such actions under the provisions of Section 218(g) of the Social Security Act to permit employees who are not currently paying employee portion of the Medicare Tax with a one-time opportunity to choose to be covered by the Medicare Tax. If the employee chooses to be covered by the Medicare Tax the choice cannot be revoked at a later date.

**30.5 Termination by City of Retiree Medical Benefit**

Failure of the retiree or surviving spouse to pay their monthly share of the health insurance premium will result in termination of the retiree medical benefit and relieve the City of any further obligation to provide any further benefits under this section.

**30.6 Retiree Medical Benefit for Employees Retiring Between the Ages of 50 and 55**

An employee who is at least 50 years of age, but less than 55, and has at least eight years of CalPERS qualifying employment with the City will retain eligibility for the retiree medical benefits provided in subsection 30.3 (Pre Age 65 Retiree Health Insurance) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his/her termination from City employment until the employee's 55th birthday. If for any reason the employee has a lapse in group health care coverage the employee forfeits his/her eligibility for the retiree health plan benefits upon reaching age 55 and the City has no further obligation to provide any benefits under this section to the employee and/or his spouse or domestic partner.

**30.7 Employees Retiring with a CalPERS Approved Disability Retirement**

If an employee retires from the City before age 55 with a CalPERS approved disability retirement, the employee will retain eligibility for the retiree medical benefits provided in subsection 30.3 (Pre Age 65 Retiree Health Insurance) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his/her termination from City employment until the employee's 55th birthday. If for any reason the employee has a lapse in health care coverage the employee forfeits his/her eligibility for the retiree health plan

benefits upon reaching age 55 and the City has no further obligation to provide any benefits under this section to the employee and/or his spouse or domestic partner.

### **30.8 City Funding of Retiree Health Benefit**

City contributions to the retiree medical benefit will begin on July 1, 1998. Funding of this benefit will be set aside in a trust to be established by the City.

Effective with the 1998-2002 Memorandum Agreement, the retiree medical benefit was funded by a charge of 0.25% of payroll in each year of this Agreement, so that contributions are at 1% of the payroll in the fourth year of that Agreement. The City will fund the benefit at approximately 1% of the payroll for every year thereafter with the intent of achieving a funding level of 70% after 30 years. The funding will be ongoing to maintain a 70% funding level thereafter.

Effective July 4, 2004, except for employees in Representation Unit R-1, an additional charge of 0.25% of payroll was charged each year in the final four years of the 2002-2008 Agreement so that contributions are at 2% in the final year of that Agreement. The purpose of that 1% increase in payroll contribution was to fund post age 65 Medicare supplement plans. As a result of this change, the amount the City contributes toward the post-65 Medicare Supplement coverage under the Retiree Health Premium Assistance Plan is \$77 effective July 7, 2002 for all post 65 retirees formally represented by the union as well as future retirees.

Effective July 1, 2008, for eligible retirees between the ages of 55 and 65 who retire on or after June 29, 2008 the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by \$50 per month in addition to the 4.5% that occurs on July 1 as provided in Section 30.3 (Pre Age 65 Retiree Health Insurance). Effective July 1, 2009, the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by an additional \$25 per month (i.e., an aggregate \$75 per month increase) in addition to the 4.5% that occurs on July 1 as provided in Section 30.3 (65 Retiree Health Insurance). Effective July 1, 2011, the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by an additional \$25 per month (i.e., an aggregate \$100 per month increase) in addition to the 4.5% that occurs on July 1 as provided in Section 30.3 (Pre Age 65 Retiree Health Insurance).

The Union understands and acknowledges that the City conducted an actuarial study to determine the percentage of payroll it needed to set aside each year and the rate of return of 7% it must achieve to fund the retiree health benefit provided in this section. The City will conduct an actuarial study by an outside actuary of the retiree medical plan prior to June 30, 2002. After that time, the City will conduct an actuarial study by the outside actuary of the retiree medical plan every two to three years to review the funding status of the program. The outside actuary will be selected by mutual agreement of the parties. The Union and City agree that if

the Actuary concludes that the City’s funding of this benefit by contribution of 1% of the payroll for all miscellaneous employees is insufficient to fully fund the retiree medical benefits, the City shall not be required to increase its funding for this benefit to more than 1% of the payroll for miscellaneous employees. In the event that there are insufficient funds in the trust to cover all retirees’ monthly health premiums, the City and the Union agree to meet and confer regarding the City’s distribution of its 1% contribution.

The City shall include in its next actuarial request in preparation of the next successor contract negotiations the impact on the City if the City were to amend its Retiree Health Premium Plan V to provide the following benefit levels:

Single:	\$577.32
Single and Dependent:	\$577.32
Single + (spouse, domestic partner):	\$1154.00

**SECTION 31: PROBATIONARY PERIOD**

**31.1 Duration**

Original and promotional appointments from employment lists shall be tentative and subject to a probationary period of six (6) months (and a minimum of 1040 hours) of actual service for full-time employees, and six (6) calendar months for part-time employees (and a minimum of 520 hours for ½ time employees; 780 hours for ¾ time employees, etc), exclusive of all leave and light duty, and shall be completed within a one (1) year period. The probationary period may be extended as provided in Section 31.4 (Extension of Probationary Period for Classifications Covered by Section 31.1 – Duration) and 31.5 (Extension of Probationary Period for Classifications Covered by Section 31.2 – Nine (9) Month Probationary Period). Probationary employees who are granted military leaves of absence shall complete the balance of their probationary period within a period of six (6) months following their return to City service. No provision of this Section 31.1 (Duration) shall be interpreted to preclude the City from establishing new classifications which may require a probationary period of more than six (6) months.

**31.2 Nine (9) Month Probationary Period**

The probationary period for employees hired in one of the following classifications shall be nine (9) months (and a minimum of 1560 hours) of actual service for full-time employees, and nine (9) calendar months of actual service for part-time employees (and a minimum of 780 hours for ½ time employees, 1170 hours for ¾ time employees, etc.) except as provided in Section 31.3 and may be extended as provided in Section 31.5 (Extension of Probationary Period for Classifications Covered by Section 31.2 – Nine (9) Month Probationary Period).

31.2.1 Applications Programmer Analyst II (for employees hired on or after July 1, 2008)

- 31.2.2 Architect
- 31.2.3 Auditor II
- 31.2.4 Central Library Circulation Supervisor
- 31.2.5 Community Development Project Coordinator
- 31.2.6 Hazardous Materials Specialist II
- 31.2.7 Landscape Architect
- 31.2.8 Landscape Architect (Registered)
- 31.2.9 Library Literacy Program Coordinator
- 31.2.10 Library Materials Preparation Specialist
- 31.2.11 Library Special Services Coordinator
- 31.2.12 Senior Community Health Specialist
- 31.2.13 Senior Environmental Health Specialist
- 31.2.14 Senior Field Investigator
- 31.2.15 Senior Health Management Analyst
- 31.2.16 Senior Information Systems Specialist
- 31.2.17 Senior Librarian
- 31.2.18 Senior Mental Health Clinician
- 31.2.19 Senior Planner
- 31.2.20 Senior Psychiatric Social Worker
- 31.2.21 Senior Public Health Nurse
- 31.2.22 Supervising Librarian
- 31.2.23 Supervising Library Assistant

**31.3 Six (6) Month Probationary Period**

For the promotional appointment of a career employee to a non-supervisory position that is part of the normal promotional ladder for that position, the probationary period shall be six (6) months of actual service (and a minimum of 1,040 hours), six (6) months of actual service for part-time employees (and a minimum of 520 hours for ½ time employees, 780 hours for ¾ time employees, etc.) except as provided in Section 32.4 (Extension of Probationary Period for Classifications Covered by Section 32.1 – Duration). No position shall have a longer probationary period than the probationary period applicable to the position that supervises that position.

**31.4 Extension of Probationary Period for Classifications Covered by Section 31.1**

For employees hired into positions covered under Section 31.1 (Duration) the Department head may extend the probationary period during the fifth or sixth month of a six (6) month probationary period from six (6) to nine (9) months provided that written probationary period evaluations have been given to the employee and filed with the Director of Human Resources no later than forty-five (45) days after the second and fourth months and these evaluations include statements of where the employee’s performance needed improvement or which essential duties of the position the supervisor had not yet been able to evaluate.

**31.5 Extension of Probationary Period for Classifications Covered by Section 32.2**

For employees hired into positions covered under Section 31.2 (Nine (9) Month Probationary Period), the Department head may extend the probationary period during the seventh or eighth month of a nine (9) month probationary period from

nine (9) to twelve (12) months provided that written probationary period evaluations have been given to the employee and filed with the Director of Human Resources no later than forty-five (45) days after the third and sixth months and these evaluations include statements of where the employee's performance needed improvement or which essential duties of the position the supervisor had not yet been able to evaluate.

**31.6 Promotion or Provisional Appointment Prior to Completing Probationary Period**

Unless applying for a closed examination, an employee does not have to complete the probationary period as a prerequisite for promotion. If, before completing the required probationary period, an employee is provisionally appointed to a higher class in the same or a related series of classes, the time served in such higher class shall be counted toward completion of the probationary period in the lower class.

**31.7 Probationary Performance Evaluations**

The City shall give probationary employees written, bi-monthly, probationary period evaluations in order to advise the employee of their performance. If the service of the probationary employee has been satisfactory to the Department Head, the Department Head shall file with the Director of Human Resources a statement in writing to such effect and stating that the retention of such probationer in the service is desired. If such service has been unsatisfactory, the Department Head shall file with the Director of Human Resources such a statement, in writing, with the recommendation to the City Manager/Board of Library Trustees that the employee be discharged. The provisions of this section shall in no way limit the rights of the City under Section 31.8 (Rejection During Probationary Period).

**31.8 Rejection during Probationary Period**

During the probationary period, an employee may be discharged at any time without right of appeal or hearing in any manner, except that appeal may be had in accordance with Section 37 (Grievance Procedure), if it is alleged that the discharge was in violation of Section 3 (No Discrimination). An employee rejected from a position to which the employee has been promoted shall be reinstated to the position from which the employee was promoted unless charges are filed and the employee is discharged as provided in Section 38.6 (Discharge).

**31.9 Exception to Probationary Period**

Employees reclassified as a result of a desk audit shall not be subjected to a new probationary period provided the employee has performed those duties for one year or more and has not received an unsatisfactory evaluation during that period.

## **SECTION 32: TRANSFER**

The Human Resources Department shall maintain a list of career employees who are interested in transfer. Prior to filling a vacancy with a new (probationary) employee, the Department Head shall consider qualified employees on the transfer list. No employee shall be transferred to a position for which the employee does not possess the minimum qualifications. An employee with permanent status who is transferred from one class to another class shall assume permanent status in the class to which the employee is transferred.

Prior to outside recruiting, vacancies will be announced for two (2) weeks by notices in *Berkeley Matters*, on bulletin boards and by notice to departments.

## **SECTION 33: PROMOTION**

### **33.1 Filling of Vacancy**

Insofar as practicable and consistent with the best interests of the service, all vacancies in the competitive service shall be filled by promotion from within the competitive service, after a promotional examination has been given and a promotion list established. Consistent with City of Berkeley Personnel Rules, each candidate for promotion must be either a permanent employee in the competitive service or a former permanent employee on an active mandatory layoff Reemployment List and must possess the minimum qualifications as set forth in the specifications of the class to which promotion is sought. The right to compete in a promotional examination in a specific classification series is not limited to employees in the bargaining unit.

### **33.2 Open, Competitive Examination**

If, in the opinion of the City Manager, or for Library positions the Director of Library Services, or for Rent Board positions the Executive Director of the Rent Board, the best interests of the service can be served by an open, competitive examination instead of a closed, promotional examination, and if there is not already a valid promotional list for the higher position, from which the vacancy could be filled, then the City Manager, or for Library positions the Director of Library Services, or for Rent Board positions the Executive Director of the Rent Board, may instruct the Director of Human Resources to call for applications for the vacancy and arrange for an open, competitive examination and for the preparation and publication of an eligibility list.

### **33.3 Interview of City Employee**

A City employee who is on a closed promotional or an open competitive list shall have the option to interview for the vacancy. A City employee who is unsuccessful and who so requests shall be advised of steps s/he may take to increase her/his competitive standing for future promotional opportunities.

**33.4 Promotional Considerations**

Employees who have qualified for promotional lists shall be considered for promotion based on the following factors: previous work performance, previous training and experience, merit, ability, and seniority.

**33.5** Employees concerned with promotion should also refer to Sections 10.4 (Temporary Vacancy), 10.5 (Maximum Consecutive Temporary Appointment), 10.7 (Working in Higher Classification), 10.9 (Notification of Change in Classification Duties and Responsibilities), 10.11 (Desk Audits), 40.4 (Annual Performance Evaluation), 40.5 (Employee Development and Training Opportunities), 40.6 (Educational Leave) and 40.12 (Internships).

**33.6 Waiver of Minimum Qualifications**

If in the opinion of the City Manager, the City is facing staffing reductions which will result in displacement of employees, a waiver of minimum qualifications and/or the substitution of related experience and education may be made in promotional examinations, with an understanding on the part of management and supervisory personnel that adequate on-the-job training which can be completed within no more than one year, will be provided to facilitate job adjustment and to compensate for the waiver of qualification standards if that has occurred. The promotional recruitment announcement will state that minimum qualifications may be waived providing the applicant's experience and education demonstrates her/his on-the-job development potential, as stated above. In promotional appointments where the minimum qualifications have been waived, the probationary period will be one year to allow the employee time to demonstrate development of the necessary job knowledge and skills.

**SECTION 34: FILLING OF VACANCIES**

All career and temporary vacancies of 90 days or more shall be announced in **Berkeley Matters**, on bulletin boards and by notice to departments, and a copy of **Berkeley Matters** shall be made available to all employees.

**SECTION 35: RESIGNATION**

An employee wishing to leave the competitive service in good standing shall file with the Department Head, at least two (2) weeks before leaving the service, a written resignation stating the effective date and reasons for leaving. The resignation shall be forwarded to the Director of Human Resources with a statement by the Department Head as to the resigned employee's service performance and other pertinent information concerning the cause for resignation. Failure of the employee to give the notice required shall be entered on the service record of the employee, and may be cause for denying future employment by the City. The resignation of an employee who fails to give notice shall be reported by the Department Head immediately.



The City will discontinue use of the "would not recommend rehire" box on transaction forms.

### **SECTION 36: REINSTATEMENT**

A permanent or probationary employee who has resigned with a good record may be reinstated within three (3) years to the employee's former position, if vacant, or to a vacant position in the same or comparable class without further competitive examination. This section shall not be interpreted as a guarantee of reinstatement to an employee who has resigned with a good record and who requests reinstatement within three (3) years.

An employee who is reinstated under this Section who has completed probation in the classification to which the employee is being reinstated shall not serve a probationary period on reinstatement. An employee who is reinstated under this Section who has not completed probation in the classification to which the employee is being reinstated shall be required to serve a new probationary period on reinstatement. The duration of the probationary period determined by the classification and the provisions of Section 31(Probationary Period) of this Agreement.

## **ARTICLE 5 - GRIEVANCE AND DISCIPLINARY APPEAL PROCEDURE**

### **SECTION 37: GRIEVANCE PROCEDURE**

#### **37.1 Preamble**

- 37.1.1 The City and the Union will make every effort to create a working environment free from hostility, intimidation, and disrespect.
- 37.1.2 The supervisor may have a management representative present during a discussion with an employee and his or her Union representative.
- 37.1.3 No employee shall represent in a grievance any employee he or she regularly supervises.

#### **37.2 Definitions**

For purposes of this section of this Agreement, the following definitions shall apply:

- 37.2.1 **Grievance:** Any dispute which involves the interpretation or application of the terms of this Agreement and those rules, regulations, and resolutions which have been or may hereafter be adopted by the City Council, Board of Library Trustees, and Rent Board to govern personnel practices and working conditions, including such rules, regulations and resolutions as may be adopted by the City Council, Board of Library Trustees and Rent Board to effect Memorandum Agreements which result from the meeting and conferring process. The grievance procedure outlined herein shall be the sole formal mechanism for resolving disputes or complaints of unit members.
- 37.2.2 **Administrative Complaint:** An Administrative Complaint is a grievance filed by a grievant or the Union specifically regarding payment of compensation or the interpretation and application of contract provisions and past practices, or allegations of past practice.
- 37.2.3 **Discrimination Complaint:** A Discrimination Complaint is a grievance filed by a grievant or the Union regarding a violation of Section 3 of this Agreement.
- 37.2.4 **Grievant:** A Grievant may be any member of the bargaining unit covered by the terms of this Agreement, or the grievant may designate the Union to act on his or her behalf or the Union itself may file a grievance on behalf of a member or group of members.
- 37.2.5 **Grievance Appeal Officer:** Appeals of grievances will be heard by the City Manager for general City operations, the Library Board of Trustees for Library employees may designate the Director of Library Services as the Appeals Officer and the Executive Director of the Rent Board for Rent Board

employees. The City Manager, Library Board of Trustees or the Rent Board may designate a Grievance Appeal Officer in their stead.

37.2.6 **Union:** The term Union used throughout this procedure shall include by reference the bargaining unit itself and the appropriate Chapter President and Chief Steward who may be representing an employee engaged in this Grievance and Disciplinary Appeal Procedure.

37.2.7 **Day:** A day is defined herein as any day in the calendar year on which the City of Berkeley is regularly open and providing full administrative services to the public.

### 37.3 Grievance Procedure

**Initial Filing Period:** Formal written grievances must be filed at Step 1 of the grievance procedure within thirty (30) days of the date the incident occurred or within thirty (30) days of the date the grievant or the Union reasonably should have had knowledge of the matter.

#### 37.3.1 Informal Process:

37.3.1.1 **Complaints Filed With:** An employee or Union who believes that s/he/it has a grievance shall discuss the grievance informally with the applicable immediate non-bargaining unit supervisor. If this is not possible due to the absence of this supervisor, the employee or his/her Union may discuss the grievance informally with the applicable Division Manager.

37.3.1.2 **Filing Period:** Such informal grievances shall be verbally brought to the attention of either the immediate non-bargaining unit supervisor or, if unavailable, with the Division Manager within a reasonable period of time of the incident generating the grievance. (NOTE: In order to comply with formal grievance procedures, refer to Section 37.3, "Initial Filing Period", for absolute filing deadlines and time frames for formal grievances.)

37.3.1.3 **Process:** The grievant shall be entitled to a personal conference with, and an informal decision by, either the relevant supervisor or Division Manager within ten (10) days of making the request for an informal meeting. This informal decision terminates the informal process unless mutually agreed upon by employee, supervisor/manager and Union to extend informal discussions.

#### 37.3.2 Formal Process: STEP 1 – First-Level Manager

- 37.321 **Complaints Filed With:** If the grievant is not satisfied with the results of the informal process, the grievant may file a formal written grievance following the conclusion of the informal conference process. Such written grievance shall be presented to the applicable Division Manager with a copy to the Department Director and the union.
- 37.321.1 **Interpretation of Agreement and Past Practice:** Questions regarding the interpretation of the Agreement or allegations of violations of Past Practice shall initially be filed in writing with the Director of Human Resources of the City.
- 37.321.2 **Compensation:** All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Director of Human Resources of the City.
- 37.321.3 **EEO:** All complaints concerning discrimination or other Section 3 (No Discrimination) matters shall be initially filed in writing with the Equal Employment Opportunity and Diversity Officer of the City. However, complaints alleging violation of any applicable laws pertaining to protected union activity will be filed with the Director of Human Resources of the City.
- 37.322 **Filing Period:** This written grievance must be filed within ten (10) days following the conclusion of the informal conference process, except as follows:
- 37.322.1 **Compensation:** Administrative Complaints regarding issues concerning payment of compensation may be filed within 90 days of the last day of the alleged under or over compensation.
- 37.322.2 **EEO:** The allowed time for filing of a complaint under this section shall be governed by the EEO Complaint Investigation and Resolution Procedure of the City of Berkeley's EEO/Affirmative Action Program (attached herein as Appendix B).
- 37.323 **Process:** The grievance must be presented in writing on a form provided by the City, and approved by the Union. The written statement shall be a clear, concise statement of the grievance including specific provisions of this Agreement alleged to have been violated, the circumstances involved, the decision rendered at the informal conference, and the specific remedy sought. Within ten (10) days of receiving the written grievance, the grievant shall be entitled to a personal conference with the Division Manager if requested. Other than issues of Contract Interpretation and Past Practices, Compensation or EEO, within ten (10) days, the Division Manager shall communicate a

written decision to the grievant and the Union with a copy to the Director of Human Resources and the Department Director. Such action will terminate Step 1.

- 37.3.2.3.1 **Compensation:** In the case of issues of compensation, the Director of Human Resources or his/her designee shall respond in writing within thirty (30) days of receiving the written complaint. In such cases, no adjustment shall be retroactive for more than thirty (30) calendar days from the date upon which the complaint was filed or thirty (30) calendar days from the date when an employee and/or the Union may reasonably be expected to have learned of said claimed violation. Only complaints which allege that employees are not being compensated in accordance with the rules, regulations, and resolutions of the City Council or in accordance with the understanding contained in any Agreement which has resulted from the meeting and conferring process shall be considered.

Any other matters of compensation are to be resolved in the meeting and conferring process, and, if not detailed in the operative Agreement which results from such meeting and conferring process, shall be deemed withdrawn until the meeting and conferring is next opened for such discussion.

- 37.3.2.3.2 **EEO:** Discrimination complaints shall be processed in accordance with the EEO Complaint Investigation and Resolution procedure of the City of Berkeley EEO/Affirmative Action Program (attached herein as Appendix B) except that:

- 37.3.2.3.2.1 The employee has the right to be represented by a Union representative at all stages of the informal and formal complaint investigation and resolution procedure;
- 37.3.2.3.2.2 The Equal Employment Opportunity and Diversity Officer shall meet with and report to only the City Manager during the formal resolution process; and
- 37.3.2.3.2.3 The City Manager shall make the final decision on the complaint which may be appealed by the Union to an impartial arbitrator within ten (10) days of receipt by the Union of the City Manager's decision. Such an appeal shall be processed in accordance with the above defined grievance procedure of this Agreement. The City shall promptly notify the Union of the filing of all formal complaints, as well as their acceptance or rejection.

The City Manager or his or her designee will notify the Union of a proposed decision on a formal complaint, and the reasons therefore, and upon a request within ten (10) days, shall meet with the Union prior to issuing a final decision.

If a grievance also alleges a violation of another section of the contract in addition to Section 3 (No Discrimination), Section 37.3.2.3.2. shall apply only to that part of the grievance which alleges a violation of Section 3 (No Discrimination) unless otherwise mutually agreed.

Complaints challenging, disputing, or seeking to modify or change any policy component of the City's EEO/Affirmative Action Program, including but not limited to the assignment of responsibilities, workforce utilization analysis, and affirmative action goals and timetables, shall not be subject to the grievance/arbitration procedures of this Agreement. This in no way limits the right of the Union to grieve violations of the City's EEO/Affirmative Action Plan.

**37.3.2.3.3 Interpretation and Past Practice:** In the case of issues of interpretation of the Agreement, past practices, payment of compensation or violations of Section 3 (No Discrimination) of the Agreement (Discrimination, etc.), if the grievant is not satisfied, s/he may move the complaint directly to Step 3 of this grievance procedure.

### **37.3.3 Formal Process: STEP 2 – Department Director**

**37.3.3.1 Complaints Filed With:** If the grievant is not satisfied with the results rendered in Step 1, the grievant may appeal the decision in writing to the applicable Department Director or his/her designee with a copy to the union.

Contract Interpretation and Past Practice, Compensation and EEO complaints would go directly to Step 3 of this process. (NOTE: See Section 37.3.2.)

**37.3.3.2 Filing Period:** Such written appeal must be submitted to the Department Director or his/her designee within ten (10) days from the date the grievant received the decision of the Division Manager.

37.3.3.3 **Process:** The written appeal shall include a copy of the original grievance, a description of the informal process and results, the decision rendered at Step 1 and a clear, concise statement of the reasons for the appeal. Within ten (10) days of receiving the written grievance, the grievant shall be entitled to a personal conference with the Department Director or his/her designee if requested. Within ten (10) days of the personal conference, the Department Director or his/her designee shall communicate a written decision to the grievant and the union with a copy to the Director of Human Resources. Such action will terminate Step 2.

**37.3.4 Formal Process: STEP 3 – Grievance Appeal Officer:**

37.3.4.1 **Complaints Filed With:** If the grievant is not satisfied with the results rendered in Step 2 for general grievances and Step 1 for issues of Contract Interpretation and Past Practice, Compensation or EEO, the grievant may appeal the decision in writing to the applicable Grievance Appeal Officer with a copy to the Department Director, the Director of Human Resources and the union.

37.3.4.2 **Filing Period:** Such written appeal must be submitted to the appropriate Grievance Appeal Officer within ten (10) days from the date the grievant received the decision rendered in Step 2.

37.3.4.3 **Process:** The written appeal shall include a copy of the original grievance, a description of the informal process and results, the decision rendered at Step 1 and 2 and a clear, concise statement of the reasons for the appeal. Within ten (10) days of receiving the written grievance, the grievant shall be entitled to a personal conference with the Grievance Appeal Officer or his/her designee if requested. Within ten (10) days of the personal conference, the Grievance Appeal Officer or his/her designee shall communicate a written decision to the grievant and the union with a copy to the Director of Human Resources and the Department Director. Such action will terminate Step 3.

**37.3.5 Formal Process: STEP 4 – Arbitration**

37.3.5.1 **Complaints Filed With:** If the Union is not satisfied with the results rendered in Step 3, the Union may require that the grievance be referred to an impartial arbitrator by notifying the applicable Grievance Appeal Officer.

37.3.5.2 **Filing Period:** Such notification of desire to go to arbitration must be filed in writing with the Grievance Appeal Officer within thirty (30) days of the conclusion of Step 3 with a copy to the Director of Human Resources. Provided further that the Union shall forward to the City the Union's portion of the California State Mediation and Conciliation

Services (CSMCS) fee within sixty (60) days of receipt of the City Manager's response. Failure by the Union to meet either the thirty (30) day or sixty (60) day deadline for both referral to Arbitration and payment of the CSMCS fee shall be deemed as a full and complete waiver by the Union to appeal the City Manager decision to Arbitration and the City Manager decision shall be final and binding on all parties.

37.35.3 **Process:** The impartial arbitrator shall be selected from the California State Mediation and Conciliation Services (CSMCS) unless another party is mutually agreed upon. CSMCS will provide a list of five (5) arbitrators. The City and the Union will alternately strike a name until one remains. The remaining name will be the arbitrator. The cost of the arbitrator's decision shall be borne equally by the parties.

The arbitrator may hear testimony, receive written briefs, interview witnesses, and conduct any investigations she or he deems appropriate, and shall render a final and binding decision to the parties which will end the formal grievance process.

No Arbitrator shall entertain, hear, decide or make recommendations on any dispute involving a deposition over which a formally recognized employee organization has jurisdiction unless such dispute falls within the definition of a grievance as specified in this Section.

Proposals to add or to change the Agreement or written agreements or addenda supplementary hereto shall not be arbitrable and no proposal to modify, amend or terminate the Agreement, nor any matter or subject arising out of or in connection with such proposal may be referred to arbitration under this Section; and neither any Arbitrator shall have the power to amend or modify or recommend amendment or modification of the Agreement, or any written agreements or addenda supplementary hereto or to establish or recommend establishment of any new terms and conditions of employment.

No changes in this Agreement or interpretation thereof (except interpretations resulting from arbitration proceedings hereunder) will be recognized unless agreed to by the City Manager and the Union.



### 37.3.6 General Conditions of a Formal Grievance

- 37.3.6.1 **Union Representation:** The grievant shall be entitled upon request to representation by the Union at all levels of the grievance procedure. In situations where the Union has not been requested to represent the grievant, the City will not agree to a final resolution of the grievance until the Union has received a copy of the grievance and the proposed resolution, and has been given the opportunity to respond and state its view on the matter. The Union will be given ten (10) days in which to respond.
- 37.3.6.2 **Time Limits:** Failure by the Union to file or appeal a grievance within the time limits specified constitutes a dropping of the grievance. Failure by the City to respond by the specified times shall entitle the Union to move the matter to the next higher step of the grievance procedure. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.
- 37.3.6.3 **Witnesses:** The City and / or the grievant may call witnesses.
- 37.3.6.4 **Release Time:** If an employee covered by this Agreement gives testimony in connection with the grievance procedure during working hours, the employee shall suffer no loss of pay. If the grievant's hearing is scheduled during working hours, the grievant shall suffer no loss of pay in order to present his or her grievance.

## SECTION 38: DISCIPLINARY ACTIONS

### 38.1 Preamble

- 38.1.1 The City commits itself to the application and enforcement of a uniform policy of progressive discipline.
- 38.1.2 An employee may request the presence of a steward during an interview with her/his supervisor which the employee reasonably believes may result in disciplinary action, and where there is no assurance from the supervisor that disciplinary action is not intended. If at any time during an interview without a steward in attendance, it becomes apparent that disciplinary action could occur, either party may adjourn the interview until a steward can be present.
- 38.1.3 The supervisor may have a management representative present during a discussion with an employee and his or her Union representative.

## 38.2 Definitions:

- 38.2.1 **Disciplinary Action:** The recommendation of or implementation by an employee's supervisor or Department Director related to the suspension, demotion, salary reduction or discharge of an employee covered by this Agreement.
- 38.2.2 **Disciplinary Appeal:** A Disciplinary Appeal is the procedure established hereunder to afford an employee his or her due process rights related to a pending disciplinary action. An employee may appeal the recommendation or imposition of suspension, demotion, salary reduction or discharge other than when such action is taken during the formal probationary period for that employee.
- 38.2.3 **Salary Reduction:** Salary Reduction is the reduction of an employee's base compensation to a lower salary step within the employee's current salary range for a specified period of time.
- 38.2.4 **Suspension:** Suspension is the temporary removal of an employee from his or her duties without pay.
- 38.2.5 **Union:** The term Union used throughout this procedure shall include by reference the bargaining unit itself and the appropriate Chapter President and Chief Steward who may be representing an employee engaged in this Grievance and Disciplinary Appeal Procedure.
- 38.2.6 **Day:** A day is defined herein as any day in the calendar year on which the City of Berkeley is regularly open and providing full administrative services to the public.

## 38.3 Written Reprimand

In the event that an employee receives a written reprimand, the Union or the employee may request a meeting with the supervisor to discuss the reprimand. Such meeting shall occur within fifteen (15) days of the request. The employee may write a rebuttal to any written reprimand within thirty (30) calendar days of receiving the written reprimand or the meeting and such rebuttal will be placed in the Personnel File along with the written reprimand.

## 38.4 Demotion

The City Manager (or Board of Library Trustees) may demote an employee who so requests it, or whose ability to perform required duties falls below standard, or for just cause. No employee shall be demoted to a class for which the employee does not possess the minimum qualifications as determined by the Director of Human Resources.

Notice of the demotion shall be given the employee no later than thirty (30) days prior to the effective date of demotion and a copy of said notice shall be simultaneously filed with the Director of Human Resources and the Union. Said notice shall include the reasons for the action.

An employee with permanent status who is demoted shall assume permanent status in the class to which the employee is demoted.

Upon the request of the employee, demotion may be made to a vacant position as a substitution for layoff. In such cases the employee shall be restored to his/her other former position without further examination whenever such position is again to be filled.

### **38.5 Suspension**

The City Manager may suspend an employee from his/her position at any time for just cause. Suspension without pay shall not exceed twenty (20) working days. No employee shall be penalized by suspension for more than twenty (20) working days in any one year period.

A Department Head may suspend an employee for not more than three (3) working days for any one offense. Such suspension shall be reported immediately in writing to the City Manager and the Union.

Any suspension will be postponed until the City Manager level is concluded in the grievance/disciplinary appeal procedure.

An employee who the Department Head determines to be an immediate threat to the health and safety of co-workers or the public shall be placed on administrative leave with pay and sent home.

### **38.6 Discharge**

An employee may be discharged at any time by the City Manager or the Director of Library Services for employees of the Library. If the probationary period has been completed, then such discharge must be for just cause. Any employee who has been discharged shall be entitled to receive a written statement of the reasons for such action. Said written statement shall be provided simultaneously to the Union.

### **38.7 Written Notice of Intent**

Employees who are to be demoted, suspended or discharged for just cause shall be given written notice of such intended action, including the reasons therefore issued by the immediate supervisor/manager. A copy of such written notices shall be sent simultaneously to the Union. The employee shall be afforded the opportunity to a Skelly conference with the department head or his or her designee as provided in Section 38.8.3 (Disciplinary Process: STEP 1 – Department Director) or may respond to the Notice of Intent in writing to the Department Head within ten (10) working days of receipt of the Written Notice of Intent.

The Department Director (or his or her designee) or for Library employees, the Deputy Director of Library Services (or his or her designee) shall hold a Skelly conference with the employee and his or her Union representative.

### **38.8 Disciplinary Appeals**

**38.8.1 Union Representation:** An employee may request the presence of a Union steward during an interview with his or her supervisor when the employee reasonably believes the interview may result in disciplinary action, and where there is no assurance from the supervisor that disciplinary action is not intended. If at any time during an interview without a steward in attendance, it becomes apparent that disciplinary action could result, either party may adjourn the interview until a steward can be present. The City commits itself to the application and enforcement of a uniform policy of progressive discipline.

**38.8.2 Sole Mechanism:** The provisions of this section shall be the sole mechanism for resolving Disciplinary Appeals pertaining to suspensions, demotions, salary reductions and terminations and shall be processed in the following manner:

#### **38.8.3 Disciplinary Process: STEP 1 – Department Director**

**38.8.3.1 Skelly Conference:** The Department Director (or his or her designee) or for Library employees, the Deputy Director of Library Services (or his or her designee), shall meet with the employee and his or her Union representative, or the affected employee may choose to make an appeal in written form.

The Skelly conference is the employee's opportunity to present his or her side of the story. The Department Director or his or her designee shall issue a Skelly decision sustaining, modifying or rejecting the discipline within ten (10) working days after the completion of the Skelly conference with the affected employee, or if the employee chose to make an appeal in written form, receipt of the written appeal. This shall conclude Step 1 of the Disciplinary Appeal Procedure.

#### **38.8.4 Disciplinary Process: STEP 2 – Appeal of the Decision**

**38.8.4.1 Appeals Filed With:** If the employee or his or her Union is not satisfied with the Skelly decision in the case of suspensions of three (3) days or less, or Skelly recommendation in the case of suspension of more than three (3) days, of the Department Director or his or her designee resulting from Step 1, the employee or the Union may appeal the Skelly action rendered by the department head to the City Manager. The City

Manager or his or her designee shall hear the appeal. In the Library, the Board of Library Trustees may designate the Director of Library Services or other designee as the Discipline Appeal Officer.

**For Suspensions of Three (3) Days or Less:** If the employee or his or her Union do not appeal the decision of the Department Director or his or her designee resulting from Step 1, the disciplinary action shall be implemented in accordance with the provisions of Section 38.5 (Suspension) and the Disciplinary Appeal Procedure will end here.

**For Disciplinary Action of Suspensions of Greater than three (3) days or Discharge:** If the employee or his or her Union do not appeal the Skelly action rendered by the Department Director or his or her designee resulting from Step 1, the disciplinary actions involving suspension greater than three (3) days, salary reduction or discharge will be referred to the City Manager/Director of Library Services for review. The City Manager/Director of Library Services may review or modify the Skelly action rendered by the Department Director. If the City Manager/Director of Library Services does not modify the Skelly action rendered by the Department Director, the Skelly action shall be implemented in accordance with the provisions of the Agreement and the Disciplinary Appeal Procedure will end here.

If the City Manager/Director of Library Services contemplates modification of the Skelly action rendered by the Department Director, the employee and the union will be notified in writing of their right to a disciplinary appeal meeting with the Discipline Appeal Officer. Such notice shall be issued within ten (10) working days of receipt of the Department Director Skelly action. The Discipline Appeal Officer will hold a meeting and issue a decision as provided in Section 38.8.4.3 below.

- 38.8.4.2 **Filing Period:** Said appeal must be filed in writing within ten (10) working days of the conclusion of Step 1 above; and must contain the Notice of Intent, the written Skelly decision of the Department Director or designee and all other correspondence exchanged from the start of the original recommended action and Step 1 activities.
- 38.8.4.3 **Process:** The Discipline Appeal Officer receiving an appeal of a proposed skelly action shall hold a meeting with the employee and his or her Union representative. The appeal meeting must be held with the employee and his/her Union within ten (10) working days of receiving the written appeal. The Discipline Appeal Officer shall issue a written decision sustaining, modifying or rejecting the discipline within ten (10) working days after the completion of the appeal meeting with the affected employee and/or the receipt of the written appeal. This shall

conclude Step 2 of the Disciplinary Appeal Procedure. Any decision to suspend, implement a reduction in salary or terminate an employee will become effective at the conclusion of Step 2 of the Disciplinary Appeal Procedure.

### **38.8.5 Disciplinary Process: STEP 3 – Arbitration**

- 38.8.5.1 **Appeals Filed With:** If the Union is not satisfied with the decision of the Discipline Appeal Officer resulting from Step 2, the Union may appeal the decision issued at Step 2 as provided in Section 38.8.5.3 (Process) to an impartial arbitrator by notifying the City Manager.
- 38.8.5.2 **Filing Period:** Such notification of desire to go to arbitration must be filed in writing with the City Manager within thirty (30) days of the conclusion of Step 3 with a copy to the Director of Human Resources. Provided further that the Union shall forward to the City the Union's portion of the California State Mediation and Conciliation Services (CSMCS) fee within sixty (60) days of receipt of the City Manager's response. Failure by the Union to meet either the thirty (30) day or sixty (60) day deadline for both referral to Arbitration and payment of the CSMCS fee shall be deemed as a full and complete waiver by the Union to appeal the City Manager decision to Arbitration and the City Manager decision shall be final and binding on all parties.
- 38.8.5.3 **Process:** The impartial arbitrator shall be selected from the California State Mediation and Conciliation Services (CSMCS) unless another party is mutually agreed upon. CSMCS will provide a list of five (5) arbitrators. The City and the grievant will alternately strike a name until one remains. The remaining name will be the arbitrator.

The arbitrator may hear testimony, receive written briefs, interview witnesses, and conduct any investigations she or he deems appropriate, and shall render a final and binding decision to the parties which will end the formal disciplinary appeal process.

The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the employee (or his or her Union) and the City. Each party, however, shall bear the cost of its own presentations including preparation and post-hearing briefs, if any. Arbitrator decisions on matters properly before them which pertain to the disciplinary actions involving the suspension, demotion, pay reduction, or discharge of an employee shall be final and binding on both parties.

### 38.9 General Conditions for Disciplinary Appeals

- 38.9.1 **Union Representation:** The employee who is the recipient of the recommended discipline shall be entitled upon request to representation by the Union at all levels of the disciplinary appeal process.
- 38.9.2 **Time Limits:** Failure by the employee or the Union to file an appeal of the proposed discipline within the time limits specified constitutes a dropping of the disciplinary appeal. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.
- 38.9.3 **Witnesses:** The City and/or the appellant may call witnesses.
- 38.9.4 **Release Time:** If an employee covered by this Agreement gives testimony in connection with the disciplinary appeal procedure during working hours, the employee shall suffer no loss of pay. If the employee's appeal is scheduled during working hours, the employee shall suffer no loss of pay in order to present his or her appeal.

## **ARTICLE 6 - MISCELLANEOUS TERMS AND CONDITIONS**

### **SECTION 39: GENERAL PROVISIONS**

#### **39.1 Personal Conduct**

39.1.1 **Civil Public Service Limitation:** No employee shall accept appointment to the deputyship or assistantship of any County or State Office or position, or otherwise incur an obligation of civil public service outside his/her regular municipal employment without first obtaining the recommendation of the head of his/her department, and of the City Manager for units G-1, G-3, L, R-1 and R-2.

39.1.2 **Off-the-Job Conduct:** No employee shall be disciplined for off-the-job activities which do not affect the employee's job performance.

39.1.3 **Personal Creditors:** Employees shall so arrange their personal financial affairs so that the demands of creditors and collection agencies shall not impose a recurring burden upon the officers of the City Manager, the Department Heads, or the Director of Human Resources for the purpose of making collections.

39.1.4 **Private Business/Undertaking:** Full-time City employees may not carry on concurrently with their public service any private business or undertaking, attention to which affects the time or quality of their work or which casts discredit upon or creates embarrassment for the City government.

39.1.5 **Current Address:** Employees have a responsibility to provide the City with their current address and telephone number.

39.1.6 **Absence Reporting:** All employees who are absent from work for any reason must report their absence and the reason for their absence or obtain prior permission to be on leave as required by this agreement.

#### **39.2 Use of Automobiles and Parking**

39.2.1 **Vehicle Use and Mileage Reimbursement:** The City Manager (or Director of Library Services) shall govern the use of City-owned automotive equipment and privately-owned automotive equipment by such rules and regulations as he or she may establish. Compensation will be given in the form of a cash allowance that will be equal to the amount established by the Internal Revenue Service, and will change as necessary to comply with IRS Standard Mileage Rate. This allowance shall apply only to the use of



privately-owned vehicles used on City business which has been authorized in advance by the City Manager.

3922 **Liability Coverage:** Employees who are required to utilize their automobiles for City business and who, pursuant to prior written authorization of their Department Head, are using their automobiles for transporting clients, shall be covered by insurance provided by the City in case of injury or liability to the client by virtue of the authorized employees' non-negligent operation of the vehicle.

3923 **Parking Violations:** A field employee who, in the regular and authorized performance of his/her duties and because of unavoidable circumstances, receives a City of Berkeley parking violation citation shall be relieved of any and all fines connected therewith if such citation is submitted to the Department Head within three days of the issuance of such citation and the employee submits on a form provided by the City a written explanation of the circumstances under which the parking citation was issued. It is expected that employees shall use their best efforts to avoid parking violations. The City shall not be responsible for payment of parking citations and/or any fines or penalties associated with the failure of an employee to pay a parking citation if the employee did not submit the parking citation to the Department Head within the time limit specified in this paragraph and/or the Department Head determines that the citation was avoidable.

3924 **Parking Permits:** The City Manager shall issue parking permits under rules he or she may establish, for allocation by the Department Head, to be used solely in the course of employment and the performance of the employees required field duties. The parking permits will allow employees to park in the field or in authorized off-street parking areas enabling the employee to perform his or her work related duties using his or her personal vehicle. These parking permits are intended to prevent the issuance of parking citations to employees while working in the field.

3925 **City Vehicle for Emergency Use:** Employees who are regular members of a City recognized car pool, who are qualified to operate a City vehicle, who are insured, and who have no other alternative in an emergency situation, may request a City vehicle where the health or safety of a family member is at stake, subject to the approval of their department head.

3926 **Bicycle Rack:** The City will install one (1) bicycle rack (Class 2) for 10 bicycles at 2180 Milvia, and a second Class 2 rack if demand warrants it.

### 39.3 Part-Time Employees and Prorated Benefits

All current career and grant-funded benefited employees who in the future request to become part-time career or part-time grant-funded employees working a minimum of 20 hours, but less than 40 hours per week, shall receive prorated,

rather than full fringe benefits and shall pay, by payroll deduction, a pro rata portion of the health and dental insurance premiums. Effective July 1, 2008, the City will pay 75% of the cost of the medical plan which is fully paid for full time employees for those part time employees who work 20 to 29 hours per week. The City will pay 100% of the cost of the medical plan which is fully paid for full time employees for those part time employees who work 30 or more hours per week.

Current career and grant-funded benefited employees who are given the option of accepting part-time employment in lieu of layoff from City services shall continue to receive full health, dental and life insurance benefits paid by the City in addition to other prorated benefits.

Employees who voluntarily job-share to prevent layoffs of coworkers shall continue to receive full health, dental and life insurance benefits paid by the City in addition to other prorated benefits. Laid off employees who had career status at the time of their layoff, who are reemployed to part-time career status or temporary employment, shall resume receiving the level of health, dental and life insurance benefits paid by the City at the time of their layoff in addition to prorated leave benefits.

#### **39.4 Annual Performance Evaluation**

The City may implement a program of annual performance evaluation subject to Union review and comment. The program of annual performance evaluations shall be conducted as provided in the guidelines set forth in Administrative Regulation 2.3 (Performance Evaluation Program). Such evaluations shall be conducted by the employee's immediate supervisor and shall be reviewed by additional levels of supervision. The performance evaluation shall include a specific work plan for employee development. Each employee may make written comments on the evaluation which shall be made a part of the employee's personnel records.

After the initial evaluation conference between the employee and his/her supervisor the employee may make a written request for a subsequent conference with the supervisor (and such other representatives as may be determined by the City), and a Union representative to discuss the basis for the evaluation. It is specifically agreed that performance evaluations are not subject to the Grievance Procedure provided by this Agreement.

#### **39.5 Employee Development and Training Opportunities**

To facilitate employee development, employees may be assigned training opportunities which include duties normally performed by other classes at their regular rate of pay. Such assignments shall be voluntary, assigned and described in writing as a training and development opportunity and limited to 90 days. Such opportunities shall not be used to fill vacancies or in lieu of higher class assignments.

395.1 **Career Development:** During the term of this Agreement, the parties agree to meet and discuss the current curriculum available through the City's professional growth program. The City's Training Officer will review and may expand on the current courses offered through the program. Employees are entitled to reimbursement of \$250 per class per semester through the City's Tuition Reimbursement Program.

**Reimbursement for a Course taken at an Accredited Institution:**

For fiscal year 2018-2019 the City shall allocate a total maximum of \$20,000 towards a tuition reimbursement fund for members of this bargaining unit and members of the SEIU maintenance and clerical units. For fiscal year 2019-2020 the City shall allocate an additional \$20,000 to this reimbursement fund. A maximum of \$750.00 per employee may be approved per fiscal year from this fund.

Career members of the CSU/PTRLA and the Maintenance and Clerical Unit, on a first come first approval basis, may submit a tuition reimbursement request to the employee's Department Head and the Human Resources Director for tuition reimbursement of a class taken at an accredited institution that is directly related to the employee's job or related to a City of Berkeley job classification.

The Department Head and the Human Resource Director's review and action on such request shall be final. Employee may submit a provisional reimbursement authorization request, one class at a time for the closest semester/quarter the course is being offered. To be reimbursed, including those that have received a provisional approval, employee must provide the City with proof of successful completion of the course with a B- or above grade and receipts for books and tuition.

SEIU employees in this unit and the Maintenance and Clerical unit shall not be entitled to receive any other additional tuition reimbursement through the training task force or other program administered by HR. This program is intended to be in place of any other City reimbursement program.

**39.6 Educational Leave**

The City shall allow up to forty (40) hours off with pay per year to employees:

396.1 Who have completed their probationary period;

396.2 Who are required by law or as a condition of employment to obtain a license, a registration or ICC certification and, in order to do so, must take courses which were not offered as a part of their basic curriculum or;

3963 Who are required by law or as a condition of employment to obtain continuing education units;

3964 To obtain education and training related to job skills, to enhance performance of assigned duties or to promote employee development.

No more hours than are required by the State shall be granted. Employees seeking time off to take courses for an initial license must provide verification that the course was not offered as a part of their basic curriculum. All coursework will require pre-approval by a departmental manager prior to undertaking the coursework.

3965 The City and the Union recognize that some of the training applicable under this Section may be available over the Internet, through home study or correspondence courses and may be done from non-work locations.

If the coursework is taken during hours outside the normal work schedule the employee will be compensated for this time in accordance with the provisions of the Understanding and the Fair Labor Standards Act. However, the employee may request time off equal to the hours of training during the pay period in which the training occurred and such request shall not be unreasonably denied.

### 39.7 Assignments for Temporarily Disabled Employees

39.7.1 **Industrial Modified Duty:** The City may accommodate, when feasible, employees covered by this Agreement under the provisions of Workers' Compensation, and such work assignments are to incorporate the following provisions:

39.7.1.1 The assignment shall be consistent with medical limitations as determined by the physician of record.

39.7.1.2 The assignment shall be within the City of Berkeley and may include hours and days of work other than the employee's regular assignment.

39.7.1.3 Nothing herein shall require the City Manager to approve light duty assignments nor shall give an employee the right to refuse an assignment which complies with medical restrictions. Such assignment shall be at the employee's normal rate of pay.

39.7.2 **Non-Industrial Modified Duty:** The City may accommodate an employee disabled with a non- industrial disability by providing a modified work assignment in that employee's classification. To be eligible for such a modified assignment, the employee must provide the Human Resources

Department with a medical statement from his/her treating physician that clearly states the medical limitations and abilities of the employee. If modification of that position does not serve the best interests of the City, other classifications may be considered, subject to the approval of the Director of Human Resources. Compensation will be provided at the level of the classification in which the temporarily disabled employee works during the disability. The employee must meet standards of satisfactory performance for the duration of the work assignment.

- 39.7.3 **Pregnancy Related Modified Duty:** In the case of a medically certified pregnancy related disability, in which the normal duties clearly threaten the health and safety of the employee or the unborn child, the Human Resources Department will endeavor to place the employee in a position which best serves the interest of the City, with no loss of pay, but in no event will such placement exceed 5 months in duration.

### 39.8 State Disability Insurance Integration

Except as provided in Section 39.8.3 below, any employee who is absent due to personal illness for more than 7 calendar days (or for any period of time if hospitalized) may apply for State Disability Insurance (SDI) benefits.

After such employee has been absent from work due to personal illness for six workdays, the City shall integrate the employee's pay with the employee's State Disability benefits in the following way:

- 398.1 The City will determine the weekly SDI benefit amount based on the amount of wages earned with the City of Berkeley in the SDI base period.
- 398.2 The weekly SDI benefit will be subtracted from the employee's normal weekly wages and the amount necessary to bring the total of State Disability plus wages to 100% will be deducted from any accumulated sick leave, vacation leave and compensatory time available to the employee. The integrating with vacation leave and compensatory time is optional but will be automatically implemented after sick leave has expired unless written notification is received from the employee as discussed below.
- 398.3 Any employee may choose not to apply for State Disability Insurance but it is his/her responsibility to notify the departmental payroll clerk of this fact, in writing, to stop sick leave integration. The employee must also notify the payroll clerk, in writing, to stop integration of State Disability Insurance payments with vacation leave or compensatory time. Upon receipt of notification, the payroll clerk will cease integration of any future leave for that incident of illness.
- 398.4 The employee must show the State of California form (Disability Insurance Notice of Computation) to his/her payroll clerk to verify dates covered by

SDI and the amount to be paid. The employee must inform his/her payroll clerk of all SDI payments. Any employee entitled to State Disability Insurance shall receive in addition thereto such portion of his/her accumulated leave as will meet but not exceed, the standard earnings of the employee for his/her normal workweek, up to a maximum of five (5) days.

### 39.9 Health and Safety

- 39.91 **Requirement:** The City and the Union will make every effort to maintain excellent health and safety standards. No employee shall be required to perform work with unsafe equipment or in situations which are injurious to his/her health or safety. To further these purposes, the City shall maintain an ongoing safety program which shall include a committee comprised of four Union representatives and appropriate supervisory personnel. There shall be a coordinator designated by the City. The committee may meet monthly.
- 39.92 **Safety Inspection Team:** A safety inspection team may inspect work locations and equipment in regard to safety and health considerations. The safety inspection team shall consist of the Occupational Health and Safety Coordinator and two members of the safety committee to be chosen by the Occupational Health and Safety Coordinator. The inspection team may make written recommendations for safety and health improvements, and the City shall give a written response within fifteen (15) days or sooner, if possible, because of emergency conditions.
- 39.93 **Inspection Team Reporting:** The inspection team may also investigate and report on all substances currently used by the City employees and all proposed for future use.
- 39.94 **Tuberculosis and Asbestos Screening Tests:** The City shall provide annually, on City time, free tuberculosis and asbestos screening tests, at no cost to the employee, for all employees who, in the course of their work, are subject to health hazards which may cause tuberculosis or asbestos poisoning.
- 39.95 **Blood or Bodily Fluids Equipment:** The City shall take appropriate steps to ensure that the proper equipment for handling blood or bodily fluids is available at all sites where clients are provided care which may expose staff to blood or bodily fluids.
- 39.96 **Blood or Bodily Fluids Training:** City staff who handle blood or bodily fluids shall receive proper training and equipment.

- 39.9.7 **AIDS/ARC Training:** The City shall take appropriate steps to educate employees regarding AIDS/ARC and its transmission.

### 39.10 Video Display Equipment

- 39.10.1 **Working Conditions:** The City and the Union agree that employees working on video display equipment shall have safe and healthy work environments. These environments shall avoid excessive noise, crowding, contact with fumes, and other unhealthy conditions.

The City agrees wherever practical, to design the flow of work to avoid long, uninterrupted use of video display equipment by City employees.

- 39.10.2 **Pregnancies:** The City will accommodate requests for transfer from pregnant employees whose job duties require frequent exposures to video display equipment subject to the following:

- 39.10.2.1 such transfer will be limited to other positions which are vacant which the transferee is qualified to perform:
- 39.10.2.2 to voluntary trading of positions where both parties are competent to perform the new assignments:
- 39.10.2.3 to any position held by a temporary employee if the pregnant employee is qualified.

- 39.10.3 **Visual Screening and Education:** The City will develop a visual screening and education program effective July 1, 1988 for employees who in the course of their employment operate VDT terminals more than half the time. This program will include visual screening at or near employment, a referral system for employees with possible VDT related vision problems, and a regular follow-up screening at approximately two years.

- 39.10.4 **Corrective Glasses and VDT Equipment:** The City shall provide corrective glasses medically certified as required for the job to VDT operators. Within twelve (12) months of the implementation of this agreement the City will complete a survey of all departments to determine the need for ergonomic VDT equipment. Upon completion of the survey the Union and City will establish a schedule to meet the identified needs over three (3) fiscal years. The City will deal with purchases related to VDT equipment according to NIOSH or other standards as agreed if funds are available.

### 39.11 YMCA Group Membership

The City shall offer employees a low or no-cost group membership in the Berkeley Central YMCA. As of July 1, 1999 the City will pay 75% of the membership fee. If

the monthly fee is increased to more than \$60 the employee share will be capped at \$30 per month; the City will pay the balance. The amount the City contributes toward the employee's monthly membership fee is subject to federal and state income tax withholding.

Use of a YMCA membership by a City of Berkeley employee, as provided for in this Agreement, is non-compensable, is not a part of the employee's work-related duties, is not required for employment and is not condoned as part of a physical fitness program, or required to maintain top physical conditioning for the employee's job performance.

The City of Berkeley or its Claims Administrator may not be liable for any injury which arises out of a City of Berkeley employee's participation in and use of a YMCA membership.

### **39.12 Internships**

A career advancement internship program shall be established by the City. Two (2) internships of six (6) months each shall be implemented for each year of this agreement. Career advancement internship guidelines shall be developed by the City in consultation with the Union.

### **39.13 License and Registration Renewal**

The City shall pay the full cost of professional license, registration or ICC certification renewals for all employees whose classification requires a professional license, registration or ICC certification.

### **39.14 Personnel Files**

39.14.1 **Maintenance:** All official records of the employee's personnel history are maintained in the Human Resources Department (in the Library the files are maintained in Library Administration), including applications for appointment, performance appraisal forms, employee transaction forms, formal disciplinary actions and other documents pertinent to the employee's official personnel history.

39.14.2 **Inspection:** Employees have the right to inspect their personnel file which is maintained in the Human Resources Department during normal business hours, by appointment, as provided by law. No material of any kind, except documents submitted by the employee shall be placed in an employee's official personnel file after the date of employment without a copy being given to the employee. The employee may provide a concise written response to any material which is maintained in the personnel file.

39.14.3 **Records of Grievances:** Records of grievances filed by an employee which do not relate to any disciplinary action taken against that employee shall not be maintained in the individual's personnel file.



39.144 **Disciplinary Actions:** Except as otherwise required by applicable law, any material related to disciplinary action which is subsequently overturned or rescinded shall be removed from the employee's personnel file.

39.145 **Reprimands and Counseling Letters:** Formal letters of reprimand or formal counseling shall be removed from an employee's personnel file upon request after 24 months provided the employee has maintained satisfactory performance. Counseling memos shall not be placed in employee's personnel files.

### 39.15 Commuter Check Subsidy Benefits

Upon request, the City shall provide a Commuter Check subsidy valued at twenty dollars (\$20.00) per month to an employee for transit, biking or van pool. Commuter check subsidies are only intended for use by the employee while employed with the City of Berkeley and may expire due to inactivity. The City shall also provide employees the opportunity to set aside income on a pre-tax basis for a qualified transportation benefit through payroll deduction up to the maximum allowed by the Federal tax code.

**39.16 Protective Clothing and Shoes**

39.16.1 **Rain Gear** - The City will provide rain gear upon request of the employee in the classifications named below who may be assigned to work in inclement weather.

<b>Job Code</b>	<b>Classification Title</b>
24060	Assistant Environmental Health Specialist
37060	Building Inspector I (Certified)
37050	Building Inspector II
33090	Code Enforcement Officer I
33100	Code Enforcement Officer II
28830	Environmental Compliance Specialist
91050	Field Representative assigned to the Solid Waste Division in Public Works
35070	Fire Prevention Inspector
24590	Hazardous Materials Specialist I
24560	Hazardous Materials Specialist II
33080	Housing Inspector
63200	Mini Bus Driver
24050	Registered Environmental Health Specialist
32030	Senior Building Inspector
24690	Senior Environmental Health Specialist
34030	Senior Vector Control Technician
34040	Vector Control Technician

39.16.2 **Shoes** - An annual allowance of two hundred dollars (\$200) shall be paid to employees in the classifications named below toward the purchase of safety shoes. The annual shoe allowance is subject to federal and state income tax withholding.

<b>Job Code</b>	<b>Classification Title</b>
24060	Assistant Environmental Health Specialist
37060	Building Inspector I (Certified)
37050	Building Inspector II
33090	Code Enforcement Officer I
33100	Code Enforcement Officer II
28830	Environmental Compliance Specialist
91050	Field Representative assigned to the Solid Waste Division in Public Works
35070	Fire Prevention Inspector
24590	Hazardous Materials Specialist I
24560	Hazardous Materials Specialist II
33080	Housing Inspector

<b>Job Code</b>	<b>Classification Title</b>
33060	Housing Inspector (Certified)
24050	Registered Environmental Health Specialist
32030	Senior Building Inspector
24690	Senior Environmental Health Specialist
34030	Senior Vector Control Technician
34040	Vector Control Technician

39.163 **Uniforms** – Effective June 29, 2008, employees in the classifications of Fire Prevention Inspector and Fire and Life Safety Plans Examiner shall receive a uniform allowance of \$1,000 per year. Payment of such annual uniform allowances noted above shall continue to be paid in two (2) equal installments, in December and June, of each year. The amount the City contributes toward the uniform allowance is subject to federal and state income tax withholding.

39.164 **Protective Clothing for Library Circulation Employees** – the Library will provide knee pads and rain gear upon request of any Library Circulations employee.

**39.17 Crimes against Employees**

The Police Department will promptly respond to any calls regarding criminal acts committed against a City employee while engaged in his or her employment. Reports of assault or other acts of criminal misconduct committed against a City employee will be promptly investigated. The results of the investigation will be submitted to the District Attorney for disposition.

**39.18 Legal Representation**

The City will provide legal representation to the extent required by law.

## **ARTICLE 7 – RECREATION ACTIVITY LEADERS AND SPORTS OFFICIALS**

### **SECTION 40: RECREATION ACTIVITY LEADERS AND SPORTS OFFICIALS**

The parties recognize and acknowledge that Representation Unit R-2 employees are temporary, non-benefited, non-career employees without properties rights or an expectation of continued employment.

#### **40.1 Final Conversion of Last Two (2) Full-Time Recreation Activity Leaders**

Effective the first quarter of the fiscal year 2017, the following shall occur:

1. City will offer two (2) full-time positions in the classification of Recreation Activity Leader (R-1) in order of seniority and paid status;
2. If employee declines full-time position offered, the City is no longer obligated to offer that R-1 employee full-time employment;
3. If two (2) full-time positions are filled, any of the remaining four (4) who were not offered the full-time position shall be grandfathered into their position (hours and benefits).

#### **40.2 Scheduling for Representation Unit R-1 Employees**

- 4021 **Rolling Quarterly Schedule:** The City shall post a quarterly schedule of recreation services and programs for Unit R-1 employees. The schedule shall include work hours and job assignments for R-1 employees only. Copies of all schedules shall be provided to the Union President when they are posted.
- 4022 Each seven (7) day workweek shall have 2 consecutive days off.
- 4023 Hours in a work day will not be split into two or more segments that are separated by more than an unpaid lunch hour unless such split is the result of Union release time or department mandated training that cannot be scheduled without resulting in a split shift. The City will make reasonable effort to limit split shifts for training purposes to no more than one (1) time per month.
- 4024 The aforementioned limitations on R-1 Work Scheduling may be waived by mutual agreement between the employee and the supervisor.
- 4025 The City will adjust the benefit pro-ration for employees in Representation Unit R-1 based on the Rolling Quarterly Work Schedule of assigned hours and on the known and anticipated adjustment of hours during the quarter if less than full-time equivalent.

#### **4026 Representation Unit R-2 Work Schedule**

- 40261 The work schedule for Representation Unit R-2 employee will not be split into two or more segments that are separated by more than an unpaid lunch hour unless such split is the result of Union release time or department mandated training that cannot be scheduled without resulting in a split shift. This limitation may be waived by mutual agreement between the employee and the supervisor.
- 40262 Representation Unit R-2 employees are hourly, intermittent employees who can accept or reject hours.
- 40263 The City agrees to provide each R-2 employee the opportunity to participate in a thirty (30) minute Union Orientation as part of the department's new hire summer training program. The Orientation date shall commence as designated by the department.

#### **40.3 Changes in the Work Schedule**

- 403.1 When the City compiles and establishes the Rolling Quarterly Work Schedule, the City will assign Representation Unit R-2 employees so that a Representation Unit R-1 employee's core work schedule does not change during the succeeding three months. Any changes in the posted schedule for an R-1 employee must be made at least 15 days in advance. Changes in an employee's posted schedule must meet one of the following criteria:
  - 403.1.1 A program is cancelled.
  - 403.1.2 The number of attendees at the program/event is less than originally planned and requires less staff than originally scheduled.
  - 403.1.3 A special event is scheduled after the Rolling Quarterly Work Schedule is posted and the City changes the schedule of an employee to cover the event. However, the change in the work schedule will not be made: 1) if the hours that the Representation Unit R-1 was originally scheduled to work are assigned to another employee, or 2) a less senior Representation Unit R-1 employee, a Representation Unit R-2 employee or a Sports Official is scheduled to cover the same hours in the same work site where the employee was originally scheduled to work.

#### **40.4 Additional Hours**

Additional hours are work hours which the City determines are needed due to added programs/events after the quarterly schedule has been posted or the absence of an employee which is known at least five (5) working days in advance

of the employee absence. Additional hours will first be offered to R-1 employees based on seniority provided that the employee is qualified to perform the work. In the event the work which is available involves a single program which occurs over a number of days, the employee who receives the additional hours must be available to work all the hours. If no R-1 employee is scheduled for the additional hours, the hours will be offered to R-2 employees. A qualified R-1 employee will be offered additional hours based on seniority; this does not imply that seniority gives an employee the right to choose between two different programs offered as additional hours at the same time. An R-1 cannot be scheduled for additional hours that would require a modification to the employee's core schedule.

**40.5 Reduction/Elimination of Representation Unit R-2 Hours**

When a Representation Unit R-2 employee's hours are reduced or eliminated for any reason, the employee and a Union Representative (steward, Chapter Officer or Union staff member) shall have the right to a meeting, upon his or her request, as soon as practical, with the Division Chief responsible for approving the actions of the supervisor who reduced/eliminated the hours.

**40.6 Representation Unit R-2 Additional Compensation**

Effective June 29, 2008, Representation Unit R-2 employees shall be paid the equivalent of twenty (20) hours pay at the employee's regular hourly rate for each five hundred twenty (520) hours worked.

**SECTION 41: R-1 AVAILABILITY TO WORK SCHEDULED HOURS**

If a designated career part-time employee in Unit R-1 is consistently not available for regularly scheduled assigned hours, said employee may agree to a demotion into R-2, may resign and/or may be disciplined and thereby may be replaced with the most senior qualified employee who can accept those hours. This provision shall not apply if an employee is on an authorized leave (i.e., sick leave, workers' compensation, vacation, etc.).

**SECTION 42: ATTENDANCE AT MEETINGS**

**42.1 Staff Meetings**

The Union may appoint one (1) employee in each Center who shall be allowed to attend, with pay, quarterly full-time staff meetings held with the Recreation and Youth Services Manager, and such other staff meetings to which the appointed employees may be invited by the Recreation and Youth Services Manager. Quarterly meetings will be announced in writing. The Recreation and Youth Services Manager will be notified in writing by the Union of the names of employees who are appointed pursuant to this provision.

#### **42.2 Center Budget Planning**

The Union may appoint one (1) employee from each Center who shall be allowed to participate in Center budget planning recommendations to be transmitted to the City Manager's Office.

### **SECTION 43: WEATHER CONDITIONS**

#### **43.1 Notification when Conditions Known**

When weather conditions are such that prior to the start of scheduled outdoor activities it is known that these activities will be canceled, the employee shall telephone the Center Supervisor to ascertain the need for the employees services in productive alternative work.

#### **43.2 Notification when Conditions are Unknown**

When weather conditions develop after the start of scheduled outdoor activities which necessitate their discontinuation, the employee shall make an immediate assessment of the availability of alternate indoor space at the location involved and consider the productive uses to which such space can be devoted. In the event both space availability and program warrant, the employee shall then contact the Center Supervisor by telephone, specifying the proposal for the continuation of work.

#### **43.3 Management Discretion**

Under either situation set forth above, the decision to proceed with the work of the employee shall be at the discretion of the Center Supervisor, which shall be reasonably exercised.

### **SECTION 44: SUMMER WORK SCHEDULE**

During the summer season (June 15 - August 15) the following shall apply in the operation of the City's summer recreation programs:

#### **44.1 Offer of Jobs/Hours**

New, additional or vacant recreation jobs or hours shall be offered to career, benefited Recreation Activity Leaders (RALs) and Sports Officials (SOs) who meet specific written qualifications and who may accept such work, so as to allow each career RAL and SO that so chooses to work up to 40 hours per week.

**SECTION 45: OVERNIGHT EXCURSIONS**

Recreation workers who participate in overnight excursion will flex their schedule, if possible, to maintain a 40-hour workweek. If they are unable to flex, they will be paid overtime or compensatory time consistent with state law.

**SECTION 46: LABOR/MANAGEMENT COMMITTEE**

The City and the Union agree to create a joint Labor/Management Committee consisting of four (4) union and four (4) City representatives to discuss PTRLA to keep lines of communication open and to discuss the issues set forth in Section 40 (Recreation Activity Leaders and Sports Officials). The joint labor management committee will meet on a monthly basis or less frequently if mutually agreed by the parties.



## **ARTICLE 8 - RETIREMENT SYSTEMS**

### **SECTION 47: PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

#### **47.1 Participation**

The City shall continue participation under the Miscellaneous Employees Plan of the Public Employees' Retirement System.

#### **47.2 "Classic Employees" Definition**

Classic Employees are defined as current employees and future employees who do not qualify as "New Members" under the California Public Employees' Pension Reform Act of 2013 (PEPRA).

#### **47.3 "New Members" Definition**

New Members are as defined in the Public Employees' Pension Reform Act of 2013 (PEPRA), Government Code Section 7522.04(f).

#### **47.4 CalPERS Retirement Formula for Members as Defined Under the Public Employees' Pension Reform Act of 2013 (PEPRA)**

"New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the retirement formula set forth in PEPRA.

#### **47.5 CalPERS Retirement Formula and Employer Paid Member Contribution for Classic Employees, i.e., current employees and future employees who do not qualify as "New Members" under the California Public Employees' Pension Reform Act of 2013 (PEPRA)**

Effective January 5, 2003, the City agrees to provide the 2.7% at age 55-retirement formula benefit improvement, and the City's contribution to CalPERS on behalf of the employee will increase from 7% to 8%. Effective July 3, 1994, contributions made pursuant to this section shall be reported to PERS as "special compensation" as provided in Government Code Section 20636(c)(4) pursuant to Section 20691. Said contributions shall not apply in the case of temporary or provisional employees.

The aforesaid contribution shall not be considered as a part of an employee's salary for the purpose of computing straight time earnings, compensation for overtime worked, or education incentive pay; nor shall such contribution be taken into account in determining the level of any other benefit which is a function of or percentage of salary. The City reserves the right to take said contribution into account for the purpose of salary comparisons with other employees.

The City will not treat these contributions as compensation subject to income tax withholding unless the Internal Revenue Service or Franchise Tax Board indicates that such contributions are taxable income subject to withholding. Each employee shall be solely and personally responsible for any federal, state or local tax liability

of the employee that may arise out of the implementation of this section or any penalty that may be imposed therefore.

**47.6 New Members Payment of Normal Cost**

New Members as defined by PEPRA who are hired by the City on or after January 1, 2013 will be required to pay 50% of the normal cost, as provided by CalPERS. New Members shall receive any other additional optional CalPERS benefits that the City provides to Classic Employees as allowed by PEPRA.

**47.7 Hourly Rated Employees In Lieu of CalPERS**

The Salary Resolution shall provide that hourly-rated employees working in represented classes will receive an additional 7% in-lieu of CalPERS.

**47.8 Optional Benefits**

The City's contract with CalPERS includes the following optional benefits:

- 47.8.1 **Classic Employees - One-Year Final Compensation:** Classic Employees, as defined in Section 47.2, shall be eligible to receive retirement allowance based on One-Year Final Compensation as provided in Section 20042 (July 9, 1978).
- 47.8.2 **New Members – Three Years Final Compensation:** Provided further that New Members as defined by PEPRA hired on or after January 1, 2013 shall be eligible to receive retirement allowance based on three (3) highest consecutive years of compensation under the plan as provided in the California Public Employee Pension Reform Act of 2013, or as subsequently amended
- 47.8.3 Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (December 16, 1973).
- 47.8.4 Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).
- 47.8.5 Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988).
- 47.8.6 1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (December 16, 1973).
- 47.8.7 Third Level of 1959 Survivor Benefits as provided in Section 21573 (November 28, 1996).
- 47.8.8 2% @ 55 for Local Miscellaneous Members as provided in Section 21354 (June 30, 1992).
- 47.8.9 Military Service as Public Service as provided in Section 21024 (April 9, 1999)

47.8.10 Public Service Credit for Peace Corps or AmeriCorps/VISTA Service as provided in Section 21023.5 (April 14, 2000).

#### **47.9 Classic Employees' Pension Contribution**

47.9.1 Effective January 1, 2017, employees will contribute eight percent (8.0%) towards the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allows such contributions via automatic payroll deduction on a pre-tax basis, in exchange for the City granting the salary increase set forth in Section 9.1.6 of this Memorandum Agreement. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.

47.9.2 If legislation is enacted requiring employees under the CalPERS retirement system to pay all of the employee's share of retirement, thus eliminating the EPMC, the parties agree as soon as possible to convert the employee's contribution to the employer's share under this 20516 CalPERS contract amendment to the employee's share towards retirement and the City will continue to pay the wage increase as described in Section 9.1.6 (maximum of 5.58%) associated with this cost neutral provision.

#### **47.10 New Members' Pension Contribution**

47.10.1 New members hired on or after January 1, 2013 shall pay 50% of the normal share of costs required by PEPRA.

47.10.2 Effective January 1, 2017, in addition to the contribution in Section 47.10.1, New Members will contribute eight percent (8.0%) towards the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allows such contributions as pre-tax via automatic payroll deduction, in exchange for the City granting the salary increase (5.58%) set forth in Section 9.1.6 of this Memorandum Agreement. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.

47.10.3 The parties recognize that the CalPERS 20516 employee contributions towards the employer rate is in addition to the required 50% of the normal cost of "New Members" benefits and made in consideration of additional salary increases in Section 9.1.6 above (5.58% salary increase in exchange for employees paying eight percent (8.0%) towards PERS pension cost).

47.10.4 If legislation is enacted and becomes effective during this agreement requiring "classic members" as defined by PEPRA to pay all of the employees' share of retirement thus requiring the discontinuation of the

20516 employee contribution towards the employer rate as described in Section 47.9.2 above, the parties agree that as soon as possible the City shall convert the "New Members" eight percent (8.0%) contribution under the 20516 contract amendment to an equivalent payroll deduction. Such employee deductions by the City shall be used towards the City's CalPERS required contribution.

## **SECTION 48: PUBLIC AGENCY RETIREMENT SYSTEM**

### **48.1 PARS**

Employees who are otherwise not covered by the provisions of Section 47 (Public Employees' Retirement System), shall be enrolled in the Public Agency Retirement System (PARS).

### **48.2 Employee's PARS Contributions**

**48.2.1 Employee Contribution:** Each pay period, each employee shall contribute three and three-quarters percent (3.75%) of his or her salary and deposited into his or her PARS account.

**48.2.2 Excluded from Salary:** The aforesaid contribution shall not be considered as part of an employee's salary for the purpose of computing straight time earnings, compensation for overtime worked, or education incentive pay; nor shall such contribution be taken into account in determining the level of any other benefit which is a function of or percentage of salary. The City reserves the right to take said contribution into account for the purpose of salary comparisons with other employers.

**48.2.3 City Contribution:** Each pay period, the City shall contribute three and three-quarters percent (3.75%) of the employee's salary and deposited into their individual PARS account.

### **48.3 Termination from Employment**

Upon termination from employment, the employee or his or her beneficiary shall receive payment in full of all monies deposited in the employee's individual PARS account.

## **SECTION 49: SUPPLEMENTAL RETIREMENT/DISABILITY INSURANCE PLAN**

Effective January 1, 1983, the majority of miscellaneous employees under the City's contract with the State of California Public Employees' Retirement System who were covered by the integrated Social Security Program voted to withdraw from participation in the Federal Social Security Program. In lieu of Social Security payments, the City has agreed to pay an amount equal to that percent of individual pay (6.7% payable on the first

\$32,400 of salary paid in the calendar year) which had been paid by the City to Social Security as of December 31, 1982 to a Supplemental Retirement and Income and Long Term Disability Insurance Plan for those employees previously covered under the integrated CalPERS/Social Security Plan. Provisions of this plan are described in City of Berkeley Municipal Code Section 04.36.101 et seq. (Supplementary Retirement and Income Plan I and 04.38.101 et. seq. (Supplementary Retirement and Income Plan II) as amended.

As of November 27, 1994 the City will assume the premium payment of the optional SRIP II Long-Term Disability Plan for those members who are then enrolled in the program. Upon completion of re-negotiations of the optional disability plan with the insurance carrier, the City will assume the premium payment for all members.

## **SECTION 50: INCREASED HOURS**

Part-time career employees in the same classification shall be notified and have the opportunity to apply for increased hours in a classification before hiring from the outside. Decisions to offer the increased hours shall be based on program necessities. This provision shall not apply when the increased hours are offered to the occupant of the position and he/she has accepted same.

## **SECTION 51: LIBRARY AIDES**

### **51.1 Minimum Positions**

The City shall establish an ongoing level of 9.63 additional FTE Library Aide positions (10.63 at start, leveling to 9.63 through attrition), 8 positions to be 20 hours per week with full pro rata fringe benefits. This will be in addition to the existing 2.925 FTE career Library Aide positions which will remain career positions of at least 20 hours per week.

### **51.2 Applicable Provisions**

Part-Time Library Aides who work less than 20 hours per week do not receive health and welfare benefits including, but not limited to, medical coverage, pension benefits under CalPERS, retiree medical coverage, Supplementary Retirement and Income Plan, Long-Term Disability Plan, group life insurance, cash-in-lieu benefits and education leave. Part-Time Library Aides who work less than 20 hours per week do receive pro-rated vacation leave accrual, sick leave accrual, compensatory time accrual and floating holiday accrual. All other provisions of this Agreement are applicable to these Part-Time Library Aides who work less than 20 hours per week.

**51.3 Salary Advancement**

When a permanent part-time Library Aide who works less than 20 hours per week has worked 1040 hours without terminating his/her service with the City or being terminated from his/her service with the City, such employee shall be moved to the second salary step within his/her classification on the first day of the payroll period following completion of said 1040 hours, provided that at least twelve (12) calendar months shall pass from step increase to step increase. Such employees shall be eligible for subsequent step increases on a 1040 hour formula.

An employee classified in a single classification who is specifically assigned to work in a different classification shall receive credit for such temporary hours worked in the employee's basic classification.

**51.4 Step Increases**

Hourly Library Aides who are appointed to 20 hour fully benefited positions receive the first step increase after that appointment based on the 1040 rule provided that 12 months have passed since the date of the last step increase. The anniversary date for further successive annual step increases shall be established based on the date of the first step increase after the 20 hour appointment is effective.

## **ARTICLE 9 - LAYOFF PROCEDURE**

### **SECTION 52: LAYOFF**

This layoff policy for the City of Berkeley is intended to provide the maximum employment protection to the City staff should a layoff become necessary. The policy also aims to minimize the impact such a layoff might have on the City's affirmative action accomplishments.

#### **52.1 Announcement of Layoff**

52.1.1 The City Council, City Manager, and Department Head shall make every reasonable effort to manage and budget the City's resources effectively and to plan for the delivery of City services in a manner which will avoid the necessity to lay off career City employees. If a reduction in the work force is necessitated by, but not limited to, the following: a material change in duties and organization, adverse working conditions, return of employee from leave of absence, or shortage of work or funds, the City Manager shall notify the Director of Human Resources of the intended action and the reason for the layoff.

52.1.2 Immediately following a decision which may involve the potential layoff of career City employees, the City Manager shall freeze all current City vacancies in the competitive service in similar and related classifications to those likely to be targeted for layoff, as well as all related full-time, benefited, temporary positions which are expected to last six (6) months or more, and shall notify the Department Heads that such current and anticipated vacancies will be frozen until further notice in order to implement the provisions of Sections 52.4 (Employee Retreat Rights/Out Placement) and 52.5 (Employee/Union Notification). In notifying Department Heads of a freeze required by this section, the City Manager shall require that requisitions continue to be submitted for any budgeted positions which the Department intends to fill and for which funding is available.

52.1.3 After the City has announced the need for a reduction in force, including the magnitude of such reduction, and has informed employees of their prospective layoff or retreat, but before any actual layoff, the City will consider employee requests for the alternative action, including job sharing.

#### **52.2 Seniority Service Date**

52.2.1 All service in the employ of the City shall be counted toward the establishment of an employee's Seniority Service Date, including, for example, permanent, probationary, provisional, temporary (full-time and intermittent), seasonal, exempt employment, as well as leaves of absence

for obligatory military service and approved family care leave while an employee of the City. Less than full-time service will be consolidated into equivalences of full-time service for the purpose of establishing the Seniority Service Date. Time off as a result of formal disciplinary action will be subtracted from the Seniority Service Date.

- 5222 The Human Resources Department shall maintain up-to-date and current Seniority Dates for all City employees holding probationary and permanent appointments.

### 52.3 Establishment of Seniority Lists

- 5231 Whenever a layoff of one or more career employees becomes necessary, as defined above, such layoffs shall be made according to City-wide classification Seniority Lists. Upon receiving notification that the City Manager must proceed with a possible reduction in the work force, and following receipt of information concerning the specific positions, programs, and departments involved, the Human Resources Department will immediately establish separate Probationary and Permanent Seniority Lists for each classification targeted for layoff.

- 5232 The names of all City employees holding permanent and probationary appointments in a given classification will be on the appropriate list in descending order by Seniority Service Date. Employees on both lists shall be laid off on the basis of their Seniority Service Date, i.e., employees with the least amount of total service shall be laid off first. All emergency, temporary, and provisional employees working in classifications similar to those identified for layoff must be terminated prior to the layoff of probationary or permanent employees. Employees on the Probationary Seniority List for a specific classification will be laid off prior to employees on the Permanent Seniority List for that class.

- 5233 Probationary or permanent employees temporarily acting out of classification and holding a provisional appointment in another classification will be listed only on a Seniority List for the class in which they hold permanent or probationary status and which is targeted for layoff.

- 2.3.4 If two (2) or more employees on a Seniority List have an identical Seniority Service Date, the tie shall be broken in the following order:

- 52.3.4.1 Time in classification - the employees having least time in the class shall be released first;

- 52.3.4.2 By lot.



## 52.4 Employee Retreat Rights/Out Placement

524.1 Before an employee with permanent or probationary status may be released from employment with the City of Berkeley, the Human Resources Department must consider the employee's right to retreat to lower level classifications through which he or she was originally promoted, or any subsequently created intermediate level career classification which provides normal progression through the classification series. Retreat rights shall also extend to employees who have not previously been promoted through a classification but for whom the classification is a natural progression or beginning in the classification series.

In addition to providing the employee with the appropriate retreat offer, when it is determined to be in the best interest of the service, the City Manager may authorize the Human Resources Department to offer the affected employee the option of out placement. The out placement offer would provide a designated amount of funds to be paid to the employee for use by the employee for career development. The employee could either accept the retreat offer (offer to bump another employee) or accept the out placement offer. If the employee accepts the out placement offer, the employee forfeits his or her rights under the layoff policy and will be laid off without rights to re-employment.

524.2 In the process of retreating, the same rules concerning the length of service, classification, Seniority Lists, etc., apply as in the first stage of the layoff process. In order to retreat, the targeted employee must be higher on the Seniority List for the classification into which he or she is retreating than at least one of the incumbents on the probationary or permanent Seniority List for that class.

524.3 **Waiver of Minimum Qualifications:** The City Manager may consider a temporary waiver of minimum qualification standards where the employee, because of (a) changes to the minimum requirements of a previously held classification, or (b) changes to the minimum requirements of a subsequently created intermediate level career classification in the same classification series, no longer meets the minimum qualifications of the previously held or intermediate level classification. The temporary waiver of minimum qualification standards shall be subject to a twelve (12) month probationary period during which time the employee must meet the new minimum qualifications of the classification. The employee shall be subject to the provisions of Sections 31.7 (Probationary Performance Evaluations) and 31.8 (Rejection During Probationary Period) of this Agreement. Employees shall be advised of her or his progress in writing after three (3), six (6) and eleven (11) months in the classification. If at the conclusion of the probationary period, management determines that the employee is not

meeting the minimum qualifications of the position, then the employee shall again be subject to the layoff process. Management will ensure that the retreating employee will receive orientation and feedback during the probationary period.

5244 If an employee is qualified for retreat into more than one classification with comparable salary ranges, or if a vacancy exists in a classification to which an employee is entitled to retreat, the Director of Human Resources shall discuss the options with the employee and due consideration shall be given to the employee's preferences. The Director of Human Resources shall then make a recommendation to the City Manager. However, it is the prerogative of the City Manager to determine the final placement offer to the employee.

5245 **Salary Placement:** The retreating employee has a right to be retained in the highest salary range possible which is equal to or less than his/her present salary range. An employee involved in layoff does not have a right of mandatory placement in positions with a higher salary range, i.e., promotion.

5246 **Reduction in Hours:** If an employee with a full time position is offered a reduction in hours in that position or in a lower classification, the employee may elect to be targeted for layoff for purpose of consideration under Section 52.6 (Flexible Placement Program/Out Placement) If there is no flexible placement available for the employee, the employee may accept the reduction in hours, in lieu of layoff.

## 52.5 Employee/Union Notification

5251 Emergency, temporary, intermittent, seasonal, etc., employees shall be notified individually, in writing, of pending layoff as soon as possible. However, at least two (2) weeks notification is desirable if possible.

5252 Provisional employees shall be notified individually, in writing, of pending layoff as soon as possible, with no less than fifteen (15) calendar days notification if targeted for release or reassignment.

5253 Permanent, probationary, and career-exempt employees shall be notified individually, in writing, of pending layoffs as soon as possible, with no less than thirty (30) calendar days notification if targeted for release or reassignment.

If an employee fails to accept a bona fide offer of reassignment within ten (10) calendar days after the offer has been made, he/she forfeits further right to employment retention. Acceptance of a reassignment does not remove the right of appeal under Section 52.10 (Appeal Procedures).

All notices of layoff under Section 52.5 (Employee/Union Notification) shall be issued to the Union simultaneously with notice to the affected employee(s). Together with any layoff notices sent to the Union, a list shall be included of all vacancies which are authorized for filling.

## **52.6 Flexible Placement Program/Out Placement**

526.1 In order to minimize the negative impact of a layoff, the City Manager will, as previously stated in Section 52.1.2 impose a City-wide freeze on all appropriate vacancies as soon as it has been determined that a layoff of career City employees may be necessary.

526.2 Following the release of all emergency, temporary, and provisional employees in classes similar to those targeted for layoff, and as soon as employees targeted for layoff have been identified and the provisions under Section 52.4 (Employee Retreat Rights/Out Placement) have been carried out, the Human Resources Department will review and identify the frozen vacant classifications into which employees ultimately targeted for layoff may be placed on the basis of total experience and education. In making this decision, a waiver of minimum qualification standards and/or the substitution of related experience and education may be made, with an understanding on the part of management and supervisory personnel that adequate supervised on-the-job training which can be completed within no more than six (6) months will be provided to facilitate job adjustment and to compensate for the waiver of qualification standards if that has occurred.

A training program shall be developed with the employee, the supervisor, and the Training Officer. The employee shall be advised of her/his progress in writing after two months, four months and six months in the new classification. If at the end of this time the employee is unable to adequately perform the assignment, then the employee shall be again subject to the layoff process.

526.3 In addition to providing the employee with the flexible placement offer, when it is determined to be in the best interest of the service, the City Manager may authorize the Human Resources Department to offer the affected employee the option of out placement. The out placement offer would provide a designated amount of funds to be paid to the employee for use by the employee for career development. The employee could either accept the flexible placement offer (offer to be flexibly placed in a vacant position) or accept the out placement offer. If the employee accepts the out placement offer, the employee forfeits his or her rights including, but not limited to, retreat rights, flexible placement and re-employment rights, under the layoff policy and will be laid off. All offers of out placement will be made in a manner to comply with general law and the affected employee will be

required to sign a waiver and release of all claims in consideration for receiving this benefit.

The City Manager, at his sole discretion, may approve outplacement payments in accordance with the Layoff Procedure at the rate of \$1,000 or 2% of annual salary; whichever is greater, for each full time equivalent year of City Service, up to a maximum of \$30,000.

5264 Assignments under the Flexible Placement Program shall be limited to positions in the same or lesser salary range as the classification from which the employee is to be laid off, except that the City Manager may authorize the offer of a flexible placement to position with a maximum salary of no more than five (5) percent above the salary range as the classification from which layoff is targeted, when it is in the best interest of the City service to do so. Whenever flexible placement is made to a classification with a greater salary range, the appointment shall be probationary, in accordance with the terms of that classification.

5265 All employees in classifications from which layoffs would otherwise be made shall be eligible to apply for flexible placement positions on a voluntary basis. Where more qualified employees apply under flex placement than are needed to prevent layoffs, each employee must be evaluated for his or her background (as opposed to classification) to determine whether the employee can assume full duties of flex placement within six months. The City will choose the applicants it considers best qualified to be offered the flex placement position. Where there are not enough volunteers for flexible placement, all employees slated for Layoff shall constitute the flexible placement pool of employees and offers to positions under the Flexible Placement Program shall be made as follows:

52.6.5.1 The total experience and education for each employee slated for layoff is compiled.

52.6.5.2 The employees slated for layoff are listed by order of seniority and placed in positions in order of seniority.

52.6.5.3 The right to Flexible Placement shall remain in force for the duration of the re-employment list.

52.6.5.4 All offers and placements made under this provision of the layoff policy shall be documented in detail, with records available for audit and review. Upon request, a written statement of the reasons for not offering an employee a particular position shall be made to the employee and/or the Union.

- 5266 Offers to positions under the Flexible Placement Program shall be made according to Seniority Service Date and in accordance with the Probationary and Permanent Seniority List certification process outlined in Section 52.3 (Establishment of Seniority Lists) and in accordance with the following procedures:
- 52.6.6.1 Full-time vacancies authorized to be filled shall be listed in order from highest to lowest based on the actual maximum salary.
  - 52.6.6.2 Part-time vacancies authorized to be filled shall be included in the above list in order based on the actual monthly maximum salary for the hours involved.
  - 52.6.6.3 The individual with the earliest Seniority Service Date (SSD) targeted for layoff will be considered for flexible placement in the top position on the above list.
  - 52.6.6.4 If it is determined that the person with the earliest SSD is eligible and qualified for flexible placement in the top position on the list, the Director of Human Resources shall recommend to the City Manager that the employee be offered the position. If the City Manager approves the recommendation, the employee shall be offered the position.
  - 52.6.6.5 If the City Manager and/or Director of Human Resources determines that the employee is not eligible or not qualified for the top position, the Director of Human Resources shall proceed down the list of vacancies in an effort to identify the next highest position for which the employee is eligible and qualified for flexible placement. Upon identification of such a match, the Director of Human Resources shall recommend to the City Manager that the employee be offered the position.
  - 52.6.6.6 This above process shall be repeated until either a match is identified or the list of vacancies has been exhausted.
  - 52.6.6.7 The above process shall be repeated next for the employee with the second highest SSD, and, subsequently in order from earliest to most recent SSD for each other employee targeted for layoff.
- 5267 If an employee fails to accept a bona fide written offer of an alternative job within ten (10) calendar days after the offer has been made, he or she forfeits further rights to employment retention. Acceptance or rejection of an alternative job under the Flexible Placement Program in no way jeopardizes an employee's standings on the Reemployment Priority Lists

on which his or her name has been placed in accordance with Section 52.7 (Reemployment Lists).

## 52.7 Reemployment Lists

- 527.1 The names of all probationary and permanent employees released from positions in the competitive service as a result of layoff must be placed on Reemployment Priority Lists for those classifications from which they were separated, as well as all other classifications to which they have retreat rights in accordance with Section 52.4 (Employee Retreat Rights/Out Placement).
- 5272 A Reemployment Priority List shall remain in effect for three (3) years. Said list shall remain in effect indefinitely for employees who are retreated or flexibly placed and remain employed with the City. Except that eligibility for reemployment in seasonal positions shall not be in effect for more than one year.
- 5273 Departments with vacancies in any classification for which there is an active Reemployment Priority List must use the Reemployment Priority List to fill their positions and may not use any other recruitment or appointment method to fill a vacancy until appropriate Reemployment Lists have been exhausted.
- 5274 When a vacancy occurs in a class for which there is a Reemployment Priority List, the employee on the appropriate Reemployment Priority List with the highest Seniority Date shall be given the offer of employment with a copy sent to the Department Head. Employees so certified from the Reemployment Priority List must be appointed to the existing vacancy.
- 5275 If a former employee fails to accept a bona fide written offer of reemployment to the class from which s/he was laid off within fifteen (15) calendar days, his/her name will be removed permanently from the Reemployment Priority List from which the offer was made unless the offer of reemployment is for fewer hours than his/her previous position. Failure to accept an offer of reemployment to the class with the highest salary range for which the employee is eligible for reemployment will result in automatic removal from all Reemployment Priority Lists. However, the employee may decline (or accept) temporary reemployment or reemployment to lower salary range classifications without jeopardizing his/her standing on the Reemployment Priority List for the classification from which s/he was originally terminated.
- 5276 Upon reappointment to the classification from which the employee was originally separated or demoted, the employee has the right to be placed at

the step of the salary range which the employee held at the time of layoff or demotion.

## 52.8 Reinstatement List

5281 Provisions of this Section 52.8 (Reinstatement List) shall be applicable only to unrepresented positions and positions represented by Unions and/or Associations which have incorporated identical language in their Memorandum Agreement and/or in formally executed Letters of Agreement.

5282 Any former employee on a reemployment list shall be included on the reinstatement list for a specific class at or below the class from which s/he was laid off whenever s/he both:

52.8.2.1 meets minimum qualifications of the specific class and

52.8.2.2 has requested reinstatement in that class.

5283 In order to permit reinstatement in another specific class of an individual who is on a mandatory reemployment list, minimum qualifications may be waived and On-the-Job Training (OJT) may be provided as specified under the Flexible Placement Program.

Such individuals shall be included on the eligibility list certified for a specific position and identified as eligible based on this provision.

5284 Consideration for 53.8.2 and/or 53.8.3 would be based on a written request from an employee for reinstatement in that specific class; such request must include an updated City of Berkeley job application form.

5285 **Berkeley Matters** shall be sent to all former employees on Reemployment Lists.

## 52.9 Career-Exempt Employees

Only those employees holding full-time, benefited exempt positions who, in the past, have achieved permanent status and have been continuously employed without a break in service between their career and exempt appointment, have the right to retreat to previously held career classifications, placement on the Reemployment Priority Lists, and all other provisions governing layoff procedures. For the purpose of layoff, such employees shall be referred to as "career-exempt".

## 52.10 Appeal Procedures

Any permanent, probationary, or career-exempt employee who is laid off, demoted, or reassigned as a result of layoff, who believes that the layoff procedure has been administered in violation of the terms of this Agreement, and those rules, regulations and resolutions which have been or may hereafter be adopted by the

City Council, as it pertains to the employee's case, may appeal the action under Section 37 (Grievance Procedure). In addition, employees may, at all times, before, during and subsequent to layoff, review all records, including Seniority Lists, Reemployment Priority Lists, documentation pertaining to appointments under the Flexible Placement Program, etc., which pertain to their classification and their rights under the provisions of the layoff policy.

#### **52.11 Reclassification or Reallocation of Positions**

Reclassification or reallocation of positions shall not be used as a mechanism, the sole purpose of which is to improperly circumvent the provisions of this Agreement, including provisions relating to layoff, transfer, demotion or promotion.

#### **52.12 Audit**

52.121 If it is determined that a vacancy has been filled by an employee not on the appropriate Reemployment Priority List in a classification for which a Reemployment Priority List existed and which included available applicants at the time, the former employee with reemployment rights shall be hired and given retroactive pay from the date that the vacancy occurred. The employee who was originally hired to fill the vacancy shall continue to be retained in City employment provided s/he has completed her/his probationary period.


52.122 In the event of a dispute between the Union and the City over the application of the Reemployment Priority Lists and if either party so requests, the City Manager's Office shall order an audit by an outside auditor of all vacant positions filled in each department, and authorized positions which have not been filled, to determine whether the vacancies occurred in classifications for which Reemployment Priority Lists were in existence, and, if so, whether the appointments made by the selecting official were in accordance with the procedures outlined in Section 52.7 (Reemployment Lists). In the event vacancies for which Reemployment Priority Lists were in existence remained unfilled, the auditor shall offer an opinion as to whether or not the reasons for leaving the positions vacant appear to be legitimate. A report of the audit must be transmitted to the City Manager, the City Council and the Union.

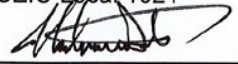


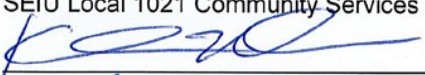
**SIGNATURE PAGE**


This Memorandum Agreement is executed this 16 day of October, 2018, by the employer-employee relations representatives whose signatures appear below for their respective organizations.

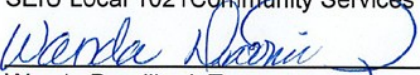
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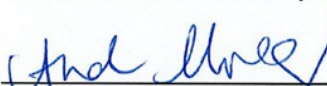
  
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Jose Martinez, Chief Negotiator  
SEIU Local 1021

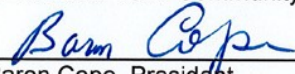
  
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Nathan Dahl, President  
SEIU Local 1021 Community Services


  
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Khin Chin, Vice President  
SEIU Local 1021 Community Services

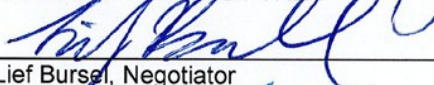
  
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Michael Marchant, Chief Steward  
SEIU Local 1021 Community Services

  
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Wanda Drouillard, Treasurer  
SEIU Local 1021 Community Services

  
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Andrea Mullarkey, Secretary  
SEIU Local 1021 Community Services

  
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Baron Cope, President  
SEIU Local 1021 Part-Time Recreational  
Leaders Association

  
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Marcellis Ashley, Negotiator  
SEIU Local 1021 CSU/PTRLA

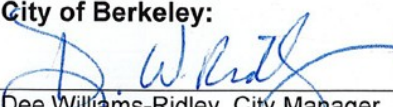
  
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Matthew Channing, Negotiator  
SEIU Local 1021 Community Services

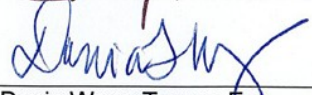
  
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SEIU Local 1021 CSU/PTRLA

  
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John Stead-Mendez, Executive Director  
SEIU Local 1021

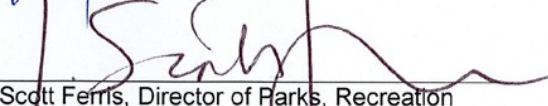
**City of Berkeley:**

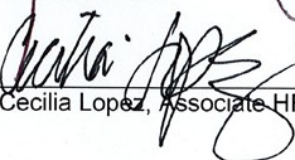
  
\_\_\_\_\_  
Dee Williams-Ridley, City Manager

  
\_\_\_\_\_  
Tanya Bellow, Director Human Resources

  
\_\_\_\_\_  
Dania Wong-Torres, Esq.  
Chief Negotiator

  
\_\_\_\_\_  
Kelly Wallace, Interim Director HHCS

  
\_\_\_\_\_  
Scott Ferris, Director of Parks, Recreation  
and Waterfront

  
\_\_\_\_\_  
Cecilia Lopez, Associate HR Analyst

**Exhibit A – Salary Ranges October 21, 2018 through October 19, 2019  
(3% Wage Increase)**

Job Code	Rep Unit	Classification Title	FLSA	Step 1	Step 2	Step 3	Step 4	Step 5
21070	L	Accountant I	N	35.8881	37.4269	38.9417	40.5675	42.3598
21170	L	Accountant II	N	41.9649	43.7594	45.7007	47.6161	49.7215
28230	L	Applications Programmer/Analyst I	N	43.5092	45.3641	47.4003	49.4882	51.6279
28220	L	Applications Programmer/Analyst II	N	47.4781	49.5744	51.8092	54.1471	56.5977
22280	L	Architect	E	53.9747	56.5545	59.2894	62.1363	65.0783
22270	L	Assistant Architect	E	46.2615	48.3753	50.6875	53.1553	55.7691
24060	G1	Assistant Environmental Health Specialist	N	0	0	38.0222	40.0582	41.6540
28090	L	Assistant Management Analyst	N	35.8653	37.4183	38.9363	40.5412	42.3360
54040	G1	Assistant Mental Health Clinician	N	30.1796	31.2493	32.2504	33.3805	35.0631
29200	L	Assistant Planner	N	36.0893	37.6769	39.1955	40.8521	42.6206
28100	L	Associate Management Analyst	N	44.7426	46.6957	48.8069	50.9017	53.1291
29030	L	Associate Planner	N	43.5785	45.5023	47.3485	49.4623	51.7314
21340	L	Auditor I	N	35.8881	37.4269	38.9417	40.5675	42.3598
21160	L	Auditor II	N	44.7426	46.8537	48.8568	50.9597	53.1291
26070	IA	Automation Librarian	N	43.3713	45.3901	47.5296	49.8074	52.2492
24780	G1	Behavioral Health Clinician I	E	38.3945	40.0046	41.6463	43.3198	45.0329
24790	G1	Behavioral Health Clinician II	E	42.2888	43.9702	45.7068	47.5311	49.3950
37060	L	Building Inspector I (Certified)	N	42.5946	44.4410	46.4599	48.4182	50.5322
37050	L	Building Inspector II	N	43.8887	45.7872	47.8663	49.8850	52.0679
37070	L	Building Inspector II (Certified)	N	45.6577	47.6161	49.7818	51.8870	54.1558
35160	L	Building Plans Examiner	N	45.6577	47.6161	49.7818	51.8870	54.1558
28020	L	Buyer	N	38.3672	40.0756	41.6630	43.4058	45.2779
96080	IA	Central Library Circulation Supervisor	N	33.9671	35.4076	36.9351	38.5312	40.5326
24110	G1	Clinical Psychologist	E	46.7793	48.5996	50.5234	52.4994	54.6131
33090	L	Code Enforcement Officer I	N	33.7342	35.3045	36.9435	38.6694	40.4808
33100	L	Code Enforcement Officer II	N	40.9556	42.7242	44.6653	46.5462	48.5908
28330	L	Community Development Project Coordinator	E	46.5892	48.8238	51.2311	53.7417	56.3300
55070	G1	Community Health Worker	N	0	27.7985	28.4280	29.1357	30.5766
55370	G1	Community Health Worker Specialist	N	30.1796	31.2493	32.2504	33.3805	35.0631
28080	L	Community Services Specialist I	N	35.8881	37.4269	38.9417	40.5675	42.3598
28120	L	Community Services Specialist II	N	44.7426	46.6957	48.8069	50.9017	53.1291
28320	L	Disability Services Specialist	N	44.7426	46.6957	48.8069	50.9017	53.1291
28840	L	Emergency Services Coordinator	N	44.7442	46.7045	48.8020	50.8993	53.1334
28830	L	Environmental Compliance Specialist	E	48.4591	50.1725	52.0600	54.1378	56.1521
24220	G1	Epidemiologist	E	38.5376	40.4631	42.4846	44.6087	46.8410

Job Code	Rep Unit	Classification Title	FLSA	Step 1	Step 2	Step 3	Step 4	Step 5
41050	L	Field Representative	N	0	0	33.4665	34.8212	36.3913
35090	L	Fire and Life Safety Plans Examiner	N	50.3166	52.4907	54.8717	57.1927	59.7292
75070	L	Fire Prevention Inspector	N	40.9556	42.7242	44.6653	46.5462	48.5908
24590	G1	Hazardous Materials Specialist I	N	42.6722	44.1649	45.8303	47.6506	49.4536
24560	G1	Hazardous Materials Specialist II	N	48.4616	50.1697	52.0590	54.1384	56.1573
24190	G1	Health Educator	E	42.2135	43.8483	45.5511	47.3294	49.2064
33080	L	Housing Inspector	N	40.9556	42.7242	44.6653	46.5462	48.5908
33060	L	Housing Inspector (Certified)	N	42.5946	44.4410	46.4599	48.4182	50.5322
28300	L	Information Systems Specialist	N	40.7026	42.4631	44.3586	46.2860	48.3084
36050	L	Information Systems Support Technician	N	33.7858	35.0543	36.3568	37.7201	39.1265
22290	L	Landscape Architect	E	52.0570	54.4340	57.0356	59.8286	62.7707
26050	IB	Librarian I	N	35.0715	36.7366	38.5913	40.3084	42.0512
26040	IB	Librarian II	N	38.5913	40.3084	42.0512	44.0096	45.8991
42450	IB	Library Aide	N	21.0686	22.0696	23.0185	24.0023	24.6580
42130	IB	Library Assistant	N	25.5811	26.6940	27.8587	29.0405	30.4039
26150	IA	Library Literacy Program Coordinator	N	36.9608	38.6088	40.2911	42.1288	43.9664
42462	ID	LIBRARY PAGE	N	0	0	0	0	18.0000
26100	IA	Library Special Services Coordinator	E	41.5509	43.5351	45.6404	47.7714	50.0577
42500	IB	Library Specialist I	N	28.8769	30.1104	31.4133	32.7421	34.4592
46100	IB	Library Specialist II	N	30.4039	32.0346	33.3979	34.7780	36.5212
64200	G1	Mealsite Coordinator	N	0	0	26.7973	27.4273	28.0828
24700	G3	Mid-level Practitioner	E	0	53.6382	55.4155	57.4343	59.4706
63200	G1	Mini Bus Driver	N	0	0	27.0909	28.1432	29.2995
24040	G1	Nutritionist	E	37.5564	39.0402	40.5154	42.0512	43.7767
35150	L	Permit Specialist	N	32.0085	33.5359	35.0369	36.6763	38.3931
35200	L	Planning Technician	N	32.2094	33.9058	35.6882	37.5635	39.5381
24760	G1	Psychiatrist	E	83.6501	87.8305	92.2200	96.8303	101.6737
24020	G3	Public Health Nurse	E	49.3076	51.0742	53.1306	55.3492	57.5183
65742	R2	RECREATION ACTIV LDR R2	N	18.8563	20.9032	23.3463	25.6015	28.5459
65740	R1	Recreation Activity Leader	N	19.3339	21.4202	23.8500	26.2788	29.2681
24050	G1	Registered Environmental Health Specialist	N	43.4705	44.9853	46.7062	48.5464	50.3787
24030	G3	Registered Nurse	E	0	47.7609	49.4104	51.0983	52.9372
21360	L	Revenue Development Specialist I	N	35.8869	37.4309	38.9417	40.5784	42.3609
21150	L	Revenue Development Specialist II	N	44.7442	46.7045	48.8020	50.8993	53.1334
24800	G1	Senior Behavioral Health Clinician	E	46.1591	48.0232	49.8074	51.7822	53.8840
32030	L	Senior Building Inspector	N	50.3166	52.4907	54.8717	57.1927	59.7292
35170	L	Senior Building Plans Examiner	N	50.3166	52.4907	54.8717	57.1927	59.7292
55390	G1	Senior Community Health Specialist	N	31.6983	32.8110	33.8636	35.0109	36.7971
24690	G1	Senior Environmental Health Specialist	N	45.6517	47.2536	49.0222	50.9813	52.9006

Job Code	Rep Unit	Classification Title	FLSA	Step 1	Step 2	Step 3	Step 4	Step 5
41030	L	Senior Field Representative	N	0	0	36.2104	37.8065	39.3507
28260	L	Senior Health Management Analyst	N	46.1495	48.3666	50.7306	53.2411	55.7949
28960	L	Senior Information Systems Specialist	N	44.8744	46.8727	48.9828	51.1953	53.4796
26060	IB	Senior Librarian	N	40.3516	42.0944	43.9495	45.9684	47.9612
35140	L	Senior Permit Specialist	N	34.6176	36.3618	38.1709	40.0883	42.6476
29020	L	Senior Planner	E	50.1095	52.3524	54.7425	57.1496	59.7035
24010	G3	Senior Public Health Nurse	E	53.9996	56.0699	58.2041	60.6772	63.0090
65560	G1	Senior Service Aide	N	0	0	24.2957	25.1840	26.1849
65570	G1	Senior Service Assistant	N	0	0	31.0254	31.8362	32.6041
24810	G1	Social Services Specialist	N	35.8869	37.4308	38.9416	40.5783	42.3608
65532	R2	SPORTS FIELD MONITOR	N	0	0	0	0	18.0000
65750	R1	Sports Official	N	20.3767	23.7859	27.1949	30.6032	34.0250
65752	R2	SPORTS OFFICIAL R2	N	19.8590	23.1795	26.5206	29.8199	33.1400
26030	IA	Supervising Librarian	E	45.9767	48.1079	50.3769	52.7929	55.3896
46090	IA	Supervising Library Assistant	N	31.1804	32.4745	33.8893	35.3475	38.3731
34040	G1	Vector Control Technician	N	0	0	31.8612	32.9637	33.9812

**Exhibit B – Salary Ranges as of October 20, 2019  
(2.0% Salary Increase)**

<b>Job Code</b>	<b>Rep Unit</b>	<b>Classification Title</b>	<b>FLSA</b>	<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>	<b>Step 4</b>	<b>Step 5</b>
21070	L	Accountant I	N	36.6059	38.1754	39.7206	41.3789	43.2070
21170	L	Accountant II	N	42.8042	44.6346	46.6147	48.5684	50.7159
28230	L	Applications Programmer/Analyst I	N	44.3794	46.2714	48.3484	50.4780	52.6605
28220	L	Applications Programmer/Analyst II	N	48.4276	50.5659	52.8453	55.2301	57.7296
22280	L	Architect	E	55.0542	57.6856	60.4751	63.3791	66.3799
22270	L	Assistant Architect	E	47.1867	49.3428	51.7012	54.2184	56.8845
24060	G1	Assistant Environmental Health Specialist	N	0	0	38.7826	40.8594	42.4871
28090	L	Assistant Management Analyst	N	36.5826	38.1667	39.7151	41.3521	43.1827
54040	G1	Assistant Mental Health Clinician	N	30.7832	31.8743	32.8954	34.0481	35.7644
29200	L	Assistant Planner	N	36.8110	38.4304	39.9795	41.6691	43.4731
28100	L	Associate Management Analyst	N	45.6375	47.6296	49.7830	51.9198	54.1917
29030	L	Associate Planner	N	44.4500	46.4123	48.2955	50.4515	52.7660
21340	L	Auditor I	N	36.6059	38.1754	39.7206	41.3789	43.2070
21160	L	Auditor II	N	45.6375	47.7908	49.8339	51.9789	54.1917
26070	IA	Automation Librarian	N	44.2388	46.2979	48.4802	50.8035	53.2942
24780	G1	Behavioral Health Clinician I	E	39.1624	40.8047	42.4792	44.1862	45.9335
24790	G1	Behavioral Health Clinician II	E	43.1346	44.8496	46.6210	48.4817	50.3829
37060	L	Building Inspector I (Certified)	N	43.4465	45.3298	47.3891	49.3866	51.5428
37050	L	Building Inspector II	N	44.7665	46.7029	48.8236	50.8827	53.1093
37070	L	Building Inspector II (Certified)	N	46.5708	48.5684	50.7774	52.9247	55.2390
35160	L	Building Plans Examiner	N	46.5708	48.5684	50.7774	52.9247	55.2390
28020	L	Buyer	N	39.1346	40.8771	42.4963	44.2739	46.1834
96080	IA	Central Library Circulation Supervisor	N	34.6464	36.1158	37.6738	39.3018	41.3433
24110	G1	Clinical Psychologist	E	47.7148	49.5716	51.5339	53.5494	55.7053
33090	L	Code Enforcement Officer I	N	34.4089	36.0106	37.6823	39.4428	41.2904
33100	L	Code Enforcement Officer II	N	41.7747	43.5786	45.5586	47.4772	49.5626
28330	L	Community Development Project Coordinator	E	47.5210	49.8003	52.2557	54.8165	57.4566
55070	G1	Community Health Worker	N	0	28.3545	28.9966	29.7185	31.1881
55370	G1	Community Health Worker Specialist	N	30.7832	31.8743	32.8954	34.0481	35.7644
28080	L	Community Services Specialist I	N	36.6059	38.1754	39.7206	41.3789	43.2070
28120	L	Community Services Specialist II	N	45.6375	47.6296	49.7830	51.9198	54.1917
28320	L	Disability Services Specialist	N	45.6375	47.6296	49.7830	51.9198	54.1917
28840	L	Emergency Services Coordinator	N	45.6390	47.6386	49.7781	51.9172	54.1961
28830	L	Environmental Compliance Specialist	E	49.4283	51.1759	53.1012	55.2206	57.2752
24220	G1	Epidemiologist	E	39.3084	41.2723	43.3343	45.5008	47.7778
41050	L	Field Representative	N	0	0	34.1358	35.5176	37.1191



Job Code	Rep Unit	Classification Title	FLSA	Step 1	Step 2	Step 3	Step 4	Step 5
35090	L	Fire and Life Safety Plans Examiner	N	51.3229	53.5405	55.9692	58.3365	60.9238
75070	L	Fire Prevention Inspector	N	41.7747	43.5786	45.5586	47.4772	49.5626
24590	G1	Hazardous Materials Specialist I	N	43.5256	45.0482	46.7469	48.6037	50.4426
24560	G1	Hazardous Materials Specialist II	N	49.4308	51.1731	53.1002	55.2212	57.2804
24190	G1	Health Educator	E	43.0578	44.7253	46.4621	48.2760	50.1905
33080	L	Housing Inspector	N	41.7747	43.5786	45.5586	47.4772	49.5626
33060	L	Housing Inspector (Certified)	N	43.4465	45.3298	47.3891	49.3866	51.5428
28300	L	Information Systems Specialist	N	41.5167	43.3124	45.2457	47.2117	49.2745
36050	L	Information Systems Support Technician	N	34.4616	35.7554	37.0840	38.4745	39.9090
22290	L	Landscape Architect	E	53.0981	55.5227	58.1763	61.0251	64.0261
26050	IB	Librarian I	N	35.7729	37.4714	39.3632	41.1146	42.8922
26040	IB	Librarian II	N	39.3632	41.1146	42.8922	44.8898	46.8170
42450	IB	Library Aide	N	21.4900	22.5110	23.4789	24.4824	25.1512
42130	IB	Library Assistant	N	26.0928	27.2279	28.4159	29.6213	31.0120
26150	IA	Library Literacy Program Coordinator	N	37.7000	39.3810	41.0970	42.9714	44.8458
42462	ID	LIBRARY PAGE		0	0	0	0	18.0000
26100	IA	Library Special Services Coordinator	E	42.3819	44.4058	46.5532	48.7269	51.0588
42500	IB	Library Specialist I	N	29.4544	30.7127	32.0415	33.3969	35.1484
46100	IB	Library Specialist II	N	31.0120	32.6753	34.0658	35.4736	37.2517
64200	G1	Mealsite Coordinator	N	0	0	27.3333	27.9759	28.6444
24700	G3	Mid-level Practitioner	E	0	54.7109	56.5238	58.5829	60.6600
63200	G1	Mini Bus Driver	N	0	0	27.6327	28.7061	29.8855
24040	G1	Nutritionist	E	38.3075	39.8210	41.3257	42.8922	44.6522
35150	L	Permit Specialist	N	32.6487	34.2066	35.7377	37.4098	39.1610
35200	L	Planning Technician	N	32.8536	34.5839	36.4020	38.3148	40.3288
24760	G1	Psychiatrist	E	85.3231	89.5871	94.0644	98.7669	103.7071
24020	G3	Public Health Nurse	E	50.2938	52.0957	54.1932	56.4561	58.6687
65742	R2	RECREATION ACTIV LDR R2		19.2334	21.3213	23.8132	26.1136	29.1168
65740	R1	Recreation Activity Leader	N	19.7206	21.8486	24.3270	26.8044	29.8535
24050	G1	Registered Environmental Health Specialist	N	44.3399	45.8850	47.6403	49.5173	51.3863
24030	G3	Registered Nurse	E	0	48.7161	50.3986	52.1203	53.9959
21360	L	Revenue Development Specialist I	N	36.6046	38.1795	39.7206	41.3900	43.2081
21150	L	Revenue Development Specialist II	N	45.6390	47.6386	49.7781	51.9172	54.1961
24800	G1	Senior Behavioral Health Clinician	E	47.0823	48.9837	50.8035	52.8179	54.9617
32030	L	Senior Building Inspector	N	51.3229	53.5405	55.9692	58.3365	60.9238
35170	L	Senior Building Plans Examiner	N	51.3229	53.5405	55.9692	58.3365	60.9238
55390	G1	Senior Community Health Specialist	N	32.3322	33.4673	34.5409	35.7112	37.5330
24690	G1	Senior Environmental Health Specialist	N	46.5647	48.1986	50.0027	52.0010	53.9586
41030	L	Senior Field Representative	N	0	0	36.9346	38.5626	40.1377

Job Code	Rep Unit	Classification Title	FLSA	Step 1	Step 2	Step 3	Step 4	Step 5
28260	L	Senior Health Management Analyst	N	47.0725	49.3339	51.7452	54.3059	56.9108
28960	L	Senior Information Systems Specialist	N	45.7719	47.8102	49.9624	52.2192	54.5492
26060	IB	Senior Librarian	N	41.1586	42.9363	44.8285	46.8878	48.9204
35140	L	Senior Permit Specialist	N	35.3099	37.0891	38.9344	40.8900	43.5005
29020	L	Senior Planner	E	51.1117	53.3994	55.8373	58.2926	60.8976
24010	G3	Senior Public Health Nurse	E	55.0796	57.1913	59.3682	61.8907	64.2691
65560	G1	Senior Service Aide	N	0	0	24.7816	25.6876	26.7086
65570	G1	Senior Service Assistant	N	0	0	31.6459	32.4730	33.2562
24810	G1	Social Services Specialist	N	36.6046	38.1794	39.7205	41.3899	43.2080
65532	R2	SPORTS FIELD MONITOR		0	0	0	0	18.0000
65750	R1	Sports Official	N	20.7843	24.2616	27.7388	31.2152	34.7055
65752	R2	SPORTS OFFICIAL R2		20.2562	23.6431	27.0511	30.4163	33.8028
26030	IA	Supervising Librarian	E	46.8962	49.0700	51.3845	53.8487	56.4974
46090	IA	Supervising Library Assistant	N	31.8040	33.1240	34.5670	36.0544	39.1406
34040	G1	Vector Control Technician	N	0	0	32.4984	33.6230	34.6608

**Exhibit C**

**NON-CAREER EMPLOYEE PROVISIONS (UNITS G1, G3, AND L)**

- Section 1 .....Preamble
- Section 2 .....Recognized Employee Organization
- Section 3 .....No Discrimination
- Section 4 .....Union Security
- Section 5 .....Union Representatives
- Section 6 .....Separability of Provisions
- Section 7 .....Finality of Recommendations
- Section 8 .....Duration
- Section 9 .....Salaries
- Section 10 .....Higher Classification and Temporary Appointments
- Section 12 .....Hours and Days of Work
- Section 13 .....Overtime
- Section 14 .....Shift Differential
- Section 16 .....Payroll Errors
- Section 15.2 .....Bilingual Premium Pay
- Section 39.1 .....Personal Conduct
- Section 39.2 .....Use of Automobiles and Parking
- Section 52 .....Layoff

**Non-Career Employees - Paid Time Off**

A non-career employee who works one thousand forty (1040) hours or more in a calendar year in a classification covered by this Agreement, and is in active employment during December of such year, shall be credited with forty (40) hours of paid time off to be used by such employee in the subsequent calendar year for either paid vacation or paid sick leave. The following conditions shall apply to the use of paid time off:

1. To qualify for paid time off as vacation, the employee must apply in writing, to the employee's Supervisor at least thirty (30) calendar days in advance of the desired time off. The grant or denial of the requested time off shall be in writing and shall be controlled by program considerations as established by the City.
2. To qualify for paid time off as sick leave, the employee must notify the employee's Supervisor of an inability to report for work by reason of illness or injury in advance of the scheduled work.
3. An employee who has credited and unused paid time off shall receive payment for such time upon termination of employment. All credited paid time off not utilized by employees at the end of the calendar year in which the employees are eligible



to take such time will be paid off at the end of the year as wages and shall not be accumulated from year to year.

### **Salary Advancement - Non-Career Employees**

When a non-career employee has worked two thousand eighty (2080) hours subsequent to July 1, 1983 without terminating his/her service with the City or being terminated from his/her service with the City, such employee shall be moved to the next higher salary step within her/his present classification on the first day of the payroll period following completion of said 2080 hours. Non-career employees shall be eligible for subsequent step increases based on the above 2080 hour formula.

No provision herein shall be interpreted as preventing Department Heads from placing an employee at a higher salary step within a classification at her/his discretion provided the placement is made in accordance with City rules and regulations and standard pay practices.

## Appendix A

### SEXUAL HARASSMENT POLICY (OCTOBER 10, 1986)

#### **WHY SHOULD EMPLOYEES BE CONCERNED ABOUT SEXUAL HARASSMENT**

The City has adopted an Affirmative Action and Equal Employment Opportunity policy that prohibits, not only obvious forms of discrimination based on race, sex, age, religion, color, sexual preference, national origin, ethnicity, handicap/disability, but also the more hidden or subtle forms commonly called Sexual Harassment. Specifically this policy states:

"The City of Berkeley affirms its commitment to enshrine an environment for all employees which is fair, humane and respectful; an environment which supports and rewards employee performance on the basis of relevant considerations such as ability and effort. Behaviors which inappropriately assert sexuality as relevant to employee performance are damaging to this environment.

The City of Berkeley deplores such conduct as an abuse of authority and thus it is an official City policy that sexual harassment of employees will not be tolerated."

**SEXUAL HARASSMENT** is detrimental to employee morale and productivity. This type of harassment is not to be tolerated, trivialized, or condoned in any City department or agency.

#### **WHAT TYPE OF BEHAVIOR CONSTITUTES HARASSMENT**

Harassment is defined as "to annoy continually or chronically; or to badger." Harassment includes ethnicity or sex based jokes, racial slurs and unwelcome teasing, posters or pictures hostile to or making fun of a specific class of people, unwanted physical or sexual contact and request for intimate relations. Behavior such as hazing or 'initiation,' which intentionally or unintentionally humiliates or intimidates can also be harassment. Action on the part of the supervisor or co-worker that conditions any employment decision upon an employee's tolerating any harassment or giving sexual favors is a violation of this policy as well as federal and state law.

#### **CAN FRIENDLY INTERACTION AND/OR SEXUAL REFERENCES BE HARASSMENT?**

There is a clear line in most cases between attractiveness to a particular person and unwelcome behavior or pressure for an intimate relationship. The positive exchange of the former situation is not going to be considered harassment; employees are free to form social relationships of their own choosing. However, when one worker is pursuing or forcing a relationship upon another who does not like or want it, regardless of friendly intent, the behavior will be considered harassment and should be stopped.

**IF I'M BEING HARASSED -- OR THINK I AM -- WHAT SHOULD I DO?**

First, be "up front," tell the person(s) harassing you that you do not like what they are doing and want them to stop. If you cannot do this by yourself, ask your supervisor or co-worker to be with you when you tell the harasser. You may also contact the Affirmative Action Officer for assistance or advice at any time.

**WHY SHOULD I STOP BEING FRIENDLY TO SOMEONE JUST BECAUSE HE OR SHE THINKS I'M HARASSING THEM?**

If someone tells you that they do not like something you are saying, stop the harassment immediately. Otherwise, you may face a lawsuit that can run several thousands of dollars in punitive damages (out of your pocket). You may also be subject to City discipline which could include dismissal. Additionally, harassing someone for "turning you in" is called retaliation and is against City policy, state and federal law.

**ARE THERE PROTECTIONS AGAINST FALSE CHARGES?**

Yes. This kind of situation is serious for everyone involved. The whole situation will be carefully reviewed before any action is taken. The best protection is keep all conduct free from behaviors that are inappropriate in a work environment.

**WHAT RESPONSIBILITIES DO DEPARTMENT HEADS OR SUPERVISORS HAVE?**

Department heads and supervisors have the responsibility to keep harassment out of their units and to maintain a "bias free" work environment. This means being aware of how people are treating each other and being responsive when issues of harassment are brought to their attention. The Equal Employment Opportunity and Diversity Officer is available to provide guidance, training and assistance as may be required.

**IF THE HARASSER DOESN'T TAKE "NO" FOR AN ANSWER OR MY DEPARTMENT HEAD/SUPERVISOR DOES NOT HELP, WHAT THEN?**

If the harasser will not stop the harassing actions and the Department Head/Supervisor is unresponsive, a complaint can be filed with the City Equal Employment Opportunity and Diversity Officer. This will be handled with as much confidentiality for all parties as is possible. If attempts to resolve the matter informally are not successful, a formal complaint will be required and confidentiality cannot be maintained. After a thorough review of the situation, recommendations will be made to correct or remedy the matter. You are encouraged to seek the assistance of the Personnel Office as soon as you feel a problem exists. You may call Personnel at 981-6811 for assistance. Complaints may also be filed with the California Department of Fair Employment Opportunity Commission.

## Appendix B

### EEO COMPLAINT INVESTIGATION AND RESOLUTION PROCEDURE

Policy: In accordance with EEO principles and the policies of the EEO/Affirmative Action Program, all employment practices, procedures, conditions and decisions shall be based on valid job-related criteria and shall be maintained without discrimination or harassment on the basis of race, color, religion, ancestry, national origin, age, sex, sexual orientation, marital status, political affiliation, physical disability, or medical condition (including cancer and HIV status).

Objectives: The EEO Complaint Investigation and Resolution Procedure shall apply to all City employees who seek redress from any employment practice, procedure, condition or decision which is believed to have been applied to them in a manner inconsistent with EEO principles or in violation of any policy of the EEO/Affirmative Action Program. The objectives of this procedure are as follows:

1. To provide the structure of due process for City employees to use in order to report and seek correction of employment practices, procedures, conditions or decisions which are believed to have been applied to them in violation of EEO principles or any policy of the EEO/Affirmative Action Program;
2. To define appropriate roles, responsibilities and accountability for impartial evaluation, investigation, and revision of practices, procedures or decisions to ensure compliance with EEO principles and EEO/Affirmative Action Program policies;
3. To make City departments more conscious of the EEO concerns and issues, and to improve the capability of departments to appropriately respond to and resolve EEO concerns and issues;
4. To provide the City with the opportunity to identify, evaluate and appropriately respond to EEO concerns and issues in a timely manner at lowest administrative level possible, and to prevent the necessity for outside intervention by courts or EEO regulatory agencies.

Conditions: The following conditions shall apply with regard to the application and administration of the EEO Complaint Investigation and Resolution Procedure:

1. No employee, as a result of his/her participation in the EEO Complaint Investigation and Resolution Procedure, shall be subject to retaliation or reprisal by any other employee which:
  - a) deprives or tends to deprive him/her of employment opportunities,

- b) has the effect of creating an intimidating, hostile or offensive working environment,
- c) has the purpose or effect of unreasonably interfering with his/her work performance,
- d) otherwise adversely affects his/her status as an employee.

The City will take severe disciplinary action, up to and including termination, against any employee who violates this condition.

2. All internal complaints that allege violation of EEO principles or EEO/Affirmative Action Program policies, and all responses to such complaints may be handled under the provisions of the EEO Complaint Investigation and Resolution Procedure.
3. The EEO Complaint Investigation and Resolution Procedure is not intended to place any limitation or prohibition on any entitlement to file complaints with the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, or the courts.
4. The EEO Complaint Investigation and Resolution Procedure is not intended to place any limitation or prohibition on any entitlement to file grievances under the provisions of collective bargaining agreements.
5. The EEO Complaint Investigation and Resolution Procedure shall not apply to formal complaints on matters outside the purview of the EEO/Affirmative Action Program.
6. Any corrective or preventative measures undertaken to resolve EEO problems and concerns identified in accordance with this procedure shall be entered into voluntarily by the City of Berkeley as part of its ongoing commitment to the provision of equal employment opportunity. Such action shall not be construed as an admission, nor shall such action imply, that the City of Berkeley engages in or ever has engaged in unlawful discrimination.
7. All investigation reports prepared in accordance with the provisions of the EEO Complaint Investigation and Resolution Procedure shall remain the sole property of the City of Berkeley, and as such shall be established and maintained as confidential material. No persons other than authorized complaint investigators and evaluators shall have any entitlement to access such material. The City of Berkeley will take such steps as necessary to secure appropriate legal remedies in response to any unauthorized duplication, distribution or possession of such material.

8. Any party who files a complaint under the provisions of the EEO Complaint Investigation and Resolution Procedure shall be entitled upon request to advice, counsel and representation by an authorized agent of his/her bargaining unit throughout the investigation and resolution process.

#### Informal Resolution Process

The Equal Employment Opportunity and Diversity Officer will be responsible for accepting informal complaints of EEO policy violations, either orally or in writing. Upon this notification, the Equal Employment Opportunity and Diversity Officer will advise the complainant of the steps of the process and his/her right to file civil action, and will perform whatever inquiry is deemed necessary to provide the complainant with an informal analysis of the matter.

If the complainant determines that it is appropriate to pursue the matter, then the Equal Employment Opportunity and Diversity Officer will establish a date to meet with the complainant and the Department Head or the appropriate City official as determined by the City Manager to review the allegations of the complaint. Subsequent to the interview, the Department Head or other appropriate City official will take the following steps.

- a) Investigate the complaint allegations with the advice and assistance from the Equal Employment Opportunity and Diversity Officer as necessary.
- b) Prepare a written investigative report.
- c) Provide copies of the investigation report to the Equal Employment Opportunity and Diversity Officer.
- d) Meet with the complainant and the Equal Employment Opportunity and Diversity Officer to discuss the complaint, investigation results, and resolution of the complaint.

The Equal Employment Opportunity and Diversity Officer will engage in any additional inquiry deemed appropriate to bring the complaint to resolution, and will prepare a written statement of agreement that identifies the complaint allegations, summarizes the department's investigation results, identifies the independent assessments of the Equal Employment Opportunity and Diversity Officer, documents any corrective actions to be taken, and documents each area of satisfactory resolution of the complaint that has been agreed to by the complainant.

- a) Regardless as to whether the complainant elects to proceed to the next step of the procedure, or elects to engage in civil action or any other legal alternative, all corrective actions identified in the statement of agreement that are to be carried out by any City official shall be implemented.

- b) The Equal Employment Opportunity and Diversity Officer will provide copies of the statement of agreement to the Department Head or the appropriate City Official, and to the complainant.
- c) The informal resolution process must be performed in an expeditious manner, not to exceed twenty (20) working days from the date the complaint was submitted.

#### Formal Resolution Process

1. *Complaint Submission.* Formal complaints may be initiated upon the failure of the informal process to resolve the complaint. The complaint must be submitted in writing to the Equal Employment Opportunity and Diversity Officer within twenty (20) working days of the date of the termination of the unsatisfactory informal resolution process. The formal complaint should include the following information:
  - a) description of the activities and circumstances believed to be EEO violations;
  - b) identification of the complaint allegations that have not been addressed in satisfactory manner by the Department;
  - c) identification of any policies, practices or procedures believed to have been violated;
  - d) description of the participants' roles, responsibilities and activities in relationship to the alleged violations;
  - e) description of desired outcomes, relief, or other corrective measures.
2. *Complaint Rejection.* When presented with a formal complaint, if it is determined that: (a) the complaint does not fall within the scope of this procedure; (b) the complaint was not filed within the specified time limits; (c) the complaint is currently or has been the subject of a lawsuit against the City, or the complaint is currently or has been otherwise under legal review and/or subject to formal resolution by the authority of a court or an EEO regulatory agency including the California Department of Fair Employment and Housing (DFEH), the U.S. Office of Civil Rights (OCR), the U.S. Equal Employment Opportunity Commission (EEOC); (d) a decision has already been made and appropriate steps have been taken by proper authorities; then the Equal Employment Opportunity and Diversity Officer shall take the following steps:
  - a) Within five (5) working days of the receipt of the formal complaint, the Equal Employment Opportunity and Diversity Officer will submit a written notification of its receipt to the City Manager that recommends rejection of the complaint and provides the reasons.

- b) If the City Manager authorizes rejection of the complaint, then within ten (10) working days from the receipt of the complaint, the Equal Employment Opportunity and Diversity Officer will provide written acknowledgment of its receipt to the complainant, and advise the complainant of its rejection, the reasons and his/her right to file civil action.
  - c) If the City Manager does not authorize rejection of the complaint then the Equal Employment Opportunity and Diversity Officer will proceed in accordance with the complaint investigation in accordance with the Complaint Acceptance provisions of this procedure.
3. *Complaint Acceptance.* When presented with a formal complaint, and after determining that (a) the complaint falls within the scope of this procedure, and (b) the complainant has satisfied the requirements of pre-complaint processing, the Equal Employment Opportunity and Diversity Officer shall take the following steps:
- a) Within ten (10) working days of the receipt of the formal complaint, provide written acknowledgment of its receipt to the complainant, and advise the complainant of the steps of the process and his/her right to file civil action.
  - b) Within ten (10) working days of the receipt of the formal complaint, provide written notification of the acceptance of the complaint to the City Manager, the Department Head or other appropriate City official, and the Chair of the Personnel Board Affirmative Action Subcommittee.
  - c) Within twenty (20) working days of the receipt of the formal complaint, (a) conduct a formal investigation of the allegations of the complaint, (b) submit a comprehensive investigation report with results, conclusions and recommendations to the City Manager, the Department Head or other appropriate City official, and the Chair of the Personnel Board Affirmative Action Subcommittee.
  - d) Within twenty-five (25) working days of the receipt of the formal complaint, meet with the City Manager, Department Head or other appropriate City official, and the Chair of the Personnel Board Affirmative Action Subcommittee to: (1) review the results of the investigation; and (2) discuss and document any corrective actions and/or preventative measures to be taken, including roles, responsibilities, implementation time lines, and evaluation criteria.
  - e) Within thirty (30) working days of the receipt of the formal complaint, provide a formal written response to the complainant that (1) identifies the allegations of the complaint; and (2) summarizes the overall results of the investigation, and any corrective or preventative measures to be taken as appropriate.



4. *Complaint Investigation.* The formal investigation and written investigation report shall include the following elements:
  - a) Review and evaluation of the activities and circumstances alleged to be EEO violations;
  - b) Review and evaluation of the applicable policies, practices, and procedures;
  - c) Review and evaluation of the participants' roles, responsibilities and activities in relationship to the alleged violations;
  - d) Review and evaluation of other relevant documentation that may include personnel files, disciplinary, performance, payroll or related records;
  - e) Assessment of the extent to which allegations are supported by the evidence;
  - f) Identification of corrective, preventative and other appropriate measures recommended to resolve the problem (including roles, responsibilities, timetables and other relevant considerations).

**Appendix C****CITY OF BERKELEY  
ADMINISTRATIVE REGULATIONS****A.R. NUMBER: 2.4****EFFECTIVE DATE: August 17, 1994****REVISED DATE: June 5, 1995****PURPOSE:**

To set forth policy and procedure for the implementation and administration of Family Care Leave as required by the Federal Family and Medical Leave Act, and the California Family Rights Act, and to incorporate the separate City of Berkeley Parental Leave Policy under a comprehensive Family Care Leave program.

**POLICY:**

It is the policy of the City to extend the full benefits of family care leave to any permanent career employee who has a minimum of one (1) year career service with the City of Berkeley, and limited benefits to qualified temporary employees as defined herein. Employees eligible for parental leave shall be entitled to a maximum of one (1) year of leave for the birth or adoption of a child who is five (5) years of age or younger. Employees eligible for family care leave under state and federal law are eligible for twelve (12) weeks of leave for the birth or adoption of a child or for the placement of a child with the employee for foster care, to care for a family member with a serious health condition, or to care for the employee's own serious health condition. Leaves under this provision may not be combined to yield a larger amount of leave than the stated maximums. Time away from work on parental leave shall be deducted from the amount permitted for medical leave, and time away from work on medical leave shall be deducted from the amount permitted for parental leave.

**PROCEDURE:**Parental Leave

There are two types of parental leave described in this regulation. The first kind of parental leave is a one-year parental leave policy provided by the City of Berkeley's personnel rules and regulations. Not all City employees will qualify for this benefit. The second kind of parental leave is a twelve-week parental leave required by state and federal law which respectively are called the California Family Rights Act and the Family and Medical Leave Act of 1993. Some employees who do not qualify for the City's one-year parental leave policy may qualify under state and federal law for the twelve-week parental leave.

A. City of Berkeley Personnel Rules

1. Any employee with one (1) or more years of benefited employment with the City of Berkeley shall be entitled to up to one (1) year of parental leave as provided in the City's personnel rules as follows:
  - a. The birth of a child of the employee, or the adoption of a child who is five (5) years of age or younger by the employee.
  - b. Leave for the birth or adoption of a child must commence no later than thirteen (13) months from the date of birth or adoption and must conclude no later than twenty-five (25) months from the date of birth or adoption. Leave may begin before the date of birth or adoption upon presentation of medical certification of pregnancy, or the presentation of legal evidence of adoption. Leave may be taken intermittently upon mutual agreement between the employee and the department director.
  - c. Employees exercising their rights under this provision must provide the department director at least thirty (30) calendar days written notice prior to the anticipated commencement date of parental leave.
  - d. At the employee's option, the employee may be placed on authorized leave without pay or may be compensated during parental leave with his / her accumulated sick leave (up to a maximum of two hundred (200) days), and all other accrued leaves. Such accrued leave balances will be paid in the same manner as if the employee were absent due to illness or on vacation during the leave. Upon exhausting all employee designated leave balances, the employee will be on unpaid status for the remainder of the leave.
  - e. During approved parental leave, after all accrued leaves are exhausted, the City will maintain life and health insurance coverage for the duration of the parental leave subject to any regular participation requirement of the employee.
  - f. In the event both parents are employed by the City of Berkeley, both employees may take parental leave simultaneously if eligible.
  - g. Approved parental leave shall not be deducted from the employee's seniority service date.

B. State and Federal Law

1. Employees who are not eligible for the one-year parental leave benefit under the City of Berkeley's personnel rules may still qualify for up to twelve (12) weeks of parental leave in a twelve-month period under state and federal law. In addition,

while the City of Berkeley's one-year parental leave policy does not cover placement of a child with the employee for foster care, the state and federal law does provide leave for foster care. In order to qualify for parental leave under federal and state law, employees must have at least one (1) year of continuous service with the City and also have worked at least 1,250 hours in the twelve (12) months preceding the leave. This includes non-career hourly employees. Eligible employees may be entitled to a leave of absence of up to a maximum of twelve (12) weeks in a twelve-month period as follows:

- a. Upon the birth of the employee's child, the adoption of a child by the employee or placement of a child with the employee for foster care;
- b. Leave may begin before the date of birth, adoption or foster care upon presentation of medical certification of pregnancy, the presentation of legal evidence of adoption, or presentation of documentation requiring state action for foster care. Leave may be taken intermittently upon mutual agreement between the employee and the department director, but under no condition may intermittent leave extend the period of parental leave beyond the one (1) year period in which the maximum twelve (12) weeks of leave is permitted to be taken under state and federal law.
- c. Employees exercising their rights to parental leave under state and federal law must provide the department director at least thirty (30) calendar days written notice prior to the anticipated commencement date of parental leave. If the need is such that 30 days' notice cannot be provided, the request must be made as soon as possible.
- d. All parental leaves of absence under federal and state law are unpaid unless an employee has accrued leave. All accrued sick leave, vacation leave, compensatory leave, and/or administrative leave must be used before being placed on leave without pay.
- e. During an approved parental leave under federal and state law, the City will maintain life and health insurance coverage for the duration of the twelve-week parental leave subject to any regular participation requirement of the employee.
- f. In the event both parents are employed by the City of Berkeley, both employees may take parental leave simultaneously if eligible.
- g. Approved parental leave shall not be deducted from the employee's seniority service date.

Medical Leave

1. Eligible employees shall be granted medical leave as follows:

- a. Up to twelve (12) weeks of leave in a twelve-month period to care for a family member with a serious health condition, or to care for the employee's own serious health condition that prevents the employee from performing his / her job.
- b. For the purposes of this provision, a family member is defined as a biological child, adopted or foster child, stepchild, legal ward of an employee, biological parent, step-parent, adoptive parent, legal guardian, grandchild or grandparent in families where no parents are present, spouse or domestic partner. A serious health condition is defined as an illness, injury, impairment, or physical or mental condition requiring either inpatient treatment at a hospital, hospice, or residential care facility or continuing treatment by a health care provider that prevents the employee from performing his / her job.
- c. Employees exercising their rights under this provision must provide the department director at least thirty (30) calendar days written notice prior to the anticipated commencement date of medical leave. If the leave is unforeseen, the employee shall provide the department director written notice of leave as soon as is practicable. When medically necessary, leave may be taken intermittently or on a reduced work week schedule, however the employee must schedule the leave so as not to unduly disrupt the department director operations. The City may transfer an employee to another position which would better accommodate the requirements of the City's operations.
- d. At the commencement of medical leave, the employee must first use accrued sick leave, and then must use all other accrued leaves. Employees may not use greater than twelve (12) days of their sick leave to care for a family member. Such accrued leave balances will be paid in the same manner as if the employee were absent due to illness or on vacation during the leave. Upon exhausting all leave balances, the employee will be on unpaid status for the remainder of the leave.
- e. During approved medical leave, after all applicable leaves are exhausted, the City will maintain life and health insurance coverage for the duration of the leave subject to any regular participation requirement of the employee.
- f. The foregoing leave shall be granted upon medical certification that the employee has a serious health condition, or the employee is needed to care for a family member suffering from a serious health condition. Additional medical opinions may be required (at the City's expense) and a fitness for duty report to return to work.
- g. Approved medical leave shall not be deducted from the employee's seniority service date.

2. Non-career hourly employees shall be eligible for up to twelve (12) weeks of medical leave if they have a minimum of one (1) year of service and have worked at least 1,250 hours during the previous twelve (12) months.

#### Implementation of Family Care Leave

1. Employees requesting family care leave must submit completed Request For Family Care Leave form (designating either parental or medical leave), or if leave is unforeseen, call their supervisor to obtain the form.
  - a. If parental leave is requested, employee must provide medical certification of pregnancy, legal evidence of adoption, or evidence of State authorized foster care.
  - b. If medical leave is requested to care for the employee's own serious health condition, the department shall require the employee to submit the City of Berkeley Medical Certification form completed by the employee's personal physician.
  - c. If medical leave is requested to care for a family member, the employee must submit City of Berkeley Medical Certification form indicating that the employee is needed to provide care for family member.
3. Employees may only be granted intermittent parental leave upon mutual agreement between the employee and the Department / City.
4. Intermittent leave must be granted for medical leave to care for the employee's own serious health condition provided the employee schedules leave so as not to unduly disrupt the department's operational needs.
5. Upon receiving documented leave requests, the departmental payroll clerk will conduct an audit of the employee's file and time cards for previous 12 months to confirm that the employee is eligible for family care leave, and to determine amount of leave employee can use.
6. Upon verification of employee eligibility, ACM / Department Director will approve family care leave for a specific time period and forward the leave application to Human Resources Director and City Manager for authorization.
7. The department will prepare the necessary payroll forms and employee transaction form to document the family care leave, and to ensure that the employee receives compensation, if applicable, and that all paid leaves are exhausted, as appropriate, prior to placing the employee on leave without pay.

**SIDE LETTER AGREEMENT  
BETWEEN THE CITY OF BERKELEY AND  
SEIU LOCAL 1021 CSU**

The parties to this Side Letter Agreement are the City of Berkeley (the "City") and Service Employees International Union Local 1021 Community Services and PTRLA Units (CSU) (the "Union").

This Agreement is the result of discussions between the parties regarding the City's need to, on a one-time, non-precedent basis, allow the City Manager to provide up to four (4) weeks of vacation earning allowance for the single class of Psychiatrist because it is a difficult to fill position.

The City has attempted to recruit for this position for the last eighteen (18) months. The City has finally selected a viable candidate and prepared an offer for salary and benefits. Due to the candidate's length of experience in the field, the candidate has requested the benefit of four (4) weeks of vacation .

In consideration of the foregoing, the parties agree to the following:

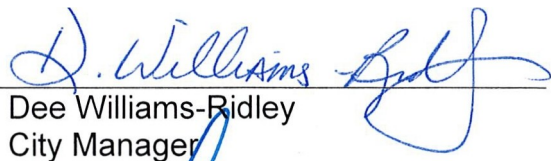
The City and the Union agree, on a one-time, non-precedent setting basis, to allow the City Manager to provide up to four (4) weeks of vacation earning allowance for the single class of Psychiatrist because it is a difficult to fill position.


WHEREFORE, the parties, by and through their authorized agents and representatives , agree to the terms of this Side Letter Agreement to be incorporated in the Memorandum Agreement section **18.3 Accrual** subject to the adoption or ratification of said Agreement by the City Council of the City of Berkeley.

The parties may modify or terminate this agreement at any time by mutual agreement. Otherwise , this agreement shall remain in effect through the June 21, 2015 to October 20, 2018 memorandum agreement between the parties and the first successor thereto. Upon expiration of said successor agreement but prior to the signing of the next successor agreement, the continuation , modification or discontinuation of the Side Letter shall be governed by collective bargaining.

,4 /,

\_\_\_\_\_  
Nathan Dahl  
President, 1021 SEIU CSU

  
Dee Williams-Ridley  
City Manager

  
\_\_\_\_\_  
Jose Martinez  
Field Representative ,

9/18/18

  
\_\_\_\_\_  
LaTanya Bellow  
Director of Human Resources



# **Memorandum Agreement**

**between**

**City of Berkeley**

**and**

**Service Employees International Union  
Local 1021**

**Community Services  
&**

**Part-Time Recreation Leaders Association  
June 27, 2020 to June 26, 2021**



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RESOLUTION NO. 68,625 N.S.

MEMORANDUM AGREEMENT: SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1021 COMMUNITY SERVICES AND PART-TIME RECREATION LEADERS ASSOCIATION

WHEREAS, the City is obligated under the provisions of California Government Code Section 3500 – 3510, commonly referred to as the Meyers-Milias-Brown Act, to meet and confer in good faith and attempt to reach agreement with representatives of recognized bargaining units on matters within the scope of representation including, but not limited to wages, hours and other terms and conditions of employment; and

WHEREAS, representatives of the City and the Service Employees International Union Local 1021 Community Services and Part-Time Recreation Leaders Association have met and conferred in good faith and have reached agreement on a new Memorandum Agreement that incorporates all changes and modifications in wages, hours and other terms and conditions of employment agreed to by the parties.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute the new Memorandum Agreement for the period October 21, 2018 through June 27, 2020 with the Service Employees International Union Local 1021 Community Services and Part-Time Recreation Leaders Association, including changes in certain benefits on dates specified in the Memorandum Agreement which is attached hereto, made a part hereof and marked Exhibit A.

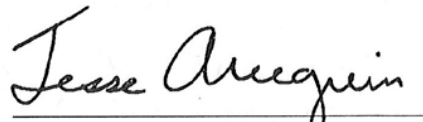
BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute and implement said Memorandum Agreement including all changes in wages, hours, and other terms and conditions of employment. A fully executed original of said contract is filed in the Office of the City Clerk.


The foregoing Resolution was adopted by the Berkeley City Council on October 16, 2018 by the following vote:

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

Noes: None.

Absent: None.

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

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

RESOLUTION NO. 68,626-N.S.

APPROVING A NEW CLASSIFICATION AND SALARY RESOLUTION FOR SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1021 COMMUNITY SERVICES AND PART-TIME RECREATION LEADERS ASSOCIATION AND RESCINDING RESOLUTION NO. 67,483-N.S.

WHEREAS, the City Council has approved a new Memorandum Agreement (twenty months) with Service Employees International Union Local 1021 Community Services and Part-Time Recreation Leaders Association which includes salary increases; and WHEREAS, it is necessary for the City Council to adopt a new Classification and Salary Resolution to reflect the salary adjustments reflected in the new Memorandum Agreement.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley adopts a new Classification and Salary Resolution for employees in Representation Units G-1 (career and non-career health, welfare and social service occupations); G-3 (career and non-career professional nursing classification); I-A (career supervisory library employees); I-B (career non-supervisory library employees including all Library Aides); I-D (non-career Library Page); L (career and non-career, miscellaneous and administrative employees); R-1 (career benefitted, part-time Recreational); and R-2 (non-career, non-benefitted, part-time Recreational) effective October 21, 2018 through June 27, 2020 to incorporate changes to the salary schedule as shown in Exhibit A (October 21, 2018); and Exhibit B (October 20, 2019) attached hereto and made a part thereof.

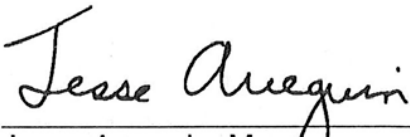
BE IT FURTHER RESOLVED that Resolution No. 67,483-N.S. is hereby rescinded.

The foregoing Resolution was adopted by the Berkeley City Council on October 16, 2018 by the following vote:

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

Noes: None.

Absent: None.

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

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

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## **ARTICLE 1 - ADMINISTRATION**

### **SECTION 1: PREAMBLE**

This Memorandum Agreement is entered into pursuant to the Meyers-Miliias-Brown Act (Government code, Sections 3500-3511, as amended) and has been jointly prepared by the parties.

The City Manager is the representative of the City of Berkeley, hereinafter referred to as "the City," in employer-employee relations as provided in Resolution No. 43,397-N.S. adopted by the City Council on October 14, 1969.

Service Employees International Union (SEIU) Local 1021, hereinafter referred to as "the Union", is the recognized employee organization for representation Units G-1 (career and non-career health, welfare and social service occupations), G-3 (career and non-career professional nursing classifications), I-A (career supervisory library employees), I-B (career non-supervisory library employees including all Library Aides), L (career and non-career, miscellaneous and administrative employees), R-1 (career benefited, part-time Recreational) and R-2 (non-benefited, part-time Recreational). The employee positions in the Representation Units referred to above are set forth in Section 5. The Union is recognized as the sole representative of employees in positions assigned to these units.

The parties have met and conferred in good faith regarding wages, hours, and other terms and conditions of employment of the employees whose positions are within Representation Units G-1, G-3, I-A, I-B, L [CSU0] R-1 and R-2 [CSPT] and have freely exchanged information, opinions and proposals. The parties have endeavored to reach agreement on all matters relating to employment conditions and employer-employee relations. Those provisions of this Memorandum Agreement applicable to non-career employees in Units G-1, G-3, L [CSU0], R-1 and R-2 [CSPT] are set forth in Exhibit A attached, and are incorporated as part of this Agreement.

Library and Rent Board employees working in classifications covered by this agreement shall have the same terms and conditions of employment as other City employees covered by this Memorandum Agreement except as specifically modified by this agreement.

This Memorandum Agreement shall be presented to the City Council, Rent Board, and Board of Library Trustees as the joint recommendation of the undersigned.

### **SECTION 2: RECOGNIZED EMPLOYEE ORGANIZATION**

#### **2.1 Representation**

The Union is the exclusive representative of all employees within Representation Units G-1 (career and non-career health, welfare and social service occupations), G-3 (career and non-career professional nursing classifications), I-A (career

supervisory library employees), I-B (career non-supervisory library employees including all Library Aides), L (career and non-career miscellaneous, administrative employees), R-1 (career benefited, part-time Recreational) and R-2 (non-benefited, part-time Recreational) and shall continue to be recognized as such unless the Union is no longer certified as the recognized employee organization for employees in Representation Units G-1, G-3, I-A, I-B, L, R-1 and R-2.

## **2.2 City Management**

The City management retains all traditional rights and responsibilities for the operation of the City.

## **SECTION 3: NO DISCRIMINATION**

The City and Union agree that they will not discriminate against employees based on race, creed, color, ethnicity, ancestry, religion, political affiliation, gender, sexual orientation, age, national origin, marital or domestic partner status, gender identity or gender expression, parental status, pregnancy, disability or medical condition, Acquired Immune Deficiency (AIDS/HIV) or AIDS related condition, or any other status protected by applicable state or federal law, or protected Union activity. Furthermore, the City and Union agree to comply with all applicable federal, state and local laws pertaining to non-discrimination and equal employment opportunity.

The City of Berkeley Harassment Prevention Policy and Sexual Harassment Policy, as may be amended from time to time to comply with applicable state or federal law, is available on-line on the City's IntraWeb at <http://www.ci.berkeley.ca.us/>, in the Department of Human Resources, or by contacting the City's Equal Employment Opportunity and Diversity Officer.

## **SECTION 4: UNION SECURITY**

The City by Resolution No. 68,479-N.S. supports the freedom of all employees to exercise their rights to a voice and dignity on the job through joining together in strong unions.

### **4.1 Authorization of Payment of Dues**

Upon written certification from the Union that it has and will maintain a payroll deduction form for an employee, the City will deduct from the employee's pay the appropriate dues and contributions as established.

### **4.2 Deduction of Union Dues**

**4.2.1** Upon written notification by the Union, the City shall deduct, once monthly, the regular and periodic Union dues, voluntary COPE contributions, or insurance premiums as may be specified by the Union. Employees may change union

insurance deductions no more than twice in any one (1) year period for each policy. Such deductions, together with a written statement of the names and amounts deducted, shall be forwarded promptly by the Union office to the City's designated representative. COPE deductions, and any special membership assessments as may be specified by the Union under the authority of an authorization card furnished by the Union and signed by the unit member.

**4.2.2** Such deductions shall continue unless the employee revokes authorization with the terms of the Union's authorization form and shall terminate in accordance with the procedure in 4.2.3 below.

**4.2.3** Changes to dues and union insurance premiums shall be processed with the same month if received in writing by the City's payroll representative prior to 5:00pm on the 3<sup>rd</sup> day of the same month. Any changes to deductions received in writing by the union after the 3<sup>rd</sup> of the month shall be processed in the following month.

**4.2.4** The City shall remit to the Union the dues and contribution in accordance with the Union's monthly written report submitted to the City along with a report confirming the deductions consistent with the Union's written report.

**4.2.5** The Union shall provide the City at least 2 months' notice of any change in the Union's dues deduction and dues procedures affecting more than 30% of the bargaining unit.

**4.2.6** The Union shall not provide the City a copy of the employee's authorization unless a dispute arises about the existence or terms of the authorization and/or change in deductions requested by the employee.

**4.3 Indemnification**

The Union shall indemnify and hold the City harmless from any and all claims made by the employee, including but not limited to, demands, fees, reimbursements, suits, judgments, awards, penalties, court costs and attorneys' fees, or any other action arising from compliance with any provision of Section 4.0 or Section 4.2. The City shall promptly provide notice to the Union regarding such claims.

**4.4** The City shall not deter or discourage employees or applicants from voluntarily authorizing the Union to deduct dues and insurance deductions.

#### 4.5 Reports

The Human Resources Department shall furnish the Union, on a monthly basis, with the name, employee number, date of hire to the unit, salary, classification, work location and home address, work email and personal email and personal cell phone number, if provided by the employee, of all employees who enter the bargaining unit and are subject to this agreement. This shall apply to new hires, returnees from unpaid leaves of more than 30 days, and employees promoted, demoted, or transferred into the bargaining unit.

The City shall furnish the Union, on a monthly basis, with the name, effective date and reason of employees who terminate their employment with the City or who leave the bargaining unit. In addition, the City shall furnish the Union with the name, effective date and duration of any employee granted a leave of absence more than 30 days from her/his employment with the City.

A list of all employees in represented classes shall be provided to the Union each month.

#### 4.6 New Hire Information

The City shall print 275 copies of the Agreement and have it ready for distribution within 90 days of final ratification. .

#### 4.7 Orientation Meetings

A representative of the Union will be given sixty (60) minutes of Union release time per quarter per calendar year to provide information on the Union to employees represented by the Union. The Union shall notify the City of the date, time and location of the quarterly orientation meetings at least one (1) month in advance of the meetings to ensure that departmental managers are able to release employees to attend quarterly orientation meetings. The City shall notify the Union of new employees when they are hired. The Union will provide the City with the names of those employees the Union expects to attend the quarterly meetings at least two (2) weeks in advance of the meeting. Employees attending orientation will also be given sixty (60) minutes of Union release time to attend the scheduled orientation.

#### 4.7.1 New Employee Orientation

This provision shall apply to new hire employees appointed to classifications covered by this agreement and to existing employees newly appointed to classifications covered by this agreement.

4.7.1.1 **Onboarding:** The parties acknowledge that the City provides a new employee orientation (onboarding) to each new employee hired by the City. As such, the Union will be provided with not less than 10 calendar days' advanced notice of the time, date, and location of the onboarding of any new employee represented by the Union. The Union will be given 30- minutes at the start of the new

employee onboarding in a room designated by the City for no more than one (1) representative to present Union membership information. The City representative will excuse him or herself during the Union portion of the onboarding. The Union agrees in its portion of the onboarding not to engage in speech that could cause disruption or material interference with City activities.

The City will provide 30 minutes of Union Release Time to the Union representative presenting the Union membership information during the scheduled onboarding. The Union shall provide the Union representative's immediate supervisor with the Union representative's name at least five (5) days prior to the onboarding. The Union representative shall be released for this purpose unless unusual operation needs interfere with such release in which case the Union representative's immediate supervisor will provide a written explanation of why release could not be approved. If the Union representative is not released due to department operational needs, the Union representative may arrange an alternative date and time to meet with the newly hired employee within the first two (2) weeks of employment, subject to the 30-minutes onboarding and Union Release Time requirements as stipulated above.

#### 4.7.1.2

**Information Provided:** On a quarterly basis (March, June, September, and December), the City will provide the Union with a digital file via email to the email address designated by the Union. The Union acknowledges and understands that the City is working diligently and in good faith to update its contact information database functionality to incorporate all the fields of contact information listed below. As a result, the City may not initially be able to provide the employee's work telephone number, personal phone number, and personal email address until the completion and implementation of the City's new Enterprise Resource Management Application (ERMA) system.

The City will provide the Union with the following information on file, to the extent the City has it on file:

- Name
- Job Title
- Department
- Work Location
- Home telephone number
- Home address
- Personal cellular telephone number (new hires hired on or after October 1, 2017)
- Work telephone number (*upon implementing ERMA*)
- Personal email addresses on file with the City (*upon*

*implementing ERMA)*

Notwithstanding the foregoing, limited to the express purpose of the requirements of Government Code section 3558 only, an employee may opt out via written request to the City (copy to the Union) to direct the City to withhold disclosure of the employee's: Home address; home telephone number; personal cellular telephone number; personal email address; and date of birth.

**4.8 Elected Official/Steward Leave Without Pay**

A leave of absence without pay requested in writing at least 30 days in advance shall be granted at the request of an employee who is an elected official or steward of the Union for the purpose of employee's attending a training course sponsored by the Union. By mutual agreement the 30-day time period may be waived. The maximum duration of such leave shall not exceed two (2) consecutive full payroll periods in a calendar year. Conditional upon prior approval of the course content and upon receipt of certification of completion, the City shall reimburse the employee for up to one half of his/her time spent in such training at the employee's permanent rate of pay, not to exceed twenty hours of paid leave in a calendar year.

**4.9 Union Member Leave**

A leave of absence may be permitted to members of the unit to participate in union projects or internships. Such leave shall be at the discretion of management. The Union shall reimburse the City for salary and associated benefits. The typical duration of these leaves shall be for one to four weeks.

**SECTION 5: UNION REPRESENTATIVES****5.1 Attendance at Meetings**

The City shall allow representatives of the Union reasonable time off from work, without loss of compensation or other benefits to represent its members in disputes which involve the interpretation or application of those rules, regulations, and resolutions which have been or may hereafter be adopted by the City Council, to govern personnel practices and working conditions, including such rules, regulations, and resolutions as may be adopted by the City Council to effect Memorandum Agreements which may result from the meeting and conferring process, and to represent its members in meeting and conferring in good faith for amendments to this Agreement in the future, subject to the conditions set forth in Sections 5.2 (Negotiations) and 5.3 (Notification).

All release time shall be recorded on time sheets and time cards, with the appropriate code.

Union representatives' workload will be adjusted on the basis of approved release time. Where required, a department head may request budget replacement for this workload adjustment to provide for completion of the authorized workplan.



## **5.2 Negotiations**

With respect to the negotiation --process to develop a subsequent Agreement or revision to this Agreement, ten (10) Union representatives shall be the maximum number of employees who will be allowed concurrent time off. In disputes as defined in Section 5.1, the maximum number allowed concurrent time off shall be two (2), in addition to the grievant. For all other matters, where the participation of the Union is agreed to, the Union may designate one representative from each Unit up to a maximum of six (6).

## **5.3 Notification**

Union representatives shall advise their supervisors at the earliest possible time and, except in emergency cases, no later than 24 hours in advance before leaving their work assignments. In emergency situations which require the immediate attention of said representative, the representative shall notify a supervisor, who is out of the bargaining unit, prior to leaving work. In all cases the Union representative shall notify the supervisor upon his/her return to work. It is understood that representatives will not leave their work assignments without the approval of the supervisor and that such approval shall not be unreasonably denied.

The representatives shall inform their supervisor of their location during release time.

## **5.4 Bulletin Boards**

The City shall provide bulletin board space for Union use at each of its work centers where covered employees are regularly employed.

## **5.5 Field Representative**

The Union's field representative shall be permitted to enter work areas where its members are employed during normal working hours for the purpose of ascertaining whether the terms of this Agreement are being observed, to observe job conditions under which its members are employed, and to assist in adjusting grievances. The Union field representative shall notify the department head or other designated supervisor at the earliest possible time, and at least upon entering such work areas, and shall not interfere with or interrupt the conduct of work in such areas. The Union field representative may confer with employees, including designated Union representatives or stewards.

## **5.6 Employee Release Time**

Reasonable release time without loss of compensation will be provided to an employee for the purpose of appearing at a grievance proceeding when he or she is the principal in such grievance proceeding, provided that the notice requirements set forth in Section 5.3 (Notification) are met.

**5.7 Employee Witness**

An employee called as a witness in a grievance proceeding shall be given reasonable release time without loss of compensation, provided that his/her release from duty will not adversely affect the operation of his/her department or unit. When such employees desire release time, they must comply with the notice requirements set forth in Section 5.3 (Notification).

**5.8 List of Representatives**

The Union will provide the City with a list of all Union representatives, stewards, and field representatives, and such list shall be kept current.

**5.9 Use of City Facilities**

The Union shall be allowed to utilize City facilities for regular meetings on the same basis as every other non-City organization. In accordance with the policy, the Union will be allowed to utilize the Milvia employee's lounge for its monthly meetings subject to whatever conditions are imposed upon all other non-City organizations and so long as there is no conflict with City activities or use of that facility. Should the City, in its discretion, have to discontinue the Union's regular use of the Milvia facility, it will notify the Union. The Union will be allowed to utilize the Central Library Staff Room for meetings so long as the Director of Library Services or her/his designee determines there is no conflict with City/Library activities or use of that facility. The Union will be allowed to utilize a recreation facility room selected by the City for meetings so long as the Recreation Program Director or his or her designee determines there is no conflict with City / Recreation activities or use of that facility. The Union shall notify the City in advance of the dates and times of its meetings.

**5.10 City Manager Monthly Meetings**

Monthly meetings shall be held between the Union and the City Manager, the Executive Director of the Rent Board and the Director of Library Services. Release time shall be granted for up to eight (8) Union officials. Agendas for such meetings shall be set one week in advance between representatives of the Union and the City Manager the Executive Director of the Rent Board and the Director of Library Services or their designees. Meetings within departments may be held at the request of either the department head or the Union. The number of attendees and frequency of meeting may be adjusted by mutual agreement.

**5.11 Agreement Orientation Sessions**

The Union and the City will conduct orientation sessions on the Agreement at least once during the term of the contract. A special session for stewards and supervisors shall also be provided. The Union will designate two representatives to work with Human Resources to do the orientations.

**5.12 Possible Grievance Release Time**

The City will provide release time up to one (1) hour to Union members to meet with a Union representative for the purpose of discussing a possible grievance.

Such time may be extended by mutual agreement between the City and the Union. The member shall contact the Chapter President or Chief Steward or other designees who will then contact the supervisor/department director to notify the City of the necessity for the meeting. The release time shall be granted within 24 hours of the request subject to operational necessity.

**5.13 Steward Council**

The City will provide release time for Union Stewards to attend monthly Steward Council meetings and training sessions. Each Steward shall receive a maximum of four (4) hours per month to attend the meeting. A maximum of twenty-five (25) Stewards shall be released to attend the meeting. The Chapter President or Chief Steward will notify Human Resources in writing at least two (2) weeks in advance with the names of the Stewards attending the monthly meeting. In event there are conflicts in a work schedules that may create problems with a designated Steward attending the meeting, the Chapter President or Chief Steward will work with the affected department supervisor to schedule Steward attendance in a manner which minimizes the disruption of the work.

**5.14 Investigatory Meetings**

Unless otherwise stated, only two (2) Union Representatives shall be allowed time off to attend investigatory meetings.

**5.15 Union Business Release Time**

Community Services Unit and the Part-Time Recreation Leaders Association

The CSU and PTRLA Units will be entitled to up to two-hundred and forty (240) hours of paid leave of absence each calendar year to be granted collectively to employees in the Community Services Unit and the Part-Time Recreation Leaders Association who are designated elected officials or stewards of the Union, subject to prior approval by employee's Department Head, to attend seminars, conferences, or conventions away from the job site. The Department Head may, in his or her discretion, approve additional Union requests. Time spent on such Union business will be recorded with the appropriate code on time sheets. A maximum of forty (40) hours of the 240 hours may be used by PTRLA members.

**SECTION 6: SEPARABILITY OF PROVISIONS**

In the event that any provisions of this Agreement are declared by a court of competent jurisdiction to be illegal or unenforceable, that provision of this Agreement shall be null and void, but such nullification shall not affect any other provisions of this Agreement, all of which other provisions shall remain in full force and effect.

Upon such nullification, at the written request of either party, the City and the Union will meet and confer in a good-faith effort to reach mutual agreement on substitute provisions for such parts or provisions rendered or declared illegal or unenforceable.

**SECTION 7: FINALITY OF RECOMMENDATIONS**

The recommendations set forth herein are final. No changes or modifications shall be offered, urged, or otherwise presented by the union or the City Manager prior to July 27, 2020; provided, however, that nothing herein shall prevent the parties to this Agreement from meeting and conferring and making modifications herein by mutual consent.

**SECTION 8: DURATION**

This Agreement covers the period of October 21, 2018 through June 27, 2020. This Agreement shall be effective after Union ratification and approval by the City Council except for those provisions which have been assigned other effective dates as herein set forth, and shall remain in full force and effect to and including June 27, 2020. New negotiations shall commence no later than sixty (60) days prior to the expiration date of this Agreement. This Agreement and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at midnight June 27, 2020.

## **ARTICLE 2 - SALARIES, HOURS OF WORK AND COMPENSATION ISSUES**

### **SECTION 9: SALARIES**

Effective the first pay period after ratification and Council approval on its regular agenda, the salary ranges for those classifications covered by this Agreement will receive a salary increase of three percent (3%).

Effective the first full pay period after Union ratification and Council approval on its regular agenda, each full time employee on paid status as of approval by Council will receive a one-time lump sum payment of \$1750.00 prorated for less than full time employees, minus applicable local, state, and/or federal taxes. Hourly non-benefited employees on paid status will receive a one-time lump sum payment of \$100.00 minus applicable local, state, and/or federal taxes. The parties agree that this lump sum provision does not create or bind the City to any precedent or past practice.

Effective the second full pay period in October 2019, the salary ranges for those classifications covered by this Agreement will receive a salary increase of two percent (2%).

Effective the first full pay period after Union ratification and Council approval at its regular meeting the hourly salaries for the classifications of Library Page and Sports Monitors will be increased to \$18.00 per hour and remain at \$18.00 per hour for the duration of the contract.

#### **9.1 Confidential Classifications**

When any of the classifications named in Exhibit "A" of this Agreement are assigned to the following department/divisions, they are designated as confidential and are not represented by a recognized employee organization: City Manager - Administration, City Attorney, Human Resources, and Library - Administration.

#### **9.2 Salaries**

Employees occupying a position in the competitive service shall be paid a salary or wage within the range established for that position's class as set forth in Exhibit A of this Agreement as provided in Section 10.1 et seq. and considering Section 48.7 (Hourly Rated Employees in Lieu of CalPERS). The minimum rate for the class shall apply to employees upon original appointment to the position, unless the City Manager or his or her designee approves appointment at a higher step. The reasons for such decision shall be sent to the Union upon request. Transfers shall not affect an employee's salary rate. Employees appointed to any of the positions set forth in Exhibit A of this Agreement as provided in Section 10.1 et seq. and considering Section 38.7 (Hourly Rated Employees in Lieu of CalPERS), and employed or working on a part-time basis, shall be paid in proportion to the time worked and described in their appointment.

**9.3 Maximum Salary Rate**

No salary advancement shall be made so as to exceed the maximum rate established for the class to which the advanced employee's position is allocated. Advancement shall be in accordance with the compensation plan of the City, provided that step increases within the salary range shall occur on the anniversary date of the appointment.

An employee's pay increase shall not be affected by any leave of absence without pay if the employee is off the payroll for less than one hundred sixty consecutive hours. If the employee is off the payroll, one hundred sixty consecutive hours or more the total amount of time off shall be made up before the employee shall be entitled to such pay.

**9.4 Step Increase for Unit R-2 Employees**

When an employee in Unit R-2 has worked one thousand forty (1040) satisfactory hours without terminating his or her service with the City or being terminated from his or her service with the City, such employee shall be moved to the next higher salary step within his or her present classification on the first day of the payroll period following completion of said one thousand forty (1040) hours.

Non-career Unit R-2 employees who become Career Unit R-1 employees will receive their step increase following their appointment to career status after completing the 1040 hours. Subsequently, they will receive step increases on an annual basis from the date of the above increase.

Employees shall receive no more than one (1) step increase in any year.

**9.5 Workers' Compensation for Unit R-2 Employees**

An R-2 employee who is entitled to Workers' Compensation by reason of a job-related injury shall receive up to twelve (12) hours per week credit for time lost by reason of such injury for purposes of the one thousand forty (1040) hours progression only. Lesser credit shall be given to employees who average fewer than twelve (12) hours of work per week based on such actual average.

**9.6 Y-Rate**

An employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary, or occupying a position in a class the salary rate or range for which is reduced, shall continue to receive his/her present salary. Such salary shall be designated as a "Y" rate. When an employee on a Y rate vacates his/her position, subsequent appointments to that position shall be made in accordance with Section 9.4 (Salaries).

**9.7 Pay Frequency**

Payment of salaries herein established shall be bi-weekly. Each pay period shall begin at 12:01 a.m. Sunday to and including 12:00 midnight Saturday two weeks

following. Each payment shall be made not later than the Friday following the ending of each payroll period and shall include payment for all earnings during the previous payroll period. The City will initiate a program for electronic deposit of payroll checks with banks and credit unions whenever possible.

**9.8 Step Increases**

Step increases shall be effective, for payroll purposes only, on the first day of the pay period nearest the date an employee is entitled to a step increase (anniversary date or 1040 hours).

**9.9 End of Year Pay Period**

For all salary and benefit purposes, the parties agree that the last day of the last pay period ending in the calendar year shall be the end of the year. For excess leave only, the end of the year shall be treated as the last pay period nearest March 31.

**9.10 Effective Date of Salary and Benefit Adjustments**

The City and the Union agree that all future general salary and benefit adjustments shall become effective on the first day of a pay period, unless otherwise mutually agreed.

**9.11 Equity Studies**

A list of 13 comparison jurisdictions is established for the purpose of salary equity studies: Alameda County, Concord, Contra Costa County, Daly City, Fremont, Hayward, Oakland, Palo Alto, Richmond, San Francisco, San Jose, San Mateo, and Santa Clara County. If at least eight matches are not found for a classification after polling this entire list other jurisdictions may be added as required by agreement between the parties. For Health classifications only, the following jurisdictions shall be surveyed: Alameda County, Contra Costa County, San Francisco, San Mateo County, Santa Clara County, Marin County, Sonoma County, and Solano County.

**9.12** During the term of this Agreement, the City agrees to conduct classification studies on the following classifications: Building Inspector; Housing Inspector; Recreation Activity Leader; and the Management Analyst series represented by this Memorandum Agreement.

**9.13 ICC Differentials**

9.13.1 Payment of Differential for Obtaining and Maintaining ICC Certifications: Effective November 20, 1994, an employee in one of the classifications named below shall receive a differential to base salary for obtaining and maintaining a valid certification(s) issued by the International Code Council (ICC) or equivalent as determined by the building official. In order to obtain and maintain the differential to base salary, the employee will

submit the original certification to the appropriate departmental supervisor who will verify the certification and return it to the employee.

The duration of the differential will correspond to the duration of the ICC certification or equivalent as determined by the building official. The employee is responsible for submitting documentation of renewal of the appropriate ICC certification or equivalent as determined by the building official in order to maintain the differential.

Payment of the differential will be effective at the beginning of the first pay period after the employee submits the ICC certification or equivalent as determined by the building official for verification. The employee shall receive the certification based on the specific certification or equivalent as determined by the building official regardless of the order the certification is obtained.

9.13.2 **Certified Access Specialist (CASp) Certificate for Senior Building Plans Examiner, Building Plans Examiner, Senior Building Inspector, Building Inspector (Certified) and Building Inspector:** An employee in the classifications of Senior Building Plans Examiner, Building Plans Examiner, Senior Building Inspector, Building Inspector (Certified), or Building Inspector shall receive a differential to base salary of three percent (3%) under this section. The differential provided under this section shall not be subject to the maximum differential to base salary as provided in Section 10.17.3 below.

9.13.3 **Senior Building Plans Examiner, Building Plans Examiner, Senior Building Inspector, Building Inspector (Certified) and Building Inspector:** An employee in the classification of Senior Building Plans Examiner, Building Plans Examiner, Senior Building Inspector, Building Inspector (Certified) or Building Inspector shall receive a maximum differential to base salary of four percent (4%) under this section.

9.13.3.1 ICC Electrical Inspection Certificate or equivalent as determined by the building official - 3%

9.13.3.1.1 Employees currently receiving a four percent (4%) differential for possession of a valid ICC Electrical Inspection Certificate or equivalent as determined by the building official will continue to receive the four percent (4%) differential for as long as they remain in either the classification of Senior Building Plans Examiner, Building Plans Examiner, Senior Building Inspector, or Building Inspector and continue to possess a valid ICC Electrical Inspection Certificate or equivalent as determined by the building official.



- 9.13.3.2 ICC Mechanical Inspection Certificate - 1%
  - 9.13.3.2.1 Employees in the classification of Senior Building Plans Examiner or Building Plans Examiner currently receiving a one and one-half percent (1½%) differential for possession of a valid ICC Mechanical Inspection Certificate or equivalent as determined by the building official will continue to receive the one and one-half percent (1½%) differential for as long as the remain in the classification of Senior Building Plans Examiner or Building Plans Examiner and continue to possess a valid ICC Mechanical Inspection Certificate or equivalent as determined by the building official.
- 9.13.3.3 ICC Plumbing Inspection Certificate or equivalent as determined by the building official - 1%
- 9.13.3.4 ICC Accessibility Inspector/Plans Examiner Certificate or equivalent as determined by the building official - 1%
- 9.13.3.5 ICC Plans Examiner Certificate or equivalent as determined by the building official - 1%
- 9.13.4 The City will pay the cost of the ICC or equivalent examinations for each new certificate listed above that the employee obtains and for the cost of the successful recertification.
- 9.13.5 **Bonus:** After December 1, 1998, once the employee has reached the maximum four percent (4%) or equivalent differential payment limit as provided in Sections 9.17.3.1 through 9.17.3.5, the City will pay an employee a one-time bonus of \$600 for each new certificate or equivalent as determined by the building official listed above that the employee has attained through examination. This provision will only apply to ICC certificates or equivalent as determined by the building official as notated in Sections 9.17.3.1 through 9.17.3.5 obtained while in the employ of the City of Berkeley. Employees receiving the CASp differential noted in Section 9.17.2 shall not be eligible for the bonus as provided in this Section 9.17.5 (Bonus). If an employee moves to a classification other than those listed in Sections 9.17.2 and 9.17.3, the differential to base salary discussed in this section shall terminate and the certification differential shall not be used as a part of base salary for the purpose of future salary adjustments. If the International Code Council or equivalent certifying agency as determined by the building official changes the requirements of any of the certifications listed above and this change affects an employee in one of the classifications listed above, the parties agree to meet and confer on the

impact of the change but only to the extent of the change promulgated by ICC or the equivalent certifying agency.

9.13.6 **Housing Inspector and Permit Specialist:** An employee in the classification of Housing Inspector or Permit Specialist shall receive a maximum differential to base salary of eight percent (8%) under this section.

9.13.6.1 ICC or equivalent as determined by the building official Building Inspection Certificate - 4%

9.13.6.2 ICC or equivalent as determined by the building official Building Plans Examiner Certificate - 4%

9.13.6.3 ICC or equivalent as determined by the building official Electrical Inspection Certificate - 3%

9.13.6.4 ICC or equivalent as determined by the building official Mechanical Inspection Certificate - 1%

9.13.6.5 ICC or equivalent as determined by the building official Plumbing Inspection Certificate - 1%

9.13.6.6 ICC or equivalent as determined by the building official Accessibility Inspector/Plans Examiner Certificate - 1%

9.13.6.7 ICC or equivalent as determined by the building official Plans Examiner Certificate - 1%

9.13.6.8 For the classification of Housing Inspector - ICC or equivalent as determined by the building official Rehabilitation and Conservation Inspection Certificate - 2%

9.13.6.9 Effective June 29, 2008, for the classification of Permit Specialist - ICC or equivalent as determined by the building official certificate as a Permit Technician Certificate – 4%.

9.13.7 **Housing Inspector (Certified):** An employee in the classification of Housing Inspector (Certified) shall receive a maximum differential to base salary of four percent (4%) under this section.

9.13.7.1 ICC or equivalent as determined by the building official Electrical Inspection Certificate - 3%

9.13.7.2 ICC or equivalent as determined by the building official Mechanical Inspection Certificate - 1%

- 9.13.7.3 ICC or equivalent as determined by the building official Plumbing Inspection Certificate - 1%
- 9.13.7.4 ICC or equivalent as determined by the building official Accessibility Inspector/Plans Examiner Certificate - 1%
- 9.13.7.5 ICC or equivalent as determined by the building official Light Commercial Combination Inspection Certificate - 1%
- 9.13.7.6 ICC or equivalent as determined by the building official Rehabilitation and Conservation Inspection Certificate - 2%
- 9.13.7.7 ICC or equivalent as determined by the building official Housing Inspection Certificate – 2%
- 9.13.8 **Payment of Examinations:** The City will pay the cost of the ICC or equivalent examinations for each new certificate listed above that the employee obtains and for the cost of the successful recertification.
- 9.13.9 **Bonus:** After December 1, 1998, once the employee has reached the maximum four percent (4%) ICC or equivalent differential payment limit, the City will pay an employee a one-time bonus of \$600 for each new ICC or equivalent certificate listed above that the employee has attained through examination. This provision will only apply to ICC or equivalent certificates obtained while in the employ of the City of Berkeley.

If an employee moves to a classification other than those listed above, the differential to base salary discussed in this section shall terminate and the certification differential shall not be used as a part of base salary for the purpose of future salary adjustments. If the International Code Council or equivalent certifying agency as determined by the building official changes the requirements of any of the certifications listed above and this change affects an employee in one of the classifications listed above, the parties agree to meet and confer on the impact of the change but only to the extent of the change promulgated by ICC or equivalent certifying agency.

- 9.13.10 **Fire and Life Safety Plans Examiner and Senior Building Plans Examiner:** Effective June 29, 2008, an employee in either the classification of Fire and Life Safety Plans Examiner or Senior Building Plans Examiner shall receive a differential of four percent (4%) to base salary who possess and maintain a valid ICC or equivalent as determined by the building official certificate as a Fire Plans Examiner Certificate.

**9.13.11 Hazardous Materials Specialist II:**

- 9.13.11.1 Employees who are hired or promoted into the classification of Hazardous Materials Specialist II on or after September 1, 2005 must

first obtain and maintain all necessary certifications and any other International Code Council (ICC) certifications, or equivalent certifications, as required to perform their job responsibilities and as a condition of continued employment.

- 9.13.11.2 Incumbent Hazardous Materials Specialist II employees who do not possess valid ICC certifications for programs specified in Chapter 6.11 of Division 20 of the California Health and Safety Code are not required to comply with the terms and conditions in the preceding paragraph. Effective September 1, 2005, Hazardous Materials Specialist II's, who successfully obtain valid certification as a California Underground Storage Tank (UST) Inspector or future certifications, must maintain the certifications as a condition of continued employment.
- 9.13.11.3 A salary differential for Hazardous Materials Specialist II of two percent (2.0%) of the base rate will be paid to all employees who possess valid certificates necessary for conducting their job.
- 9.13.11.4 New state-mandated certifications may be added as necessary. Hazardous Materials Specialist II's who do not receive the new certification will no longer receive the above 2.0% differential.
- 9.13.11.5 The classification specification for Hazardous Materials Specialist II is modified to reflect the requirement that possession and maintenance of all certifications necessary for conducting inspections specified in Chapter 6.11 of Division 20 of the California Health and Safety Code and storm water inspections are a condition of continued employment.
- 9.13.11.6 The City will move to terminate an employee who fails to maintain the ICC certifications. Hazardous Materials Specialist II's who fail to maintain the certifications will be given reasonable time to recertify.

**9.18 Supervising Library Assistant**

Effective the first full pay period following SEIU Local 1021 CSU & PTRLA ratification and Council approval of this MOU on its regular agenda in accordance with Brown Act, Step E of the Supervising Library Assistant classification shall be increased by three and two-tenths percent (3.2%).

**9.19 Senior Permit Specialist**

Effective the first full pay period following SEIU Local 1021 CSU & PTRLA ratification and Council approval of this MOU on its regular agenda in accordance with Brown Act, Step E of the Senior Permit Specialist classification shall be increased by two percent (2%).

**9.20 Venipuncture Educational Incentive Pay**

Upon written agreement by SEIU Local 1021 Community Services & Part-Time Recreation Leaders Association, and adoption by the Personnel Board of the revisions to the Community Health Worker Specialist and Senior Community Health Specialist classification specifications, effective the first full pay period following Council approval of a successor MOU, incumbents in the classifications of Community Health Worker Specialist and Senior Community Health Specialist, who are required to possess a certificate to perform venipuncture for blood samples as a condition of employment and who are regularly assigned to perform such venipuncture duties, shall be eligible to receive a five percent (5%) differential. This salary differential shall be reported to CalPERS as an Educational Incentive Pay.

The classification specifications for Community Health Worker Specialist and Senior Community Health Specialist are modified and agreed upon by the parties as attached.

Moreover, the three (3) incumbents as of November 20, 2015 in the Senior Community Health Specialist classification shall not be required to perform the venipuncture duties as a condition of employment. In addition, the Senior Community Health Specialist who is performing venipuncture duties shall be required to continue to perform said duties for three months following Council approval of a successor MOU. Furthermore, the Union agrees to withdraw the grievance pending arbitration (1021CSU-14-02).

**9.20.1 Payment of Examinations:** The City will pay the cost of the venipuncture certificate and for the cost of the successful recertification for employees who are regularly assigned to perform venipuncture duties.

**9.21** Effective the first full pay period after Union ratification and Council approval at its regular meeting the hourly salaries for the classifications of Library Page and Sports Monitors will be increased to \$18.00 per hour and remain at \$18.00 per hour for the duration of the contract.

## **SECTION 10: HIGHER CLASSIFICATION AND TEMPORARY APPOINTMENTS**

### **10.1 Temporary Appointment Duration**

Except as provided in Section 10.2 (Backfilling Temporarily Vacated Position), any temporary appointment made shall be limited to six (6) months. However, temporary appointments may be made or extended to a limit of twenty-five (25) months with the mutual agreement of the parties. If the parties do not mutually agree to extend a temporary beyond six (6) months to a maximum of twenty-five months, such extension may be approved by the City Council after review by the Personnel Board for extension up to twenty-five (25) months. However, temporary appointments resulting from workers compensation, parental leave, or other authorized leaves of absence, shall be limited to the term of the leave but not in any case exceed twenty-five (25) months. No employee shall hold a provisional appointment in the same position for more than 12 months. The City Manager may extend the provisional appointment beyond this 12-month limitation with the mutual agreement of the parties.

### **10.2 Backfilling Temporarily Vacated Position**

It is agreed that temporary appointments, pending the establishment of an eligibility list, will be made expeditiously. If a career employee -is temporarily assigned to another career position, the position temporarily vacated by the career employee may be backfilled on a temporary provisional basis for the period the career employee works temporarily assigned to another career position.

### **10.3 Fringe Benefits for Employees in Temporary Positions**

Non-career employees appointed to temporary positions may be eligible for fringe benefits if the duration of the temporary appointment is expected to be six (6) months or longer and funding is available. Career employees temporarily filling a vacant position at the same or higher salary level shall continue to receive fringe benefits. Employees on mandatory reemployment lists as a result of layoffs who are reemployed to fill temporary positions, who had career status at the time of their layoff, shall resume receiving the level of health, dental and life insurance benefits paid by the City at the time of their lay-off in addition to prorated leave benefits. Such employees who are reemployed for periods of 180 days or more shall additionally resume career status.

### **10.4 Temporary Vacancy**

When a temporary vacancy is to be filled in a classification for which there is an existing eligibility list, the City shall attempt to make the temporary appointment from that list. Provided there are City employee applicants meeting the minimum qualifications, temporary vacancies of greater than 90 days shall be filled by existing City of Berkeley employees from existing eligibility and/or transfer lists except as otherwise provided in Section 52 (Layoff). When the employee completes the temporary appointment, the employee would then return to his/her former classification at the appropriate pay level. The employee shall suffer no loss of seniority in his/her classification as a result of filling a temporary vacancy. The City does not guarantee a permanent promotion to the employee working in a temporary appointment. Employees shall indicate availability for temporary

appointments on an employment application. Employees may update their existing application forms to indicate their availability for future temporary appointments.

**10.5 Maximum Consecutive Temporary Appointment**

An employee may hold more than one type of temporary appointment within a calendar year. Consecutive appointments of a non-career employee as provided in Sections 10.1 (Temporary Appointment Duration) and 10.2 (Backfilling Temporarily Vacated Position) may not exceed twenty-five (25) months.

**10.6 Filling of Positions through Competitive System**

Any position, regardless of its funding source, shall be filled through the competitive system if the position is expected to last one year or more.

**10.7 Working in Higher Classification**

The Department Heads will work all employees within their career classification. The departments may assign an employee to work temporarily in a higher classification. Such assignments shall be in writing and shall indicate the reasons, length and duties of the assignment. Assignments over one week shall be approved in advance by the City Manager, Director of Library Services, or their designees. To be eligible for temporary assignment to a higher classification, the employee must work a minimum of one day, meet all of the minimum qualifications, and perform the duties of the higher classification. Employees meeting these requirements will be compensated at the lowest step of the higher classification which provides at least a five percent (5%) increase in salary. Excluded from this provision are all employees whose job classifications regularly include assuming administrative and/or supervisory responsibilities in the absence of another, e.g. Assistant Department Heads.

**10.8 Training for Supervisory Position**

For training purposes, employees not meeting all of the minimum qualifications for a supervisory position may be temporarily assigned for a minimum of one week (five consecutive working days), to perform the duties of supervisor and will receive a five percent (5%) increase in their current base salary rate listed in Exhibit A and Exhibit B.

**10.9 Notification of Change in Classification Duties and Responsibilities**

Whenever a need for a change in the duties and responsibilities of any position occurs in which matters of classification may be involved, the Department Head in whose department the position is located shall notify the City Manager through the Human Resources Department of that fact and the Union will be so advised by the Director of Human Resources.

### **10.10 Notification of New Classification**

The City shall notify the Union and upon written request discuss in advance the establishment of new career classifications if the work is related to work performed by classifications in Units G-1, G-3, I-A, I-B, L, R-1 and R-2. This procedure shall also be applicable to the reclassification of positions presently in such units.

### **10.11 Desk Audits**

Upon request of the employee or his/her Department Head, the Human Resources Department shall, within ninety (90) days if possible, audit the position of the employee to determine if he/she is working out of classification. If the audit determines that the employee has been working in the higher class, the employee shall receive back pay to the date of the beginning of the closest pay period that the position description questionnaire was received by the employee's supervisor. In the event the City reclassifies a position from a lower level classification to a higher level classification, an incumbent occupying such position shall be reclassified without competitive examination provided s/he has performed the duties of the new class for one year and has not received an unsatisfactory evaluation during that period. All other employees shall pass an examination for the higher class and shall serve the normal probationary period. There will be a maximum of one (1) audit in a twelve (12) month period unless the employee is assigned to a different job in which case there may be a second audit in a twelve (12) month period. This section is not applicable to salary equity reviews when the assignment fits within the existing classification.

Reclassification or reallocation of positions shall not be used as a mechanism, the sole purpose of which is to improperly circumvent the provisions of this Agreement, including provisions relating to layoff, transfer, demotion or promotion. Upon request, the City will provide the Union with a written yearly report of all audits requested and performed. The City shall provide, upon request, for information only, the status (expiration date) of all existing eligible lists for Local 1021 and Local 1 classifications.

### **10.12 Temporary Appointments Notification**

Temporary appointees will be advised that they are hired on a temporary basis and will be provided with an offer letter setting forth the terms of their employment.

### **10.13 Continuous Eligibility**

- 10.13.1 **For Career Employees:** Any employee maintaining permanent or probationary status in any classification may qualify for continuous eligibility for classifications in which his/her name appears on the eligible list. Employees who qualify for continuous eligibility will remain on the eligible list in their relative standing without being required to compete in subsequent examinations. Employees will be required to submit to the Human Resources Department an updated application within the announced filing period for a specific position. Continuous eligibility is



based on persons meeting the minimum requirements for the classification. Continuous eligibility does not preclude the employee from taking subsequent tests to attempt to improve his or her standing.

At such time as new eligibility standards are introduced, employees will be notified by the Human Resources Department that they must pass a new examination in order to remain on the eligible list. Continuous eligibility shall be administered by the Director of Human Resources according to procedures established by the Director of Human Resources.

- 10.132 **For Temporary/Intermittent Employees:** Any employee continuously appointed as a temporary/intermittent employee from an eligible list shall remain eligible for probationary appointment to career positions within that classification for the duration of the temporary/intermittent employment without renewing eligibility on subsequent eligible lists.

## **SECTION 11: CONTRACTING OUT**

For the purpose of preserving work and job opportunities for employees covered by this agreement, the employer agrees that no work or service of the kind, nature, or type presently performed by members of this bargaining unit shall be subcontracted prior to meeting and conferring with the Union in an effort to find alternatives.

The Union shall be provided notice of any proposed contracts with outside vendors for services with the City. Additionally, the City shall provide the Union with notice of a Request for Proposals for outside services. Such notice shall be provided when the Contract Management System or Request for Proposal number is assigned. Notification shall be provided through an electronic notification system.

## **SECTION 12: HOURS AND DAYS OF WORK**

### **12.1 Rules**

Hours and days of work shall be governed by rules established by the City Manager. At the present time, for a full-time employee, the normal workday shall consist of eight (8) hours, and the normal workweek shall consist of forty (40) hours, unless otherwise provided. However, employees in work units that provide a six (6) or seven (7) day operation may be required to flex their work schedule based on the needs of the work unit, except in the Library Department. Flexing of work schedule will be assigned on the basis of inverse seniority unless more senior employees prefer to accept such work. The required flexing of work schedules will be on a day-for-day basis. When an employee is required to work on a regularly scheduled day off, the department will provide that employee with an alternative day off in the same work week when the required flexing occurs.

## 12.2 Flexible Work Schedule

Employees may request variable working hours such as, but not limited to, 10 hours a day, four days a week, job sharing, and working under a flexible arrangement. Flexible scheduling may also include the option of a one-half hour lunch break. This option shall be available in all departments in the City and will be considered seriously if all City functions within units can be accomplished through flexible scheduling.

## 12.3 Work Week

The workweek will begin at 12:01 a.m. Sunday and end at Saturday midnight. Regular days off will be considered to be Saturday and Sunday except in those programs with six or seven day operations.

## 12.4 Lunch and Rest Periods

As approved by the Department Head, lunch periods shall be a minimum of one-half hour to a maximum of one hour. Employees shall receive a rest break of fifteen (15) minutes during each four-hour shift. For each additional hour of work time, the employee shall receive an additional five (5) minutes of rest break.

Whereas, for R-1 and R-2 employees, lunch and/or rest breaks cannot be taken because of program constraints, the employee will be paid for the time worked during such lunch and rest periods. Time paid for rest breaks will not be counted as regular scheduled work hours, i.e., if an employee works from 9:00 a.m. to 4:00 p.m., the employee should be paid from 9:00 a.m. to 4:30 p.m.

## 12.5 Sunday and Graveyard Shifts

Regularly scheduled Sunday shifts and "graveyard" shifts, as defined in Section 14, shall be for eight (8) consecutive hours including up to one-half ( $\frac{1}{2}$ ) hour for lunch.

## 12.6 Shift Assignments

Within a given classification, shift assignments shall first be offered to employees by classification seniority on a voluntary basis. In the event shift assignments are not filled voluntarily, such assignments will be made on the basis of inverse classification seniority. Within a Library department or unit, shift assignments shall be made on a rotational basis so that the least desirable shifts can be shared as equally as possible.

### 12.6.1 Types of Shifts:

- a. **Swing** shift means authorized work schedules regularly assigned in which four (4) hours or more worked are between the hours of 5:00 p.m. and 12:00 midnight of each workday.

- b. **Night** shift means authorized work schedules regularly assigned in which four (4) hours or more worked are between the hours of 12:00 midnight and 7:00 a.m. of each workday.
- c. **Day** shift means any authorized work schedules assigned except swing or night shifts as defined in this section.

### 12.7 Library Flex Time

Employees who are working during hours of the Board of Library Trustees (BOLT) meeting may request flex time consistent with Library policy as set forth in Library Administrative Regulation 2.11 (Flexitime/Alternate Work Schedules Policy and Guidelines) to attend the meeting. The Library shall use its best efforts to grant such requests from at least one (1) branch library employee for each meeting.

### 12.8 Daylight Saving Time

12.8.1 **Spring:** In the Spring when transitioning to Daylight Saving Time (DST), employees working during the one (1) hour transition from Standard Time to DST will be paid only for actual hours worked. Employees working on a shift which includes the one (1) hour transition may be granted an option by the Department Head or his or her designee, to work an additional hour or use compensatory time, floating holiday, or vacation to make up the lost work hour.

12.8.2 **Fall:** In the Fall when transitioning to DST, employees working during the one (1) hour transition will be paid for all hours worked including overtime at one and one-half (1½) times the straight-time rate of pay for hours worked in excess of the regular workweek as set forth in Section 13 of this Agreement.

## SECTION 13: OVERTIME

Employees required to work in excess of their basic workweek shall be compensated for such overtime services as follows:

### 13.1 Overtime

The straight-time workweek shall consist of forty (40) hours, five (5) days per week, unless otherwise agreed between the employee and the City. If the employee is required to work in excess of forty (40) hours in any one work week or eight (8) hours in any one workday, the employee shall be paid at the rate of time and one-half the employee's regular rate for all hours over eight (8) in a day or forty (40) in a week, except that if the employee works over twelve (12) hours in a workday, the employee shall be paid at the rate of two times the employee's regular rate of pay. These provisions shall not result in pyramiding of overtime and shall not apply to employees who voluntarily work under a flex-schedule arrangement which

requires more than eight (8) hours per day. Leave without pay shall not be considered hours worked for the purpose of computing overtime compensation.

**13.2 Department Head Discretion**

Whether an employee shall be compensated for overtime by compensatory time off or by payment shall be at the sole discretion of the employee's Department Head.

13.2.1 **Mandatory Overtime:** when an employee is directed to work in excess of his or her basic work week, the employee shall be paid at the rate of one and one-half (1½) times the employee's regular rate of pay. Based on the needs of the work unit, the manager may offer the employee being directed to work overtime the option of earning Compensatory Time in lieu of overtime pay, subject to the maximum accumulation requirement in Section 13.7 (Compensatory Time Off).

**13.3 Final Compensation**

In the event that an employee resigns or is terminated, the employee shall be entitled to compensation for his or her accumulated overtime.

**13.4 Workweek**

For the purpose of computing overtime, the workweek shall be defined as beginning at 12:01 a.m. Sunday and ending at 12:00 midnight Saturday.

**13.5 Emergency Call Back**

Employees who are called into work outside their normal work schedule shall be paid overtime compensation for actual time worked. The minimum time for which such overtime compensation shall be paid shall be four (4) hours. If such overtime work is performed prior to the beginning of the regularly scheduled work period and overtime continues into the regularly scheduled work period without a break in service, compensation shall be paid only for the actual time worked.

**13.6 Standby Pay**

Standby service shall mean being available for service outside of regular working hours at any time when called. Employees may be assigned to standby service and the City shall compensate employees thus assigned on an hourly rate as provided below. If an employee assigned to standby service is not available when called or is unable or fails for any reason to perform the service when called, the employee shall not receive the standby pay provided for herein. An employee will not be assigned to standby service if the employee is on vacation leave, sick leave, compensatory time off, off work on a floating holiday, on workers' compensation leave or other leave, or when on a modified duty assignment.

Days of the Week	Hourly Rate of Pay
Monday, Tuesday, Wednesday, Thursday, Friday	\$4.09 per hour
Saturday, Sunday, or any Holiday named in Sections 18.1.1 through 19.1.13 regardless of the day of the week	\$5.43 per hour

### 13.7 Compensatory Time Off

Compensatory time off may be earned in lieu of overtime pay at the rate of one and one-half (1½) hours for each overtime hour worked up to a maximum of sixty (60) hours of such compensatory time. Accumulation of compensatory time off in excess of sixty (60) hours may be allowed at the discretion of the Department Head. Compensatory Time Off cannot be used in the same pay period it is accrued. Utilization of compensatory time shall be determined by the Department Head with due regard for the wishes of the employee and particular regard for the needs of the service. As used herein, sixty (60) hours of compensatory time is equal to ninety (90) hours of time off work. In the event of layoff, termination, or transfer the employee shall be compensated for all compensatory time accrued but still unused.

### 13.8 Natural Disaster/Declared Emergency

If an emergency is declared by the City, county, state or national authority:

- 138.1 If an employee is called outside of normal working hours, the employee gets time and one half (1½) the normal rate of pay for the first whole shift regardless of the number of hours worked. If the employee is not called from home the regular rules apply (i.e., overtime for hours worked above eight in a day).
- 138.2 Thereafter: the first eight hours at regular rate and 7½% for hours worked between 5:00 p.m. and midnight; 10% for hours worked from midnight to 7:00 a.m. For hours greater than eight in a shift, the employee gets time and one half (1½) the normal rate of pay but no shift differential on those hours above eight.

## SECTION 14: SHIFT DIFFERENTIAL

### 14.1 Shift Differential

- 14.1.1 Swing Shift: Employees who regularly work on a full shift of eight (8) hours or more on swing shift as defined in Section 12.6.1 (Types of Shifts), which includes four (4) hours or more between the hours of 5:00 p.m. and 12:00 midnight, shall be paid their regular salary plus seven and one-half percent (7½%) of their monthly salary per month.
- 14.1.2 Night Shift: Employees who regularly work a full shift of eight (8) hours or more on night shift as defined in Section 12.6.1 (Types of Shifts), which includes four (4) hours or more between the hours of 12:00 midnight and 7:00 a.m., shall be paid their regular salary plus ten percent (10%) of their monthly salary per month, provided that in the case of any employee who is regularly assigned to night-shift work for less than an entire work week,

the additional payment shall be made only for the portion of the work week worked on the night-shift assignment.

**14.2 Sunday Shift for Career Library Employees**

For career library (including Library Aides) only, employees who work a shift entirely on Sunday of less than 8 hours shall receive a differential of ten percent (10%) of their regular hourly rate for those hours actually worked.

**14.3 Sunday Shift for R-1 and R-2 Employees**

R-1 and R-2 employees (excepting Sports Officials) who are required to work a shift entirely on Sunday of less than eight (8) hours (or for special events such as civic festival on a Sunday) shall receive a differential of ten percent (10%) of their regular hourly rate for those hours actually worked.

**SECTION 15: PREMIUM PAY**

**15.1 Library-Supervisor-In-Charge**

When a non-supervisory library employee is required to be the "Library-Supervisor-In-Charge" at the Central Library, s/he shall receive a differential of five percent (5%) above the regular hourly wage for all time in which such work is performed.

**15.2 Bilingual Premium Pay**

152.1 An employee who is required as an essential part of his or her job to provide non-English language services, including Braille and sign language, routinely and consistently as part of his or her regular job assignment as determined by the City will receive a Bilingual Premium Pay Differential of five percent (5%). The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of five percent (5%) will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

152.2 An employee who is required as an essential part of his or her job to provide non-English language services, including Braille and sign language, will receive a Bilingual Premium Pay Differential of two percent (2%). The criteria for receiving the differential will be: a) when assigned by management, or b) at the request of the employee with the supervisor's agreement, or, c) after a job audit and who must utilize these skills on an occasional basis. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of two percent (2%) will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked

on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

- 15.2.3 **Competency:** The bilingual premium will not be applicable under any circumstances except to an employee who possesses second language competency. Management reserves the right to test for second language appropriate competency prior to a Bilingual Premium Pay Differential.

### 15.3 Longevity Pay

Effective June 28, 2009, employees completing twenty-four (24) years of service shall receive a three percent (3%) differential beginning with the anniversary date of beginning the twenty-fifth (25<sup>th</sup>) year of service and shall apply to all hours in a paid status. This Longevity Pay shall be reported to CalPERS as Longevity Pay Incentive Pay.

### 15.4 Senior Information Systems Specialist Educational Incentive

An employee in the Senior Information Systems Specialist classification who obtains and maintains a valid Cisco Certified Network Associate (CCNA) certificate shall receive a two percent (2%) differential to his or her base salary. An employee in the Senior Information Systems Specialist classification who obtains and maintains a valid Microsoft Certified Systems Engineer (MCSE) certificate shall receive a four percent (4%) differential to his or her base salary. The specific certifications referenced in this Section (CCNA and MCSE) are subject to change as modifications to the City's technical infrastructure change. This salary differential shall be reported to CalPERS as Educational Incentive Pay.

### 15.5 Recreation Activity Leaders Personal Care Services Differential

Recreation Activity Leaders assigned to work with disabled children in the Inclusion Program and who provide personal care services (i.e., toileting, etc.) to those children shall receive a six and one-half percent (6.5%) differential for those hours worked in the program. The differential shall be reported to CalPERS as Hazard Premium Special Assignment Pay.

The classification specification for Recreation Activity Leader will be modified to include personal care as a duty to which employees may be assigned. The Union shall be provided copies of the proposed change to the classification specification prior to implementation.

## SECTION 16: PAYROLL ERRORS

To ensure that system or other errors which affect an employee's pay are processed in an efficient and effective manner, the City shall notify the affected employee(s) as soon as practicable. Payroll errors detected by an employee shall, as soon as practicable, be communicated to the employee's Departmental Payroll Clerk. In the case of under payments, the Payroll Clerk shall submit the appropriate adjustments as soon as

practicable. Payroll errors identified by the Auditor will be communicated to the employee either directly by Auditor staff or through the Departmental Payroll Clerk.

Under payments will be processed as soon as practicable after they are brought to the attention of the Auditor's Department. If the employee is paid less than 80% of base salary as a result of an underpayment in the then-current pay period, the City shall process the underpayment within three business days after notification to the departmental payroll clerk and approval of the supervisor. All other underpayment adjustments will be processed on the next pay check.

In the event of an overpayment, the Auditor's Office will determine a reasonable repayment schedule and inform the employee of the schedule directly, or through the Department Payroll Clerk. Before a repayment schedule is implemented the affected employee shall be given an opportunity to discuss the schedule of repayment and to request an adjustment to the repayment schedule as a needed and reasonable modification. In the event that (1) the employee does not respond within 10 working days of receiving written notice of the overpayment, or (2) mutual agreement on the repayment schedule is not achieved within 20 working days of the employee receiving written notice of the overpayment, the Auditor's Office will proceed to implement a reasonable repayment schedule consistent with the requirements of this section. Factors considered in determining whether a requested modification of a repayment schedule is reasonable include, but are not limited to, the length of time the overpayment has occurred, the amount of the overpayment, the employee's normal salary, and other financial obligations of the employee.

Generally, overpayment shall be recaptured at least at the rate at which the overpayment occurred. Overpayment shall not be recaptured at a more rapid rate than the rate at which the overpayment occurred, except (1) by permission of the affected employee, or (2) if the repayment amount per pay period would otherwise be less than five percent (5%) of gross base salary each pay period, or, (3) the overpayment was of \$99 or less, in which case it must be recouped in one lump sum. However, should an employee with a repayment schedule leave the employ of the City before repaying the City the full amount of any overpayment, the outstanding debt shall be deducted from any salary and leave balances for which the employee would otherwise be paid upon separating from the City. Where an employee requests and the City concludes that s/he has justified a modified repayment schedule, the City may, in its sole discretion, permit exceptions to these standards.

The City and the Union agree that the City is authorized to recover any salary overpayment made to the employee from the employee's wages, except that the City shall not attempt to recover overpayments which would be barred by a four year statute of limitations in a court action for their recovery. However, once a repayment schedule is implemented, the City will retain the right to recover the full amount of the overpayments covered by the schedule, and the limitations period for those overpayments shall be tolled for the duration of the repayment schedule.

Nothing in this policy shall prevent the City from taking such other or additional action, such as a lawsuit, as is appropriate and necessary to recover overpayments to employees.



## ARTICLE 3 - LEAVES

### SECTION 17: VACATION

#### 17.1 Entitlement

All employees who work with the City shall be entitled to use vacation leave (Library Aides: see Section 51).

#### 17.2 Vacation Approval

The times during the calendar year at which an employee shall take vacation shall be determined by the Department Head with due regard for the wishes of the employee and particular regard for the needs of the service. Wherever practical, employees in Units G-1, G-3, L, and R-1 working in the same classifications within a division shall be given preference of vacation time by seniority. If the City cannot allow the vacation that the employee requested, the employee, with the Department Head's approval (if the service permits), may take vacation at another mutually agreed upon time during the same calendar year. If the requirements of the service are such that a Department Head cannot permit an employee within the department to take an annual vacation leave, or any part of such leave within a particular calendar year, the City Manager/Director of Library Services may permit the employee to take the deferred vacation during the following year.

With advance supervisory approval, vacations may be taken in increments of one (1) hour.

The City may revise vacation accumulation provisions in order to standardize accounting procedures without effect on the amount of employees' vacation; subject to review and comment by the Union.

#### 17.3 Accrual

Employees shall be entitled to vacation leave as follows (except as provided in Sections 17.4 (Accrual, Use, and Limitations for Employees), 17.5 (Effect of Holidays Upon Vacation Leave), 17.9 (Public Health Classifications Vacation Accrual), 17.10 (Mental Health Classifications Vacation Accrual), 17.11 (Library Classifications Vacation Accrual), and 17.12 (Vacation Without Pay) below).

Years of Service	Authorize Annual Vacation (in work weeks)	Vacation Leave Credits (in workdays per month of service)	Vacation Leave Credits (in hours earned per month of service)
First through third years of service	2 work weeks	0.833	6.667
Fourth through eleventh years of service	3 work weeks	1.25	10

<b>Years of Service</b>	<b>Authorize Annual Vacation (in work weeks)</b>	<b>Vacation Leave Credits (in workdays per month of service)</b>	<b>Vacation Leave Credits (in hours earned per month of service)</b>
Twelfth through seventeenth years of service	4 work weeks	1.667	13.333
Eighteenth through twenty-fourth years of service	5 work weeks	2.083	16.667
Twenty-fifth and subsequent years of service	6 work weeks	2.5	20

**174 Accrual, Use, and Limitations for Employees**

Each employee, during that portion of the calendar year in which the employee was originally appointed and during the next succeeding calendar year, shall be entitled to vacation leave credits at the rate of .833 work days for each calendar month of service.

17.4.1 Employees shall be entitled to pro-rata vacation leave credits for each hour the employee either works or is paid. An employee who is on unpaid status shall not accrue vacation benefits for the period the employee is not working and is not receiving pay.

17.4.2 During the first two calendar years of employment, employees shall be entitled to take only such annual vacation leave as the employee earns. After two years of service, employees may request, and upon approval, take up to a maximum of two weeks of their annual vacation, in advance of actual earning. Approval of requests for advance vacation shall be solely at the discretion of management.

17.4.3 For an employee who has been on leave of absence without pay for a total of six (6) months or more or who has left employment and subsequently reemployed, the actual years of service with the City shall be used for the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5), and six (6) weeks' rate.

17.4.4 For the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5), or six (6) weeks' rate, time spent on extended military leave shall be counted as time spent in the service of the City.

**17.5 Effect of Holidays upon Vacation Leave**

In the event one or more municipal holidays fall within a vacation leave, such holidays shall not be charged as vacation leave, and the vacation leave shall be extended accordingly. The provisions of this Section shall not apply to those

positions in which holidays, due to the necessities of public health and safety, are normal working days.

#### **17.6 Maximum Vacation Accumulation**

Employees may defer vacation earned up to a maximum cumulative total of eight (8) weeks. An employee who has attained maximum accumulation may be required to take all excess earned vacation. Not later than October 1 of each year, the City will advise employees who have attained a maximum accumulation of vacation whether such excess earned vacation must be scheduled as time off prior to March 31. Such time off shall be scheduled in accordance with the provisions of Section 17.2 (Vacation Approval). Accumulated vacation may not be used immediately prior to retirement in order to extend the date of retirement, but shall instead be paid out in full upon retirement.

The City shall require all employees to reduce their accrued vacation balances to no more than 320 hours, as of the last pay period in February of each year of this Agreement. To effectuate the requirement that employees not accrue more than 320 hours vacation leave, the parties agree that not later than November 15 of each year of this Agreement, the City will provide the Union and Department Heads with a report identifying all employees who have accrued two hundred and eighty (280) hours of vacation leave and appear in danger of exceeding the 320 hour limit. Employees who have accrued 280 hours of vacation leave, as of that date, will be advised by their supervisor that they must take vacation leave to reduce their vacation leave accrual by February of the following year.

Supervisors should be flexible in granting employee vacation requests to those employees above, or approaching the 320 hours limit, and further, that with regard to employees who are in danger of exceeding the 320 hour limit, no vacation request by such an employee shall be unreasonably denied. If an employee who is in danger of exceeding the 320 hour limit fails by December 31 of each year of this Agreement to schedule a vacation to be taken before the last pay period in February of each year of this Agreement, the City has the authority to direct the employee to go on vacation leave to reduce the employee's accrued vacation.

If, due to operational necessity, a department head denies an employee vacation leave and does not provide the employee with an alternate vacation date, and as a result causes the employee to exceed the 320 vacation leave limit, said employee shall nonetheless be entitled to use that vacation leave in the next calendar year to the extent necessary to reduce their accrued vacation to not more than 320 hours.

**17.7 Return from Leave**

An employee who has returned from extended military leave or any other extended leave of absence without pay or who has been reemployed or reinstated shall be entitled, during the calendar year in which the employee returns to the City service, to a prorated vacation based upon the total years of service with the City and upon the total actual service with the City during the said calendar year. For succeeding calendar years, vacation shall be as provided in this Section 17 (Vacation).

**17.8 Computation of Vacation Leave upon Termination, Extended Military Leave or Other Extended Leave of Absence Without Pay**

If after six (6) months of continuous service, an employee is terminated, or is granted an extended military leave or other extended leave of absence without pay, such employee or his/her estate shall be paid for vacation credits in excess of the actual amount of vacation leave taken or such employee or his/her estate shall reimburse the City for the actual amount of vacation leave taken in excess of vacation leave credits as the case may be.

Upon termination, extended military leave or other extended leave of absence without pay, vacation leave credits shall be totaled, and the actual amount of vacation leave taken, including any that may have been taken during the year in which the termination, extended military leave or other extended leave of absence without pay occurs, shall be deducted from the total credits. If the credits exceed the actual amount of vacation leave taken, such employee or his/her estate shall be paid for the excess of the credits on the basis hereinafter set forth. If the actual amount of vacation leave taken exceeds the credits, such employee or his/her estate shall reimburse the City on the same basis.

The basis for such payment by the City or for such reimbursement to the City shall be as follows:

The employee's monthly salary at date of termination, extended military leave or other extended leave of absence without pay, divided by thirty (30) and multiplied by the excess of credits over vacation leave actually taken or excess of vacation leave actually taken over credits, as the case may be.

At the time of termination, extended military leave or other extended leave of absence without pay, or as soon thereafter as possible, payment for excess of vacation leave credits shall be made in a lump sum. An employee may elect to use excess vacation leave credits prior to termination, extended military leave or other extended leave of absence without pay, to the extent permitted by this Section, and receive a lump sum payment for the balance of vacation leave credits, if any. An employee or his/her estate shall not be paid for vacation leave credits in excess of eight (8) calendar weeks. Notwithstanding the foregoing, accumulated but unused vacation credit at the time of retirement shall be paid off in a lump sum.

**17.9 Public Health Classifications Vacation Accrual**

The authorized annual vacation leave for employees occupying positions in the classifications listed in this Section 17.9 shall be entitled to vacation leave as noted herein:

**Job Code Title**

95070	Community Health Worker
95370	Community Health Worker Specialist
34050	Licensed Vocational Nurse
24700	Mid-Level Practitioner
24020	Public Health Nurse
24760	Psychiatrist
24030	Registered Nurse
95390	Senior Community Health Worker Specialist
24010	Senior Public Health Nurse

<b>Years of Service</b>	<b>Authorize Annual Vacation (in work weeks)</b>
1 <sup>st</sup> through 2 <sup>nd</sup> years of service	2 work weeks
3 <sup>rd</sup> through 5 <sup>th</sup> years of service	3 work weeks
6 <sup>th</sup> through 17 <sup>th</sup> years of service	4 work weeks
18 <sup>th</sup> through 24 <sup>th</sup> years of service	5 work weeks
25 <sup>th</sup> and subsequent years of service	6 work weeks

**17.10 Mental Health Classifications Vacation Accrual**

The authorized annual vacation leave for employees occupying positions in the classifications listed in this Section 17.10 shall be entitled to vacation leave as noted herein:

**Job Code Title**

94040	Assistant Mental Health Clinician
24110	Clinical Psychologist
24450	Mental Health Clinician
24520	Mental Health Clinician II
24460	Psychiatric Social Worker I
24410	Psychiatric Social Worker II
24530	Senior Mental Health Clinician
24130	Senior Psychiatric Social Worker

<b>Years of Service</b>	<b>Authorize Annual Vacation (in work weeks)</b>
1 <sup>st</sup> through 4 <sup>th</sup> years of service	2 work weeks
5 <sup>th</sup> through 17 <sup>th</sup> years of service	4 work weeks
18 <sup>th</sup> through 24 <sup>th</sup> years of service	5 work weeks
25 <sup>th</sup> and subsequent years of service	6 work weeks

**17.11 Library Classifications Vacation Accrual**

The authorized annual vacation leave for employees occupying positions in the classifications listed in this Section 17.11 shall be entitled to vacation leave as noted herein:

<b><u>Job Code</u></b>	<b><u>Title</u></b>
26070	Automation Librarian
26050	Librarian I
26040	Librarian II
26060	Senior Librarian
26030	Supervising Librarian

<b>Years of Service</b>	<b>Authorize Annual Vacation (in work weeks)</b>
1 <sup>st</sup> through 11 <sup>th</sup> years of service	3 work weeks
12 <sup>th</sup> through 17 <sup>th</sup> years of service	4 work weeks
18 <sup>th</sup> through 24 <sup>th</sup> years of service	5 work weeks
25 <sup>th</sup> and subsequent years of service	6 work weeks

**17.12 Vacation Without Pay**

Upon written request to the Department Head, employees will be granted up to seven (7) consecutive calendar days without pay to be used as additional vacation, provided that such request may be denied at the discretion of the Department Head by reason of adverse staffing impact (including workload considerations).

**SECTION 18: HOLIDAYS**

**18.1 Recognized Holidays**

Recognized holidays for career employees in Representation Units G-1, G-3, I-A, I-B, L, and R-1 shall be:

- 18.1.1 New Year's Day
- 18.1.2 Martin Luther King Jr.'s Birthday - observed on the third Monday in January
- 18.1.3 Lincoln's Birthday - deferred to Christmas Eve Day for Units I-A and I-B only
- 18.1.4 Washington's Birthday - observed on the third Monday in February
- 18.1.5 Malcolm X's Birthday - observed on the Monday or Friday nearest May 19
- 18.1.6 Memorial Day - observed on the last Monday in May
- 18.1.7 Independence Day
- 18.1.8 Labor Day - observed on the first Monday in September
- 18.1.9 Indigenous Peoples Day - observed on the second Monday in October
- 18.1.10 Veterans Day
- 18.1.11 Thanksgiving Day
- 18.1.12 The day after Thanksgiving Day
- 18.1.13 Christmas Day

**18.2 Floating Holidays**

Employees in the competitive service who have worked for the City six (6) months or more shall be granted three (3) floating holidays each calendar year. In the first calendar year of employment, employees shall be granted pro rata floating holidays as follows:

Hired January 1 - April 30	3 days
Hired May 1 - August 31	2 days
Hired September 1 - December 31	1 day

**18.3 Use of Floating Holidays**

The days selected shall be by mutual agreement between the employee and the Department Head (or his/her designee). Employees may take floating holidays in one hour increments. In the event mutual agreement cannot be reached on the selection of floating holidays, the employee shall have one (1) or two (2) or three (3) days added to his/her accrued vacation time. Employees who terminate employment within the first six (6) months of initial employment shall not be eligible for payout of any unused floating holidays.

**18.4 Holidays for Employees with Schedules other than Monday through Friday**

Employees whose workweek is Monday through Friday shall be allowed all holidays with pay which fall within such work week. Those employees whose work week is other than Monday through Friday shall be entitled to the same number of holidays, with pay, during each calendar year as are allowed to employees whose work week is Monday through Friday, and the procedure for allowing these holidays shall be established by the City Manager. The provisions of this Section 18.4 are not applicable to intermittent employees.

**18.5 Work on a Holiday**

An employee required to work on any day which is a holiday for employees whose work is Monday through Friday shall be paid for the number of hours worked during such day at the rate of one and one-half (1½) times the straight-time rate, based upon the employee's regular monthly salary, or shall be granted compensatory time off in any amount equal to one and one-half (1½) times the number of hours worked on such holiday. The hours worked on such a holiday and paid at the rate herein provided shall not be credited in computing the hours worked in the week for overtime purposes.

The holiday pay provided for shall be in addition to an employee's regular salary. In the event that the time worked on such a holiday also includes overtime, as provided in Section 13 (Overtime) of this Memorandum Agreement, payment will be made for the hours worked either as overtime under said Section 13 (Overtime), or as holiday pay under this Section 18 (Holidays), but will not be made under both Sections.

**Sections.18.6 Holiday for Part-Time Employees**

Regularly scheduled part-time employees working 20 hours or more per week shall be entitled to holiday pay on a pro-rata basis (Library Aides see Section 45).

In the event that a holiday occurs on the employee's regular scheduled day off, the employee shall receive holiday pay on a pro-rata basis or the employee, at his/her option, shall be permitted to accrue the hours for use as paid time off. Such hours shall be reported as Holiday Compensatory Time Straight (Payroll Code HC). The amount of leave accrued under this section shall be limited to twenty (20) hours. An employee shall notify his or her supervisor at least two (2) weeks prior to the holiday regarding the selection of pay or the accrual of hours. Scheduling of accumulated time off shall be coordinated between the employee and his/her supervisor.

In the event that a holiday occurs on a day the employee is normally scheduled to work, the employee will receive holiday pay on a pro-rata basis and, if the employee's normal hours for that day exceed the holiday pay, the employee will be provided the option of working additional hours in the workweek or using accumulated paid time off to equal his/her normal schedule. The employees will notify his or her supervisor at least two (2) weeks prior to the holiday regarding his or her choice to work or use accumulated time off.

**18.7 Paid Status**

In order to be eligible for holiday pay, an employee must be on paid leave status on his or her regularly scheduled workday before the recognized holiday.

**SECTION 19: SICK LEAVE**

**19.1 Eligibility**

Any employee shall be entitled to take sick leave with full pay in case of sickness, disability, or serious illness within the immediate family of the employee in accordance with the provisions of Section 20.2 (Accrual) and 20.7 (Leave Without Pay), inclusive.

**19.2 Accrual**

Each employee shall be credited with one (1) working day of sick leave with full pay for each month of service. For the purposes of Section 20 (Sick Leave), a month of service shall mean thirty (30) consecutive calendar days during which the employee is working or receiving pay in the case of employees working on a full-time or part-time basis, and shall mean 173 hours of work in the case of employees working on an intermittent basis.



### 19.3 Part-Time Accrual

An employee working on a part-time basis shall be entitled to use earned sick leave only on a pro rata basis; for example, if an employee works half-time the employee shall be paid for time off on sick leave on a half-time basis.

**Intermittent:** An employee who works on an intermittent basis shall be entitled to use earned sick leave only for those days on which the employee would have worked if the employee had not been sick; provided, however, that an employee working on an intermittent basis, who works only when called, shall be entitled to use earned sick leave only when the employee becomes sick after reporting to work in response to such call.

### 19.4 Maximum Accumulation

Such sick leave as provided in Section 20.2 (Accrual), when not used shall be cumulative. The accumulated unused period of sick leave shall not exceed two hundred (200) working days regardless of the length of service. When the maximum has been reached, and thereafter part of the maximum has been used, the number of accumulated sick days may be brought back up to maximum at the applicable rate provided in Section 20.2 (Accrual).

**Payment upon Retirement/Termination 20-28 Years of Benefitted Service:** All accumulated sick leave shall be canceled when an employee terminates or is terminated, except as provided below for employees hired on or before June 30, 2013. For employees hired on or before June 30, 2013 who retire or voluntarily terminate with a vested pension, and with at least twenty (20) and not more than twenty-eight (28) years of service shall be entitled to receive payment at retirement or termination with a vested pension of thirty eight percent (38%) of accumulated sick leave but not, in any event, more than their stated fractional amount of the two-hundred (200) day maximum accumulation. Employees who voluntarily separate from service with a vested pension and at least twenty-eight (28) years of benefitted City of Berkeley service shall be entitled to receive payment in an amount equal to fifty percent (50%) of their accrued sick leave days up to a maximum of two hundred (200) unused sick leave days.

**Permanent Disability:** Any employee hired on or before June 30, 2013 and retiring on permanent disability arising out of and incurred in the course and scope of his/her employment with the City shall be entitled to receive payment at retirement for thirty-eight percent (38%) of accumulated unused sick leave days, but not, in any event, more than thirty-eight percent (38%) of the two hundred (200) day maximum accumulation. Employees retiring on permanent disability arising out of and incurred in the course and scope of their employment with the City with at least twenty-eight (28) years of benefitted service shall be entitled to receive payment in an amount equal to 50% of their accrued sick leave days up to a maximum of two hundred unused sick leave days.

**Annual Sick Leave Payout:** Employees hired on or before June 30, 2013 who regularly work one-half ( $\frac{1}{2}$ ) time or more and who have attained the two hundred (200) day maximum sick leave accumulation shall be entitled to receive payment for one-third ( $\frac{1}{3}$ ) of the first twelve (12) days of sick leave, or if earning sick leave at the rate of two (2) working days for each month of service, one-third ( $\frac{1}{3}$ ) of the first twenty-four (24) days of sick leave, for which they become eligible, do not use and would otherwise forfeit because of the two hundred (200) day maximum limitation. Determination of eligibility for such payment shall be made on an annual calendar-year basis, and payment shall be made not later than January 22 of the following year. Such payment shall be made at the employee's salary rate in effect on the preceding December 31 and shall be made only in units of whole days, and will not be made for any fraction of a day.

**Sick Leave after Reemployment:** Accumulated sick leave which has been canceled by reason of an employee's layoff in accordance with Section 53 (Layoff) shall be credited back to such employee if the employee returns to City employment within three (3) years of such layoff.

#### 19.5 Purpose of Sick Leave

Sick leave shall not be considered as a privilege which an employee may use at the employee's discretion, but shall be allowed only in case of sickness or disability of the employee or in the case of serious illness within the immediate family of the employee. Not more than fifteen (15) working days (120 hours prorated for part-time benefited employees) in any calendar year may be taken as sick leave because of the illness of a member of the employee's immediate family. The immediate family of an employee, for the purpose of this Section, shall be defined as: a dependent residing in the employee's household or parent, spouse, child, legal guardian or ward, grandparent, grandchild, register domestic partner, or sibling. If the employees has no spouse or registered domestic partner, the employee may designate one person as to whom the employee may use paid sick leave to aid or care for the person. The opportunity to make such a designation shall be extended to the employee no later than the date on which the employee worked 30 hours after paid sick leave gains to accrue pursuant to Section 20.2 and 20.3 above. There shall be a window of ten (10) work days for the employee to make this designation. Thereafter, the opportunity to make such a designation, including the opportunity to change such designation previously made, shall be extended to the employee on an annual basis during open enrollment for medical benefits.

**Effect of Outside Employment on Sick Leave:** No sick leave shall be allowed for time off for an injury incurred while working for another employer, provided that the injury is covered by the Workers' Compensation laws of the State of California, or other provision for payment for time off because such injury is made by the other employer. In the event such injury is not covered by the Workers' Compensation laws of the State of California, and no other provision for payment for time off because of such injury is made by the other employer, sick leave in accordance

with the provisions of this Section shall be allowed only if such outside employment has been approved by the City.

**19.6 Notification**

Except in emergencies and where reliable reporting procedures are in place, in order to receive compensation while absent on sick leave, the employee shall notify his/her supervisor within one (1) hour after the time set for beginning his/her daily duties or as may be approved by the Department Head.

Leave for non-emergency doctor's appointments shall be requested in advance.

The City, the Library and the Rent Board may require that employees give notice, where reliable reporting procedures are in place, prior to the beginning of their scheduled shift in order to be eligible for sick leave. This requirement shall be applied equitably.

**19.7 Leave Without Pay**

An employee who is granted a leave of absence without pay and is otherwise off the payroll shall not earn sick leave credit.

**19.8 Control**

The City may establish a reasonable program for the control of abuse of sick leave and absenteeism, subject to Union review and comment.

**19.9 Sick Leave Bonus**

For every six (6) months of perfect sick leave attendance after July 1, 1987, the employee will receive eight (8) hours of bonus time. This bonus time will be prorated for part-time employees. Such bonus time can be used for any leave purpose covered by this Agreement. Such bonus time shall be counted as vacation leave credits for purposes of determining eligibility for carry-over and cash payments.

**19.10 Voluntary Leave Exchange for Catastrophic Illness**

19.10.1 **Recovery Transfer Time:** Recovery Time Transfer is that system whereby an employee grants time from earned compensatory vacation leave or sick leave to another employee. Such transfer of time shall be limited to situations where the recipient of the transfer is, by reason of illness or injury, threatened with the loss of earnings due to his/her exhaustion of employment benefits. Such time transfer request must be in writing, and subject to the approval of the City Manager/Director of Library Services/Executive Director of the Rent Board. Such approval shall not be unreasonably denied. Such transfer shall be credited to the recipient at the donor's rate of pay. Recovery Transfer Time will not be used for industrial injuries or illnesses. The use or receipt of Recovery Transfer Time shall not preclude possible medical separation of the recipient employee. The City

reserves the right to require medical verification by a qualified medical practitioner of the recipient employee's medical condition. The City may transfer an employee receiving Recovery Transfer Time into another position in the same classification.

19.10.2 **Vacation and Compensatory Time:** An employee may donate earned compensatory time off or vacation leave.

19.10.3 **Sick Leave:** An employee may donate accrued but unused sick leave as Recovery Transfer Time subject to the following conditions:

19.10.3.1 The employee donating sick leave must maintain a sick leave balance of at least 120 hours after the donation of leave for Recovery Transfer Time. An employee donating sick leave coincidentally with terminating employment with the City shall be limited to a sick leave donation of no more than forty (40) hours regardless of the sick leave donation option(s) used.

19.10.3.1.1 An employee may donate compensatory time off and/or vacation leave time; or

19.10.3.1.2 An employee may donate up to forty (40) hours of sick leave per calendar year and be charged hour per hour for each hour of sick leave donated; or,

19.10.3.1.3 After the first forty (40) hours of sick leave are donated, an employee may donate sick leave but the employee will be charged two hours of sick leave for each hour of sick leave donated for use as Recovery Transfer Time.

### 19.11 401(a) Termination Savings Plan

The City has established an Internal Revenue Code Section 401(a) plan and trust agreement to address the liquidation of sick leave at time of retirement and has received a Determination Letter and a Private Letter Ruling on the plan and trust agreement. This provides employees with an irrevocable option to defer accrued but unused sick leave at time of retirement into a 401(a) plan or be paid out the balance of the accrued but unused sick leave less withholding of applicable federal and state taxes.

### 19.12 Family Friendly and Environment Friendly Workplace

The City shall comply with the applicable provisions of the Berkeley Family Friendly and Environmental Friendly Workplace Ordinance 13.101 to members of this bargaining unit. As such, employees may request variable working hours such as, but not limited to, 10 hours a day, four (4) days a week, flexing start and end times, and working under a flexible arrangement. Management may approve, in advance, an employees' request to temporarily flex their work schedule between

the hours of 6:00 a.m. and 8:00 p.m. on a particular day, or over a specific period of time, by adjustment to the employee's start time and end time, or lunch break. Any denial of an employee's request for flexible scheduling shall explain the denial in a written response that sets out a business reason for the denial.

## **SECTION 20: WORKERS' COMPENSATION LEAVE AND SALARY CONTINUATION**

### **20.1 Workers' Compensation**

Workers' compensation payments shall commence, in accordance with State law, on the fourth day following injury, unless the employee is hospitalized, ("Hospitalized" meaning confinement), in which case payment commences on the first day of injury. Employees whose disability requires absence of more than 21 days will receive retroactive compensation, both pay and leave, for the three-day waiting period. Employees shall be on administrative leave with pay for the initial three (3) days. Such leave shall not be deducted from the employee's leave balance.

### **20.2 Salary Continuation**

Payments under the workers' compensation law for temporary disability or a recurrence thereof arising out of and in the course of employment shall be paid for a period not to exceed 365 days at a maximum payment of the employee's pre-disability pay, but shall not exclude any salary adjustments to which the employee is entitled. Thereafter, the employee will continue to receive only the temporary disability payments provided under State law and the City will cease to pay the difference. However, salary continuation payments above the statutorily required temporary disability payments shall not be reported by the City to CalPERS as compensation.

### **20.3 Salary Continuation Calculation (Gross/Net) Pay**

The City shall continue to calculate salary continuation at pre-disability gross pay. The City may calculate salary continuation payments at pre-disability net pay at such time when they develop the capacity to administer it equitably. Any change in calculation shall not reduce employee's combination of disability payments and salary continuation payments below employee's pre-disability net pay.

The change in calculation shall not affect employees who are off the job with a work-related injury prior to the new calculation method being implemented.

## **SECTION 21: BEREAVEMENT LEAVE**

### **21.1 Benefit and Covered Individuals**

In the case of death within the immediate family of an employee, the employee shall be entitled to remain absent from duty with pay in order to grieve the passing of a loved one, for a period not to exceed three (3) working days, or, in the case of attending a service outside the State of California, for a period not exceeding five (5) working days. Bereavement leave need not be taken in consecutive days but shall be taken within twenty (20) days of the death of the immediate family member. The immediate family of an employee, for the purpose of this Section, shall be defined as: spouse, domestic partner, child, parent, sibling, grandparent, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchildren, aunt, uncle, or dependent.

Bereavement Leave shall not be charged against vacation or sick leave to which an employee may be entitled, but shall be in addition thereto. Employees may request, and the City will make reasonable efforts to accommodate requests, for employees to supplement bereavement leave by using accrued vacation, compensatory time, or floating holiday. All accrued leave (and/or sick leave, if applicable) shall be utilized prior to taking a leave of absence without pay.

In special cases, with the approval of the Department Head, the City Manager or in the Library, the Director of Library Services may grant a death leave to allow an employee to attend funeral or memorial services because of the death of a person not included within the definition of the immediate family. This leave shall not be unreasonably denied.

In order to be eligible for Bereavement Leave as noted above, employees are required to complete and submit the City of Berkeley Bereavement Leave Statement as provided in the City policy. Employees shall not be required to provide an obituary.

## **21.2 Bereavement Leave for Part-Time Employees**

An employee working on a part-time basis shall be entitled to use bereavement leave only on a pro rata basis.

## **SECTION 22: MILITARY AND MARITIME LEAVE**

Military and Maritime Leave shall be governed by the provisions of the Federal Uniformed Services Employment and Reemployment Rights Act (USERRA) and any regulations promulgated to implement the Act, and the California Military and Veteran's Code.

## **SECTION 23: FAMILY CARE LEAVE**

The City's Family Care Leave policy, as of June 1995, is contained in Administrative Regulation (A.R.) 2.4 (attached as Appendix C). The Union will be notified of any revisions to A.R. 2.4 (Family Care Leave).

## **SECTION 24: LEAVE OF ABSENCE WITHOUT PAY**

### **24.1 Approval**

Upon request of the employee, a Department Head may grant to an employee within his/her department leave of absence without pay for a period not to exceed thirty (30) working days. No leave without pay shall be granted for more than thirty (30) working days except upon the written request of an employee and approval of the City Manager or his or her designated representative or Director of Library Services for Library employees. Failure on the part of an employee on leave to report promptly at its expiration shall be cause for discipline up to and including discharge.

- 24.1.1 In the event of illness, an employee must exhaust all available sick leave prior to receiving authorization for leave without pay.
- 24.1.2 The City shall not unreasonably deny a request for medical leave as Authorized Leave Without Pay for Part-Time benefitted employees who work or are compensated for a minimum of 1,040 hours, when the employee is suffering from a serious medical condition or must care for a family member with a serious medical condition.
- 24.1.3 In the event of a request for leave of absence for personal reasons (not related to sickness), an employee must exhaust all compensatory and vacation time available, prior to receiving authorization for leave without pay.
- 24.1.4 Accrual of sick leave credits and/or vacation benefits for an employee on leave without pay shall be as provided in Sections 17 (Vacation) and 20 (Sick Leave).

## **24.2 Right to Return**

An employee shall have the right to return to their classification upon return from an approved leave without pay.

## **24.3 Sabbatical Leave**

After eight (8) consecutive years of employment with the City, an employee may apply for a sabbatical leave without pay of up to six (6) months. Sabbatical leave is not intended to be used for the six-month period immediately prior to retirement. Such leave may be granted by the appropriate authority upon the recommendation of the employee's department head but such leave shall not be unreasonably denied. However, the department head will deny sabbatical leave requests for the period immediately prior to retirement. There shall be no requirement that the employee exhaust paid leave balances prior to such sabbatical leave. Life and Health insurance shall be paid by the City for the duration of an approved Sabbatical Leave. For employees who fail to return to work at the expiration of the approved Sabbatical Leave or fail to return for the equivalent amount of time he or she was approved for Sabbatical Leave, such employee shall reimburse the City or the City may deduct the cost of the Health and Life Insurance premiums paid by the City on behalf of the employee from the employee's payout of their accrued leave balance due at termination.

## **SECTION 25: JURY DUTY LEAVE**

An employee who is called or required to serve as a juror shall be entitled to be absent from duties or service with the City with pay during the period of such service or while necessarily being present in court as a result of such call, provided the employee provides proof of such call. The employee will keep any payment received for jury service including mileage reimbursement. Employees are required to submit a written proof of jury duty service issued by the Court Clerk.

On dates when required to be physically present at a court facility for jury service, an employee shall be entitled to be absent from work with pay, whether or not hours of jury service on that date correlate exactly with scheduled work hours. The employee shall be responsible for notifying his or her supervisor of impending jury service as soon as possible and for providing proof of attendance at the court to his or her supervisor.

## **SECTION 26: DOMESTIC VIOLENCE LEAVE**

The City will comply with the provisions of California Labor Code Section 230(c), which provides that victims of domestic violence, as defined in Section 6211 of the Family Code, may take time off from work to obtain or attempt to obtain relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of a domestic violence victim or his or her child. The City will comply with the provisions of California Labor Code Section 230.1, which



provides that an employee who is a victim of domestic violence, as defined in Section 6211 of the Family Code, will not be discharged or discriminated or retaliated against for taking time off from work to attend to any of the following:

**26.1 Medical Attention**

To seek medical attention for injuries caused by domestic violence.

**26.2 Services**

To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence.

**26.3 Counseling**

To obtain psychological counseling related to an experience of domestic violence.

**26.4 Safety**

To participate in safety planning and take other actions to increase safety from future domestic violence, including temporary or permanent relocation.

**26.5 Use of Leave**

The employee may use vacation leave, floating holiday time or compensatory time off for the purposes described above. The employee will give his or her supervisor reasonable advance notice of his or her intention to take Domestic Violence Leave unless advance notice is not feasible. When an unscheduled absence occurs, the City will not take action against the employee if the employee, within a reasonable time after the absence, provides a certification to his or her supervisor. The certification will be sufficient in the form of any of the following:

26.5.1 A police report indicating the employee was a victim of domestic violence.

26.5.2 A court order protecting or separating the employee from the perpetrator of an act of domestic violence, or other evidence from the court or prosecuting attorney that the employee has appeared in court.

26.5.3 Documentation from a medical professional, domestic violence advocate, health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence.

**26.6 Confidentiality**

To the extent allowed by law, the City shall maintain the confidentiality of any employee requesting domestic violence release time.

## **ARTICLE 4 - HEALTH AND WELFARE BENEFITS**

### **SECTION 27: HOSPITAL-MEDICAL AND DENTAL COVERAGE**

#### **27.1 Medical Coverage**

The City shall pay for the cost of health insurance coverage for employees, spouse/domestic partner and dependents who have such coverage under any group health insurance plan authorized by the City Council, regardless of the funding source for their position. The maximum amount the City shall be required to pay for medical insurance premiums shall be the applicable Kaiser rate (i.e., single party, two party, or family) regardless of the City sponsored health plan selected by the employee. The present level of the health plan benefits described above shall be maintained at City expense.

**Domestic Partnership Taxation:** If an employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for medical benefits for his or her domestic partner, the employee may be subject to federal and state income tax withholding.

**Part-Time Employees:** Effective July 1, 2008, the City will pay 75% of the cost of the medical plan which is fully paid for full time employees for those part time employees who work 20 to 29 hours per week. The City will pay 100% of the cost of the medical plan which is fully paid for full time employees for those part time employees who work 30 or more hours per week.

#### **27.2 Meet & Confer**

The Parties agree to meet and confer commencing no sooner than January 1, 2017. This negotiation shall be on methods to contain or reduce the City health benefit costs and/or preventing that the City be required to pay any penalties associated with the Excise Tax, including but not limited to a new and/or replacement health plan. This meet and confer process will be subject to normal rules of collective bargaining, including applicable impasse, strike or lockout procedures.

#### **27.3 Health Premium Overpayment Recovery**

If the City under deducts an employee's medical co-payment, the amount owed by the employee shall be paid back in monthly increments by the same amount as the undercharge, over the same number of months, unless the employee agrees to an alternative arrangement.

**Dependent Coverage:** The City agrees to extend all medical, dental and orthodontia benefit coverages to dependents of City employees up to the date of their 26th birthday.

**27.4 Dental Coverage**

The City shall provide a dental care program for employees. The Dental Program shall be maintained at City expense, to provide 90% co-insurance for the employee and employee's dependents, for the duration of this Agreement. Effective January 1, 1995, the Dental Program shall be improved at City expense to increase the lifetime orthodontic coverage from \$1,000 to \$2,000 and to increase the Dental Program annual coverage from \$1,000 to \$2,000. If an employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for dental benefits for his or her domestic partner, the employee may be subject to federal and state income tax withholding.

**27.5 Dental Insurance In-Lieu Payments**

For those employees who show proof of alternate dental insurance coverage, the City will compensate the employee \$61.64 per month, prorated for less than full-time employees. This benefit shall be frozen at this amount through the term of this Agreement.

**27.6 Maintenance of Plans**

In the absence of agreement between the City Manager and the Union to effect a new program, the City agrees to maintain the present hospital-medical and dental plans for the duration of this Agreement as specified above.

Before the City acts to change an insurance carrier during the term of this Agreement, the City shall give the Union thirty (30) days notice of its intention to change carriers and shall, upon written request, meet with the Union to discuss the reasons for such change. The final determination of insurance carriers shall be in the sole discretion of the City.

**27.7 Notice**

The City shall give advance notice to any employee who resigns, is terminated or is on a leave of absence, as to what is necessary to keep the Health Plan in force without a break in coverage.

**27.8 Health Insurance In-Lieu Payments Effective May 22, 2016**

Effective May 22, 2016, for employees who show proof of alternate medical coverage, the City will compensate the employee \$576.00 per month, prorated for less than full time benefitted employees. Effective upon ratification of the 2015 Memorandum Agreement, Library employees who continue to receive the amount in effect as of July 1, 2008, shall remain in effect through December 31, 2016. Effective January 1, 2017, Library employees under this Section shall receive \$576.00 per month, prorated for less than full-time benefitted employees.

**27.9 Effective Date of Benefits**

New medical and dental benefits shall begin the first day of the calendar month following the date of hire, and end the last day of the month an employee is in pay status.

**27.10 Flexible Spending Account**

The City shall establish an Internal Revenue Code Section 125 Flexible Spending Account that allows an employee to elect pre-tax deductions from salary for the purpose of paying allowable medical expenses. Such plan shall be established no later than November 1, 2008.

**SECTION 28: GROUP LIFE INSURANCE**

The City shall provide group life insurance, by a carrier of the City's choice, in the amount of \$50,000 for each employee that shall include the standard accidental death and dismemberment provision of a like amount.

Life insurance shall become effective the first day of the calendar month following appointment, and shall continue until the last day of the last calendar month in a pay status.

In addition, employees may purchase additional life insurance in increments of \$10,000 up to a maximum of \$300,000 at a rate offered by the City's insurance carrier and subject to any medical exam as required by the insurance carrier.

**SECTION 29: DEPENDENT CARE**

The City has established a Dependent Care Plan under Internal Revenue Code Sections 125 and 129 to allow employees to designate a specific amount of salary, consistent with applicable law, to be redirected to pay for dependent care costs prior to withholding of taxes.

**SECTION 30: RETIREE MEDICAL COVERAGE**

The City and Union have agreed that the City will make available retiree health insurance coverage under certain terms and conditions described below. The retiree medical benefit described below is the plan tentatively agreed to during multi-union bargaining during the summer of 1998. The terms and conditions of this benefit shall be set forth in a separate document which shall contain a full plan description and shall control the administration of the retiree medical plan.

The City will begin to provide the retiree medical coverage set forth in this section on June 28, 1998. An employee's entitlement to any and all benefits provided by the City under this retiree medical cover plan are subject to the funding limitations set forth in subsection 31.8 (City Funding of Retiree Health Benefit).

**30.1: Amendment of Retiree Health Premium Assistance Plan V, effective June 28, 1998, Restated and Amended effective March 22, 2011.**

Employees who retire on or after June 21, 2015, shall be permitted, at their discretion, to enroll in non-City sponsored health plans. After Council approval of the successor Memorandum of Understanding, the City shall amend the Retiree Health Premium Assistance Plan V (For Service Employees International Union, Local 1021 Community Services & Part-Time Recreation Leaders Association) as soon as practicable to allow enrollment in non-City sponsored health plans. In the event a retiree elects to enroll in a non-City sponsored health plan, the City shall make medical insurance premium payments directly to the health insurance provider in an amount equal to what the City would contribute to the City sponsored health plan. Retiree shall be solely responsible for all aspects of the requirements to enroll in a non-City sponsored health plan and maintain eligibility for such a plan; the City's sole obligation is to pay the medical insurance premium contribution required under this section, as directed by the retiree to a non-City sponsored health plan. The City shall not be responsible for any excess cost differentials associated with the direct payment of premiums to non-City sponsored plans. The City will only make payments through its third party administrator to provide medical insurance premium payments for an individual plan and will not make payments for a group plan. The retiree and/or surviving spouse or domestic partner that enroll in non-City sponsored health plans shall be solely responsible for paying the administrative set up fee, the monthly administrative fee, and/or any other fees established by the third party administrator, and said fees will be deducted directly from the retiree's monthly contribution. No cash payments will be paid directly to the retiree and/or the retiree's spouse/domestic partner. There shall be no cash in lieu payments made under this benefit.

The City and the Union agree that the City will also amend the Retiree Premium Assistance Plan V to allow eligible retirees who retired on or after June 21, 2015 to enroll in a non-City sponsored health plan.

The City agrees to meet and confer with SEIU, no later than January 1, 2019, regarding the reimbursement process of medical insurance premiums for the Retiree Health Assistance Plan for retiree and/or spouse/domestic partner until the death of both.

**30.2 Eligibility**

An employee is eligible for the retiree health insurance coverage set forth in subsection 30.3 (Pre Age 65 Retiree Health Insurance) below if he/she meets all the following criteria:

- 31.2.1 retires on or after June 28, 1998,
- 31.2.2 is vested with CalPERS,
- 31.2.3 has at least eight (8) years of CalPERS qualifying service with the City,
- 31.2.4 is at least age 55.

**30.3 Pre Age 65 Retiree Health Insurance**

Beginning June 28, 1998, the City shall make available health insurance coverage to the employee and his/her spouse or domestic partner. The City will pay on the employee's behalf no more than \$166.26 per month for an employee electing single party health coverage and no more than \$332.52 per month for an employee electing two-party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the following chart:

<b>Years of CalPERS Qualifying Service</b>	<b>Percent of City Contribution</b>
8	30%
9	40%
10	50%
11	58%
12	66%
13	74%
14	82%
15	90%
16	92%
17	94%
18	96%
19	98%
20	100%

The employee will pay the difference between the City's monthly contribution and the actual monthly insurance premium charged by the health plan he/she has elected for retiree medical coverage. If during the term of this Agreement, the premiums for such health insurance are increased, the amount the City contributes shall increase no more than 4.5% above the previous year's contribution. No increases in the amount the City contributes shall occur before July 1, 1999. Thereafter, any increase in the amount contributed by the City will occur on July 1 each year thereafter.

**30.4 Retiree Benefits for Employees Age 65 and Over**

Once an employee or retiree reaches age 65, he or she is eligible for Medicare. As a result his/her eligibility for the retiree medical benefits set forth in subsection 30.3 (Pre Age 65 Retiree Health Insurance) ceases. On reaching age 65, the City will make available health insurance coverage in addition to Medicare. When an employee or retiree reaches age 65, the City will contribute no more than \$16.17 per month on the employee's behalf for single party health insurance coverage and no more than \$32.34 per month for two-party health coverage. If during the term of this Agreement, the premiums for such health insurance are increased, the amount the City contributes shall increase no more than 4.5% above the previous year's contribution.

The City will take such actions under the provisions of Section 218(g) of the Social Security Act to permit employees who are not currently paying employee portion of the Medicare Tax with a one-time opportunity to choose to be covered by the Medicare Tax. If the employee chooses to be covered by the Medicare Tax the choice cannot be revoked at a later date.

**30.5 Termination by City of Retiree Medical Benefit**

Failure of the retiree or surviving spouse to pay their monthly share of the health insurance premium will result in termination of the retiree medical benefit and relieve the City of any further obligation to provide any further benefits under this section.

**30.6 Retiree Medical Benefit for Employees Retiring Between the Ages of 50 and 55**

An employee who is at least 50 years of age, but less than 55, and has at least eight years of CalPERS qualifying employment with the City will retain eligibility for the retiree medical benefits provided in subsection 30.3 (Pre Age 65 Retiree Health Insurance) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his/her termination from City employment until the employee's 55th birthday. If for any reason the employee has a lapse in group health care coverage the employee forfeits his/her eligibility for the retiree health plan benefits upon reaching age 55 and the City has no further obligation to provide any benefits under this section to the employee and/or his spouse or domestic partner.

**30.7 Employees Retiring with a CalPERS Approved Disability Retirement**

If an employee retires from the City before age 55 with a CalPERS approved disability retirement, the employee will retain eligibility for the retiree medical benefits provided in subsection 30.3 (Pre Age 65 Retiree Health Insurance) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his/her termination from City employment until the employee's 55th birthday. If for any reason the employee has a lapse in health care coverage the employee forfeits his/her eligibility for the retiree health plan

benefits upon reaching age 55 and the City has no further obligation to provide any benefits under this section to the employee and/or his spouse or domestic partner.

### **30.8 City Funding of Retiree Health Benefit**

City contributions to the retiree medical benefit will begin on July 1, 1998. Funding of this benefit will be set aside in a trust to be established by the City.

Effective with the 1998-2002 Memorandum Agreement, the retiree medical benefit was funded by a charge of 0.25% of payroll in each year of this Agreement, so that contributions are at 1% of the payroll in the fourth year of that Agreement. The City will fund the benefit at approximately 1% of the payroll for every year thereafter with the intent of achieving a funding level of 70% after 30 years. The funding will be ongoing to maintain a 70% funding level thereafter.

Effective July 4, 2004, except for employees in Representation Unit R-1, an additional charge of 0.25% of payroll was charged each year in the final four years of the 2002-2008 Agreement so that contributions are at 2% in the final year of that Agreement. The purpose of that 1% increase in payroll contribution was to fund post age 65 Medicare supplement plans. As a result of this change, the amount the City contributes toward the post-65 Medicare Supplement coverage under the Retiree Health Premium Assistance Plan is \$77 effective July 7, 2002 for all post 65 retirees formally represented by the union as well as future retirees.

Effective July 1, 2008, for eligible retirees between the ages of 55 and 65 who retire on or after June 29, 2008 the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by \$50 per month in addition to the 4.5% that occurs on July 1 as provided in Section 30.3 (Pre Age 65 Retiree Health Insurance). Effective July 1, 2009, the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by an additional \$25 per month (i.e., an aggregate \$75 per month increase) in addition to the 4.5% that occurs on July 1 as provided in Section 30.3 (65 Retiree Health Insurance). Effective July 1, 2011, the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by an additional \$25 per month (i.e., an aggregate \$100 per month increase) in addition to the 4.5% that occurs on July 1 as provided in Section 30.3 (Pre Age 65 Retiree Health Insurance).

The Union understands and acknowledges that the City conducted an actuarial study to determine the percentage of payroll it needed to set aside each year and the rate of return of 7% it must achieve to fund the retiree health benefit provided in this section. The City will conduct an actuarial study by an outside actuary of the retiree medical plan prior to June 30, 2002. After that time, the City will conduct an actuarial study by the outside actuary of the retiree medical plan every two to three years to review the funding status of the program. The outside actuary will be selected by mutual agreement of the parties. The Union and City agree that if



the Actuary concludes that the City’s funding of this benefit by contribution of 1% of the payroll for all miscellaneous employees is insufficient to fully fund the retiree medical benefits, the City shall not be required to increase its funding for this benefit to more than 1% of the payroll for miscellaneous employees. In the event that there are insufficient funds in the trust to cover all retirees’ monthly health premiums, the City and the Union agree to meet and confer regarding the City’s distribution of its 1% contribution.

The City shall include in its next actuarial request in preparation of the next successor contract negotiations the impact on the City if the City were to amend its Retiree Health Premium Plan V to provide the following benefit levels:

Single:	\$577.32
Single and Dependent:	\$577.32
Single + (spouse, domestic partner):	\$1154.00

**SECTION 31: PROBATIONARY PERIOD**

**31.1 Duration**

Original and promotional appointments from employment lists shall be tentative and subject to a probationary period of six (6) months (and a minimum of 1040 hours) of actual service for full-time employees, and six (6) calendar months for part-time employees (and a minimum of 520 hours for ½ time employees; 780 hours for ¾ time employees, etc), exclusive of all leave and light duty, and shall be completed within a one (1) year period. The probationary period may be extended as provided in Section 31.4 (Extension of Probationary Period for Classifications Covered by Section 31.1 – Duration) and 31.5 (Extension of Probationary Period for Classifications Covered by Section 31.2 – Nine (9) Month Probationary Period). Probationary employees who are granted military leaves of absence shall complete the balance of their probationary period within a period of six (6) months following their return to City service. No provision of this Section 31.1 (Duration) shall be interpreted to preclude the City from establishing new classifications which may require a probationary period of more than six (6) months.

**31.2 Nine (9) Month Probationary Period**

The probationary period for employees hired in one of the following classifications shall be nine (9) months (and a minimum of 1560 hours) of actual service for full-time employees, and nine (9) calendar months of actual service for part-time employees (and a minimum of 780 hours for ½ time employees, 1170 hours for ¾ time employees, etc.) except as provided in Section 31.3 and may be extended as provided in Section 31.5 (Extension of Probationary Period for Classifications Covered by Section 31.2 – Nine (9) Month Probationary Period).

31.2.1 Applications Programmer Analyst II (for employees hired on or after July 1, 2008)

- 31.2.2 Architect
- 31.2.3 Auditor II
- 31.2.4 Central Library Circulation Supervisor
- 31.2.5 Community Development Project Coordinator
- 31.2.6 Hazardous Materials Specialist II
- 31.2.7 Landscape Architect
- 31.2.8 Landscape Architect (Registered)
- 31.2.9 Library Literacy Program Coordinator
- 31.2.10 Library Materials Preparation Specialist
- 31.2.11 Library Special Services Coordinator
- 31.2.12 Senior Community Health Specialist
- 31.2.13 Senior Environmental Health Specialist
- 31.2.14 Senior Field Investigator
- 31.2.15 Senior Health Management Analyst
- 31.2.16 Senior Information Systems Specialist
- 31.2.17 Senior Librarian
- 31.2.18 Senior Mental Health Clinician
- 31.2.19 Senior Planner
- 31.2.20 Senior Psychiatric Social Worker
- 31.2.21 Senior Public Health Nurse
- 31.2.22 Supervising Librarian
- 31.2.23 Supervising Library Assistant

**31.3 Six (6) Month Probationary Period**

For the promotional appointment of a career employee to a non-supervisory position that is part of the normal promotional ladder for that position, the probationary period shall be six (6) months of actual service (and a minimum of 1,040 hours), six (6) months of actual service for part-time employees (and a minimum of 520 hours for ½ time employees, 780 hours for ¾ time employees, etc.) except as provided in Section 32.4 (Extension of Probationary Period for Classifications Covered by Section 32.1 – Duration). No position shall have a longer probationary period than the probationary period applicable to the position that supervises that position.

**31.4 Extension of Probationary Period for Classifications Covered by Section 31.1**

For employees hired into positions covered under Section 31.1 (Duration) the Department head may extend the probationary period during the fifth or sixth month of a six (6) month probationary period from six (6) to nine (9) months provided that written probationary period evaluations have been given to the employee and filed with the Director of Human Resources no later than forty-five (45) days after the second and fourth months and these evaluations include statements of where the employee’s performance needed improvement or which essential duties of the position the supervisor had not yet been able to evaluate.

**31.5 Extension of Probationary Period for Classifications Covered by Section 32.2**

For employees hired into positions covered under Section 31.2 (Nine (9) Month Probationary Period), the Department head may extend the probationary period during the seventh or eighth month of a nine (9) month probationary period from

nine (9) to twelve (12) months provided that written probationary period evaluations have been given to the employee and filed with the Director of Human Resources no later than forty-five (45) days after the third and sixth months and these evaluations include statements of where the employee's performance needed improvement or which essential duties of the position the supervisor had not yet been able to evaluate.

**31.6 Promotion or Provisional Appointment Prior to Completing Probationary Period**

Unless applying for a closed examination, an employee does not have to complete the probationary period as a prerequisite for promotion. If, before completing the required probationary period, an employee is provisionally appointed to a higher class in the same or a related series of classes, the time served in such higher class shall be counted toward completion of the probationary period in the lower class.

**31.7 Probationary Performance Evaluations**

The City shall give probationary employees written, bi-monthly, probationary period evaluations in order to advise the employee of their performance. If the service of the probationary employee has been satisfactory to the Department Head, the Department Head shall file with the Director of Human Resources a statement in writing to such effect and stating that the retention of such probationer in the service is desired. If such service has been unsatisfactory, the Department Head shall file with the Director of Human Resources such a statement, in writing, with the recommendation to the City Manager/Board of Library Trustees that the employee be discharged. The provisions of this section shall in no way limit the rights of the City under Section 31.8 (Rejection During Probationary Period).

**31.8 Rejection during Probationary Period**

During the probationary period, an employee may be discharged at any time without right of appeal or hearing in any manner, except that appeal may be had in accordance with Section 37 (Grievance Procedure), if it is alleged that the discharge was in violation of Section 3 (No Discrimination). An employee rejected from a position to which the employee has been promoted shall be reinstated to the position from which the employee was promoted unless charges are filed and the employee is discharged as provided in Section 38.6 (Discharge).

**31.9 Exception to Probationary Period**

Employees reclassified as a result of a desk audit shall not be subjected to a new probationary period provided the employee has performed those duties for one year or more and has not received an unsatisfactory evaluation during that period.

## **SECTION 32: TRANSFER**

The Human Resources Department shall maintain a list of career employees who are interested in transfer. Prior to filling a vacancy with a new (probationary) employee, the Department Head shall consider qualified employees on the transfer list. No employee shall be transferred to a position for which the employee does not possess the minimum qualifications. An employee with permanent status who is transferred from one class to another class shall assume permanent status in the class to which the employee is transferred.

Prior to outside recruiting, vacancies will be announced for two (2) weeks by notices in *Berkeley Matters*, on bulletin boards and by notice to departments.

## **SECTION 33: PROMOTION**

### **33.1 Filling of Vacancy**

Insofar as practicable and consistent with the best interests of the service, all vacancies in the competitive service shall be filled by promotion from within the competitive service, after a promotional examination has been given and a promotion list established. Consistent with City of Berkeley Personnel Rules, each candidate for promotion must be either a permanent employee in the competitive service or a former permanent employee on an active mandatory layoff Reemployment List and must possess the minimum qualifications as set forth in the specifications of the class to which promotion is sought. The right to compete in a promotional examination in a specific classification series is not limited to employees in the bargaining unit.

### **33.2 Open, Competitive Examination**

If, in the opinion of the City Manager, or for Library positions the Director of Library Services, or for Rent Board positions the Executive Director of the Rent Board, the best interests of the service can be served by an open, competitive examination instead of a closed, promotional examination, and if there is not already a valid promotional list for the higher position, from which the vacancy could be filled, then the City Manager, or for Library positions the Director of Library Services, or for Rent Board positions the Executive Director of the Rent Board, may instruct the Director of Human Resources to call for applications for the vacancy and arrange for an open, competitive examination and for the preparation and publication of an eligibility list.

### **33.3 Interview of City Employee**

A City employee who is on a closed promotional or an open competitive list shall have the option to interview for the vacancy. A City employee who is unsuccessful and who so requests shall be advised of steps s/he may take to increase her/his competitive standing for future promotional opportunities.

### **33.4 Promotional Considerations**

Employees who have qualified for promotional lists shall be considered for promotion based on the following factors: previous work performance, previous training and experience, merit, ability, and seniority.

**33.5** Employees concerned with promotion should also refer to Sections 10.4 (Temporary Vacancy), 10.5 (Maximum Consecutive Temporary Appointment), 10.7 (Working in Higher Classification), 10.9 (Notification of Change in Classification Duties and Responsibilities), 10.11 (Desk Audits), 40.4 (Annual Performance Evaluation), 40.5 (Employee Development and Training Opportunities), 40.6 (Educational Leave) and 40.12 (Internships).

### **33.6 Waiver of Minimum Qualifications**

If in the opinion of the City Manager, the City is facing staffing reductions which will result in displacement of employees, a waiver of minimum qualifications and/or the substitution of related experience and education may be made in promotional examinations, with an understanding on the part of management and supervisory personnel that adequate on-the-job training which can be completed within no more than one year, will be provided to facilitate job adjustment and to compensate for the waiver of qualification standards if that has occurred. The promotional recruitment announcement will state that minimum qualifications may be waived providing the applicant's experience and education demonstrates her/his on-the-job development potential, as stated above. In promotional appointments where the minimum qualifications have been waived, the probationary period will be one year to allow the employee time to demonstrate development of the necessary job knowledge and skills.

## **SECTION 34: FILLING OF VACANCIES**

All career and temporary vacancies of 90 days or more shall be announced in ***Berkeley Matters***, on bulletin boards and by notice to departments, and a copy of ***Berkeley Matters*** shall be made available to all employees.

## **SECTION 35: RESIGNATION**

An employee wishing to leave the competitive service in good standing shall file with the Department Head, at least two (2) weeks before leaving the service, a written resignation stating the effective date and reasons for leaving. The resignation shall be forwarded to the Director of Human Resources with a statement by the Department Head as to the resigned employee's service performance and other pertinent information concerning the cause for resignation. Failure of the employee to give the notice required shall be entered on the service record of the employee, and may be cause for denying future employment by the City. The resignation of an employee who fails to give notice shall be reported by the Department Head immediately.

The City will discontinue use of the "would not recommend rehire" box on transaction forms.

### **SECTION 36: REINSTATEMENT**

A permanent or probationary employee who has resigned with a good record may be reinstated within three (3) years to the employee's former position, if vacant, or to a vacant position in the same or comparable class without further competitive examination. This section shall not be interpreted as a guarantee of reinstatement to an employee who has resigned with a good record and who requests reinstatement within three (3) years.

An employee who is reinstated under this Section who has completed probation in the classification to which the employee is being reinstated shall not serve a probationary period on reinstatement. An employee who is reinstated under this Section who has not completed probation in the classification to which the employee is being reinstated shall be required to serve a new probationary period on reinstatement. The duration of the probationary period determined by the classification and the provisions of Section 31(Probationary Period) of this Agreement.

## **ARTICLE 5 - GRIEVANCE AND DISCIPLINARY APPEAL PROCEDURE**

### **SECTION 37: GRIEVANCE PROCEDURE**

#### **37.1 Preamble**

- 37.1.1 The City and the Union will make every effort to create a working environment free from hostility, intimidation, and disrespect.
- 37.1.2 The supervisor may have a management representative present during a discussion with an employee and his or her Union representative.
- 37.1.3 No employee shall represent in a grievance any employee he or she regularly supervises.

#### **37.2 Definitions**

For purposes of this section of this Agreement, the following definitions shall apply:

- 37.2.1 **Grievance:** Any dispute which involves the interpretation or application of the terms of this Agreement and those rules, regulations, and resolutions which have been or may hereafter be adopted by the City Council, Board of Library Trustees, and Rent Board to govern personnel practices and working conditions, including such rules, regulations and resolutions as may be adopted by the City Council, Board of Library Trustees and Rent Board to effect Memorandum Agreements which result from the meeting and conferring process. The grievance procedure outlined herein shall be the sole formal mechanism for resolving disputes or complaints of unit members.
- 37.2.2 **Administrative Complaint:** An Administrative Complaint is a grievance filed by a grievant or the Union specifically regarding payment of compensation or the interpretation and application of contract provisions and past practices, or allegations of past practice.
- 37.2.3 **Discrimination Complaint:** A Discrimination Complaint is a grievance filed by a grievant or the Union regarding a violation of Section 3 of this Agreement.
- 37.2.4 **Grievant:** A Grievant may be any member of the bargaining unit covered by the terms of this Agreement, or the grievant may designate the Union to act on his or her behalf or the Union itself may file a grievance on behalf of a member or group of members.
- 37.2.5 **Grievance Appeal Officer:** Appeals of grievances will be heard by the City Manager for general City operations, the Library Board of Trustees for Library employees may designate the Director of Library Services as the Appeals Officer and the Executive Director of the Rent Board for Rent Board

employees. The City Manager, Library Board of Trustees or the Rent Board may designate a Grievance Appeal Officer in their stead.

37.2.6 **Union:** The term Union used throughout this procedure shall include by reference the bargaining unit itself and the appropriate Chapter President and Chief Steward who may be representing an employee engaged in this Grievance and Disciplinary Appeal Procedure.

37.2.7 **Day:** A day is defined herein as any day in the calendar year on which the City of Berkeley is regularly open and providing full administrative services to the public.

### 37.3 Grievance Procedure

**Initial Filing Period:** Formal written grievances must be filed at Step 1 of the grievance procedure within thirty (30) days of the date the incident occurred or within thirty (30) days of the date the grievant or the Union reasonably should have had knowledge of the matter.

#### 37.3.1 Informal Process:

37.3.1.1 **Complaints Filed With:** An employee or Union who believes that s/he/it has a grievance shall discuss the grievance informally with the applicable immediate non-bargaining unit supervisor. If this is not possible due to the absence of this supervisor, the employee or his/her Union may discuss the grievance informally with the applicable Division Manager.

37.3.1.2 **Filing Period:** Such informal grievances shall be verbally brought to the attention of either the immediate non-bargaining unit supervisor or, if unavailable, with the Division Manager within a reasonable period of time of the incident generating the grievance. (NOTE: In order to comply with formal grievance procedures, refer to Section 37.3, "Initial Filing Period", for absolute filing deadlines and time frames for formal grievances.)

37.3.1.3 **Process:** The grievant shall be entitled to a personal conference with, and an informal decision by, either the relevant supervisor or Division Manager within ten (10) days of making the request for an informal meeting. This informal decision terminates the informal process unless mutually agreed upon by employee, supervisor/manager and Union to extend informal discussions.

#### 37.3.2 Formal Process: STEP 1 – First-Level Manager



- 37.321 **Complaints Filed With:** If the grievant is not satisfied with the results of the informal process, the grievant may file a formal written grievance following the conclusion of the informal conference process. Such written grievance shall be presented to the applicable Division Manager with a copy to the Department Director and the union.
- 37.321.1 **Interpretation of Agreement and Past Practice:** Questions regarding the interpretation of the Agreement or allegations of violations of Past Practice shall initially be filed in writing with the Director of Human Resources of the City.
- 37.321.2 **Compensation:** All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Director of Human Resources of the City.
- 37.321.3 **EEO:** All complaints concerning discrimination or other Section 3 (No Discrimination) matters shall be initially filed in writing with the Equal Employment Opportunity and Diversity Officer of the City. However, complaints alleging violation of any applicable laws pertaining to protected union activity will be filed with the Director of Human Resources of the City.
- 37.322 **Filing Period:** This written grievance must be filed within ten (10) days following the conclusion of the informal conference process, except as follows:
- 37.322.1 **Compensation:** Administrative Complaints regarding issues concerning payment of compensation may be filed within 90 days of the last day of the alleged under or over compensation.
- 37.322.2 **EEO:** The allowed time for filing of a complaint under this section shall be governed by the EEO Complaint Investigation and Resolution Procedure of the City of Berkeley's EEO/Affirmative Action Program (attached herein as Appendix B).
- 37.323 **Process:** The grievance must be presented in writing on a form provided by the City, and approved by the Union. The written statement shall be a clear, concise statement of the grievance including specific provisions of this Agreement alleged to have been violated, the circumstances involved, the decision rendered at the informal conference, and the specific remedy sought. Within ten (10) days of receiving the written grievance, the grievant shall be entitled to a personal conference with the Division Manager if requested. Other than issues of Contract Interpretation and Past Practices, Compensation or EEO, within ten (10) days, the Division Manager shall communicate a

written decision to the grievant and the Union with a copy to the Director of Human Resources and the Department Director. Such action will terminate Step 1.

**37.3.2.3.1 Compensation:** In the case of issues of compensation, the Director of Human Resources or his/her designee shall respond in writing within thirty (30) days of receiving the written complaint. In such cases, no adjustment shall be retroactive for more than thirty (30) calendar days from the date upon which the complaint was filed or thirty (30) calendar days from the date when an employee and/or the Union may reasonably be expected to have learned of said claimed violation. Only complaints which allege that employees are not being compensated in accordance with the rules, regulations, and resolutions of the City Council or in accordance with the understanding contained in any Agreement which has resulted from the meeting and conferring process shall be considered.

Any other matters of compensation are to be resolved in the meeting and conferring process, and, if not detailed in the operative Agreement which results from such meeting and conferring process, shall be deemed withdrawn until the meeting and conferring is next opened for such discussion.

**37.3.2.3.2 EEO:** Discrimination complaints shall be processed in accordance with the EEO Complaint Investigation and Resolution procedure of the City of Berkeley EEO/Affirmative Action Program (attached herein as Appendix B) except that:

**37.3.2.3.2.1** The employee has the right to be represented by a Union representative at all stages of the informal and formal complaint investigation and resolution procedure;

**37.3.2.3.2.2** The Equal Employment Opportunity and Diversity Officer shall meet with and report to only the City Manager during the formal resolution process; and

**37.3.2.3.2.3** The City Manager shall make the final decision on the complaint which may be appealed by the Union to an impartial arbitrator within ten (10) days of receipt by the Union of the City Manager's decision. Such an appeal shall be processed in accordance with the above defined grievance procedure of this Agreement. The City shall promptly notify the Union of the filing of all formal complaints, as well as their acceptance or rejection.

The City Manager or his or her designee will notify the Union of a proposed decision on a formal complaint, and the reasons therefore, and upon a request within ten (10) days, shall meet with the Union prior to issuing a final decision.

If a grievance also alleges a violation of another section of the contract in addition to Section 3 (No Discrimination), Section 37.3.2.3.2. shall apply only to that part of the grievance which alleges a violation of Section 3 (No Discrimination) unless otherwise mutually agreed.

Complaints challenging, disputing, or seeking to modify or change any policy component of the City's EEO/Affirmative Action Program, including but not limited to the assignment of responsibilities, workforce utilization analysis, and affirmative action goals and timetables, shall not be subject to the grievance/arbitration procedures of this Agreement. This in no way limits the right of the Union to grieve violations of the City's EEO/Affirmative Action Plan.

**37.3.2.3.3 Interpretation and Past Practice:** In the case of issues of interpretation of the Agreement, past practices, payment of compensation or violations of Section 3 (No Discrimination) of the Agreement (Discrimination, etc.), if the grievant is not satisfied, s/he may move the complaint directly to Step 3 of this grievance procedure.

### **37.3.3 Formal Process: STEP 2 – Department Director**

**37.3.3.1 Complaints Filed With:** If the grievant is not satisfied with the results rendered in Step 1, the grievant may appeal the decision in writing to the applicable Department Director or his/her designee with a copy to the union.

Contract Interpretation and Past Practice, Compensation and EEO complaints would go directly to Step 3 of this process. (NOTE: See Section 37.3.2.)

**37.3.3.2 Filing Period:** Such written appeal must be submitted to the Department Director or his/her designee within ten (10) days from the date the grievant received the decision of the Division Manager.

37.3.3.3 **Process:** The written appeal shall include a copy of the original grievance, a description of the informal process and results, the decision rendered at Step 1 and a clear, concise statement of the reasons for the appeal. Within ten (10) days of receiving the written grievance, the grievant shall be entitled to a personal conference with the Department Director or his/her designee if requested. Within ten (10) days of the personal conference, the Department Director or his/her designee shall communicate a written decision to the grievant and the union with a copy to the Director of Human Resources. Such action will terminate Step 2.

**37.3.4 Formal Process: STEP 3 – Grievance Appeal Officer:**

37.3.4.1 **Complaints Filed With:** If the grievant is not satisfied with the results rendered in Step 2 for general grievances and Step 1 for issues of Contract Interpretation and Past Practice, Compensation or EEO, the grievant may appeal the decision in writing to the applicable Grievance Appeal Officer with a copy to the Department Director, the Director of Human Resources and the union.

37.3.4.2 **Filing Period:** Such written appeal must be submitted to the appropriate Grievance Appeal Officer within ten (10) days from the date the grievant received the decision rendered in Step 2.

37.3.4.3 **Process:** The written appeal shall include a copy of the original grievance, a description of the informal process and results, the decision rendered at Step 1 and 2 and a clear, concise statement of the reasons for the appeal. Within ten (10) days of receiving the written grievance, the grievant shall be entitled to a personal conference with the Grievance Appeal Officer or his/her designee if requested. Within ten (10) days of the personal conference, the Grievance Appeal Officer or his/her designee shall communicate a written decision to the grievant and the union with a copy to the Director of Human Resources and the Department Director. Such action will terminate Step 3.

**37.3.5 Formal Process: STEP 4 – Arbitration**

37.3.5.1 **Complaints Filed With:** If the Union is not satisfied with the results rendered in Step 3, the Union may require that the grievance be referred to an impartial arbitrator by notifying the applicable Grievance Appeal Officer.

37.3.5.2 **Filing Period:** Such notification of desire to go to arbitration must be filed in writing with the Grievance Appeal Officer within thirty (30) days of the conclusion of Step 3 with a copy to the Director of Human Resources. Provided further that the Union shall forward to the City the Union's portion of the California State Mediation and Conciliation

Services (CSMCS) fee within sixty (60) days of receipt of the City Manager's response. Failure by the Union to meet either the thirty (30) day or sixty (60) day deadline for both referral to Arbitration and payment of the CSMCS fee shall be deemed as a full and complete waiver by the Union to appeal the City Manager decision to Arbitration and the City Manager decision shall be final and binding on all parties.

37.35.3 **Process:** The impartial arbitrator shall be selected from the California State Mediation and Conciliation Services (CSMCS) unless another party is mutually agreed upon. CSMCS will provide a list of five (5) arbitrators. The City and the Union will alternately strike a name until one remains. The remaining name will be the arbitrator. The cost of the arbitrator's decision shall be borne equally by the parties.

The arbitrator may hear testimony, receive written briefs, interview witnesses, and conduct any investigations she or he deems appropriate, and shall render a final and binding decision to the parties which will end the formal grievance process.

No Arbitrator shall entertain, hear, decide or make recommendations on any dispute involving a deposition over which a formally recognized employee organization has jurisdiction unless such dispute falls within the definition of a grievance as specified in this Section.

Proposals to add or to change the Agreement or written agreements or addenda supplementary hereto shall not be arbitrable and no proposal to modify, amend or terminate the Agreement, nor any matter or subject arising out of or in connection with such proposal may be referred to arbitration under this Section; and neither any Arbitrator shall have the power to amend or modify or recommend amendment or modification of the Agreement, or any written agreements or addenda supplementary hereto or to establish or recommend establishment of any new terms and conditions of employment.

No changes in this Agreement or interpretation thereof (except interpretations resulting from arbitration proceedings hereunder) will be recognized unless agreed to by the City Manager and the Union.

### 37.3.6 General Conditions of a Formal Grievance

- 37.3.6.1 **Union Representation:** The grievant shall be entitled upon request to representation by the Union at all levels of the grievance procedure. In situations where the Union has not been requested to represent the grievant, the City will not agree to a final resolution of the grievance until the Union has received a copy of the grievance and the proposed resolution, and has been given the opportunity to respond and state its view on the matter. The Union will be given ten (10) days in which to respond.
- 37.3.6.2 **Time Limits:** Failure by the Union to file or appeal a grievance within the time limits specified constitutes a dropping of the grievance. Failure by the City to respond by the specified times shall entitle the Union to move the matter to the next higher step of the grievance procedure. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.
- 37.3.6.3 **Witnesses:** The City and / or the grievant may call witnesses.
- 37.3.6.4 **Release Time:** If an employee covered by this Agreement gives testimony in connection with the grievance procedure during working hours, the employee shall suffer no loss of pay. If the grievant's hearing is scheduled during working hours, the grievant shall suffer no loss of pay in order to present his or her grievance.

## SECTION 38: DISCIPLINARY ACTIONS

### 38.1 Preamble

- 38.1.1 The City commits itself to the application and enforcement of a uniform policy of progressive discipline.
- 38.1.2 An employee may request the presence of a steward during an interview with her/his supervisor which the employee reasonably believes may result in disciplinary action, and where there is no assurance from the supervisor that disciplinary action is not intended. If at any time during an interview without a steward in attendance, it becomes apparent that disciplinary action could occur, either party may adjourn the interview until a steward can be present.
- 38.1.3 The supervisor may have a management representative present during a discussion with an employee and his or her Union representative.

## 38.2 Definitions:

- 38.2.1 **Disciplinary Action:** The recommendation of or implementation by an employee's supervisor or Department Director related to the suspension, demotion, salary reduction or discharge of an employee covered by this Agreement.
- 38.2.2 **Disciplinary Appeal:** A Disciplinary Appeal is the procedure established hereunder to afford an employee his or her due process rights related to a pending disciplinary action. An employee may appeal the recommendation or imposition of suspension, demotion, salary reduction or discharge other than when such action is taken during the formal probationary period for that employee.
- 38.2.3 **Salary Reduction:** Salary Reduction is the reduction of an employee's base compensation to a lower salary step within the employee's current salary range for a specified period of time.
- 38.2.4 **Suspension:** Suspension is the temporary removal of an employee from his or her duties without pay.
- 38.2.5 **Union:** The term Union used throughout this procedure shall include by reference the bargaining unit itself and the appropriate Chapter President and Chief Steward who may be representing an employee engaged in this Grievance and Disciplinary Appeal Procedure.
- 38.2.6 **Day:** A day is defined herein as any day in the calendar year on which the City of Berkeley is regularly open and providing full administrative services to the public.

## 38.3 Written Reprimand

In the event that an employee receives a written reprimand, the Union or the employee may request a meeting with the supervisor to discuss the reprimand. Such meeting shall occur within fifteen (15) days of the request. The employee may write a rebuttal to any written reprimand within thirty (30) calendar days of receiving the written reprimand or the meeting and such rebuttal will be placed in the Personnel File along with the written reprimand.

## 38.4 Demotion

The City Manager (or Board of Library Trustees) may demote an employee who so requests it, or whose ability to perform required duties falls below standard, or for just cause. No employee shall be demoted to a class for which the employee does not possess the minimum qualifications as determined by the Director of Human Resources.

Notice of the demotion shall be given the employee no later than thirty (30) days prior to the effective date of demotion and a copy of said notice shall be simultaneously filed with the Director of Human Resources and the Union. Said notice shall include the reasons for the action.

An employee with permanent status who is demoted shall assume permanent status in the class to which the employee is demoted.

Upon the request of the employee, demotion may be made to a vacant position as a substitution for layoff. In such cases the employee shall be restored to his/her other former position without further examination whenever such position is again to be filled.

### **38.5 Suspension**

The City Manager may suspend an employee from his/her position at any time for just cause. Suspension without pay shall not exceed twenty (20) working days. No employee shall be penalized by suspension for more than twenty (20) working days in any one year period.

A Department Head may suspend an employee for not more than three (3) working days for any one offense. Such suspension shall be reported immediately in writing to the City Manager and the Union.

Any suspension will be postponed until the City Manager level is concluded in the grievance/disciplinary appeal procedure.

An employee who the Department Head determines to be an immediate threat to the health and safety of co-workers or the public shall be placed on administrative leave with pay and sent home.

### **38.6 Discharge**

An employee may be discharged at any time by the City Manager or the Director of Library Services for employees of the Library. If the probationary period has been completed, then such discharge must be for just cause. Any employee who has been discharged shall be entitled to receive a written statement of the reasons for such action. Said written statement shall be provided simultaneously to the Union.

### **38.7 Written Notice of Intent**

Employees who are to be demoted, suspended or discharged for just cause shall be given written notice of such intended action, including the reasons therefore issued by the immediate supervisor/manager. A copy of such written notices shall be sent simultaneously to the Union. The employee shall be afforded the opportunity to a Skelly conference with the department head or his or her designee as provided in Section 38.8.3 (Disciplinary Process: STEP 1 – Department Director) or may respond to the Notice of Intent in writing to the Department Head within ten (10) working days of receipt of the Written Notice of Intent.



The Department Director (or his or her designee) or for Library employees, the Deputy Director of Library Services (or his or her designee) shall hold a Skelly conference with the employee and his or her Union representative.

### **38.8 Disciplinary Appeals**

**38.8.1 Union Representation:** An employee may request the presence of a Union steward during an interview with his or her supervisor when the employee reasonably believes the interview may result in disciplinary action, and where there is no assurance from the supervisor that disciplinary action is not intended. If at any time during an interview without a steward in attendance, it becomes apparent that disciplinary action could result, either party may adjourn the interview until a steward can be present. The City commits itself to the application and enforcement of a uniform policy of progressive discipline.

**38.8.2 Sole Mechanism:** The provisions of this section shall be the sole mechanism for resolving Disciplinary Appeals pertaining to suspensions, demotions, salary reductions and terminations and shall be processed in the following manner:

#### **38.8.3 Disciplinary Process: STEP 1 – Department Director**

**38.8.3.1 Skelly Conference:** The Department Director (or his or her designee) or for Library employees, the Deputy Director of Library Services (or his or her designee), shall meet with the employee and his or her Union representative, or the affected employee may choose to make an appeal in written form.

The Skelly conference is the employee's opportunity to present his or her side of the story. The Department Director or his or her designee shall issue a Skelly decision sustaining, modifying or rejecting the discipline within ten (10) working days after the completion of the Skelly conference with the affected employee, or if the employee chose to make an appeal in written form, receipt of the written appeal. This shall conclude Step 1 of the Disciplinary Appeal Procedure.

#### **38.8.4 Disciplinary Process: STEP 2 – Appeal of the Decision**

**38.8.4.1 Appeals Filed With:** If the employee or his or her Union is not satisfied with the Skelly decision in the case of suspensions of three (3) days or less, or Skelly recommendation in the case of suspension of more than three (3) days, of the Department Director or his or her designee resulting from Step 1, the employee or the Union may appeal the Skelly action rendered by the department head to the City Manager. The City

Manager or his or her designee shall hear the appeal. In the Library, the Board of Library Trustees may designate the Director of Library Services or other designee as the Discipline Appeal Officer.

**For Suspensions of Three (3) Days or Less:** If the employee or his or her Union do not appeal the decision of the Department Director or his or her designee resulting from Step 1, the disciplinary action shall be implemented in accordance with the provisions of Section 38.5 (Suspension) and the Disciplinary Appeal Procedure will end here.

**For Disciplinary Action of Suspensions of Greater than three (3) days or Discharge:** If the employee or his or her Union do not appeal the Skelly action rendered by the Department Director or his or her designee resulting from Step 1, the disciplinary actions involving suspension greater than three (3) days, salary reduction or discharge will be referred to the City Manager/Director of Library Services for review. The City Manager/Director of Library Services may review or modify the Skelly action rendered by the Department Director. If the City Manager/Director of Library Services does not modify the Skelly action rendered by the Department Director, the Skelly action shall be implemented in accordance with the provisions of the Agreement and the Disciplinary Appeal Procedure will end here.

If the City Manager/Director of Library Services contemplates modification of the Skelly action rendered by the Department Director, the employee and the union will be notified in writing of their right to a disciplinary appeal meeting with the Discipline Appeal Officer. Such notice shall be issued within ten (10) working days of receipt of the Department Director Skelly action. The Discipline Appeal Officer will hold a meeting and issue a decision as provided in Section 38.8.4.3 below.

- 38.8.4.2 **Filing Period:** Said appeal must be filed in writing within ten (10) working days of the conclusion of Step 1 above; and must contain the Notice of Intent, the written Skelly decision of the Department Director or designee and all other correspondence exchanged from the start of the original recommended action and Step 1 activities.
- 38.8.4.3 **Process:** The Discipline Appeal Officer receiving an appeal of a proposed skelly action shall hold a meeting with the employee and his or her Union representative. The appeal meeting must be held with the employee and his/her Union within ten (10) working days of receiving the written appeal. The Discipline Appeal Officer shall issue a written decision sustaining, modifying or rejecting the discipline within ten (10) working days after the completion of the appeal meeting with the affected employee and/or the receipt of the written appeal. This shall

conclude Step 2 of the Disciplinary Appeal Procedure. Any decision to suspend, implement a reduction in salary or terminate an employee will become effective at the conclusion of Step 2 of the Disciplinary Appeal Procedure.

### **38.8.5 Disciplinary Process: STEP 3 – Arbitration**

- 38.8.5.1 **Appeals Filed With:** If the Union is not satisfied with the decision of the Discipline Appeal Officer resulting from Step 2, the Union may appeal the decision issued at Step 2 as provided in Section 38.8.5.3 (Process) to an impartial arbitrator by notifying the City Manager.
- 38.8.5.2 **Filing Period:** Such notification of desire to go to arbitration must be filed in writing with the City Manager within thirty (30) days of the conclusion of Step 3 with a copy to the Director of Human Resources. Provided further that the Union shall forward to the City the Union's portion of the California State Mediation and Conciliation Services (CSMCS) fee within sixty (60) days of receipt of the City Manager's response. Failure by the Union to meet either the thirty (30) day or sixty (60) day deadline for both referral to Arbitration and payment of the CSMCS fee shall be deemed as a full and complete waiver by the Union to appeal the City Manager decision to Arbitration and the City Manager decision shall be final and binding on all parties.
- 38.8.5.3 **Process:** The impartial arbitrator shall be selected from the California State Mediation and Conciliation Services (CSMCS) unless another party is mutually agreed upon. CSMCS will provide a list of five (5) arbitrators. The City and the grievant will alternately strike a name until one remains. The remaining name will be the arbitrator.

The arbitrator may hear testimony, receive written briefs, interview witnesses, and conduct any investigations she or he deems appropriate, and shall render a final and binding decision to the parties which will end the formal disciplinary appeal process.

The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the employee (or his or her Union) and the City. Each party, however, shall bear the cost of its own presentations including preparation and post-hearing briefs, if any. Arbitrator decisions on matters properly before them which pertain to the disciplinary actions involving the suspension, demotion, pay reduction, or discharge of an employee shall be final and binding on both parties.

### 38.9 General Conditions for Disciplinary Appeals

- 38.9.1 **Union Representation:** The employee who is the recipient of the recommended discipline shall be entitled upon request to representation by the Union at all levels of the disciplinary appeal process.
- 38.9.2 **Time Limits:** Failure by the employee or the Union to file an appeal of the proposed discipline within the time limits specified constitutes a dropping of the disciplinary appeal. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.
- 38.9.3 **Witnesses:** The City and/or the appellant may call witnesses.
- 38.9.4 **Release Time:** If an employee covered by this Agreement gives testimony in connection with the disciplinary appeal procedure during working hours, the employee shall suffer no loss of pay. If the employee's appeal is scheduled during working hours, the employee shall suffer no loss of pay in order to present his or her appeal.

## **ARTICLE 6 - MISCELLANEOUS TERMS AND CONDITIONS**

### **SECTION 39: GENERAL PROVISIONS**

#### **39.1 Personal Conduct**

- 39.1.1 **Civil Public Service Limitation:** No employee shall accept appointment to the deputyship or assistantship of any County or State Office or position, or otherwise incur an obligation of civil public service outside his/her regular municipal employment without first obtaining the recommendation of the head of his/her department, and of the City Manager for units G-1, G-3, L, R-1 and R-2.
- 39.1.2 **Off-the-Job Conduct:** No employee shall be disciplined for off-the-job activities which do not affect the employee's job performance.
- 39.1.3 **Personal Creditors:** Employees shall so arrange their personal financial affairs so that the demands of creditors and collection agencies shall not impose a recurring burden upon the officers of the City Manager, the Department Heads, or the Director of Human Resources for the purpose of making collections.
- 39.1.4 **Private Business/Undertaking:** Full-time City employees may not carry on concurrently with their public service any private business or undertaking, attention to which affects the time or quality of their work or which casts discredit upon or creates embarrassment for the City government.
- 39.1.5 **Current Address:** Employees have a responsibility to provide the City with their current address and telephone number.
- 39.1.6 **Absence Reporting:** All employees who are absent from work for any reason must report their absence and the reason for their absence or obtain prior permission to be on leave as required by this agreement.

#### **39.2 Use of Automobiles and Parking**

- 39.2.1 **Vehicle Use and Mileage Reimbursement:** The City Manager (or Director of Library Services) shall govern the use of City-owned automotive equipment and privately-owned automotive equipment by such rules and regulations as he or she may establish. Compensation will be given in the form of a cash allowance that will be equal to the amount established by the Internal Revenue Service, and will change as necessary to comply with IRS Standard Mileage Rate. This allowance shall apply only to the use of

privately-owned vehicles used on City business which has been authorized in advance by the City Manager.

3922 **Liability Coverage:** Employees who are required to utilize their automobiles for City business and who, pursuant to prior written authorization of their Department Head, are using their automobiles for transporting clients, shall be covered by insurance provided by the City in case of injury or liability to the client by virtue of the authorized employees' non-negligent operation of the vehicle.

3923 **Parking Violations:** A field employee who, in the regular and authorized performance of his/her duties and because of unavoidable circumstances, receives a City of Berkeley parking violation citation shall be relieved of any and all fines connected therewith if such citation is submitted to the Department Head within three days of the issuance of such citation and the employee submits on a form provided by the City a written explanation of the circumstances under which the parking citation was issued. It is expected that employees shall use their best efforts to avoid parking violations. The City shall not be responsible for payment of parking citations and/or any fines or penalties associated with the failure of an employee to pay a parking citation if the employee did not submit the parking citation to the Department Head within the time limit specified in this paragraph and/or the Department Head determines that the citation was avoidable.

3924 **Parking Permits:** The City Manager shall issue parking permits under rules he or she may establish, for allocation by the Department Head, to be used solely in the course of employment and the performance of the employees required field duties. The parking permits will allow employees to park in the field or in authorized off-street parking areas enabling the employee to perform his or her work related duties using his or her personal vehicle. These parking permits are intended to prevent the issuance of parking citations to employees while working in the field.

3925 **City Vehicle for Emergency Use:** Employees who are regular members of a City recognized car pool, who are qualified to operate a City vehicle, who are insured, and who have no other alternative in an emergency situation, may request a City vehicle where the health or safety of a family member is at stake, subject to the approval of their department head.

3926 **Bicycle Rack:** The City will install one (1) bicycle rack (Class 2) for 10 bicycles at 2180 Milvia, and a second Class 2 rack if demand warrants it.

### 39.3 Part-Time Employees and Prorated Benefits

All current career and grant-funded benefited employees who in the future request to become part-time career or part-time grant-funded employees working a minimum of 20 hours, but less than 40 hours per week, shall receive prorated,

rather than full fringe benefits and shall pay, by payroll deduction, a pro rata portion of the health and dental insurance premiums. Effective July 1, 2008, the City will pay 75% of the cost of the medical plan which is fully paid for full time employees for those part time employees who work 20 to 29 hours per week. The City will pay 100% of the cost of the medical plan which is fully paid for full time employees for those part time employees who work 30 or more hours per week.

Current career and grant-funded benefited employees who are given the option of accepting part-time employment in lieu of layoff from City services shall continue to receive full health, dental and life insurance benefits paid by the City in addition to other prorated benefits.

Employees who voluntarily job-share to prevent layoffs of coworkers shall continue to receive full health, dental and life insurance benefits paid by the City in addition to other prorated benefits. Laid off employees who had career status at the time of their layoff, who are reemployed to part-time career status or temporary employment, shall resume receiving the level of health, dental and life insurance benefits paid by the City at the time of their layoff in addition to prorated leave benefits.

#### **39.4 Annual Performance Evaluation**

The City may implement a program of annual performance evaluation subject to Union review and comment. The program of annual performance evaluations shall be conducted as provided in the guidelines set forth in Administrative Regulation 2.3 (Performance Evaluation Program). Such evaluations shall be conducted by the employee's immediate supervisor and shall be reviewed by additional levels of supervision. The performance evaluation shall include a specific work plan for employee development. Each employee may make written comments on the evaluation which shall be made a part of the employee's personnel records.

After the initial evaluation conference between the employee and his/her supervisor the employee may make a written request for a subsequent conference with the supervisor (and such other representatives as may be determined by the City), and a Union representative to discuss the basis for the evaluation. It is specifically agreed that performance evaluations are not subject to the Grievance Procedure provided by this Agreement.

#### **39.5 Employee Development and Training Opportunities**

To facilitate employee development, employees may be assigned training opportunities which include duties normally performed by other classes at their regular rate of pay. Such assignments shall be voluntary, assigned and described in writing as a training and development opportunity and limited to 90 days. Such opportunities shall not be used to fill vacancies or in lieu of higher class assignments.

395.1 **Career Development:** During the term of this Agreement, the parties agree to meet and discuss the current curriculum available through the City's professional growth program. The City's Training Officer will review and may expand on the current courses offered through the program. Employees are entitled to reimbursement of \$250 per class per semester through the City's Tuition Reimbursement Program.

**Reimbursement for a Course taken at an Accredited Institution:**

For fiscal year 2018-2019 the City shall allocate a total maximum of \$20,000 towards a tuition reimbursement fund for members of this bargaining unit and members of the SEIU maintenance and clerical units. For fiscal year 2019-2020 the City shall allocate an additional \$20,000 to this reimbursement fund. A maximum of \$750.00 per employee may be approved per fiscal year from this fund.

Career members of the CSU/PTRLA and the Maintenance and Clerical Unit, on a first come first approval basis, may submit a tuition reimbursement request to the employee's Department Head and the Human Resources Director for tuition reimbursement of a class taken at an accredited institution that is directly related to the employee's job or related to a City of Berkeley job classification.

The Department Head and the Human Resource Director's review and action on such request shall be final. Employee may submit a provisional reimbursement authorization request, one class at a time for the closest semester/quarter the course is being offered. To be reimbursed, including those that have received a provisional approval, employee must provide the City with proof of successful completion of the course with a B- or above grade and receipts for books and tuition.

SEIU employees in this unit and the Maintenance and Clerical unit shall not be entitled to receive any other additional tuition reimbursement through the training task force or other program administered by HR. This program is intended to be in place of any other City reimbursement program.

**39.6 Educational Leave**

The City shall allow up to forty (40) hours off with pay per year to employees:

396.1 Who have completed their probationary period;

396.2 Who are required by law or as a condition of employment to obtain a license, a registration or ICC certification and, in order to do so, must take courses which were not offered as a part of their basic curriculum or;



3963 Who are required by law or as a condition of employment to obtain continuing education units;

3964 To obtain education and training related to job skills, to enhance performance of assigned duties or to promote employee development.

No more hours than are required by the State shall be granted. Employees seeking time off to take courses for an initial license must provide verification that the course was not offered as a part of their basic curriculum. All coursework will require pre-approval by a departmental manager prior to undertaking the coursework.

3965 The City and the Union recognize that some of the training applicable under this Section may be available over the Internet, through home study or correspondence courses and may be done from non-work locations.

If the coursework is taken during hours outside the normal work schedule the employee will be compensated for this time in accordance with the provisions of the Understanding and the Fair Labor Standards Act. However, the employee may request time off equal to the hours of training during the pay period in which the training occurred and such request shall not be unreasonably denied.

### 39.7 Assignments for Temporarily Disabled Employees

39.7.1 **Industrial Modified Duty:** The City may accommodate, when feasible, employees covered by this Agreement under the provisions of Workers' Compensation, and such work assignments are to incorporate the following provisions:

39.7.1.1 The assignment shall be consistent with medical limitations as determined by the physician of record.

39.7.1.2 The assignment shall be within the City of Berkeley and may include hours and days of work other than the employee's regular assignment.

39.7.1.3 Nothing herein shall require the City Manager to approve light duty assignments nor shall give an employee the right to refuse an assignment which complies with medical restrictions. Such assignment shall be at the employee's normal rate of pay.

39.7.2 **Non-Industrial Modified Duty:** The City may accommodate an employee disabled with a non- industrial disability by providing a modified work assignment in that employee's classification. To be eligible for such a modified assignment, the employee must provide the Human Resources

Department with a medical statement from his/her treating physician that clearly states the medical limitations and abilities of the employee. If modification of that position does not serve the best interests of the City, other classifications may be considered, subject to the approval of the Director of Human Resources. Compensation will be provided at the level of the classification in which the temporarily disabled employee works during the disability. The employee must meet standards of satisfactory performance for the duration of the work assignment.

- 39.7.3 **Pregnancy Related Modified Duty:** In the case of a medically certified pregnancy related disability, in which the normal duties clearly threaten the health and safety of the employee or the unborn child, the Human Resources Department will endeavor to place the employee in a position which best serves the interest of the City, with no loss of pay, but in no event will such placement exceed 5 months in duration.

### 39.8 State Disability Insurance Integration

Except as provided in Section 39.8.3 below, any employee who is absent due to personal illness for more than 7 calendar days (or for any period of time if hospitalized) may apply for State Disability Insurance (SDI) benefits.

After such employee has been absent from work due to personal illness for six workdays, the City shall integrate the employee's pay with the employee's State Disability benefits in the following way:

- 39.8.1 The City will determine the weekly SDI benefit amount based on the amount of wages earned with the City of Berkeley in the SDI base period.
- 39.8.2 The weekly SDI benefit will be subtracted from the employee's normal weekly wages and the amount necessary to bring the total of State Disability plus wages to 100% will be deducted from any accumulated sick leave, vacation leave and compensatory time available to the employee. The integrating with vacation leave and compensatory time is optional but will be automatically implemented after sick leave has expired unless written notification is received from the employee as discussed below.
- 39.8.3 Any employee may choose not to apply for State Disability Insurance but it is his/her responsibility to notify the departmental payroll clerk of this fact, in writing, to stop sick leave integration. The employee must also notify the payroll clerk, in writing, to stop integration of State Disability Insurance payments with vacation leave or compensatory time. Upon receipt of notification, the payroll clerk will cease integration of any future leave for that incident of illness.
- 39.8.4 The employee must show the State of California form (Disability Insurance Notice of Computation) to his/her payroll clerk to verify dates covered by

SDI and the amount to be paid. The employee must inform his/her payroll clerk of all SDI payments. Any employee entitled to State Disability Insurance shall receive in addition thereto such portion of his/her accumulated leave as will meet but not exceed, the standard earnings of the employee for his/her normal workweek, up to a maximum of five (5) days.

### 39.9 Health and Safety

- 39.91 **Requirement:** The City and the Union will make every effort to maintain excellent health and safety standards. No employee shall be required to perform work with unsafe equipment or in situations which are injurious to his/her health or safety. To further these purposes, the City shall maintain an ongoing safety program which shall include a committee comprised of four Union representatives and appropriate supervisory personnel. There shall be a coordinator designated by the City. The committee may meet monthly.
- 39.92 **Safety Inspection Team:** A safety inspection team may inspect work locations and equipment in regard to safety and health considerations. The safety inspection team shall consist of the Occupational Health and Safety Coordinator and two members of the safety committee to be chosen by the Occupational Health and Safety Coordinator. The inspection team may make written recommendations for safety and health improvements, and the City shall give a written response within fifteen (15) days or sooner, if possible, because of emergency conditions.
- 39.93 **Inspection Team Reporting:** The inspection team may also investigate and report on all substances currently used by the City employees and all proposed for future use.
- 39.94 **Tuberculosis and Asbestos Screening Tests:** The City shall provide annually, on City time, free tuberculosis and asbestos screening tests, at no cost to the employee, for all employees who, in the course of their work, are subject to health hazards which may cause tuberculosis or asbestos poisoning.
- 39.95 **Blood or Bodily Fluids Equipment:** The City shall take appropriate steps to ensure that the proper equipment for handling blood or bodily fluids is available at all sites where clients are provided care which may expose staff to blood or bodily fluids.
- 39.96 **Blood or Bodily Fluids Training:** City staff who handle blood or bodily fluids shall receive proper training and equipment.

- 39.9.7 **AIDS/ARC Training:** The City shall take appropriate steps to educate employees regarding AIDS/ARC and its transmission.

### 39.10 Video Display Equipment

- 39.10.1 **Working Conditions:** The City and the Union agree that employees working on video display equipment shall have safe and healthy work environments. These environments shall avoid excessive noise, crowding, contact with fumes, and other unhealthy conditions.

The City agrees wherever practical, to design the flow of work to avoid long, uninterrupted use of video display equipment by City employees.

- 39.10.2 **Pregnancies:** The City will accommodate requests for transfer from pregnant employees whose job duties require frequent exposures to video display equipment subject to the following:

- 39.10.2.1 such transfer will be limited to other positions which are vacant which the transferee is qualified to perform:
- 39.10.2.2 to voluntary trading of positions where both parties are competent to perform the new assignments:
- 39.10.2.3 to any position held by a temporary employee if the pregnant employee is qualified.

- 39.10.3 **Visual Screening and Education:** The City will develop a visual screening and education program effective July 1, 1988 for employees who in the course of their employment operate VDT terminals more than half the time. This program will include visual screening at or near employment, a referral system for employees with possible VDT related vision problems, and a regular follow-up screening at approximately two years.

- 39.10.4 **Corrective Glasses and VDT Equipment:** The City shall provide corrective glasses medically certified as required for the job to VDT operators. Within twelve (12) months of the implementation of this agreement the City will complete a survey of all departments to determine the need for ergonomic VDT equipment. Upon completion of the survey the Union and City will establish a schedule to meet the identified needs over three (3) fiscal years. The City will deal with purchases related to VDT equipment according to NIOSH or other standards as agreed if funds are available.

### 39.11 YMCA Group Membership

The City shall offer employees a low or no-cost group membership in the Berkeley Central YMCA. As of July 1, 1999 the City will pay 75% of the membership fee. If

the monthly fee is increased to more than \$60 the employee share will be capped at \$30 per month; the City will pay the balance. The amount the City contributes toward the employee's monthly membership fee is subject to federal and state income tax withholding.

Use of a YMCA membership by a City of Berkeley employee, as provided for in this Agreement, is non-compensable, is not a part of the employee's work-related duties, is not required for employment and is not condoned as part of a physical fitness program, or required to maintain top physical conditioning for the employee's job performance.

The City of Berkeley or its Claims Administrator may not be liable for any injury which arises out of a City of Berkeley employee's participation in and use of a YMCA membership.

### **39.12 Internships**

A career advancement internship program shall be established by the City. Two (2) internships of six (6) months each shall be implemented for each year of this agreement. Career advancement internship guidelines shall be developed by the City in consultation with the Union.

### **39.13 License and Registration Renewal**

The City shall pay the full cost of professional license, registration or ICC certification renewals for all employees whose classification requires a professional license, registration or ICC certification.

### **39.14 Personnel Files**

39.14.1 **Maintenance:** All official records of the employee's personnel history are maintained in the Human Resources Department (in the Library the files are maintained in Library Administration), including applications for appointment, performance appraisal forms, employee transaction forms, formal disciplinary actions and other documents pertinent to the employee's official personnel history.

39.14.2 **Inspection:** Employees have the right to inspect their personnel file which is maintained in the Human Resources Department during normal business hours, by appointment, as provided by law. No material of any kind, except documents submitted by the employee shall be placed in an employee's official personnel file after the date of employment without a copy being given to the employee. The employee may provide a concise written response to any material which is maintained in the personnel file.

39.14.3 **Records of Grievances:** Records of grievances filed by an employee which do not relate to any disciplinary action taken against that employee shall not be maintained in the individual's personnel file.

39.144 **Disciplinary Actions:** Except as otherwise required by applicable law, any material related to disciplinary action which is subsequently overturned or rescinded shall be removed from the employee's personnel file.

39.145 **Reprimands and Counseling Letters:** Formal letters of reprimand or formal counseling shall be removed from an employee's personnel file upon request after 24 months provided the employee has maintained satisfactory performance. Counseling memos shall not be placed in employee's personnel files.

### 39.15 Commuter Check Subsidy Benefits

Upon request, the City shall provide a Commuter Check subsidy valued at twenty dollars (\$20.00) per month to an employee for transit, biking or van pool. Commuter check subsidies are only intended for use by the employee while employed with the City of Berkeley and may expire due to inactivity. The City shall also provide employees the opportunity to set aside income on a pre-tax basis for a qualified transportation benefit through payroll deduction up to the maximum allowed by the Federal tax code.

### 39.16 Protective Clothing and Shoes

39.16.1 **Rain Gear** - The City will provide rain gear upon request of the employee in the classifications named below who may be assigned to work in inclement weather.

<b>Job Code</b>	<b>Classification Title</b>
24060	Assistant Environmental Health Specialist
37060	Building Inspector I (Certified)
37050	Building Inspector II
33090	Code Enforcement Officer I
33100	Code Enforcement Officer II
28830	Environmental Compliance Specialist
91050	Field Representative assigned to the Solid Waste Division in Public Works
35070	Fire Prevention Inspector
24590	Hazardous Materials Specialist I
24560	Hazardous Materials Specialist II
33080	Housing Inspector
63200	Mini Bus Driver
24050	Registered Environmental Health Specialist
32030	Senior Building Inspector
24690	Senior Environmental Health Specialist
34030	Senior Vector Control Technician
34040	Vector Control Technician

39.16.2 **Shoes** - An annual allowance of two hundred dollars (\$200) shall be paid to employees in the classifications named below toward the purchase of safety shoes. The annual shoe allowance is subject to federal and state income tax withholding.

<b>Job Code</b>	<b>Classification Title</b>
24060	Assistant Environmental Health Specialist
37060	Building Inspector I (Certified)
37050	Building Inspector II
33090	Code Enforcement Officer I
33100	Code Enforcement Officer II
28830	Environmental Compliance Specialist
91050	Field Representative assigned to the Solid Waste Division in Public Works
35070	Fire Prevention Inspector
24590	Hazardous Materials Specialist I
24560	Hazardous Materials Specialist II
33080	Housing Inspector

Job Code	Classification Title
33060	Housing Inspector (Certified)
24050	Registered Environmental Health Specialist
32030	Senior Building Inspector
24690	Senior Environmental Health Specialist
34030	Senior Vector Control Technician
34040	Vector Control Technician

39.163 **Uniforms** – Effective June 29, 2008, employees in the classifications of Fire Prevention Inspector and Fire and Life Safety Plans Examiner shall receive a uniform allowance of \$1,000 per year. Payment of such annual uniform allowances noted above shall continue to be paid in two (2) equal installments, in December and June, of each year. The amount the City contributes toward the uniform allowance is subject to federal and state income tax withholding.

39.164 **Protective Clothing for Library Circulation Employees** – the Library will provide knee pads and rain gear upon request of any Library Circulations employee.

### 39.17 Crimes against Employees

The Police Department will promptly respond to any calls regarding criminal acts committed against a City employee while engaged in his or her employment. Reports of assault or other acts of criminal misconduct committed against a City employee will be promptly investigated. The results of the investigation will be submitted to the District Attorney for disposition.

### 39.18 Legal Representation

The City will provide legal representation to the extent required by law.



## **ARTICLE 7 – RECREATION ACTIVITY LEADERS AND SPORTS OFFICIALS**

### **SECTION 40: RECREATION ACTIVITY LEADERS AND SPORTS OFFICIALS**

The parties recognize and acknowledge that Representation Unit R-2 employees are temporary, non-benefited, non-career employees without properties rights or an expectation of continued employment.

#### **40.1 Final Conversion of Last Two (2) Full-Time Recreation Activity Leaders**

Effective the first quarter of the fiscal year 2017, the following shall occur:

1. City will offer two (2) full-time positions in the classification of Recreation Activity Leader (R-1) in order of seniority and paid status;
2. If employee declines full-time position offered, the City is no longer obligated to offer that R-1 employee full-time employment;
3. If two (2) full-time positions are filled, any of the remaining four (4) who were not offered the full-time position shall be grandfathered into their position (hours and benefits).

#### **40.2 Scheduling for Representation Unit R-1 Employees**

- 4021 **Rolling Quarterly Schedule:** The City shall post a quarterly schedule of recreation services and programs for Unit R-1 employees. The schedule shall include work hours and job assignments for R-1 employees only. Copies of all schedules shall be provided to the Union President when they are posted.
- 4022 Each seven (7) day workweek shall have 2 consecutive days off.
- 4023 Hours in a work day will not be split into two or more segments that are separated by more than an unpaid lunch hour unless such split is the result of Union release time or department mandated training that cannot be scheduled without resulting in a split shift. The City will make reasonable effort to limit split shifts for training purposes to no more than one (1) time per month.
- 4024 The aforementioned limitations on R-1 Work Scheduling may be waived by mutual agreement between the employee and the supervisor.
- 4025 The City will adjust the benefit pro-ration for employees in Representation Unit R-1 based on the Rolling Quarterly Work Schedule of assigned hours and on the known and anticipated adjustment of hours during the quarter if less than full-time equivalent.

#### **4026 Representation Unit R-2 Work Schedule**

- 40261 The work schedule for Representation Unit R-2 employee will not be split into two or more segments that are separated by more than an unpaid lunch hour unless such split is the result of Union release time or department mandated training that cannot be scheduled without resulting in a split shift. This limitation may be waived by mutual agreement between the employee and the supervisor.
- 40262 Representation Unit R-2 employees are hourly, intermittent employees who can accept or reject hours.
- 40263 The City agrees to provide each R-2 employee the opportunity to participate in a thirty (30) minute Union Orientation as part of the department's new hire summer training program. The Orientation date shall commence as designated by the department.

#### **40.3 Changes in the Work Schedule**

- 403.1 When the City compiles and establishes the Rolling Quarterly Work Schedule, the City will assign Representation Unit R-2 employees so that a Representation Unit R-1 employee's core work schedule does not change during the succeeding three months. Any changes in the posted schedule for an R-1 employee must be made at least 15 days in advance. Changes in an employee's posted schedule must meet one of the following criteria:
  - 403.1.1 A program is cancelled.
  - 403.1.2 The number of attendees at the program/event is less than originally planned and requires less staff than originally scheduled.
  - 403.1.3 A special event is scheduled after the Rolling Quarterly Work Schedule is posted and the City changes the schedule of an employee to cover the event. However, the change in the work schedule will not be made: 1) if the hours that the Representation Unit R-1 was originally scheduled to work are assigned to another employee, or 2) a less senior Representation Unit R-1 employee, a Representation Unit R-2 employee or a Sports Official is scheduled to cover the same hours in the same work site where the employee was originally scheduled to work.

#### **40.4 Additional Hours**

Additional hours are work hours which the City determines are needed due to added programs/events after the quarterly schedule has been posted or the absence of an employee which is known at least five (5) working days in advance

of the employee absence. Additional hours will first be offered to R-1 employees based on seniority provided that the employee is qualified to perform the work. In the event the work which is available involves a single program which occurs over a number of days, the employee who receives the additional hours must be available to work all the hours. If no R-1 employee is scheduled for the additional hours, the hours will be offered to R-2 employees. A qualified R-1 employee will be offered additional hours based on seniority; this does not imply that seniority gives an employee the right to choose between two different programs offered as additional hours at the same time. An R-1 cannot be scheduled for additional hours that would require a modification to the employee's core schedule.

**40.5 Reduction/Elimination of Representation Unit R-2 Hours**

When a Representation Unit R-2 employee's hours are reduced or eliminated for any reason, the employee and a Union Representative (steward, Chapter Officer or Union staff member) shall have the right to a meeting, upon his or her request, as soon as practical, with the Division Chief responsible for approving the actions of the supervisor who reduced/eliminated the hours.

**40.6 Representation Unit R-2 Additional Compensation**

Effective June 29, 2008, Representation Unit R-2 employees shall be paid the equivalent of twenty (20) hours pay at the employee's regular hourly rate for each five hundred twenty (520) hours worked.

**SECTION 41: R-1 AVAILABILITY TO WORK SCHEDULED HOURS**

If a designated career part-time employee in Unit R-1 is consistently not available for regularly scheduled assigned hours, said employee may agree to a demotion into R-2, may resign and/or may be disciplined and thereby may be replaced with the most senior qualified employee who can accept those hours. This provision shall not apply if an employee is on an authorized leave (i.e., sick leave, workers' compensation, vacation, etc.).

**SECTION 42: ATTENDANCE AT MEETINGS**

**42.1 Staff Meetings**

The Union may appoint one (1) employee in each Center who shall be allowed to attend, with pay, quarterly full-time staff meetings held with the Recreation and Youth Services Manager, and such other staff meetings to which the appointed employees may be invited by the Recreation and Youth Services Manager. Quarterly meetings will be announced in writing. The Recreation and Youth Services Manager will be notified in writing by the Union of the names of employees who are appointed pursuant to this provision.

#### **42.2 Center Budget Planning**

The Union may appoint one (1) employee from each Center who shall be allowed to participate in Center budget planning recommendations to be transmitted to the City Manager's Office.

### **SECTION 43: WEATHER CONDITIONS**

#### **43.1 Notification when Conditions Known**

When weather conditions are such that prior to the start of scheduled outdoor activities it is known that these activities will be canceled, the employee shall telephone the Center Supervisor to ascertain the need for the employees services in productive alternative work.

#### **43.2 Notification when Conditions are Unknown**

When weather conditions develop after the start of scheduled outdoor activities which necessitate their discontinuation, the employee shall make an immediate assessment of the availability of alternate indoor space at the location involved and consider the productive uses to which such space can be devoted. In the event both space availability and program warrant, the employee shall then contact the Center Supervisor by telephone, specifying the proposal for the continuation of work.

#### **43.3 Management Discretion**

Under either situation set forth above, the decision to proceed with the work of the employee shall be at the discretion of the Center Supervisor, which shall be reasonably exercised.

### **SECTION 44: SUMMER WORK SCHEDULE**

During the summer season (June 15 - August 15) the following shall apply in the operation of the City's summer recreation programs:

#### **44.1 Offer of Jobs/Hours**

New, additional or vacant recreation jobs or hours shall be offered to career, benefited Recreation Activity Leaders (RALs) and Sports Officials (SOs) who meet specific written qualifications and who may accept such work, so as to allow each career RAL and SO that so chooses to work up to 40 hours per week.

**SECTION 45: OVERNIGHT EXCURSIONS**

Recreation workers who participate in overnight excursion will flex their schedule, if possible, to maintain a 40-hour workweek. If they are unable to flex, they will be paid overtime or compensatory time consistent with state law.

**SECTION 46: LABOR/MANAGEMENT COMMITTEE**

The City and the Union agree to create a joint Labor/Management Committee consisting of four (4) union and four (4) City representatives to discuss PTRLA to keep lines of communication open and to discuss the issues set forth in Section 40 (Recreation Activity Leaders and Sports Officials). The joint labor management committee will meet on a monthly basis or less frequently if mutually agreed by the parties.

## **ARTICLE 8 - RETIREMENT SYSTEMS**

### **SECTION 47: PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

#### **47.1 Participation**

The City shall continue participation under the Miscellaneous Employees Plan of the Public Employees' Retirement System.

#### **47.2 "Classic Employees" Definition**

Classic Employees are defined as current employees and future employees who do not qualify as "New Members" under the California Public Employees' Pension Reform Act of 2013 (PEPRA).

#### **47.3 "New Members" Definition**

New Members are as defined in the Public Employees' Pension Reform Act of 2013 (PEPRA), Government Code Section 7522.04(f).

#### **47.4 CalPERS Retirement Formula for Members as Defined Under the Public Employees' Pension Reform Act of 2013 (PEPRA)**

"New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the retirement formula set forth in PEPRA.

#### **47.5 CalPERS Retirement Formula and Employer Paid Member Contribution for Classic Employees, i.e., current employees and future employees who do not qualify as "New Members" under the California Public Employees' Pension Reform Act of 2013 (PEPRA)**

Effective January 5, 2003, the City agrees to provide the 2.7% at age 55-retirement formula benefit improvement, and the City's contribution to CalPERS on behalf of the employee will increase from 7% to 8%. Effective July 3, 1994, contributions made pursuant to this section shall be reported to PERS as "special compensation" as provided in Government Code Section 20636(c)(4) pursuant to Section 20691. Said contributions shall not apply in the case of temporary or provisional employees.

The aforesaid contribution shall not be considered as a part of an employee's salary for the purpose of computing straight time earnings, compensation for overtime worked, or education incentive pay; nor shall such contribution be taken into account in determining the level of any other benefit which is a function of or percentage of salary. The City reserves the right to take said contribution into account for the purpose of salary comparisons with other employees.

The City will not treat these contributions as compensation subject to income tax withholding unless the Internal Revenue Service or Franchise Tax Board indicates that such contributions are taxable income subject to withholding. Each employee shall be solely and personally responsible for any federal, state or local tax liability

of the employee that may arise out of the implementation of this section or any penalty that may be imposed therefore.

**47.6 New Members Payment of Normal Cost**

New Members as defined by PEPRA who are hired by the City on or after January 1, 2013 will be required to pay 50% of the normal cost, as provided by CalPERS. New Members shall receive any other additional optional CalPERS benefits that the City provides to Classic Employees as allowed by PEPRA.

**47.7 Hourly Rated Employees In Lieu of CalPERS**

The Salary Resolution shall provide that hourly-rated employees working in represented classes will receive an additional 7% in-lieu of CalPERS.

**47.8 Optional Benefits**

The City's contract with CalPERS includes the following optional benefits:

- 47.8.1 **Classic Employees - One-Year Final Compensation:** Classic Employees, as defined in Section 47.2, shall be eligible to receive retirement allowance based on One-Year Final Compensation as provided in Section 20042 (July 9, 1978).
- 47.8.2 **New Members – Three Years Final Compensation:** Provided further that New Members as defined by PEPRA hired on or after January 1, 2013 shall be eligible to receive retirement allowance based on three (3) highest consecutive years of compensation under the plan as provided in the California Public Employee Pension Reform Act of 2013, or as subsequently amended
- 47.8.3 Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (December 16, 1973).
- 47.8.4 Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).
- 47.8.5 Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988).
- 47.8.6 1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (December 16, 1973).
- 47.8.7 Third Level of 1959 Survivor Benefits as provided in Section 21573 (November 28, 1996).
- 47.8.8 2% @ 55 for Local Miscellaneous Members as provided in Section 21354 (June 30, 1992).
- 47.8.9 Military Service as Public Service as provided in Section 21024 (April 9, 1999)

47.8.10 Public Service Credit for Peace Corps or AmeriCorps/VISTA Service as provided in Section 21023.5 (April 14, 2000).

#### **47.9 Classic Employees' Pension Contribution**

47.9.1 Effective January 1, 2017, employees will contribute eight percent (8.0%) towards the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allows such contributions via automatic payroll deduction on a pre-tax basis, in exchange for the City granting the salary increase set forth in Section 9.1.6 of this Memorandum Agreement. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.

47.9.2 If legislation is enacted requiring employees under the CalPERS retirement system to pay all of the employee's share of retirement, thus eliminating the EPMC, the parties agree as soon as possible to convert the employee's contribution to the employer's share under this 20516 CalPERS contract amendment to the employee's share towards retirement and the City will continue to pay the wage increase as described in Section 9.1.6 (maximum of 5.58%) associated with this cost neutral provision.

#### **47.10 New Members' Pension Contribution**

47.10.1 New members hired on or after January 1, 2013 shall pay 50% of the normal share of costs required by PEPRA.

47.10.2 Effective January 1, 2017, in addition to the contribution in Section 47.10.1, New Members will contribute eight percent (8.0%) towards the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allows such contributions as pre-tax via automatic payroll deduction, in exchange for the City granting the salary increase (5.58%) set forth in Section 9.1.6 of this Memorandum Agreement. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.

47.10.3 The parties recognize that the CalPERS 20516 employee contributions towards the employer rate is in addition to the required 50% of the normal cost of "New Members" benefits and made in consideration of additional salary increases in Section 9.1.6 above (5.58% salary increase in exchange for employees paying eight percent (8.0%) towards PERS pension cost).

47.10.4 If legislation is enacted and becomes effective during this agreement requiring "classic members" as defined by PEPRA to pay all of the employees' share of retirement thus requiring the discontinuation of the



20516 employee contribution towards the employer rate as described in Section 47.9.2 above, the parties agree that as soon as possible the City shall convert the "New Members" eight percent (8.0%) contribution under the 20516 contract amendment to an equivalent payroll deduction. Such employee deductions by the City shall be used towards the City's CalPERS required contribution.

## **SECTION 48: PUBLIC AGENCY RETIREMENT SYSTEM**

### **48.1 PARS**

Employees who are otherwise not covered by the provisions of Section 47 (Public Employees' Retirement System), shall be enrolled in the Public Agency Retirement System (PARS).

### **48.2 Employee's PARS Contributions**

**48.2.1 Employee Contribution:** Each pay period, each employee shall contribute three and three-quarters percent (3.75%) of his or her salary and deposited into his or her PARS account.

**48.2.2 Excluded from Salary:** The aforesaid contribution shall not be considered as part of an employee's salary for the purpose of computing straight time earnings, compensation for overtime worked, or education incentive pay; nor shall such contribution be taken into account in determining the level of any other benefit which is a function of or percentage of salary. The City reserves the right to take said contribution into account for the purpose of salary comparisons with other employers.

**48.2.3 City Contribution:** Each pay period, the City shall contribute three and three-quarters percent (3.75%) of the employee's salary and deposited into their individual PARS account.

### **48.3 Termination from Employment**

Upon termination from employment, the employee or his or her beneficiary shall receive payment in full of all monies deposited in the employee's individual PARS account.

## **SECTION 49: SUPPLEMENTAL RETIREMENT/DISABILITY INSURANCE PLAN**

Effective January 1, 1983, the majority of miscellaneous employees under the City's contract with the State of California Public Employees' Retirement System who were covered by the integrated Social Security Program voted to withdraw from participation in the Federal Social Security Program. In lieu of Social Security payments, the City has agreed to pay an amount equal to that percent of individual pay (6.7% payable on the first

\$32,400 of salary paid in the calendar year) which had been paid by the City to Social Security as of December 31, 1982 to a Supplemental Retirement and Income and Long Term Disability Insurance Plan for those employees previously covered under the integrated CalPERS/Social Security Plan. Provisions of this plan are described in City of Berkeley Municipal Code Section 04.36.101 et seq. (Supplementary Retirement and Income Plan I and 04.38.101 et. seq. (Supplementary Retirement and Income Plan II) as amended.

As of November 27, 1994 the City will assume the premium payment of the optional SRIP II Long-Term Disability Plan for those members who are then enrolled in the program. Upon completion of re-negotiations of the optional disability plan with the insurance carrier, the City will assume the premium payment for all members.

## **SECTION 50: INCREASED HOURS**

Part-time career employees in the same classification shall be notified and have the opportunity to apply for increased hours in a classification before hiring from the outside. Decisions to offer the increased hours shall be based on program necessities. This provision shall not apply when the increased hours are offered to the occupant of the position and he/she has accepted same.

## **SECTION 51: LIBRARY AIDES**

### **51.1 Minimum Positions**

The City shall establish an ongoing level of 9.63 additional FTE Library Aide positions (10.63 at start, leveling to 9.63 through attrition), 8 positions to be 20 hours per week with full pro rata fringe benefits. This will be in addition to the existing 2.925 FTE career Library Aide positions which will remain career positions of at least 20 hours per week.

### **51.2 Applicable Provisions**

Part-Time Library Aides who work less than 20 hours per week do not receive health and welfare benefits including, but not limited to, medical coverage, pension benefits under CalPERS, retiree medical coverage, Supplementary Retirement and Income Plan, Long-Term Disability Plan, group life insurance, cash-in-lieu benefits and education leave. Part-Time Library Aides who work less than 20 hours per week do receive pro-rated vacation leave accrual, sick leave accrual, compensatory time accrual and floating holiday accrual. All other provisions of this Agreement are applicable to these Part-Time Library Aides who work less than 20 hours per week.

**51.3 Salary Advancement**

When a permanent part-time Library Aide who works less than 20 hours per week has worked 1040 hours without terminating his/her service with the City or being terminated from his/her service with the City, such employee shall be moved to the second salary step within his/her classification on the first day of the payroll period following completion of said 1040 hours, provided that at least twelve (12) calendar months shall pass from step increase to step increase. Such employees shall be eligible for subsequent step increases on a 1040 hour formula.

An employee classified in a single classification who is specifically assigned to work in a different classification shall receive credit for such temporary hours worked in the employee's basic classification.

**51.4 Step Increases**

Hourly Library Aides who are appointed to 20 hour fully benefited positions receive the first step increase after that appointment based on the 1040 rule provided that 12 months have passed since the date of the last step increase. The anniversary date for further successive annual step increases shall be established based on the date of the first step increase after the 20 hour appointment is effective.

## **ARTICLE 9 - LAYOFF PROCEDURE**

### **SECTION 52: LAYOFF**

This layoff policy for the City of Berkeley is intended to provide the maximum employment protection to the City staff should a layoff become necessary. The policy also aims to minimize the impact such a layoff might have on the City's affirmative action accomplishments.

#### **52.1 Announcement of Layoff**

52.1.1 The City Council, City Manager, and Department Head shall make every reasonable effort to manage and budget the City's resources effectively and to plan for the delivery of City services in a manner which will avoid the necessity to lay off career City employees. If a reduction in the work force is necessitated by, but not limited to, the following: a material change in duties and organization, adverse working conditions, return of employee from leave of absence, or shortage of work or funds, the City Manager shall notify the Director of Human Resources of the intended action and the reason for the layoff.

52.1.2 Immediately following a decision which may involve the potential layoff of career City employees, the City Manager shall freeze all current City vacancies in the competitive service in similar and related classifications to those likely to be targeted for layoff, as well as all related full-time, benefited, temporary positions which are expected to last six (6) months or more, and shall notify the Department Heads that such current and anticipated vacancies will be frozen until further notice in order to implement the provisions of Sections 52.4 (Employee Retreat Rights/Out Placement) and 52.5 (Employee/Union Notification). In notifying Department Heads of a freeze required by this section, the City Manager shall require that requisitions continue to be submitted for any budgeted positions which the Department intends to fill and for which funding is available.

52.1.3 After the City has announced the need for a reduction in force, including the magnitude of such reduction, and has informed employees of their prospective layoff or retreat, but before any actual layoff, the City will consider employee requests for the alternative action, including job sharing.

#### **52.2 Seniority Service Date**

52.2.1 All service in the employ of the City shall be counted toward the establishment of an employee's Seniority Service Date, including, for example, permanent, probationary, provisional, temporary (full-time and intermittent), seasonal, exempt employment, as well as leaves of absence

for obligatory military service and approved family care leave while an employee of the City. Less than full-time service will be consolidated into equivalences of full-time service for the purpose of establishing the Seniority Service Date. Time off as a result of formal disciplinary action will be subtracted from the Seniority Service Date.

- 5222 The Human Resources Department shall maintain up-to-date and current Seniority Dates for all City employees holding probationary and permanent appointments.

### 52.3 Establishment of Seniority Lists

- 5231 Whenever a layoff of one or more career employees becomes necessary, as defined above, such layoffs shall be made according to City-wide classification Seniority Lists. Upon receiving notification that the City Manager must proceed with a possible reduction in the work force, and following receipt of information concerning the specific positions, programs, and departments involved, the Human Resources Department will immediately establish separate Probationary and Permanent Seniority Lists for each classification targeted for layoff.

- 5232 The names of all City employees holding permanent and probationary appointments in a given classification will be on the appropriate list in descending order by Seniority Service Date. Employees on both lists shall be laid off on the basis of their Seniority Service Date, i.e., employees with the least amount of total service shall be laid off first. All emergency, temporary, and provisional employees working in classifications similar to those identified for layoff must be terminated prior to the layoff of probationary or permanent employees. Employees on the Probationary Seniority List for a specific classification will be laid off prior to employees on the Permanent Seniority List for that class.

- 5233 Probationary or permanent employees temporarily acting out of classification and holding a provisional appointment in another classification will be listed only on a Seniority List for the class in which they hold permanent or probationary status and which is targeted for layoff.

- 2.3.4 If two (2) or more employees on a Seniority List have an identical Seniority Service Date, the tie shall be broken in the following order:

- 52.3.4.1 Time in classification - the employees having least time in the class shall be released first;

- 52.3.4.2 By lot.

## 52.4 Employee Retreat Rights/Out Placement

524.1 Before an employee with permanent or probationary status may be released from employment with the City of Berkeley, the Human Resources Department must consider the employee's right to retreat to lower level classifications through which he or she was originally promoted, or any subsequently created intermediate level career classification which provides normal progression through the classification series. Retreat rights shall also extend to employees who have not previously been promoted through a classification but for whom the classification is a natural progression or beginning in the classification series.

In addition to providing the employee with the appropriate retreat offer, when it is determined to be in the best interest of the service, the City Manager may authorize the Human Resources Department to offer the affected employee the option of out placement. The out placement offer would provide a designated amount of funds to be paid to the employee for use by the employee for career development. The employee could either accept the retreat offer (offer to bump another employee) or accept the out placement offer. If the employee accepts the out placement offer, the employee forfeits his or her rights under the layoff policy and will be laid off without rights to re-employment.

524.2 In the process of retreating, the same rules concerning the length of service, classification, Seniority Lists, etc., apply as in the first stage of the layoff process. In order to retreat, the targeted employee must be higher on the Seniority List for the classification into which he or she is retreating than at least one of the incumbents on the probationary or permanent Seniority List for that class.

524.3 **Waiver of Minimum Qualifications:** The City Manager may consider a temporary waiver of minimum qualification standards where the employee, because of (a) changes to the minimum requirements of a previously held classification, or (b) changes to the minimum requirements of a subsequently created intermediate level career classification in the same classification series, no longer meets the minimum qualifications of the previously held or intermediate level classification. The temporary waiver of minimum qualification standards shall be subject to a twelve (12) month probationary period during which time the employee must meet the new minimum qualifications of the classification. The employee shall be subject to the provisions of Sections 31.7 (Probationary Performance Evaluations) and 31.8 (Rejection During Probationary Period) of this Agreement. Employees shall be advised of her or his progress in writing after three (3), six (6) and eleven (11) months in the classification. If at the conclusion of the probationary period, management determines that the employee is not

meeting the minimum qualifications of the position, then the employee shall again be subject to the layoff process. Management will ensure that the retreating employee will receive orientation and feedback during the probationary period.

- 5244 If an employee is qualified for retreat into more than one classification with comparable salary ranges, or if a vacancy exists in a classification to which an employee is entitled to retreat, the Director of Human Resources shall discuss the options with the employee and due consideration shall be given to the employee's preferences. The Director of Human Resources shall then make a recommendation to the City Manager. However, it is the prerogative of the City Manager to determine the final placement offer to the employee.
- 5245 **Salary Placement:** The retreating employee has a right to be retained in the highest salary range possible which is equal to or less than his/her present salary range. An employee involved in layoff does not have a right of mandatory placement in positions with a higher salary range, i.e., promotion.
- 5246 **Reduction in Hours:** If an employee with a full time position is offered a reduction in hours in that position or in a lower classification, the employee may elect to be targeted for layoff for purpose of consideration under Section 52.6 (Flexible Placement Program/Out Placement) If there is no flexible placement available for the employee, the employee may accept the reduction in hours, in lieu of layoff.

## 52.5 Employee/Union Notification

- 5251 Emergency, temporary, intermittent, seasonal, etc., employees shall be notified individually, in writing, of pending layoff as soon as possible. However, at least two (2) weeks notification is desirable if possible.
- 5252 Provisional employees shall be notified individually, in writing, of pending layoff as soon as possible, with no less than fifteen (15) calendar days notification if targeted for release or reassignment.
- 5253 Permanent, probationary, and career-exempt employees shall be notified individually, in writing, of pending layoffs as soon as possible, with no less than thirty (30) calendar days notification if targeted for release or reassignment.

If an employee fails to accept a bona fide offer of reassignment within ten (10) calendar days after the offer has been made, he/she forfeits further right to employment retention. Acceptance of a reassignment does not remove the right of appeal under Section 52.10 (Appeal Procedures).

All notices of layoff under Section 52.5 (Employee/Union Notification) shall be issued to the Union simultaneously with notice to the affected employee(s). Together with any layoff notices sent to the Union, a list shall be included of all vacancies which are authorized for filling.

## **52.6 Flexible Placement Program/Out Placement**

526.1 In order to minimize the negative impact of a layoff, the City Manager will, as previously stated in Section 52.1.2 impose a City-wide freeze on all appropriate vacancies as soon as it has been determined that a layoff of career City employees may be necessary.

526.2 Following the release of all emergency, temporary, and provisional employees in classes similar to those targeted for layoff, and as soon as employees targeted for layoff have been identified and the provisions under Section 52.4 (Employee Retreat Rights/Out Placement) have been carried out, the Human Resources Department will review and identify the frozen vacant classifications into which employees ultimately targeted for layoff may be placed on the basis of total experience and education. In making this decision, a waiver of minimum qualification standards and/or the substitution of related experience and education may be made, with an understanding on the part of management and supervisory personnel that adequate supervised on-the-job training which can be completed within no more than six (6) months will be provided to facilitate job adjustment and to compensate for the waiver of qualification standards if that has occurred.

A training program shall be developed with the employee, the supervisor, and the Training Officer. The employee shall be advised of her/his progress in writing after two months, four months and six months in the new classification. If at the end of this time the employee is unable to adequately perform the assignment, then the employee shall be again subject to the layoff process.

526.3 In addition to providing the employee with the flexible placement offer, when it is determined to be in the best interest of the service, the City Manager may authorize the Human Resources Department to offer the affected employee the option of out placement. The out placement offer would provide a designated amount of funds to be paid to the employee for use by the employee for career development. The employee could either accept the flexible placement offer (offer to be flexibly placed in a vacant position) or accept the out placement offer. If the employee accepts the out placement offer, the employee forfeits his or her rights including, but not limited to, retreat rights, flexible placement and re-employment rights, under the layoff policy and will be laid off. All offers of out placement will be made in a manner to comply with general law and the affected employee will be



required to sign a waiver and release of all claims in consideration for receiving this benefit.

The City Manager, at his sole discretion, may approve outplacement payments in accordance with the Layoff Procedure at the rate of \$1,000 or 2% of annual salary; whichever is greater, for each full time equivalent year of City Service, up to a maximum of \$30,000.

5264 Assignments under the Flexible Placement Program shall be limited to positions in the same or lesser salary range as the classification from which the employee is to be laid off, except that the City Manager may authorize the offer of a flexible placement to position with a maximum salary of no more than five (5) percent above the salary range as the classification from which layoff is targeted, when it is in the best interest of the City service to do so. Whenever flexible placement is made to a classification with a greater salary range, the appointment shall be probationary, in accordance with the terms of that classification.

5265 All employees in classifications from which layoffs would otherwise be made shall be eligible to apply for flexible placement positions on a voluntary basis. Where more qualified employees apply under flex placement than are needed to prevent layoffs, each employee must be evaluated for his or her background (as opposed to classification) to determine whether the employee can assume full duties of flex placement within six months. The City will choose the applicants it considers best qualified to be offered the flex placement position. Where there are not enough volunteers for flexible placement, all employees slated for Layoff shall constitute the flexible placement pool of employees and offers to positions under the Flexible Placement Program shall be made as follows:

- 52.6.5.1 The total experience and education for each employee slated for layoff is compiled.
- 52.6.5.2 The employees slated for layoff are listed by order of seniority and placed in positions in order of seniority.
- 52.6.5.3 The right to Flexible Placement shall remain in force for the duration of the re-employment list.
- 52.6.5.4 All offers and placements made under this provision of the layoff policy shall be documented in detail, with records available for audit and review. Upon request, a written statement of the reasons for not offering an employee a particular position shall be made to the employee and/or the Union.

- 5266 Offers to positions under the Flexible Placement Program shall be made according to Seniority Service Date and in accordance with the Probationary and Permanent Seniority List certification process outlined in Section 52.3 (Establishment of Seniority Lists) and in accordance with the following procedures:
- 52.6.6.1 Full-time vacancies authorized to be filled shall be listed in order from highest to lowest based on the actual maximum salary.
  - 52.6.6.2 Part-time vacancies authorized to be filled shall be included in the above list in order based on the actual monthly maximum salary for the hours involved.
  - 52.6.6.3 The individual with the earliest Seniority Service Date (SSD) targeted for layoff will be considered for flexible placement in the top position on the above list.
  - 52.6.6.4 If it is determined that the person with the earliest SSD is eligible and qualified for flexible placement in the top position on the list, the Director of Human Resources shall recommend to the City Manager that the employee be offered the position. If the City Manager approves the recommendation, the employee shall be offered the position.
  - 52.6.6.5 If the City Manager and/or Director of Human Resources determines that the employee is not eligible or not qualified for the top position, the Director of Human Resources shall proceed down the list of vacancies in an effort to identify the next highest position for which the employee is eligible and qualified for flexible placement. Upon identification of such a match, the Director of Human Resources shall recommend to the City Manager that the employee be offered the position.
  - 52.6.6.6 This above process shall be repeated until either a match is identified or the list of vacancies has been exhausted.
  - 52.6.6.7 The above process shall be repeated next for the employee with the second highest SSD, and, subsequently in order from earliest to most recent SSD for each other employee targeted for layoff.
- 5267 If an employee fails to accept a bona fide written offer of an alternative job within ten (10) calendar days after the offer has been made, he or she forfeits further rights to employment retention. Acceptance or rejection of an alternative job under the Flexible Placement Program in no way jeopardizes an employee's standings on the Reemployment Priority Lists

on which his or her name has been placed in accordance with Section 52.7 (Reemployment Lists).

## 52.7 Reemployment Lists

- 527.1 The names of all probationary and permanent employees released from positions in the competitive service as a result of layoff must be placed on Reemployment Priority Lists for those classifications from which they were separated, as well as all other classifications to which they have retreat rights in accordance with Section 52.4 (Employee Retreat Rights/Out Placement).
- 5272 A Reemployment Priority List shall remain in effect for three (3) years. Said list shall remain in effect indefinitely for employees who are retreated or flexibly placed and remain employed with the City. Except that eligibility for reemployment in seasonal positions shall not be in effect for more than one year.
- 5273 Departments with vacancies in any classification for which there is an active Reemployment Priority List must use the Reemployment Priority List to fill their positions and may not use any other recruitment or appointment method to fill a vacancy until appropriate Reemployment Lists have been exhausted.
- 5274 When a vacancy occurs in a class for which there is a Reemployment Priority List, the employee on the appropriate Reemployment Priority List with the highest Seniority Date shall be given the offer of employment with a copy sent to the Department Head. Employees so certified from the Reemployment Priority List must be appointed to the existing vacancy.
- 5275 If a former employee fails to accept a bona fide written offer of reemployment to the class from which s/he was laid off within fifteen (15) calendar days, his/her name will be removed permanently from the Reemployment Priority List from which the offer was made unless the offer of reemployment is for fewer hours than his/her previous position. Failure to accept an offer of reemployment to the class with the highest salary range for which the employee is eligible for reemployment will result in automatic removal from all Reemployment Priority Lists. However, the employee may decline (or accept) temporary reemployment or reemployment to lower salary range classifications without jeopardizing his/her standing on the Reemployment Priority List for the classification from which s/he was originally terminated.
- 5276 Upon reappointment to the classification from which the employee was originally separated or demoted, the employee has the right to be placed at

the step of the salary range which the employee held at the time of layoff or demotion.

## 52.8 Reinstatement List

5281 Provisions of this Section 52.8 (Reinstatement List) shall be applicable only to unrepresented positions and positions represented by Unions and/or Associations which have incorporated identical language in their Memorandum Agreement and/or in formally executed Letters of Agreement.

5282 Any former employee on a reemployment list shall be included on the reinstatement list for a specific class at or below the class from which s/he was laid off whenever s/he both:

52.8.2.1 meets minimum qualifications of the specific class and

52.8.2.2 has requested reinstatement in that class.

5283 In order to permit reinstatement in another specific class of an individual who is on a mandatory reemployment list, minimum qualifications may be waived and On-the-Job Training (OJT) may be provided as specified under the Flexible Placement Program.

Such individuals shall be included on the eligibility list certified for a specific position and identified as eligible based on this provision.

5284 Consideration for 53.8.2 and/or 53.8.3 would be based on a written request from an employee for reinstatement in that specific class; such request must include an updated City of Berkeley job application form.

5285 **Berkeley Matters** shall be sent to all former employees on Reemployment Lists.

## 52.9 Career-Exempt Employees

Only those employees holding full-time, benefited exempt positions who, in the past, have achieved permanent status and have been continuously employed without a break in service between their career and exempt appointment, have the right to retreat to previously held career classifications, placement on the Reemployment Priority Lists, and all other provisions governing layoff procedures. For the purpose of layoff, such employees shall be referred to as "career-exempt".

## 52.10 Appeal Procedures

Any permanent, probationary, or career-exempt employee who is laid off, demoted, or reassigned as a result of layoff, who believes that the layoff procedure has been administered in violation of the terms of this Agreement, and those rules, regulations and resolutions which have been or may hereafter be adopted by the

City Council, as it pertains to the employee's case, may appeal the action under Section 37 (Grievance Procedure). In addition, employees may, at all times, before, during and subsequent to layoff, review all records, including Seniority Lists, Reemployment Priority Lists, documentation pertaining to appointments under the Flexible Placement Program, etc., which pertain to their classification and their rights under the provisions of the layoff policy.

#### **52.11 Reclassification or Reallocation of Positions**

Reclassification or reallocation of positions shall not be used as a mechanism, the sole purpose of which is to improperly circumvent the provisions of this Agreement, including provisions relating to layoff, transfer, demotion or promotion.

#### **52.12 Audit**


52.121 If it is determined that a vacancy has been filled by an employee not on the appropriate Reemployment Priority List in a classification for which a Reemployment Priority List existed and which included available applicants at the time, the former employee with reemployment rights shall be hired and given retroactive pay from the date that the vacancy occurred. The employee who was originally hired to fill the vacancy shall continue to be retained in City employment provided s/he has completed her/his probationary period.

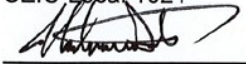
52.122 In the event of a dispute between the Union and the City over the application of the Reemployment Priority Lists and if either party so requests, the City Manager's Office shall order an audit by an outside auditor of all vacant positions filled in each department, and authorized positions which have not been filled, to determine whether the vacancies occurred in classifications for which Reemployment Priority Lists were in existence, and, if so, whether the appointments made by the selecting official were in accordance with the procedures outlined in Section 52.7 (Reemployment Lists). In the event vacancies for which Reemployment Priority Lists were in existence remained unfilled, the auditor shall offer an opinion as to whether or not the reasons for leaving the positions vacant appear to be legitimate. A report of the audit must be transmitted to the City Manager, the City Council and the Union.

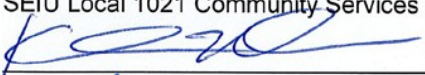
**SIGNATURE PAGE**


This Memorandum Agreement is executed this 16 day of October, 2018, by the employer-employee relations representatives whose signatures appear below for their respective organizations.

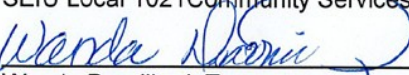
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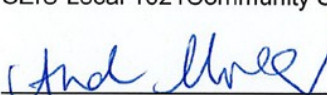
  
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Jose Martinez, Chief Negotiator  
SEIU Local 1021

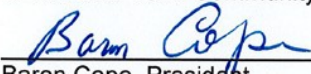
  
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Nathan Dahl, President  
SEIU Local 1021 Community Services

  
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Khin Chin, Vice President  
SEIU Local 1021 Community Services

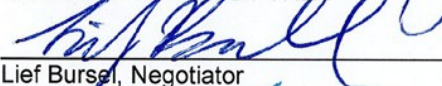
  
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Michael Marchant, Chief Steward  
SEIU Local 1021 Community Services

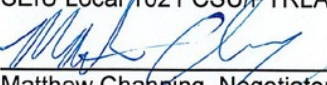
  
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Wanda Drouillard, Treasurer  
SEIU Local 1021 Community Services

  
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Andrea Mullarkey, Secretary  
SEIU Local 1021 Community Services

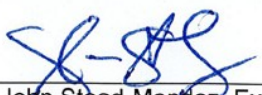
  
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Baron Cope, President  
SEIU Local 1021 Part-Time Recreational  
Leaders Association

  
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Marcellis Ashley, Negotiator  
SEIU Local 1021 CSU/PTRLA

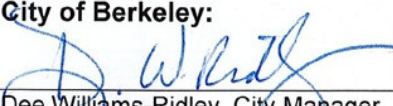
  
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Lief Bursell, Negotiator  
SEIU Local 1021 CSU/PTRLA

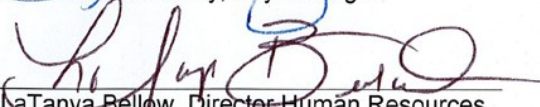
  
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Matthew Channing, Negotiator  
SEIU Local 1021 Community Services

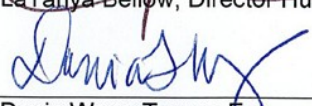
  
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Rodolfo Tapia, Negotiator  
SEIU Local 1021 CSU/PTRLA

  
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John Stead-Mendez, Executive Director  
SEIU Local 1021

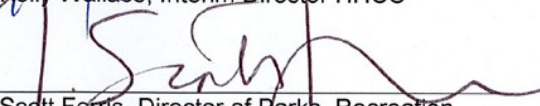
**City of Berkeley:**

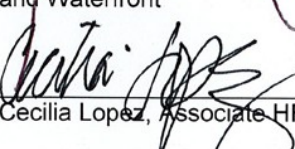
  
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Dee Williams-Ridley, City Manager

  
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Tanya Bellow, Director Human Resources

  
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Dania Wong-Torres, Esq.  
Chief Negotiator

  
\_\_\_\_\_  
Kelly Wallace, Interim Director HHCS

  
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Scott Ferris, Director of Parks, Recreation  
and Waterfront

  
\_\_\_\_\_  
Cecilia Lopez, Associate HR Analyst

**Exhibit A – Salary Ranges October 21, 2018 through October 19, 2019  
(3% Wage Increase)**

<b>Job Code</b>	<b>Rep Unit</b>	<b>Classification Title</b>	<b>FLSA</b>	<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>	<b>Step 4</b>	<b>Step 5</b>
21070	L	Accountant I	N	35.8881	37.4269	38.9417	40.5675	42.3598
21170	L	Accountant II	N	41.9649	43.7594	45.7007	47.6161	49.7215
28230	L	Applications Programmer/Analyst I	N	43.5092	45.3641	47.4003	49.4882	51.6279
28220	L	Applications Programmer/Analyst II	N	47.4781	49.5744	51.8092	54.1471	56.5977
22280	L	Architect	E	53.9747	56.5545	59.2894	62.1363	65.0783
22270	L	Assistant Architect	E	46.2615	48.3753	50.6875	53.1553	55.7691
24060	G1	Assistant Environmental Health Specialist	N	0	0	38.0222	40.0582	41.6540
28090	L	Assistant Management Analyst	N	35.8653	37.4183	38.9363	40.5412	42.3360
54040	G1	Assistant Mental Health Clinician	N	30.1796	31.2493	32.2504	33.3805	35.0631
29200	L	Assistant Planner	N	36.0893	37.6769	39.1955	40.8521	42.6206
28100	L	Associate Management Analyst	N	44.7426	46.6957	48.8069	50.9017	53.1291
29030	L	Associate Planner	N	43.5785	45.5023	47.3485	49.4623	51.7314
21340	L	Auditor I	N	35.8881	37.4269	38.9417	40.5675	42.3598
21160	L	Auditor II	N	44.7426	46.8537	48.8568	50.9597	53.1291
26070	IA	Automation Librarian	N	43.3713	45.3901	47.5296	49.8074	52.2492
24780	G1	Behavioral Health Clinician I	E	38.3945	40.0046	41.6463	43.3198	45.0329
24790	G1	Behavioral Health Clinician II	E	42.2888	43.9702	45.7068	47.5311	49.3950
37060	L	Building Inspector I (Certified)	N	42.5946	44.4410	46.4599	48.4182	50.5322
37050	L	Building Inspector II	N	43.8887	45.7872	47.8663	49.8850	52.0679
37070	L	Building Inspector II (Certified)	N	45.6577	47.6161	49.7818	51.8870	54.1558
35160	L	Building Plans Examiner	N	45.6577	47.6161	49.7818	51.8870	54.1558
28020	L	Buyer	N	38.3672	40.0756	41.6630	43.4058	45.2779
96080	IA	Central Library Circulation Supervisor	N	33.9671	35.4076	36.9351	38.5312	40.5326
24110	G1	Clinical Psychologist	E	46.7793	48.5996	50.5234	52.4994	54.6131
33090	L	Code Enforcement Officer I	N	33.7342	35.3045	36.9435	38.6694	40.4808
33100	L	Code Enforcement Officer II	N	40.9556	42.7242	44.6653	46.5462	48.5908
28330	L	Community Development Project Coordinator	E	46.5892	48.8238	51.2311	53.7417	56.3300
55070	G1	Community Health Worker	N	0	27.7985	28.4280	29.1357	30.5766
55370	G1	Community Health Worker Specialist	N	30.1796	31.2493	32.2504	33.3805	35.0631
28080	L	Community Services Specialist I	N	35.8881	37.4269	38.9417	40.5675	42.3598
28120	L	Community Services Specialist II	N	44.7426	46.6957	48.8069	50.9017	53.1291
28320	L	Disability Services Specialist	N	44.7426	46.6957	48.8069	50.9017	53.1291
28840	L	Emergency Services Coordinator	N	44.7442	46.7045	48.8020	50.8993	53.1334
28830	L	Environmental Compliance Specialist	E	48.4591	50.1725	52.0600	54.1378	56.1521
24220	G1	Epidemiologist	E	38.5376	40.4631	42.4846	44.6087	46.8410



Job Code	Rep Unit	Classification Title	FLSA	Step 1	Step 2	Step 3	Step 4	Step 5
41050	L	Field Representative	N	0	0	33.4665	34.8212	36.3913
35090	L	Fire and Life Safety Plans Examiner	N	50.3166	52.4907	54.8717	57.1927	59.7292
75070	L	Fire Prevention Inspector	N	40.9556	42.7242	44.6653	46.5462	48.5908
24590	G1	Hazardous Materials Specialist I	N	42.6722	44.1649	45.8303	47.6506	49.4536
24560	G1	Hazardous Materials Specialist II	N	48.4616	50.1697	52.0590	54.1384	56.1573
24190	G1	Health Educator	E	42.2135	43.8483	45.5511	47.3294	49.2064
33080	L	Housing Inspector	N	40.9556	42.7242	44.6653	46.5462	48.5908
33060	L	Housing Inspector (Certified)	N	42.5946	44.4410	46.4599	48.4182	50.5322
28300	L	Information Systems Specialist	N	40.7026	42.4631	44.3586	46.2860	48.3084
36050	L	Information Systems Support Technician	N	33.7858	35.0543	36.3568	37.7201	39.1265
22290	L	Landscape Architect	E	52.0570	54.4340	57.0356	59.8286	62.7707
26050	IB	Librarian I	N	35.0715	36.7366	38.5913	40.3084	42.0512
26040	IB	Librarian II	N	38.5913	40.3084	42.0512	44.0096	45.8991
42450	IB	Library Aide	N	21.0686	22.0696	23.0185	24.0023	24.6580
42130	IB	Library Assistant	N	25.5811	26.6940	27.8587	29.0405	30.4039
26150	IA	Library Literacy Program Coordinator	N	36.9608	38.6088	40.2911	42.1288	43.9664
42462	ID	LIBRARY PAGE	N	0	0	0	0	18.0000
26100	IA	Library Special Services Coordinator	E	41.5509	43.5351	45.6404	47.7714	50.0577
42500	IB	Library Specialist I	N	28.8769	30.1104	31.4133	32.7421	34.4592
46100	IB	Library Specialist II	N	30.4039	32.0346	33.3979	34.7780	36.5212
64200	G1	Mealsite Coordinator	N	0	0	26.7973	27.4273	28.0828
24700	G3	Mid-level Practitioner	E	0	53.6382	55.4155	57.4343	59.4706
63200	G1	Mini Bus Driver	N	0	0	27.0909	28.1432	29.2995
24040	G1	Nutritionist	E	37.5564	39.0402	40.5154	42.0512	43.7767
35150	L	Permit Specialist	N	32.0085	33.5359	35.0369	36.6763	38.3931
35200	L	Planning Technician	N	32.2094	33.9058	35.6882	37.5635	39.5381
24760	G1	Psychiatrist	E	83.6501	87.8305	92.2200	96.8303	101.6737
24020	G3	Public Health Nurse	E	49.3076	51.0742	53.1306	55.3492	57.5183
65742	R2	RECREATION ACTIV LDR R2	N	18.8563	20.9032	23.3463	25.6015	28.5459
65740	R1	Recreation Activity Leader	N	19.3339	21.4202	23.8500	26.2788	29.2681
24050	G1	Registered Environmental Health Specialist	N	43.4705	44.9853	46.7062	48.5464	50.3787
24030	G3	Registered Nurse	E	0	47.7609	49.4104	51.0983	52.9372
21360	L	Revenue Development Specialist I	N	35.8869	37.4309	38.9417	40.5784	42.3609
21150	L	Revenue Development Specialist II	N	44.7442	46.7045	48.8020	50.8993	53.1334
24800	G1	Senior Behavioral Health Clinician	E	46.1591	48.0232	49.8074	51.7822	53.8840
32030	L	Senior Building Inspector	N	50.3166	52.4907	54.8717	57.1927	59.7292
35170	L	Senior Building Plans Examiner	N	50.3166	52.4907	54.8717	57.1927	59.7292
55390	G1	Senior Community Health Specialist	N	31.6983	32.8110	33.8636	35.0109	36.7971
24690	G1	Senior Environmental Health Specialist	N	45.6517	47.2536	49.0222	50.9813	52.9006



Job Code	Rep Unit	Classification Title	FLSA	Step 1	Step 2	Step 3	Step 4	Step 5
41030	L	Senior Field Representative	N	0	0	36.2104	37.8065	39.3507
28260	L	Senior Health Management Analyst	N	46.1495	48.3666	50.7306	53.2411	55.7949
28960	L	Senior Information Systems Specialist	N	44.8744	46.8727	48.9828	51.1953	53.4796
26060	IB	Senior Librarian	N	40.3516	42.0944	43.9495	45.9684	47.9612
35140	L	Senior Permit Specialist	N	34.6176	36.3618	38.1709	40.0883	42.6476
29020	L	Senior Planner	E	50.1095	52.3524	54.7425	57.1496	59.7035
24010	G3	Senior Public Health Nurse	E	53.9996	56.0699	58.2041	60.6772	63.0090
65560	G1	Senior Service Aide	N	0	0	24.2957	25.1840	26.1849
65570	G1	Senior Service Assistant	N	0	0	31.0254	31.8362	32.6041
24810	G1	Social Services Specialist	N	35.8869	37.4308	38.9416	40.5783	42.3608
65532	R2	SPORTS FIELD MONITOR	N	0	0	0	0	18.0000
65750	R1	Sports Official	N	20.3767	23.7859	27.1949	30.6032	34.0250
65752	R2	SPORTS OFFICIAL R2	N	19.8590	23.1795	26.5206	29.8199	33.1400
26030	IA	Supervising Librarian	E	45.9767	48.1079	50.3769	52.7929	55.3896
46090	IA	Supervising Library Assistant	N	31.1804	32.4745	33.8893	35.3475	38.3731
34040	G1	Vector Control Technician	N	0	0	31.8612	32.9637	33.9812

**Exhibit B – Salary Ranges as of October 20, 2019  
(2.0% Salary Increase)**

Job Code	Rep Unit	Classification Title	FLSA	Step 1	Step 2	Step 3	Step 4	Step 5
21070	L	Accountant I	N	36.6059	38.1754	39.7206	41.3789	43.2070
21170	L	Accountant II	N	42.8042	44.6346	46.6147	48.5684	50.7159
28230	L	Applications Programmer/Analyst I	N	44.3794	46.2714	48.3484	50.4780	52.6605
28220	L	Applications Programmer/Analyst II	N	48.4276	50.5659	52.8453	55.2301	57.7296
22280	L	Architect	E	55.0542	57.6856	60.4751	63.3791	66.3799
22270	L	Assistant Architect	E	47.1867	49.3428	51.7012	54.2184	56.8845
24060	G1	Assistant Environmental Health Specialist	N	0	0	38.7826	40.8594	42.4871
28090	L	Assistant Management Analyst	N	36.5826	38.1667	39.7151	41.3521	43.1827
54040	G1	Assistant Mental Health Clinician	N	30.7832	31.8743	32.8954	34.0481	35.7644
29200	L	Assistant Planner	N	36.8110	38.4304	39.9795	41.6691	43.4731
28100	L	Associate Management Analyst	N	45.6375	47.6296	49.7830	51.9198	54.1917
29030	L	Associate Planner	N	44.4500	46.4123	48.2955	50.4515	52.7660
21340	L	Auditor I	N	36.6059	38.1754	39.7206	41.3789	43.2070
21160	L	Auditor II	N	45.6375	47.7908	49.8339	51.9789	54.1917
26070	IA	Automation Librarian	N	44.2388	46.2979	48.4802	50.8035	53.2942
24780	G1	Behavioral Health Clinician I	E	39.1624	40.8047	42.4792	44.1862	45.9335
24790	G1	Behavioral Health Clinician II	E	43.1346	44.8496	46.6210	48.4817	50.3829
37060	L	Building Inspector I (Certified)	N	43.4465	45.3298	47.3891	49.3866	51.5428
37050	L	Building Inspector II	N	44.7665	46.7029	48.8236	50.8827	53.1093
37070	L	Building Inspector II (Certified)	N	46.5708	48.5684	50.7774	52.9247	55.2390
35160	L	Building Plans Examiner	N	46.5708	48.5684	50.7774	52.9247	55.2390
28020	L	Buyer	N	39.1346	40.8771	42.4963	44.2739	46.1834
96080	IA	Central Library Circulation Supervisor	N	34.6464	36.1158	37.6738	39.3018	41.3433
24110	G1	Clinical Psychologist	E	47.7148	49.5716	51.5339	53.5494	55.7053
33090	L	Code Enforcement Officer I	N	34.4089	36.0106	37.6823	39.4428	41.2904
33100	L	Code Enforcement Officer II	N	41.7747	43.5786	45.5586	47.4772	49.5626
28330	L	Community Development Project Coordinator	E	47.5210	49.8003	52.2557	54.8165	57.4566
55070	G1	Community Health Worker	N	0	28.3545	28.9966	29.7185	31.1881
55370	G1	Community Health Worker Specialist	N	30.7832	31.8743	32.8954	34.0481	35.7644
28080	L	Community Services Specialist I	N	36.6059	38.1754	39.7206	41.3789	43.2070
28120	L	Community Services Specialist II	N	45.6375	47.6296	49.7830	51.9198	54.1917
28320	L	Disability Services Specialist	N	45.6375	47.6296	49.7830	51.9198	54.1917
28840	L	Emergency Services Coordinator	N	45.6390	47.6386	49.7781	51.9172	54.1961
28830	L	Environmental Compliance Specialist	E	49.4283	51.1759	53.1012	55.2206	57.2752
24220	G1	Epidemiologist	E	39.3084	41.2723	43.3343	45.5008	47.7778
41050	L	Field Representative	N	0	0	34.1358	35.5176	37.1191

Job Code	Rep Unit	Classification Title	FLSA	Step 1	Step 2	Step 3	Step 4	Step 5
35090	L	Fire and Life Safety Plans Examiner	N	51.3229	53.5405	55.9692	58.3365	60.9238
75070	L	Fire Prevention Inspector	N	41.7747	43.5786	45.5586	47.4772	49.5626
24590	G1	Hazardous Materials Specialist I	N	43.5256	45.0482	46.7469	48.6037	50.4426
24560	G1	Hazardous Materials Specialist II	N	49.4308	51.1731	53.1002	55.2212	57.2804
24190	G1	Health Educator	E	43.0578	44.7253	46.4621	48.2760	50.1905
33080	L	Housing Inspector	N	41.7747	43.5786	45.5586	47.4772	49.5626
33060	L	Housing Inspector (Certified)	N	43.4465	45.3298	47.3891	49.3866	51.5428
28300	L	Information Systems Specialist	N	41.5167	43.3124	45.2457	47.2117	49.2745
36050	L	Information Systems Support Technician	N	34.4616	35.7554	37.0840	38.4745	39.9090
22290	L	Landscape Architect	E	53.0981	55.5227	58.1763	61.0251	64.0261
26050	IB	Librarian I	N	35.7729	37.4714	39.3632	41.1146	42.8922
26040	IB	Librarian II	N	39.3632	41.1146	42.8922	44.8898	46.8170
42450	IB	Library Aide	N	21.4900	22.5110	23.4789	24.4824	25.1512
42130	IB	Library Assistant	N	26.0928	27.2279	28.4159	29.6213	31.0120
26150	IA	Library Literacy Program Coordinator	N	37.7000	39.3810	41.0970	42.9714	44.8458
42462	ID	LIBRARY PAGE		0	0	0	0	18.0000
26100	IA	Library Special Services Coordinator	E	42.3819	44.4058	46.5532	48.7269	51.0588
42500	IB	Library Specialist I	N	29.4544	30.7127	32.0415	33.3969	35.1484
46100	IB	Library Specialist II	N	31.0120	32.6753	34.0658	35.4736	37.2517
64200	G1	Mealsite Coordinator	N	0	0	27.3333	27.9759	28.6444
24700	G3	Mid-level Practitioner	E	0	54.7109	56.5238	58.5829	60.6600
63200	G1	Mini Bus Driver	N	0	0	27.6327	28.7061	29.8855
24040	G1	Nutritionist	E	38.3075	39.8210	41.3257	42.8922	44.6522
35150	L	Permit Specialist	N	32.6487	34.2066	35.7377	37.4098	39.1610
35200	L	Planning Technician	N	32.8536	34.5839	36.4020	38.3148	40.3288
24760	G1	Psychiatrist	E	85.3231	89.5871	94.0644	98.7669	103.7071
24020	G3	Public Health Nurse	E	50.2938	52.0957	54.1932	56.4561	58.6687
65742	R2	RECREATION ACTIV LDR R2		19.2334	21.3213	23.8132	26.1136	29.1168
65740	R1	Recreation Activity Leader	N	19.7206	21.8486	24.3270	26.8044	29.8535
24050	G1	Registered Environmental Health Specialist	N	44.3399	45.8850	47.6403	49.5173	51.3863
24030	G3	Registered Nurse	E	0	48.7161	50.3986	52.1203	53.9959
21360	L	Revenue Development Specialist I	N	36.6046	38.1795	39.7206	41.3900	43.2081
21150	L	Revenue Development Specialist II	N	45.6390	47.6386	49.7781	51.9172	54.1961
24800	G1	Senior Behavioral Health Clinician	E	47.0823	48.9837	50.8035	52.8179	54.9617
32030	L	Senior Building Inspector	N	51.3229	53.5405	55.9692	58.3365	60.9238
35170	L	Senior Building Plans Examiner	N	51.3229	53.5405	55.9692	58.3365	60.9238
55390	G1	Senior Community Health Specialist	N	32.3322	33.4673	34.5409	35.7112	37.5330
24690	G1	Senior Environmental Health Specialist	N	46.5647	48.1986	50.0027	52.0010	53.9586
41030	L	Senior Field Representative	N	0	0	36.9346	38.5626	40.1377

Job Code	Rep Unit	Classification Title	FLSA	Step 1	Step 2	Step 3	Step 4	Step 5
28260	L	Senior Health Management Analyst	N	47.0725	49.3339	51.7452	54.3059	56.9108
28960	L	Senior Information Systems Specialist	N	45.7719	47.8102	49.9624	52.2192	54.5492
26060	IB	Senior Librarian	N	41.1586	42.9363	44.8285	46.8878	48.9204
35140	L	Senior Permit Specialist	N	35.3099	37.0891	38.9344	40.8900	43.5005
29020	L	Senior Planner	E	51.1117	53.3994	55.8373	58.2926	60.8976
24010	G3	Senior Public Health Nurse	E	55.0796	57.1913	59.3682	61.8907	64.2691
65560	G1	Senior Service Aide	N	0	0	24.7816	25.6876	26.7086
65570	G1	Senior Service Assistant	N	0	0	31.6459	32.4730	33.2562
24810	G1	Social Services Specialist	N	36.6046	38.1794	39.7205	41.3899	43.2080
65532	R2	SPORTS FIELD MONITOR		0	0	0	0	18.0000
65750	R1	Sports Official	N	20.7843	24.2616	27.7388	31.2152	34.7055
65752	R2	SPORTS OFFICIAL R2		20.2562	23.6431	27.0511	30.4163	33.8028
26030	IA	Supervising Librarian	E	46.8962	49.0700	51.3845	53.8487	56.4974
46090	IA	Supervising Library Assistant	N	31.8040	33.1240	34.5670	36.0544	39.1406
34040	G1	Vector Control Technician	N	0	0	32.4984	33.6230	34.6608

**Exhibit C**

**NON-CAREER EMPLOYEE PROVISIONS (UNITS G1, G3, AND L)**

- Section 1 .....Preamble
- Section 2 .....Recognized Employee Organization
- Section 3 .....No Discrimination
- Section 4 .....Union Security
- Section 5 .....Union Representatives
- Section 6 .....Separability of Provisions
- Section 7 .....Finality of Recommendations
- Section 8 .....Duration
- Section 9 .....Salaries
- Section 10 .....Higher Classification and Temporary Appointments
- Section 12 .....Hours and Days of Work
- Section 13 .....Overtime
- Section 14 .....Shift Differential
- Section 16 .....Payroll Errors
- Section 15.2 .....Bilingual Premium Pay
- Section 39.1 .....Personal Conduct
- Section 39.2 .....Use of Automobiles and Parking
- Section 52 .....Layoff

**Non-Career Employees - Paid Time Off**

A non-career employee who works one thousand forty (1040) hours or more in a calendar year in a classification covered by this Agreement, and is in active employment during December of such year, shall be credited with forty (40) hours of paid time off to be used by such employee in the subsequent calendar year for either paid vacation or paid sick leave. The following conditions shall apply to the use of paid time off:

1. To qualify for paid time off as vacation, the employee must apply in writing, to the employee's Supervisor at least thirty (30) calendar days in advance of the desired time off. The grant or denial of the requested time off shall be in writing and shall be controlled by program considerations as established by the City.
2. To qualify for paid time off as sick leave, the employee must notify the employee's Supervisor of an inability to report for work by reason of illness or injury in advance of the scheduled work.
3. An employee who has credited and unused paid time off shall receive payment for such time upon termination of employment. All credited paid time off not utilized by employees at the end of the calendar year in which the employees are eligible

to take such time will be paid off at the end of the year as wages and shall not be accumulated from year to year.

### **Salary Advancement - Non-Career Employees**

When a non-career employee has worked two thousand eighty (2080) hours subsequent to July 1, 1983 without terminating his/her service with the City or being terminated from his/her service with the City, such employee shall be moved to the next higher salary step within her/his present classification on the first day of the payroll period following completion of said 2080 hours. Non-career employees shall be eligible for subsequent step increases based on the above 2080 hour formula.

No provision herein shall be interpreted as preventing Department Heads from placing an employee at a higher salary step within a classification at her/his discretion provided the placement is made in accordance with City rules and regulations and standard pay practices.

## Appendix A

### SEXUAL HARASSMENT POLICY (OCTOBER 10, 1986)

#### **WHY SHOULD EMPLOYEES BE CONCERNED ABOUT SEXUAL HARASSMENT**

The City has adopted an Affirmative Action and Equal Employment Opportunity policy that prohibits, not only obvious forms of discrimination based on race, sex, age, religion, color, sexual preference, national origin, ethnicity, handicap/disability, but also the more hidden or subtle forms commonly called Sexual Harassment. Specifically this policy states:

"The City of Berkeley affirms its commitment to enshrine an environment for all employees which is fair, humane and respectful; an environment which supports and rewards employee performance on the basis of relevant considerations such as ability and effort. Behaviors which inappropriately assert sexuality as relevant to employee performance are damaging to this environment.

The City of Berkeley deplores such conduct as an abuse of authority and thus it is an official City policy that sexual harassment of employees will not be tolerated."

**SEXUAL HARASSMENT** is detrimental to employee morale and productivity. This type of harassment is not to be tolerated, trivialized, or condoned in any City department or agency.

#### **WHAT TYPE OF BEHAVIOR CONSTITUTES HARASSMENT**

Harassment is defined as "to annoy continually or chronically; or to badger." Harassment includes ethnicity or sex based jokes, racial slurs and unwelcome teasing, posters or pictures hostile to or making fun of a specific class of people, unwanted physical or sexual contact and request for intimate relations. Behavior such as hazing or 'initiation,' which intentionally or unintentionally humiliates or intimidates can also be harassment. Action on the part of the supervisor or co-worker that conditions any employment decision upon an employee's tolerating any harassment or giving sexual favors is a violation of this policy as well as federal and state law.

#### **CAN FRIENDLY INTERACTION AND/OR SEXUAL REFERENCES BE HARASSMENT?**

There is a clear line in most cases between attractiveness to a particular person and unwelcome behavior or pressure for an intimate relationship. The positive exchange of the former situation is not going to be considered harassment; employees are free to form social relationships of their own choosing. However, when one worker is pursuing or forcing a relationship upon another who does not like or want it, regardless of friendly intent, the behavior will be considered harassment and should be stopped.

**IF I'M BEING HARASSED -- OR THINK I AM -- WHAT SHOULD I DO?**

First, be "up front," tell the person(s) harassing you that you do not like what they are doing and want them to stop. If you cannot do this by yourself, ask your supervisor or co-worker to be with you when you tell the harasser. You may also contact the Affirmative Action Officer for assistance or advice at any time.

**WHY SHOULD I STOP BEING FRIENDLY TO SOMEONE JUST BECAUSE HE OR SHE THINKS I'M HARASSING THEM?**

If someone tells you that they do not like something you are saying, stop the harassment immediately. Otherwise, you may face a lawsuit that can run several thousands of dollars in punitive damages (out of your pocket). You may also be subject to City discipline which could include dismissal. Additionally, harassing someone for "turning you in" is called retaliation and is against City policy, state and federal law.

**ARE THERE PROTECTIONS AGAINST FALSE CHARGES?**

Yes. This kind of situation is serious for everyone involved. The whole situation will be carefully reviewed before any action is taken. The best protection is keep all conduct free from behaviors that are inappropriate in a work environment.

**WHAT RESPONSIBILITIES DO DEPARTMENT HEADS OR SUPERVISORS HAVE?**

Department heads and supervisors have the responsibility to keep harassment out of their units and to maintain a "bias free" work environment. This means being aware of how people are treating each other and being responsive when issues of harassment are brought to their attention. The Equal Employment Opportunity and Diversity Officer is available to provide guidance, training and assistance as may be required.

**IF THE HARASSER DOESN'T TAKE "NO" FOR AN ANSWER OR MY DEPARTMENT HEAD/SUPERVISOR DOES NOT HELP, WHAT THEN?**

If the harasser will not stop the harassing actions and the Department Head/Supervisor is unresponsive, a complaint can be filed with the City Equal Employment Opportunity and Diversity Officer. This will be handled with as much confidentiality for all parties as is possible. If attempts to resolve the matter informally are not successful, a formal complaint will be required and confidentiality cannot be maintained. After a thorough review of the situation, recommendations will be made to correct or remedy the matter. You are encouraged to seek the assistance of the Personnel Office as soon as you feel a problem exists. You may call Personnel at 981-6811 for assistance. Complaints may also be filed with the California Department of Fair Employment Opportunity Commission.



## Appendix B

### EEO COMPLAINT INVESTIGATION AND RESOLUTION PROCEDURE

Policy: In accordance with EEO principles and the policies of the EEO/Affirmative Action Program, all employment practices, procedures, conditions and decisions shall be based on valid job-related criteria and shall be maintained without discrimination or harassment on the basis of race, color, religion, ancestry, national origin, age, sex, sexual orientation, marital status, political affiliation, physical disability, or medical condition (including cancer and HIV status).

Objectives: The EEO Complaint Investigation and Resolution Procedure shall apply to all City employees who seek redress from any employment practice, procedure, condition or decision which is believed to have been applied to them in a manner inconsistent with EEO principles or in violation of any policy of the EEO/Affirmative Action Program. The objectives of this procedure are as follows:

1. To provide the structure of due process for City employees to use in order to report and seek correction of employment practices, procedures, conditions or decisions which are believed to have been applied to them in violation of EEO principles or any policy of the EEO/Affirmative Action Program;
2. To define appropriate roles, responsibilities and accountability for impartial evaluation, investigation, and revision of practices, procedures or decisions to ensure compliance with EEO principles and EEO/Affirmative Action Program policies;
3. To make City departments more conscious of the EEO concerns and issues, and to improve the capability of departments to appropriately respond to and resolve EEO concerns and issues;
4. To provide the City with the opportunity to identify, evaluate and appropriately respond to EEO concerns and issues in a timely manner at lowest administrative level possible, and to prevent the necessity for outside intervention by courts or EEO regulatory agencies.

Conditions: The following conditions shall apply with regard to the application and administration of the EEO Complaint Investigation and Resolution Procedure:

1. No employee, as a result of his/her participation in the EEO Complaint Investigation and Resolution Procedure, shall be subject to retaliation or reprisal by any other employee which:
  - a) deprives or tends to deprive him/her of employment opportunities,

- b) has the effect of creating an intimidating, hostile or offensive working environment,
- c) has the purpose or effect of unreasonably interfering with his/her work performance,
- d) otherwise adversely affects his/her status as an employee.

The City will take severe disciplinary action, up to and including termination, against any employee who violates this condition.

2. All internal complaints that allege violation of EEO principles or EEO/Affirmative Action Program policies, and all responses to such complaints may be handled under the provisions of the EEO Complaint Investigation and Resolution Procedure.
3. The EEO Complaint Investigation and Resolution Procedure is not intended to place any limitation or prohibition on any entitlement to file complaints with the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, or the courts.
4. The EEO Complaint Investigation and Resolution Procedure is not intended to place any limitation or prohibition on any entitlement to file grievances under the provisions of collective bargaining agreements.
5. The EEO Complaint Investigation and Resolution Procedure shall not apply to formal complaints on matters outside the purview of the EEO/Affirmative Action Program.
6. Any corrective or preventative measures undertaken to resolve EEO problems and concerns identified in accordance with this procedure shall be entered into voluntarily by the City of Berkeley as part of its ongoing commitment to the provision of equal employment opportunity. Such action shall not be construed as an admission, nor shall such action imply, that the City of Berkeley engages in or ever has engaged in unlawful discrimination.
7. All investigation reports prepared in accordance with the provisions of the EEO Complaint Investigation and Resolution Procedure shall remain the sole property of the City of Berkeley, and as such shall be established and maintained as confidential material. No persons other than authorized complaint investigators and evaluators shall have any entitlement to access such material. The City of Berkeley will take such steps as necessary to secure appropriate legal remedies in response to any unauthorized duplication, distribution or possession of such material.

8. Any party who files a complaint under the provisions of the EEO Complaint Investigation and Resolution Procedure shall be entitled upon request to advice, counsel and representation by an authorized agent of his/her bargaining unit throughout the investigation and resolution process.

#### Informal Resolution Process

The Equal Employment Opportunity and Diversity Officer will be responsible for accepting informal complaints of EEO policy violations, either orally or in writing. Upon this notification, the Equal Employment Opportunity and Diversity Officer will advise the complainant of the steps of the process and his/her right to file civil action, and will perform whatever inquiry is deemed necessary to provide the complainant with an informal analysis of the matter.

If the complainant determines that it is appropriate to pursue the matter, then the Equal Employment Opportunity and Diversity Officer will establish a date to meet with the complainant and the Department Head or the appropriate City official as determined by the City Manager to review the allegations of the complaint. Subsequent to the interview, the Department Head or other appropriate City official will take the following steps.

- a) Investigate the complaint allegations with the advice and assistance from the Equal Employment Opportunity and Diversity Officer as necessary.
- b) Prepare a written investigative report.
- c) Provide copies of the investigation report to the Equal Employment Opportunity and Diversity Officer.
- d) Meet with the complainant and the Equal Employment Opportunity and Diversity Officer to discuss the complaint, investigation results, and resolution of the complaint.

The Equal Employment Opportunity and Diversity Officer will engage in any additional inquiry deemed appropriate to bring the complaint to resolution, and will prepare a written statement of agreement that identifies the complaint allegations, summarizes the department's investigation results, identifies the independent assessments of the Equal Employment Opportunity and Diversity Officer, documents any corrective actions to be taken, and documents each area of satisfactory resolution of the complaint that has been agreed to by the complainant.

- a) Regardless as to whether the complainant elects to proceed to the next step of the procedure, or elects to engage in civil action or any other legal alternative, all corrective actions identified in the statement of agreement that are to be carried out by any City official shall be implemented.

- b) The Equal Employment Opportunity and Diversity Officer will provide copies of the statement of agreement to the Department Head or the appropriate City Official, and to the complainant.
- c) The informal resolution process must be performed in an expeditious manner, not to exceed twenty (20) working days from the date the complaint was submitted.

#### Formal Resolution Process

1. *Complaint Submission.* Formal complaints may be initiated upon the failure of the informal process to resolve the complaint. The complaint must be submitted in writing to the Equal Employment Opportunity and Diversity Officer within twenty (20) working days of the date of the termination of the unsatisfactory informal resolution process. The formal complaint should include the following information:
  - a) description of the activities and circumstances believed to be EEO violations;
  - b) identification of the complaint allegations that have not been addressed in satisfactory manner by the Department;
  - c) identification of any policies, practices or procedures believed to have been violated;
  - d) description of the participants' roles, responsibilities and activities in relationship to the alleged violations;
  - e) description of desired outcomes, relief, or other corrective measures.
2. *Complaint Rejection.* When presented with a formal complaint, if it is determined that: (a) the complaint does not fall within the scope of this procedure; (b) the complaint was not filed within the specified time limits; (c) the complaint is currently or has been the subject of a lawsuit against the City, or the complaint is currently or has been otherwise under legal review and/or subject to formal resolution by the authority of a court or an EEO regulatory agency including the California Department of Fair Employment and Housing (DFEH), the U.S. Office of Civil Rights (OCR), the U.S. Equal Employment Opportunity Commission (EEOC); (d) a decision has already been made and appropriate steps have been taken by proper authorities; then the Equal Employment Opportunity and Diversity Officer shall take the following steps:
  - a) Within five (5) working days of the receipt of the formal complaint, the Equal Employment Opportunity and Diversity Officer will submit a written notification of its receipt to the City Manager that recommends rejection of the complaint and provides the reasons.

- b) If the City Manager authorizes rejection of the complaint, then within ten (10) working days from the receipt of the complaint, the Equal Employment Opportunity and Diversity Officer will provide written acknowledgment of its receipt to the complainant, and advise the complainant of its rejection, the reasons and his/her right to file civil action.
  - c) If the City Manager does not authorize rejection of the complaint then the Equal Employment Opportunity and Diversity Officer will proceed in accordance with the complaint investigation in accordance with the Complaint Acceptance provisions of this procedure.
3. *Complaint Acceptance.* When presented with a formal complaint, and after determining that (a) the complaint falls within the scope of this procedure, and (b) the complainant has satisfied the requirements of pre-complaint processing, the Equal Employment Opportunity and Diversity Officer shall take the following steps:
- a) Within ten (10) working days of the receipt of the formal complaint, provide written acknowledgment of its receipt to the complainant, and advise the complainant of the steps of the process and his/her right to file civil action.
  - b) Within ten (10) working days of the receipt of the formal complaint, provide written notification of the acceptance of the complaint to the City Manager, the Department Head or other appropriate City official, and the Chair of the Personnel Board Affirmative Action Subcommittee.
  - c) Within twenty (20) working days of the receipt of the formal complaint, (a) conduct a formal investigation of the allegations of the complaint, (b) submit a comprehensive investigation report with results, conclusions and recommendations to the City Manager, the Department Head or other appropriate City official, and the Chair of the Personnel Board Affirmative Action Subcommittee.
  - d) Within twenty-five (25) working days of the receipt of the formal complaint, meet with the City Manager, Department Head or other appropriate City official, and the Chair of the Personnel Board Affirmative Action Subcommittee to: (1) review the results of the investigation; and (2) discuss and document any corrective actions and/or preventative measures to be taken, including roles, responsibilities, implementation time lines, and evaluation criteria.
  - e) Within thirty (30) working days of the receipt of the formal complaint, provide a formal written response to the complainant that (1) identifies the allegations of the complaint; and (2) summarizes the overall results of the investigation, and any corrective or preventative measures to be taken as appropriate.

4. *Complaint Investigation.* The formal investigation and written investigation report shall include the following elements:
  - a) Review and evaluation of the activities and circumstances alleged to be EEO violations;
  - b) Review and evaluation of the applicable policies, practices, and procedures;
  - c) Review and evaluation of the participants' roles, responsibilities and activities in relationship to the alleged violations;
  - d) Review and evaluation of other relevant documentation that may include personnel files, disciplinary, performance, payroll or related records;
  - e) Assessment of the extent to which allegations are supported by the evidence;
  - f) Identification of corrective, preventative and other appropriate measures recommended to resolve the problem (including roles, responsibilities, timetables and other relevant considerations).

**Appendix C****CITY OF BERKELEY  
ADMINISTRATIVE REGULATIONS**

**A.R. NUMBER:** 2.4  
**EFFECTIVE DATE:** August 17, 1994  
**REVISED DATE:** June 5, 1995

**PURPOSE:**

To set forth policy and procedure for the implementation and administration of Family Care Leave as required by the Federal Family and Medical Leave Act, and the California Family Rights Act, and to incorporate the separate City of Berkeley Parental Leave Policy under a comprehensive Family Care Leave program.

**POLICY:**

It is the policy of the City to extend the full benefits of family care leave to any permanent career employee who has a minimum of one (1) year career service with the City of Berkeley, and limited benefits to qualified temporary employees as defined herein. Employees eligible for parental leave shall be entitled to a maximum of one (1) year of leave for the birth or adoption of a child who is five (5) years of age or younger. Employees eligible for family care leave under state and federal law are eligible for twelve (12) weeks of leave for the birth or adoption of a child or for the placement of a child with the employee for foster care, to care for a family member with a serious health condition, or to care for the employee's own serious health condition. Leaves under this provision may not be combined to yield a larger amount of leave than the stated maximums. Time away from work on parental leave shall be deducted from the amount permitted for medical leave, and time away from work on medical leave shall be deducted from the amount permitted for parental leave.

**PROCEDURE:**Parental Leave

There are two types of parental leave described in this regulation. The first kind of parental leave is a one-year parental leave policy provided by the City of Berkeley's personnel rules and regulations. Not all City employees will qualify for this benefit. The second kind of parental leave is a twelve-week parental leave required by state and federal law which respectively are called the California Family Rights Act and the Family and Medical Leave Act of 1993. Some employees who do not qualify for the City's one-year parental leave policy may qualify under state and federal law for the twelve-week parental leave.

A. City of Berkeley Personnel Rules

1. Any employee with one (1) or more years of benefited employment with the City of Berkeley shall be entitled to up to one (1) year of parental leave as provided in the City's personnel rules as follows:
  - a. The birth of a child of the employee, or the adoption of a child who is five (5) years of age or younger by the employee.
  - b. Leave for the birth or adoption of a child must commence no later than thirteen (13) months from the date of birth or adoption and must conclude no later than twenty-five (25) months from the date of birth or adoption. Leave may begin before the date of birth or adoption upon presentation of medical certification of pregnancy, or the presentation of legal evidence of adoption. Leave may be taken intermittently upon mutual agreement between the employee and the department director.
  - c. Employees exercising their rights under this provision must provide the department director at least thirty (30) calendar days written notice prior to the anticipated commencement date of parental leave.
  - d. At the employee's option, the employee may be placed on authorized leave without pay or may be compensated during parental leave with his / her accumulated sick leave (up to a maximum of two hundred (200) days), and all other accrued leaves. Such accrued leave balances will be paid in the same manner as if the employee were absent due to illness or on vacation during the leave. Upon exhausting all employee designated leave balances, the employee will be on unpaid status for the remainder of the leave.
  - e. During approved parental leave, after all accrued leaves are exhausted, the City will maintain life and health insurance coverage for the duration of the parental leave subject to any regular participation requirement of the employee.
  - f. In the event both parents are employed by the City of Berkeley, both employees may take parental leave simultaneously if eligible.
  - g. Approved parental leave shall not be deducted from the employee's seniority service date.

B. State and Federal Law

1. Employees who are not eligible for the one-year parental leave benefit under the City of Berkeley's personnel rules may still qualify for up to twelve (12) weeks of parental leave in a twelve-month period under state and federal law. In addition,



while the City of Berkeley's one-year parental leave policy does not cover placement of a child with the employee for foster care, the state and federal law does provide leave for foster care. In order to qualify for parental leave under federal and state law, employees must have at least one (1) year of continuous service with the City and also have worked at least 1,250 hours in the twelve (12) months preceding the leave. This includes non-career hourly employees. Eligible employees may be entitled to a leave of absence of up to a maximum of twelve (12) weeks in a twelve-month period as follows:

- a. Upon the birth of the employee's child, the adoption of a child by the employee or placement of a child with the employee for foster care;
- b. Leave may begin before the date of birth, adoption or foster care upon presentation of medical certification of pregnancy, the presentation of legal evidence of adoption, or presentation of documentation requiring state action for foster care. Leave may be taken intermittently upon mutual agreement between the employee and the department director, but under no condition may intermittent leave extend the period of parental leave beyond the one (1) year period in which the maximum twelve (12) weeks of leave is permitted to be taken under state and federal law.
- c. Employees exercising their rights to parental leave under state and federal law must provide the department director at least thirty (30) calendar days written notice prior to the anticipated commencement date of parental leave. If the need is such that 30 days' notice cannot be provided, the request must be made as soon as possible.
- d. All parental leaves of absence under federal and state law are unpaid unless an employee has accrued leave. All accrued sick leave, vacation leave, compensatory leave, and/or administrative leave must be used before being placed on leave without pay.
- e. During an approved parental leave under federal and state law, the City will maintain life and health insurance coverage for the duration of the twelve-week parental leave subject to any regular participation requirement of the employee.
- f. In the event both parents are employed by the City of Berkeley, both employees may take parental leave simultaneously if eligible.
- g. Approved parental leave shall not be deducted from the employee's seniority service date.

Medical Leave

1. Eligible employees shall be granted medical leave as follows:

- a. Up to twelve (12) weeks of leave in a twelve-month period to care for a family member with a serious health condition, or to care for the employee's own serious health condition that prevents the employee from performing his / her job.
- b. For the purposes of this provision, a family member is defined as a biological child, adopted or foster child, stepchild, legal ward of an employee, biological parent, step-parent, adoptive parent, legal guardian, grandchild or grandparent in families where no parents are present, spouse or domestic partner. A serious health condition is defined as an illness, injury, impairment, or physical or mental condition requiring either inpatient treatment at a hospital, hospice, or residential care facility or continuing treatment by a health care provider that prevents the employee from performing his / her job.
- c. Employees exercising their rights under this provision must provide the department director at least thirty (30) calendar days written notice prior to the anticipated commencement date of medical leave. If the leave is unforeseen, the employee shall provide the department director written notice of leave as soon as is practicable. When medically necessary, leave may be taken intermittently or on a reduced work week schedule, however the employee must schedule the leave so as not to unduly disrupt the department director operations. The City may transfer an employee to another position which would better accommodate the requirements of the City's operations.
- d. At the commencement of medical leave, the employee must first use accrued sick leave, and then must use all other accrued leaves. Employees may not use greater than twelve (12) days of their sick leave to care for a family member. Such accrued leave balances will be paid in the same manner as if the employee were absent due to illness or on vacation during the leave. Upon exhausting all leave balances, the employee will be on unpaid status for the remainder of the leave.
- e. During approved medical leave, after all applicable leaves are exhausted, the City will maintain life and health insurance coverage for the duration of the leave subject to any regular participation requirement of the employee.
- f. The foregoing leave shall be granted upon medical certification that the employee has a serious health condition, or the employee is needed to care for a family member suffering from a serious health condition. Additional medical opinions may be required (at the City's expense) and a fitness for duty report to return to work.
- g. Approved medical leave shall not be deducted from the employee's seniority service date.

2. Non-career hourly employees shall be eligible for up to twelve (12) weeks of medical leave if they have a minimum of one (1) year of service and have worked at least 1,250 hours during the previous twelve (12) months.

#### Implementation of Family Care Leave

1. Employees requesting family care leave must submit completed Request For Family Care Leave form (designating either parental or medical leave), or if leave is unforeseen, call their supervisor to obtain the form.
  - a. If parental leave is requested, employee must provide medical certification of pregnancy, legal evidence of adoption, or evidence of State authorized foster care.
  - b. If medical leave is requested to care for the employee's own serious health condition, the department shall require the employee to submit the City of Berkeley Medical Certification form completed by the employee's personal physician.
  - c. If medical leave is requested to care for a family member, the employee must submit City of Berkeley Medical Certification form indicating that the employee is needed to provide care for family member.
3. Employees may only be granted intermittent parental leave upon mutual agreement between the employee and the Department / City.
4. Intermittent leave must be granted for medical leave to care for the employee's own serious health condition provided the employee schedules leave so as not to unduly disrupt the department's operational needs.
5. Upon receiving documented leave requests, the departmental payroll clerk will conduct an audit of the employee's file and time cards for previous 12 months to confirm that the employee is eligible for family care leave, and to determine amount of leave employee can use.
6. Upon verification of employee eligibility, ACM / Department Director will approve family care leave for a specific time period and forward the leave application to Human Resources Director and City Manager for authorization.
7. The department will prepare the necessary payroll forms and employee transaction form to document the family care leave, and to ensure that the employee receives compensation, if applicable, and that all paid leaves are exhausted, as appropriate, prior to placing the employee on leave without pay.



**City of Berkeley and SEIU 1021  
Maintenance and Clerical Chapters  
&  
Community Services and Part Time Recreation Leaders Association  
TENTATIVE AGREEMENT  
JULY 1, 2020**

The Parties have reached a Tentative Agreement on the following terms:

**A. Provisional Employee**

Amend MC section 13.4 to include the following:

No employees shall hold a provisional appointment in the same position for more than 12 months. The City Manager may extend the provisional appointment beyond this 12- month limitation ~~after notification and consultation with the union~~ with the mutual agreement of the parties.

**B. Limited Reopener**

NEW LANGUAGE: If during the fiscal year 2020 -2021 the City reaches agreement with another bargaining unit or extends to unrepresented employees to confer an across the board Cost of Living Adjustment (COLA) increase and/or an additional City contribution towards medical premiums, the City agrees to a limited reopener to meet and confer with SEIU on these increases.

**C. Living Wage**

NEW LANGUAGE: The City agrees to pay each of its direct employees an hourly wage of no less than \$18.33 effective the first full pay period in January 2021. The City agrees to pay each of its direct employees an hourly wage of no less than \$19.33 effective the first full pay period in June 2021. If the Living Wage increases beyond \$19.33, as outlined in the Berkeley Municipal Code effective July 2021, the City shall implement the increases the first full pay period in September 2021 and July 1<sup>st</sup> of each year thereafter.

**D. Term Duration**

Parties agree to a one-year term ending on June 26, 2021.

**E. Additional Language on Layoffs for the Term of the MOU**

NEW LANGUAGE: The City recognizes the important role that the employee workforce plays in delivering public services; therefore, during the term of this Agreement the City agrees to not layoff any represented career employees. However should the City determine that its expenditures exceed its revenues during the term of this Agreement, the City may notice the Union in writing and the Union shall meet and confer over one-time cost savings and alternatives such as furloughs, union-directed VTO, etc. Nothing in this section requires the City to retain positions (filled or vacant) where state,

federal or grant funding has been reduced or eliminated and would require the City to backfill such positions. All other MOU provisions on Layoffs remain unchanged.

**F. COVID19 Related Proposals**

- 1. Additional City Emergency Paid Sick Leave Allocation.** NEW LANGUAGE: The City shall provide an additional 80 hours of emergency paid sick leave to be used for COVID-19 related reasons as listed in the Emergency Paid Sick Leave Act. Part-time employees receive a prorated number of hours. In order to use this additional City emergency paid sick leave, the employee must first exhaust all hours that they received under the Emergency Paid Sick Leave Act. The City will use a specific pay code for this additional emergency paid sick leave and these additional hours will be available until June 30, 2021. These additional 80 emergency paid sick leave hours shall have no cash value and may not be used towards any CalPERS retirement service credit as outline in section 43.7.5 of the Maintenance and Clerical MOU and 47.8.5 of the Community Services MOU.
- 2. Additional Floating Holidays.** NEW LANGUAGE: For employees who were required to remain in the workplace from March 17, 2020 – June 1, 2020, the City will provide 8 hours of floating holidays for every 40 hours of regularly scheduled hours worked in the workplace up to a maximum of 32 hours of floating holiday. The City will credit these floating holiday hours in the first full pay period after adoption of the MOU. The following classifications which, due to the nature of the assignment, require backfill, employees will be paid a stipend in the amount of the earned floating holiday hours up to a maximum of 32 hours the first full pay period in August 2020:

Solid Waste Drivers, Solid Waste Workers, Long Haul Drivers, Community Services Officer, Public Safety Dispatchers I/II, and Supervising Public Safety Dispatchers.

City will use a specific pay code for these additional floating holiday hours will be available until June 30, 2021. These additional 32 hours of floating holiday shall have no cash value and may not be used towards CalPERS retirement service credit as outlined in section 43.7.5 of the Maintenance and Clerical MOU and 47.8.5 of the Community Services MOU.

Date: 7/2/2020

For the Union

[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: 7-1-2020

For the City

[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Office of the City Manager

CONSENT CALENDAR  
 July 30, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: LaTanya Bellow, Director of Human Resources

Subject: Memorandum of Understanding: SEIU Local 1021 Maintenance & Clerical Chapter

RECOMMENDATION

Adopt a Resolution approving a one (1) year extension to Memorandum of Understanding (hereafter referred to as “MOU”) with SEIU Local 1021 Maintenance & Clerical Chapter (hereafter referred to as the “Union”) with a term of June 27, 2020 through June 26, 2021; authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the extended MOU with no changes in compensation except for economic items related to the COVID-19 epidemic; and authorizing the City Manager to make non-substantive edits to the format and language of the Memorandum of Understanding in alignment with the tentative agreement, and conforming to legal requirements.

FISCAL IMPACTS OF RECOMMENDATION

The terms of the new MOU provide for no wage increase for the period of the one-year extension in response to the financial effects of the COVID19 pandemic. There is a modest cost related to additional COVID 19 leave for employees who were required to report to a City workplace for the period of March 17, 2020 – June 1, 2020. The funding for this agreement comes from the general fund and other funding sources.

CURRENT SITUATION AND ITS EFFECTS

The City’s labor contract with the Union expired and was fully terminated as of June 27, 2020. In an effort to reach agreement on a successor MOU, representatives of the City and representatives of the Union held approximately seven negotiating sessions beginning in May of 2020. The parties reached an extension agreement with no substantive change on all outstanding economic (aside from COVID-19 related issues), and non-economic issues on July 1, 2020.

While the labor contract expired and fully terminated on June 27, 2020, the laws governing collective bargaining agreements provide that the terms and conditions set forth in the expired contract remain in full force and effect until modified through the collective bargaining process. The collective bargaining process has now been

completed and the parties have reached tentative agreement on all outstanding issues. On July 21, 2020, the Union ratified the tentative agreement by a vote.

**BACKGROUND**

There are approximately 445 employees represented by the Union in four (4) representational units: D, J, K-1 and K-2.

The major provisions of the new labor contract are as follows:

<b>Section</b>	<b>Change</b>
10.1 and 44.12 Additional Language on Layoffs for the Term of the MOU	NEW LANGUAGE: The City recognizes the important role that the employee workforce plays in delivering public services; therefore, during the term of this Agreement the City agrees to not layoff any represented career employees. However should the City determine that its expenditures exceed its revenues during the term of this Agreement, the City may notice the Union in writing and the Union shall meet and confer over one-time cost savings and alternatives such as furloughs, union-directed VTO, etc. Nothing in this section requires the City to retain positions (filled or vacant) where state, federal or grant funding has been reduced or eliminated and would require the City to backfill such positions. All other MOU provisions on Layoffs remain unchanged.
10 Term Duration	ADDITIONAL LANGUAGE: Parties agree to a one-year term ending on June 26, 2021.
44.12 Additional Language on Layoffs for the Term of the MOU	NEW LANGUAGE: The City recognizes the important role that the employee workforce plays in delivering public services; therefore, during the term of this Agreement the City agrees to not layoff any represented career employees. However should the City determine that its expenditures exceed its revenues during the term of this Agreement, the City may notice the Union in writing and the Union shall meet and confer over one-time cost savings and alternatives such as furloughs, union-directed VTO, etc. Nothing in this section requires the City to retain positions (filled or vacant) where state, federal or grant funding has been reduced or eliminated and would require the City to backfill such positions. All other MOU provisions on Layoffs remain unchanged.
11.10 Living Wage	NEW LANGUAGE: The City agrees to pay each of its direct employees an hourly wage of no less than \$18.33 effective the first full pay period in January 2021. The City agrees to pay each of its direct employees an hourly wage



Section	Change
	of no less than \$19.33 effective the first full pay period in June 2021. If the Living Wage increases beyond \$19.33, as outlined in the Berkeley Municipal Code effective July 2021, the City shall implement the increases the first full pay period in September 2021 and July 1st of each year thereafter.
9.1 Limited Reopener	If during the fiscal year 2020 -2021 the City reaches agreement with another bargaining unit or extends to unrepresented employees to confer an across the board Cost of Living Adjustment (COLA) increase and/or an additional City contribution towards medical premiums, the City agrees to a limited reopener to meet and confer with SEIU on these increases.
13.4 Provisional Employee	NEW LANGUAGE: No employees shall hold a provisional appointment in the same position for more than 12 months. The City Manager may extend the provisional appointment beyond this 12- month limitation with the mutual agreement of the parties.
21.13 Additional City Emergency Paid Sick Leave Allocation	NEW LANGUAGE: The City shall provide an additional 80 hours of emergency paid sick leave to be used for COVID-19 related reasons as listed in the Emergency Paid Sick Leave Act. Part-time employees receive a prorated number of hours. In order to use this additional City emergency paid sick leave, the employee must first exhaust all hours that they received under the Emergency Paid Sick Leave Act. The City will use a specific pay code for this additional emergency paid sick leave and these additional hours will be available until June 30, 2021. These additional 80 emergency paid sick leave hours shall have no cash value and may not be used towards any CalPERS retirement service credit as outline in section 43.7.5 of the Maintenance and Clerical MOU.
20.3.1 Additional Floating Holidays	NEW LANGUAGE: For employees who were required to remain in the workplace from March 17, 2020 – June 1, 2020, the City will provide 8 hours of floating holidays for every 40 hours of regularly scheduled hours worked in the workplace up to a maximum of 32 hours of floating holiday. The City will credit these floating holiday hours in the first full pay period after adoption of the MOU. The following classifications which, due to the nature of the assignment, require backfill, employees will be paid a stipend in the amount of the earned floating holiday hours up to a

Section	Change
	<p>maximum of 32 hours the first full pay period in August 2020:</p> <p>Solid Waste Drivers, Solid Waste Workers, Long Haul Drivers, Community Services Officer, Public Safety Dispatchers I/II, and Supervising Public Safety Dispatchers.</p> <p>City will use a specific pay code for these additional floating holiday hours will be available until June 30, 2021. These additional 32 hours of floating holiday shall have no cash value and may not be used towards CalPERS retirement service credit as outlined in section 43.7.5 of the Maintenance and Clerical MOU.</p>

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Representatives of the City worked within policies set by the City Council for guiding contract negotiations and staff met with the City Council in closed session to discuss and receive the policy direction and economic authority to settle this contract. The overall settlement must be within the City’s ability to pay based on projected revenue as well as demands for services across the spectrum of programs the City provides the community. The proposed changes to the MOU are consistent with City Council’s direction to staff and is fair and equitable to the members of the Union.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

LaTanya Bellow, Director of Human Resources, Human Resources, 981-6800

Attachments:

- 1: Resolution: Memorandum of Understanding: SEIU Local 1021 Maintenance & Clerical Chapter and Rescinding Resolution No. 68,532 and 68,533 N.S.

Exhibit A: Memorandum of Understanding between the City of Berkeley and SEIU Local 1021 Maintenance & Clerical Chapter

(Edited Version)

Exhibit B: Memorandum of Understanding between the City of Berkeley and SEIU  
Local 1021 Maintenance & Clerical Chapter

(Clean Version)

Exhibit C: Tentative Agreement between the City of Berkeley and SEIU Local 1021  
Maintenance & Clerical Chapter

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

MEMORANDUM OF UNDERSTANDING: SEIU Local 1021 Maintenance & Clerical Chapter

WHEREAS, the City is obligated under the provisions of California Government Code Section 3500 – 3510, commonly referred to as the Meyers-Milias-Brown Act, to meet and confer in good faith and attempt to reach agreement with representatives of recognized bargaining units on matters within the scope of representation including, but not limited to wages, hours and other terms and conditions of employment; and

WHEREAS, representatives of the City and the SEIU Local 1021 Maintenance & Clerical Chapter have met and conferred in good faith and have reached agreement on a new Memorandum of Understanding that incorporates all changes and modifications in wages, hours and other terms and conditions of employment agreed to by the parties.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute the new Memorandum of Understanding for the period June 27, 2020 through June 26, 2021 with SEIU Local 1021 Maintenance & Clerical Chapter, including changes in certain benefits on dates specified in the Memorandum of Understanding which is attached hereto, made a part hereof and marked Exhibit B.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute and implement said Memorandum of Understanding including all changes in wages, hours, and other terms and conditions of employment. A fully executed original of said contract is filed in the Office of the City Clerk.

Exhibits

- A: Memorandum of Understanding between the City of Berkeley and SEIU Local 1021 Maintenance & Clerical Chapter (Edited Version)
- B: Memorandum of Understanding between the City of Berkeley and SEIU Local 1021 Maintenance & Clerical Chapter (Clean Version)
- C: Tentative Agreement between the City of Berkeley and SEIU Local 1021 Maintenance & Clerical Chapter



EXHIBIT A



# MEMORANDUM AGREEMENT

BETWEEN

CITY OF BERKELEY

AND

SERVICE EMPLOYEES INTERNATIONAL UNION  
LOCAL 1021

MAINTENANCE AND CLERICAL CHAPTERS

June ~~17, 2018~~27, 2020 – June ~~26~~7, 20202021

BACK COVER  
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COUNCIL RESOLUTION



COUNCIL SALARY RESOLUTION

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City of Berkeley

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## ADMINISTRATION

### **SECTION 1: RECITALS**

This Memorandum Agreement, herein after referred to as "Agreement", is entered into pursuant to the Meyers-Milias- Brown Act (Government Code, Sections 3500 et seq.) as amended and has been jointly prepared by the parties.

The City Manager is the representative of the City of Berkeley, herein after referred to as "the City," in employer - employee relations as provided in Resolution No. 43,397-N.S. adopted by the City Council on October 14, 1969.

Local 1021, Service Employees International Union, is the Recognized Employee Organization for:

Representation Unit D (Manual Occupations),  
Representation Unit J (Para-professional Employees- Police Department),  
Representation Unit K-1 (career non-confidential office and clerical employees),  
Representation Unit K-2 (Supervisory Clerical Employees)

The employee positions in such Representation Unit are set forth herein and made a part hereof, and Local 1021, Service Employees International Union, hereinafter referred to as "the Union" is recognized as the sole representative of employees assigned to such positions. This Memorandum Agreement shall be presented to the City Council, Board of Library Trustees, and the Rent Stabilization Board as the joint recommendation of the undersigned.

The parties have met and conferred in good faith regarding wages, hours and other terms and conditions of employment of the employees in said Representation Units D, J, K-1, and K-2; have exchanged freely information opinions and proposals; and have endeavored to reach agreement on all matters relating to the employment conditions and employer-employee relations of such employees.

This Agreement shall be presented to the City Council as the joint recommendation of the undersigned, and therefore recognize this agreement as a binding and legal contract between the two parties.

Library and Rent Board employees working in classifications covered by this agreement shall have the same terms and conditions of employment as other employees covered by this Memorandum Agreement except as specifically modified by this agreement.

The Rent Stabilization Board and Library Board of Trustees shall ratify and sign this agreement.

## **SECTION 2: PARTIES TO AGREEMENT**

- 2.1 **The Union:** The Union is the exclusive representative of all employees within Representation Units D (Manual Occupations) [MC00], J (Para-professional Employees - Police Department) [MC00], and K-1 (career, non-confidential office and clerical) [MC01], and K-2 (Supervisory Clerical Employees) [MC02] and shall continue to be recognized as such unless, the Union is no longer certified as the Recognized Employee Organization for employees in Representation Units D, J, K-1 and K-2.
- 2.2 **City Management:** Responsibility for management of the City and direction of its work force is vested in City officials and the City Manager whose powers and duties are specified by law. In order to fulfill this responsibility, it is the exclusive right of City management to determine the mission of its constituent departments. Such rights and responsibilities shall be applied consistent with the Meyers-Milias-Brown Act.
- 2.3 The Union and the City shall create a working environment free from hostility, intimidation and disrespect.

## **SECTION 3: NO DISCRIMINATION**

The City and Union agree that they will not discriminate against any employee covered by this Agreement in a manner which would violate any applicable laws because of race, creed, color, ethnicity, ancestry, religion, political affiliation, sexual orientation, age, gender, national origin, marital or domestic partner status, gender identity or gender expression, parental status, pregnancy, disability or medical condition, Acquired Immune Deficiency (AIDS/HIV) or AIDS related condition, or any other status protected by applicable state or federal law. The City agrees that there shall be no discrimination on the basis of protected Union activity. Furthermore, the City and Union agree to comply with all applicable federal, state and local laws pertaining to non-discrimination and equal employment opportunity (Title VII of the Civil Rights Act of 1964, as amended (to include the pregnancy disability amendments), Equal Pay Act of 1963, Age Discrimination Employment Act, Executive Order 11246, Vietnam Era Veterans Readjustment Act, Rehabilitation Act of 1973, California Civil Rights Law, (Government Code Sections 12900-12996), City of Berkeley Ordinances, resolutions and policies). The City and Union will comply with the City's Harassment Prevention Policy.



The City of Berkeley Harassment Prevention Policy, as may be amended from time to time to comply with applicable state or federal law, is available on-line on the City's IntraWeb at: <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=10318>, in Department of Human Resources, or by contacting the City's Equal Employment Opportunity and Diversity Officer.

## **SECTION 4: UNION SECURITY**

### **4.1 Union Security**

4.1.1 Effective June 1, 1984, and for the term of the Agreement, all current and future employees of the City as described in Section 2, Parties to Agreement, hereof, shall, as a condition of continued employment, become and remain a member of the Union or, in lieu thereof, shall pay a service fee to the Union. Such service fee payment shall be equivalent to the standard initiation fee, periodic dues and general assessments (hereinafter collectively termed membership fees) of the Union.

4.1.2 **Religious Exemption:** Any employee of the City in a classification described in Section 1, Parties to Agreement, who is a member of a bona fide religion, body or sect which has historically held conscientious objection to joining or financially supporting a public employee organization and is recognized by the National Labor Relations Board to hold such objections to Union membership shall, upon presentation of membership and historical objection satisfactory to the City and the Union, along with verification of monthly transmittals of any charitable contributions, have sums equal to membership fees deducted and paid to one of the following charitable organizations as designated by the employee: (1) American Cancer Society; (2) Bay Area Black United Fund; (3) Over 60 Health Clinic; or (4) Sickle Cell Anemia Research and Education.

### **4.2 Voluntary Membership**

All employees in this bargaining unit who are, or hereafter voluntarily choose to become members of the Union, shall maintain such membership in good standing as a condition of continued employment for the duration of this Agreement; provided, however, that withdrawal shall be allowed during a period of not more than sixty (60) days nor less than thirty (30) days prior to the expiration date of the Agreement by sending written notice of withdrawal to the Union (with a copy to the Director of Human Resources of the City during said period), consistent with the law.

**4.3 Indemnification**

The Union shall indemnify and save harmless the City, its officers and employees, from and against any and all loss, damages, costs, expenses claims, attorney fees, demands, actions, suits, judgments and other proceedings arising out of any discharge action resulting from this Section or Section 5.

**4.4 Contract Distribution**

The Director of Human Resources or his/her designee shall issue a copy of the Agreement to all probationary and provisional employees entering the City's workforce on the date of hire.

The City shall print 200 copies of the Agreement and have it ready for distribution by the Union within 120 calendar days of final ratification. The City shall provide each permanent, probationary and provisional employee in the bargaining unit with an email copy of the new Agreement within 130 calendar days of final ratification.

Any additions or changes to the Agreement agreed to by both parties subsequent to the printing of the Agreement shall be distributed to all employees in the bargaining unit in a form that can be easily added to the printed Agreement.

**4.5 Orientation Meetings**

A representative of each Chapter of the Union will be given sixty (60) minutes of Union release time per quarter per calendar year to provide information on the Union to employees represented by the Union. The Union shall notify the City of the date, time and location of the quarterly orientation meetings at least one (1) month in advance of the meetings to ensure that departmental managers are able to release employees to attend the quarterly orientation meetings. The Union shall also provide the City with the names of the employees the Union expects to attend the quarterly meetings at least two (2) weeks in advance of the meeting. Employees attending the orientation will also be given sixty (60) minutes of Union release time to attend the scheduled orientation.

**4.6 Union Notification**

The City agrees that all notifications to the Union will include copy to the Union chapter presidents. Further, on all other correspondence involving investigatory interviews, intent to discipline, and grievance responses, the City shall also copy the relevant chapter chief steward, in addition to the relevant chapter president.

**4.7 New Employee Orientation**

This provision shall apply to new hire employees appointed to classifications covered by this Agreement and to existing employees newly appointed to classifications covered by this Agreement.

- 4.7.1 **Onboarding:** The parties acknowledge that the City provides a new employee orientation (onboarding) to each new employee hired by the City. As such, the Union will be provided with not less than 10 calendar days' advanced notice of the time, date, and location of the onboarding of any new employee represented by the Union. The Union will be given 30-minutes at the start of the new employee onboarding in a room designated by the City for no more than one (1) representative to present Union membership information. The City representative will excuse him or herself during the Union portion of the onboarding. The Union agrees in its portion of the onboarding not to engage in speech that could cause disruption or material interference with City activities.

The City will provide 30 minutes of Union Release Time to the Union representative presenting the Union membership information during the scheduled onboarding. The Union shall provide the Union representative's immediate supervisor with the Union representative's name at least five (5) days prior to the onboarding. The Union representative shall be released for this purpose unless unusual operation needs interfere with such release in which case the Union representative's immediate supervisor will provide a written explanation of why release could not be approved. If the Union representative is not released due to department operational needs, the Union representative may arrange an alternative date and time to meet with the newly hired employee within the first two (2) weeks of employment, subject to the 30-minutes onboarding and Union Release Time requirements as stipulated above.

- 4.7.2 **Information Provided:** On a quarterly basis (March, June, September, and December), the City will provide the Union with a digital file via email to the email address designated by the Union. The Union acknowledges and understands that the City is working diligently and in good faith to update its contact information database functionality to incorporate all the fields of contact information listed below. As a result, the City may not initially be able to provide the employee's work telephone number, personal phone number, and personal email address until the completion and implementation of the City's new Enterprise Resource Management Application (ERMA) system.

The City will provide the Union with the following information on file, to the extent the City has it on file:

- Name.
- Job Title.

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- Department.
- Work Location.
- Home telephone number.
- Home address.
- Personal cellular telephone number (new hires hired on or after October 1, 2017).
- Work telephone number (*upon implementing ERMA*).
- Personal email addresses on file with the City (*upon implementing ERMA*).

Notwithstanding the foregoing, limited to the express purpose of the requirements of Government Code section 3558 only, an employee may opt out via written request to the City (copy to the Union) to direct the City to withhold disclosure of the employee's: Home address; home telephone number; personal cellular telephone number; personal email address; and date of birth.

## **SECTION 5: PAYROLL DEDUCTIONS**

Effective the first complete pay period commencing after July 1, 1984 and in each month thereafter, the City shall make membership fee or service fee deductions, as appropriate, from the regular periodic payroll warrant of each City employee described in Section 1. Employees hired on or after July 1, 1984, shall receive and complete at the time of employment an authorization to deduct membership or agency fee as a condition of continued employment. Failure to complete the authorization form within 30 calendar days of employment shall result in automatic agency fee deductions.

The City shall promptly pay over to the Union all sums withheld for membership or service fees. The City shall also provide with each payment a list of employees paying service fees. All such lists shall contain the employee's name, employee number, classification, department, and the amount deducted. A list of all employees in represented classes shall be provided to the Union each month.

The City shall continue to deduct insurance premiums, COPE contributions, and other such deductions as may be specified by the employee in accordance with past practice.

## **SECTION 6: UNION REPRESENTATIVES**

6.1 **Release Time – General:** Union representatives employed and recognized by the City shall assist employees in resolving grievances at the lowest possible administrative level. These employees shall be afforded reasonable time for the investigation and processing of grievances and for meetings with management without loss of pay or benefits upon notification to their first level supervisor not in the bargaining unit. Union representatives shall request Union release time from their first level supervisor not in the bargaining unit or his/her designee prior to engaging in union business. Such request for release time shall be made at the earliest possible time and, except in emergency cases, no later than 48 hours in advance before leaving the work assignment. The Union release request shall include the location, and area of activity, the approximate time needed and the general nature of union business involved. Such request shall not be unreasonably denied. Failure to meet the 48 hours requirement may result in denial of release time.

### **6.2 Release Time - Maximum Number of Representatives**

6.2.1 **Meet & Confer:** With respect to the meet and confer process, ten (10) Union representatives shall be the maximum number who will be allowed concurrent paid time off.

- 6.2.2 **Informal Grievance Procedure:** With respect to the informal level of the grievance procedure, one (1) Union representative will be allowed paid time off.
- 6.2.3 **First Level Grievance Procedure:** With respect to the first level of the grievance procedure or the pre-disciplinary meeting, two (2) Union representatives will be allowed concurrent paid time off.
- 6.2.4 **Second Level Grievance Procedure:** With respect to the second level of the grievance process, the Skelly meeting, or Arbitration hearing, three (3) Union representatives shall be allowed concurrent paid time off.
- 6.2.5 **All Other Matters:** For all other matters, where the participation of the Union is agreed to, the Union may designate two (2) representative from each Representation Unit, up to a maximum of six (6).
- 6.2.6 **Possible Grievance Release:** The City will provide release time to Union members to meet with a Union representative for the purpose of discussing a possible grievance. The member shall contact the Chapter President or Chief Steward who will then contact the supervisor/department director to notify the supervisor/department director of the necessity for the meeting. The release time shall be granted within 48 hours of the request subject to operational necessity.
- 6.2.7 **City of Berkeley Union Council:** The City will provide release time for Union Steward representatives to attend City of Berkeley Union Steward Council Meetings. Each steward representative shall receive a maximum of four (4) hours per month to attend the meeting. A maximum of sixteen (16) stewards shall be released to attend each meeting. The President or Chief Steward will notify Human Resources at least two (2) weeks in advance of the scheduled Steward Council Meeting and will provide Human Resources with the names of stewards, the name of the steward's immediate supervisor, the department and work unit of those stewards that will be attending the Steward Council Meeting. Failure to comply with the notice requirements will result in the denial of release time. In the event that there are conflicts in work schedules, which may create problems with a designated steward attending the meeting, the President or Chief Steward will work with the affected department supervisors to schedule steward attendance in a manner which minimizes disruption of work.

**6.3 Union / Management Meetings**

Monthly meetings shall be held between the union and the City Manager or his or her designee. Release time shall be granted for up to six (6) union officials. Agendas for such meetings shall be set one week in advance between the union Chapter Presidents and the City Manager or his or her designee. In preparation for the monthly meeting with the City Manager, release time shall be granted for up to two (2) hours and up to two (2) Union officials to confer with Union staff representatives on matters within the scope of representation.

Meetings within departments may be held when necessary at the request of either party and release time will be in advance in accordance with Section 6.2.5.

**6.4 Joint Labor/Management Committee**

A quarterly departmental Joint Labor/Management (JLM) Committee may be established to discuss and review issues affecting employees in each Department. The JLM may consist of two (2) Union representatives and Department Director and/or his or her designee(s). Agendas for such meetings shall be set one (1) week in advance between the Union and Department Director or his or her. Additional meetings may be scheduled upon advanced mutual agreement.

At the first Police Department labor/management committee after the effective date of this contract (2018 to 2020), the parties agree to discuss concerns related to applicable sections of General Order P-26 as it relates to the Police Department's process for handling personnel complaints of Clerical employees and Parking Enforcement Officers.

**6.5 Official Attendance at Meetings**

Any employee requested by the City Manager or his/her designee to attend conferences, seminars, governmental agencies or bodies shall be compensated with pay or release time.

**6.6 Memorandum Agreement Orientation**

The City and the Union will conduct orientation sessions on the Agreement at least once during the term of the contract. Additional sessions for stewards and supervisors may also be provided.

**6.7 Union Business Release Time**

**Clerical Chapter:** The Union will be entitled to up to one-hundred and twenty (120) hours of paid leave of absence each calendar year to be granted collectively to employees in the Clerical Chapter who are designated elected officials or stewards of the Union, subject to prior approval by employee's Department Head, to attend seminars, conferences, or conventions away from the job site. The Department

Head may, in his or her discretion, approve additional Union requests. Time spent on such Union business will be recorded with the appropriate code on time sheets.

**Maintenance Chapter:** The Union will be entitled to up to one-hundred and twenty (120) hours of paid leave of absence each calendar year to be granted collectively to employees in the Maintenance Chapter who are designated elected officials or stewards of the Union, subject to prior approval by employee's Department Head, to attend seminars, conferences, or conventions away from the job site. The Department Head may, in his or her discretion, approve additional Union requests. Time spent on such Union business will be recorded with the appropriate code on time sheets.

## **SECTION 7: SEPARABILITY OF PROVISIONS**

In the event that any provisions of this Agreement is declared by a court of competent jurisdiction to be illegal or unenforceable, that provision of this Agreement shall be null and void, but such nullification shall not affect any other provisions of this Agreement, all of which other provisions shall remain in full force and effect.

## **SECTION 8: EXISTING MEMORANDA AGREEMENT**

This Agreement shall supersede all existing Agreements between the City and the Union. Working conditions and practices will not be continued unless they are included in this Agreement or have been or are hereafter specifically authorized by ordinance or by resolution of the City Council, or unless they are 1) not the subject of bargaining during the development of this Agreement, and 2) a continuing practice which was general, not individual in application, and mutually agreed to by the parties.

## **SECTION 9: FINALITY OF RECOMMENDATIONS**

The recommendations set forth above are final. No change or modifications shall be offered, urged, or otherwise presented by the Union or the City Manager prior to June 27, 2020 provided, however, that nothing herein shall prevent the parties to this Agreement from meeting and conferring and making modifications herein by mutual consent and ratification.



**SECTION 10: DURATION**

This Agreement covers the period of June 17, 2018 through June 27, 2020. New provisions are effective June 17, 2018, except as otherwise provided herein and shall remain in full force and effect to and including June 27, 2020. This Agreement and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at midnight June 27, 2020.

## SALARIES, HOURS OF WORK AND COMPENSATION ISSUES

### **SECTION 11: SALARIES**

#### **11.1 Salary Resolution**

Salary rates for the period of June 17, 2018 through June 27, 2020, for all classes of positions in Units D, J, K-1 and K-2, shall be set according to the classifications and salary ranges assigned to those classifications listed in Exhibits “A” through “C” and attached hereto and made part hereof as provided below.

- 11.1.1 The salary ranges for those classifications covered by this Agreement which went into effect on December 31, 2017, shall remain in effect through July 28, 2018 and are listed in Exhibit “A”.
- 11.1.2 Effective July 29, 2018 (the first full pay period after Union ratification and Council approval on its regular agenda), the salary ranges for those classifications covered by this Agreement as listed in Exhibit A will receive a salary increase of three percent (3.0%) and shall be shown in Exhibit B.
- 11.1.3 Effective the first full pay period after Union ratification and Council approval on its regular agenda (on the August 17, 2018 pay day), each employee on paid status as of approval by Council will receive a one-time lump sum payment of \$2,000.00, minus applicable local, state and/or federal taxes. The parties agree that this lump sum provision does not create or bind the City to any precedent or past practice.
- 11.1.4 Effective June 30, 2019, the salary ranges for those classifications covered by this Agreement and listed in Exhibit B will receive a cost of living increase of two percent (2.0%) and shall be shown in Exhibit C.

#### **11.2 Application of Rates**

Employees occupying a position in the competitive service shall be paid a salary or wage within the range established for that position's class as set forth in Exhibits “B” through “C”. The minimum rate for the class shall apply to employees upon original appointment of the position. Employees reinstated or reemployed after layoff shall receive a rate within the range established for the class. Transfers shall not affect an employee's salary rate. Employees appointed to any of the positions set forth herein in Exhibit “B” through “C” and employed or working on a part-time basis shall be paid in proportion to the time worked and described in their appointment.

**11.3 Salary Advancement**

No salary advancement shall be made so as to exceed the maximum rate established for the class to which the advanced employee's position is allocated. Advancement shall be in accordance with the compensation plan of the City and shall depend upon increased service value of an employee to the City as exemplified by recommendations of the Department Head, performance record, special training, length of service, and other pertinent evidence.

An employee's pay increase shall not be affected by any leave of absence without pay, if the employee is off the payroll for less than one hundred sixty (160) consecutive hours. If the employee is off the payroll for one hundred sixty (160) consecutive hours or more, the total amount of time off shall be made up before the employee shall be entitled to such pay increase.

**11.4 Y Rates**

Any employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary or occupying a position in a class the salary rate or range for which is reduced, shall continue to receive his/her present salary. Such salary shall be designated as a Y rate. When an employee on a Y rate vacates his/her position, subsequent appointments to that position shall be made in accordance with Section 11.2.

**11.5 Payment of Salaries (Bi-Weekly) - Pay Periods / Pay Days**

11.5.1 Payment of salaries herein established shall be bi-weekly. Each pay period shall begin at 12:01 a.m. Sunday to and including 12:00 midnight Saturday two weeks following. Each payment shall be made not later than the Friday following the ending of each payroll period and shall include payment for all earnings during the previous payroll period.

11.5.2 In those cases when payroll checks are available for distribution on Thursday afternoon, the Auditor's Office shall notify payroll sections of departments with employees on graveyard shifts. The department shall be responsible for distributing the checks to its graveyard shift employees by the end of the shift Friday morning. This procedure will remain in effect until the City's payroll system is fully automated, at which time payroll checks will routinely be made available to departments for distribution to employees by the end of the graveyard shift Friday morning.

11.5.3 Bi-weekly payment to full-time employees shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay

period. Except as specified below in Section 11.5.5, the hourly rate for such employees shall be determined as follows:

11.5.3.1 The hourly rate shall be the quotient of the annual salary (12 times the monthly salary specified herein) divided by 2080 hours.

11.5.3.2 For employees on a thirty-seven and one half (37.5) hour week, the monthly salary shall be the quotient of the hourly salary times 1950 hours, divided by 12.

11.5.4 Bi-weekly payment to part-time employees in a class for which monthly salary rate has been herein established shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period. Except as specified below in Section 11.5.5, the hourly rate for such part-time employees shall be computed in the same manner as for full time employees.

11.5.5 Bi-weekly payment to intermittent employees in a class for which an hourly rate has been specified herein shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period. The hourly rate for such intermittent employees shall be as specified herein.

11.5.6 Bi-weekly payment to employees in a class for which a daily rate rather than a monthly rate has been herein established shall be made on the basis of the actual days worked during the bi-weekly pay period multiplied by the daily rate.

11.5.7 Bi-weekly payment to employees in a class for which an hourly rate rather than a monthly rate has been herein established shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period.

**11.6 Friday Bank Closures**

On Friday bank holidays, City employees shall be paid in accordance with present paycheck procedures for City Holidays that fall on Friday. Paychecks shall be dated the date received by employee.

**11.7 End of Year**

For excess leave only, the end of the year shall be treated as the last day of the last pay period nearest March 31st.

**11.8 Equity Studies**

Two (2) lists of comparison jurisdictions are established. List One: Concord, Fremont, Richmond, Palo Alto, City of Santa Clara, San Leandro, Alameda County, San Francisco, Hayward, Oakland, and Vallejo. For Refuse only, Northern California Waste Management Systems and Waste Management (Oakland) will be reviewed. Other jurisdictions may be added as required by agreement between the parties. Job classifications which fall below the median for these jurisdictions may be reviewed. It is the policy of the City that within available funding limits, equity adjustments which are in the interests of the service will be considered.

- 11.8.1 **Classification Review:** Beginning no sooner than six months and no later than 9 months after ratification of this Agreement (June 17, 2018 to June 27, 2020), the City agrees to work with two representatives designated by the Union with the intent of completing a classification and compensation review of the Customer Service Specialist classification series. The Union believes that the classifications in his series have evolved substantially and warrant a classification and compensation analysis.
- 11.8.2 **Parking Meter Maintenance Worker & Traffic Maintenance Worker:** No sooner than one hundred and twenty (120) days after ratification of this Agreement (June 17, 2018 to June 27, 2020), and no later than nine (9) months after the ratification, the City agrees to work with two representatives designated by the Union to complete a compensation and classification review of the Parking Meter Maintenance Worker (Job Code 65050) and Traffic Maintenance Worker (Job Code 63080) classifications.
- 11.8.3 **Tool Lending Specialist and Mail Service Aide:** No sooner than one hundred and twenty (120) days after ratification of this Agreement (June 17, 2018 to June 27, 2020), and no later than nine (9) months after the ratification, Library management agrees to work with two representatives designated by the union to review the Tool Lending Specialist (Job Code 63010) and Mail Service Aide (Job Code 44010) classifications service needs and make a joint recommendation on staffing and service levels to the Board of Library Trustees.

**11.9 Anniversary Dates**

Step increases shall be effective, for payroll purposes only, on the first day of the pay period nearest to the anniversary date. Personnel records will maintain actual dates and will be used to resolve any discrepancies or questions that may arise.

## **SECTION 12: PAYROLL ERRORS**

To ensure that system or other errors which affect an employee's pay are processed in an efficient and effective manner, the City shall notify the affected employee(s) as soon as practicable. Payroll errors detected by an employee shall, as soon as practicable, be communicated to the employee's Departmental Payroll Clerk. In the case of under payments, the Payroll Clerk shall submit the appropriate adjustments as soon as practicable.

Payroll errors identified by the Auditor will be communicated to the employee either directly by Auditor staff or through the Departmental Payroll Clerk. Under payments will be processed as soon as practicable.

In the event of an overpayment, the Auditor's Office will notify the employee of the nature and the amount of overpayment and will determine a reasonable repayment schedule and inform the employee of the schedule directly, or through the Department Payroll Clerk. The affected employee shall be given an opportunity to discuss the schedule of repayment and, if necessary, to request an alternative repayment schedule. The total overpayment of \$100 or more shall be recaptured at the rate at which the overpayment occurred but not less than \$50 per pay period. For a total overpayment of \$99.99 or less, the overpayment shall be recouped in two (2) equal amounts over two consecutive pay periods.

Overpayments shall not be recaptured at a more rapid rate than the rate at which the overpayment occurred, except by permission of the affected employee. Should an employee with a repayment schedule leave the employ of the City before repaying the City the full amount of any overpayment, the outstanding debt shall be deducted from any salary and leave balances for which the employee would otherwise be paid upon separating from the City. Where an employee requests and the City concludes that s/he has justified a modified repayment schedule, the City may, in its sole discretion, permit exceptions to these standards.

The City and the Union agree that the City is authorized to recover any salary overpayment made to the employee from the employee's wages. In the event that (1) the employee does not respond within ten (10) working days of being notified of the overpayment, or (2) mutual agreement on the repayment schedule is not achieved within fifteen (15) working days of the employee being notified of the overpayment, the Auditor's Office will proceed to implement a reasonable repayment schedule.

## **SECTION 13: TEMPORARY, PROVISIONAL AND PROJECT BASED APPOINTMENTS, HIGHER CLASS ASSIGNMENT PAY AND TEMPORARY AGENCY EMPLOYEES**

### **13.1 Higher Class Assignments**

Department heads will work all employees within their classification. The City Manager or his/her designee shall approve higher-class assignments in advance.

### **13.2 Working in Higher Classification**

Departments with prior approval from the City Manager or City Manager's designee, may assign an employee to work in a higher class provided the employee meets the minimum qualifications for the assignment. Such assignments shall be in writing and shall indicate the reasons, length and duties of the assignment. To be eligible for higher-class pay, the employee must meet the minimum qualifications and perform a majority of the duties of the higher class to qualify. Employees shall be compensated for higher class pay on an hour-for-hour basis. An approved annual blanket authorization must be on file for any employee who is so assigned. Employees meeting these requirements will be compensated at the lowest step of the higher classification that provides at least a five percent (5%) differential for the time worked.

### **13.3 Temporary Appointments**

Temporary promotional vacancies that are available for a period of thirty-one (31) through ninety (90) days shall be filled from within the department that has the vacancy. The department may decide not to fill the vacant position at a promotional level. If the department decides to fill the vacant higher-class position, the selection shall be made from among those qualified departmental employees on the basis of merit, job knowledge and skills. If a selection cannot be made from within department staff, the department shall contact the Human Resources Department for additional candidates from other departments and the temporary appointment shall be made from among those employees.

Temporary appointment opportunities exceeding 90 days in bargaining unit classifications will be noticed in *Berkeley Matters* prior to making the temporary appointment. In cases where timing or other circumstances prohibit the use of *Berkeley Matters*, career employees on eligible and/or transfer lists for the specific classification will be notified directly of the temporary appointment opportunity prior to appointment and the opportunity will be published on the City's Intranet.

When a temporary vacancy is to be filled in a classification for which there is an existing eligibility list, the City shall attempt to make the temporary appointment from that list. Provided there are City employee applicants meeting the minimum

qualifications, temporary vacancies of greater than 90 days shall be filled by existing City of Berkeley employees from existing eligibility lists except as otherwise provided in Section 44 (Layoff). However, if no person is available for appointment, or if the hiring official is unable to select a person from the existing eligible list, the hiring official may select a qualified person from the labor market to fill the temporary vacancy.

#### **13.4 Provisional Appointments**

A career employee who is appointed to serve temporarily in a higher classification shall be designated as a provisional employee. No employee shall hold a provisional appointment in the same position for more than 12 months. The City Manager may extend the provisional appointment beyond this 12-month limitation ~~after notification and consultation with the union~~ with mutual agreement of the parties. No provisional appointment in the same position will be extended beyond 24 months, except where the employee in the provisional appointment is replacing an employee who is on the extended approved leave. No employee shall hold a provisional appointment(s) in one or more positions for more than 24 consecutive months within a 30 consecutive month period, except where the employee in the provisional appointment is replacing an employee who is on an extended approved leave.

An employee who holds provisional status in a classification shall receive step increases in such classification as if the employee held permanent appointment thereto.

The City does not guarantee a permanent promotion to the employee working as a provisional employee. An employee who is removed from a provisional appointment, shall have the right to be reinstated to his/her former classification at the appropriate pay level, before the provisional appointment. The employee shall suffer no loss of classification seniority in his/her original classification as a result of holding provisional status.

Upon career promotion to another class, an employee may request within 30 days to have any time served provisionally in the new class within the prior year credited to his/her class seniority.

#### **13.5 Working in a Classification outside the Bargaining Unit**

An employee provisionally appointed to a classification outside the bargaining unit shall work the work schedule and receive the salary of the classification of the provisional appointment. Such employees shall receive whatever vehicle assignments, subject to normal application and use procedures, which are associated with that higher position, and, if assigned in excess of 30 days, the employee shall be subject to the overtime provisions that apply to the higher-level



classification. All the health and welfare benefits and all other terms and conditions of employment set forth in this agreement shall apply to an employee provisionally appointed to a classification outside the bargaining unit.

**13.6 Temporary Assignment Training Pay**

For training purposes, employees not meeting all of the minimum qualifications for a supervisory position may be temporarily assigned for a minimum of three (3) consecutive working days, to perform the duties of supervisor and will receive a five percent (5%) increase in their current salary.

**13.7 Project Based Position Employee**

An employment status of “Project Based Position” means a position, regardless of funding source, of limited duration not to exceed three years to be utilized to complete a project or for an external grant funded position whose funding is uncertain as to amount or duration. An employee receiving an initial appointment to such “Project Based Position” may be terminated no later than upon completion of the project or the duration of the external grant funding but in any case no longer than three years from the date of the original appointment. An employee receiving an initial appointment to a Project Based Position shall be fully benefited. In the event of a layoff under Section 44, employees holding “Project Based Positions” will be terminated without right of recall prior to the layoff of any career employee, provided that a qualified career employee is available to fill the position. An employee holding a “Project Based Position” shall not be covered by the provisions of Section 44 (Layoff) and may be terminated for cause at any time by the City Manager. An employee appointed to a Project Based Position will be subject to the provisions of Section 2.1 of the Agreement.

If a career employee is appointed to a “Project Based Position” the City will be permitted to fill the vacated position with another “Project Based Position” appointment.

**13.8 Temporary Agency Employees**

An employee hired through a temporary agency shall not be retained longer than six (6) months, unless the employee is replacing a career employee on leave of absence or on a temporary assignment to another department. In no case shall the said retention period exceed the duration of the absence. The City will not attempt to extend the six (6) month period by replacing or exchanging temporary agency employees. However, nothing shall preclude temporary agency employees from competing for positions in the career service.

## **SECTION 14: HOURS AND DAYS OF WORK**

### **14.1 Rules**

Hours and days of work shall be governed by rules established by the City Manager or designee. (At the present time, hours and days of work are as shown in Exhibit E (Hours and Days of Work).)

### **14.2 Community Service Officers Assigned to the Jail**

Community Service Officers assigned to the Jail shall work shifts that are composed of eight (8) hours and fifteen (15) minutes each day. The shift shall include a thirty (30) minute lunch of which fifteen (15) minutes will be unpaid.

The City and the Union will continue to explore shift schedules that provide alternatives to the eight (8) hour and fifteen (15) minute shift.

### **14.3 Parking Division/Police Department**

The regular workweek for Parking Enforcement Officers shall include Sunday. Parking Enforcement Officers may be required to work between the hours of 7:00 a.m. and 10:00 p.m.; provided that regular shift premiums shall be applicable as set forth in Section 16, and shift selection shall be as set forth in Section 14.4, that is, Sunday work in the Parking Division will be assigned on the basis of inverse seniority unless more senior employees prefer to accept such work.

### **14.4 Shift Selection and Assignments**

Within a given classification, shift assignments (Swing, Night and Day) shall first be offered to employees by classification seniority on a voluntary basis. In the event shift assignments are not filled voluntarily, such shift assignments shall be made on the basis of inverse classification seniority.

14.4.1 In Unit J, the selection of shifts, days off and assignments, may be directed in order to ensure appropriate coverage of male and female staff for management of the City Jail facility.

#### **14.4.2 Types of Shifts:**

- a. **Swing shift** means authorized work schedules regularly assigned in which at least four (4) hours worked are between the hours of 5:00 p.m. and 12:00 midnight of each workday.

- b. **Night shift** means authorized work schedules regularly assigned in which at least four (4) hours worked are between the hours of 12:00 midnight and 7:00 a.m. of each workday.
- c. **Day shift** means any authorized work schedules assigned except rotating, swing, or night shifts as defined in this section.

**14.5 Clerical Unit Work Schedule**

For the Clerical Unit, a change in the daily work schedule that requires an employee to work beyond the regular work schedule shall not require the employee to flex his or her hours except by mutual consent of the employee and the supervisor. However, employees in work units that provide a six (6) or seven (7) day operation may be required to flex their work schedule, based on the needs of the work unit. Flexing of work schedule will be assigned on the basis of inverse seniority unless more senior employees prefer to accept such work. The required flexing of work schedules will be on a day-for-day basis. When an employee is required to work on a regularly scheduled day off, the department will provide the employee with an alternative day off in the same work week when the required flexing occurs.

In the event that the City changes a clerical employee's work hours on a permanent basis, the City will provide the employee notice at least thirty (30) calendar days in advance of the date of the change. For the purposes of this Section, the schedule change shall mean a change in the employee's work hours of at least one (1) hour. If the employee is unable to work the newly scheduled hours, the City will seek volunteers in the same classification in the Department or work area who are willing to work the newly scheduled hours. In the event that a volunteer exists, the new schedule shall be given to the volunteer. If no employee is able to work the new schedule, the City will offer the affected employee a transfer to a budgeted vacant position that is available to be filled as determined by the City Manager in the same classification in the City. If no vacancy exists, the employee's work hours will be changed as scheduled.

**14.6 Flexible Scheduling**

Employees shall be permitted to request variable working hours such as, but not limited to, 10 hours a day four days a week, job sharing, and working under a flexible arrangement. Flexible scheduling may also include the option of a one-half hour lunch break. This option shall be available in all departments in the City and will be considered seriously if all City functions within units can be accomplished through flexible scheduling.

**14.7 Shift Trades - Community Service Officer**

The Police Department policy on Shift Trades among sworn personnel shall be equally applicable among Community Service Officers.

**14.8 Work Assignment**

Each new employee shall be provided with a written description of his/her job class, and each supervisor shall discuss with the new employee the duties of his/her position as a part of the departments' orientation. Moreover, within 30 days of appointment to a new position and as part of the department orientation process, an employee in Representation Unit K1 or K2 may request a written description of the employee's major areas of responsibilities. The description of the employee's major areas of responsibilities may be amended from time to time based on the needs of the workunit and it is not intended to capture all duties that can be assigned to an employee that are within the scope of responsibility outlined in the employee's specific job classification.

**14.9 Building Maintenance**

For Building Maintenance Mechanics, Building Maintenance Mechanic Trainees, and Building Maintenance Supervisor: Hours of work will be adjusted effective January 7, 1990 to 37.5 hours per week. Monthly rate of pay adjusted to reflect actual hours.

Schedule of rotation and days off determined by the City, in the same general manner as currently applies to Electrical unit.

Effective June 29, 2008 each employee in the classifications of Building Maintenance Mechanic, Building Maintenance Mechanic Trainee and Building Maintenance Mechanic Supervisor shall have the option to retain a 37.5 hour work week schedule or to change his/her work schedule to forty hours per week with an increase in pay to reflect the additional hours. Additionally, any employee may increase to forty hours per week after July 1, provided that such change shall be made at the beginning of the pay period. An employee who has changed to a 40-hour workweek shall have a one-time option to return to a 37.5-hour workweek. If the employee exercises the option to return to 37.5 hours and then changes to a 40-hour workweek, the employee will remain at 40 hours per week for the remainder of his work time in the position. Any employee who is hired after June 29, 2008 will work a forty (40) hour per week schedule and will have no option to change his/her schedule to 37.5 hours.

The City and the Union may agree in writing to alternate work schedules other than those set forth in this agreement including a 9/80 work schedule which contains an 80 hour pay period with hours worked in 9 days. The City will take into consideration its operational needs, including the impact of potential overtime, in

deciding whether to approve an alternate work schedule. However, such alternate work will not be unreasonably denied.

#### **14.10 Daylight Saving Time**

14.10.1 **Spring:** In the Spring when transitioning to Daylight Saving Time (DST), employees working during the one (1) hour transition from Standard Time to DST will be paid only for actual hours worked. Employees working on a shift which includes the one (1) hour transition may be granted an option by the Department Head or his or her designee, to work an additional hour or use compensatory time, floating holiday, or vacation to make up the lost work hour.

14.10.2 **Fall:** In the Fall when transitioning from DST, employees working during the one (1) hour transition will be paid for all hours worked including overtime at one and one-half (1½) times the straight-time rate of pay for hours worked in excess of the regular workweek as set forth in Section 15 of this Agreement.

#### **14.11 Family Friendly and Environment Friendly Workplace**

The City shall comply with the applicable provisions of the Berkeley Family Friendly and Environmental Friendly Workplace Ordinance 13.101 to members of this bargaining unit. As such, employees may request variable working hours such as, but not limited to, 10 hours a day, four (4) days a week, flexing start and end times, and working under a flexible arrangement. Management may approve, in advance, an employees' request to temporarily flex their work schedule between the hours of 6:00 a.m. and 8:00 p.m. on a particular day, or over a specific period of time, by adjustment to the employee's start time and end time, or lunch break. Any denial of an employee's request for flexible scheduling shall explain the denial in a written response that sets out a business reason for the denial.

#### **14.12 Work Schedule Change**

Except as provided in Section 14.5 (Clerical Unit Work Schedule) and/or under emergency action as provided in Section 15.6 (Natural Disaster/Declared Emergency), the City will provide employees with at least a two (2) week advance notice of a permanent work schedule change.

## **SECTION 15: OVERTIME**

Employees required to work in excess of their basic workweek shall be compensated for such overtime services as follows:

### **15.1 Overtime Pay Eligibility and Rates**

Except for employees working an Assumed Work Day (Section 18 - Assumed Work Day) all work in excess of eight (8) hours in any 24-hour period, which begins with the employees' scheduled or actual starting time, whichever is earlier, shall be paid for at one and one-half (1½) times the regular rate for the first four (4) hours of such excess and at two (2) times the regular rate for the balance of such excess. This provision shall not be applicable when excess hours are required by a schedule adjustment requested by the employee or part of a regular flextime schedule requested by the employee. Regular flextime schedules which include work in excess of 10 hours in any day must be approved by the Union prior to requesting such a schedule.

See Appendix A and Appendix B for the scheduling of overtime for Maintenance Chapter employees in the Streets and Sanitation and Solid Waste and Recycling Divisions of the Public Works Department.

**15.1.1 Mandatory Overtime for Employees in Unit K1 and K2:** Except as otherwise provided in Section 15.2 (Compensatory Time), when an employee in Representation Unit K1 or K2 is directed to work in excess of his or her basic work week, the employee shall be paid at the rate of one-and-one-half (1½) times the employee's regular rate of pay. Based on the needs of the work unit, the manager may offer the employee being directed to work overtime the option of earning Compensatory time in lieu of overtime pay, subject to the maximum accumulation requirement in Section 15.2 (Compensatory Time).

### **15.2 Compensatory Time**

Compensatory time off may be earned in lieu of overtime pay at the rate of one and one-half (1½) hours for each overtime hour worked up to a maximum of sixty (60) hours of such compensatory time.

Accumulation of compensatory time off in excess of sixty (60) hours may be allowed at the discretion of the Department Head. Utilization of compensatory time shall be determined by the Department Head with due regard for the wishes of the employee and particular regard for the needs of the service. As used herein, sixty (60) hours is equal to ninety (90) hours of time off work. In the event of layoff or

termination, the employee shall be compensated for all compensatory time accrued but still unused.

Whether an employee shall be compensated for overtime by compensatory time off or by payment shall be at the sole discretion of the employee's Department Head.

Employees who have an accrued compensatory time bank shall be permitted, at the employee's option, to use such compensatory time in lieu of vacation time for any scheduled vacation days.

**15.3 Payment Upon Termination**

In the event that an employee resigns or is terminated, the employee shall be entitled to compensation for his or her accumulated overtime.

**15.4 Work Week**

For the purpose of computing overtime, the workweek shall be defined as beginning at 12:01 a.m. Sunday morning and ending at 12:00 midnight Saturday.

**15.5 Emergency Overtime**

Employees who are called from their living quarters for emergency work or duty on days other than normal work days or on normal work days outside of their regular work hours shall be paid emergency overtime compensation for actual time worked; provided, however, that in any case of emergency overtime as herein provided the minimum time for which such overtime compensation shall be paid shall be three (3) hours; and provided, further, that if such overtime work is performed prior to the beginning of the regularly scheduled work period and such overtime continues into such regularly scheduled work period without a break in service, compensation shall be paid only for the actual time worked. In no case shall an employee be compensated for more than 24 hours at applicable rates in any one 24 hour period, unless the department head or his/her designee approves in advance.

In the event that the employee on scheduled standby is not called, and another employee has been called to perform the emergency overtime assignment, both the employee who performed the assignment and the employee on scheduled standby status will receive the minimum overtime compensation as provided in Section 15.5.

**15.6 Natural Disaster/Declared Emergency**

If an emergency is declared by the City, county, state or national authority:

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- 15.6.1 If an employee is called outside of normal working hours, the employee gets time and one half (1½) the normal rate of pay for the first whole shift regardless of the number of hours worked. If the employee is not called from home the regular rules apply (i.e., overtime for hours worked above eight in a day).
- 15.6.2 Thereafter: the first eight hours at regular rate and 7½% for hours worked between 5:00 p.m. and midnight; 10% for hours worked from midnight to 7:00 a.m. For hours greater than eight in a shift, the employee gets time and one-half (1½) the normal rate of pay but no shift differential on those hours above eight.
- 15.6.3 There will be no reduction in the number of hours in the regular work week schedule (either 32 for employees working a 37.5 hour work week or 40).

**15.7 Clerical Unit Overtime and Scheduling**

- 15.7.1 The parties recognize that employees may be required to work overtime from time to time and that employees may have personal constraints that limit the ability of the employee to work overtime.
- 15.7.2 The City will notify Clerical unit employees at least 5 days in advance of the need to work overtime. However, the parties acknowledge that there may be unforeseen, unpredictable circumstances which arise in which the City is unable to provide 5-day advance notice of the need for overtime. In such case the City will provide as much notice as possible of the needed overtime. The City will seek volunteers to perform the work. If no volunteers are available, overtime may be mandated based on the needs of the work.
- 15.7.3 The City will use flexible scheduling in the work unit to ensure coverage with the intent to limit overtime. The City shall solicit input from staff on flexible scheduling to set a schedule that works best for the employees and meets the needs of the division/department.



**SECTION 16: PREMIUM PAY****16.1 Shift Differential**

16.1.1 **Swing Shift:** Employees who regularly work a full shift of eight (8) hours or more on swing shift as defined in Section 14.4.2 (Types of Shifts), which includes four (4) hours or more between the hours of 5:00 p.m. and 12:00 midnight, shall be paid their regular salary plus seven and one-half percent (7½%) of their monthly salary per month.

16.1.2 **Night Shift:** Employees who regularly work a full shift of eight (8) hours or more on night shift as defined in Section 14.4.2 (Types of Shifts), which includes four (4) hours or more between the hours of 12:00 midnight and 7:00 a.m., shall be paid their regular salary plus ten (10) percent of their monthly salary per month provided, however, that in the case of any such employee who is regularly assigned to such night-shift work for less than an entire work week, the additional payment shall be made only for the portion of the work week worked on the night-shift assignment.

16.1.3 **Mechanical Sweeper Operator Shifts:** Employees in the classification of Mechanical Sweeper Operator (Job Code 63090) who regularly work a combination of a "swing" and "night" shifts, which shifts include eight (8) hours or more and further include four (4) hours or more between either the hours of 5:00 p.m. and 12:00 midnight (swing shift), or the hours of 12:00 midnight and 7:00 a.m. (night shift), shall be paid in addition to their regular salary, ten percent (10%) of their regular salary for those periods said employees work a combination of "swing" and "night" shifts.

**16.2 Standby - Units D**

Except as provided below, employees in Unit D who are assigned to standby service shall be paid for such service an amount equal to ten (10) hours work during each week that they are assigned to such standby services at an overtime rate based upon their regular monthly salaries. For the purposes of this Section, week shall mean the seven (7) consecutive calendar days following assignment to standby service. In no case shall an employee be compensated for more than 24 hours at applicable rates in any one 24 hour period, unless the department head or his/her designee approves in advance.

Standby service shall mean being available for service outside of regular working hours at any time when called. If an employee assigned to standby service is not available when called or is unable or fails for any reason to perform the service when called, the employee shall not receive the standby pay provided for herein. Employees absent from work on vacation leave, compensatory time or sick leave will not be eligible to be assigned to Standby service.

The standby pay provided for herein is a minimum guarantee to an employee assigned to standby service. An employee assigned to standby duty shall receive ten (10) hours of overtime compensation in addition to any overtime worked while on standby. The City shall provide the standby employee with a vehicle. Said employee shall be responsible for taking all reasonable steps to insure the safety of the tools and equipment on that vehicle. In no case shall an employee be compensated for more than 24 hours at applicable rates in any one 24 hour period, unless the department head or his/her designee approves in advance.

**Scheduled Overtime during Standby:** The employee who is on scheduled standby status may perform scheduled overtime tasks on a voluntary basis. The standby premium shall not be pro-rated. If an emergency call occurs during the time that the employee is performing scheduled overtime tasks that call shall be paid at the time and one-half rate and not at the call back rate set forth in Section 15.5. If other employees are concurrently performing scheduled overtime tasks, the Director of Public Works may, at his or her discretion, assign the work to employees present within the City performing the scheduled overtime tasks at the regular overtime rate of pay.

### **16.3 Standby - Units K-1 and K-2**

With respect to employees in Units K-1 and K-2 only, the City agrees to arrange for standby compensation prior to any requirement that employees be assigned standby duty.

### **16.4 Emergency Standby – Unit J; Unit D Parking Enforcement Officers and Unit D Parking Enforcement Supervisors**

Employees in Unit J and Unit D Parking Enforcement Officers and Unit D Parking Enforcement Supervisors who are assigned to Emergency Standby service by the department shall be paid or given compensatory time off for being placed on Standby status as follows:

16.4.1 An employee in Unit J; and Unit D Parking Enforcement Officer and Unit D Parking Enforcement Supervisor who is placed on Standby service by the department on his or her regular scheduled work day shall be paid for a minimum of one hour and at a one-quarter time rate (i.e., 0.25 multiplied by

the hourly rate and multiplied by the number of hours placed on Standby status).

16.4.2 An employee in Unit J as well Unit D Parking Enforcement Officer and Unit D Parking Enforcement Supervisor who is placed on Standby service by the department on his or her regularly scheduled day off shall be paid for a minimum of two (2) hours at a one-quarter time rate (i.e., 0.25 multiplied by the hourly rate and multiplied by the number of hours placed on Standby status).

16.4.3 An employee in Unit J as well as a Parking Enforcement Officer and Parking Enforcement Supervisor in Unit D who is placed on Standby service as provided for in 16.4.1 and 16.4.2 above, is required to be available for service outside of regular working hours at any time when called and during the period of time as specifically assigned by the supervisor. If an employee assigned to Emergency Standby service is not available when called, is unable to respond, or fails for any reason to report for duty when called, the employee shall not receive the Emergency Standby pay provided for herein. In no case shall an employee be compensated for more than 24 hours at applicable rates in any one 24 hour period, unless the department head or his/her designee approves in advance.

## **SECTION 17: SPECIAL ASSIGNMENT PAY**

### **17.1 Bilingual Premium Pay**

17.1.1 An employee who is required as an essential part of his or her job to provide non-English language services, including Braille and sign language, routinely and consistently as part of his or her regular job assignment as determined by the City will receive a Bilingual Premium Pay Differential of 5%. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of 5% will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

17.1.2 An employee who is required as an essential part of his or her job to provide non-English language services, including Braille and sign language, when either a) assigned by management, or b) at the request

of the employee with the supervisor's agreement, or, c) after a job audit and who must utilize these skills on an occasional basis will receive a Bilingual Premium Pay Differential of 2%. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of 2% will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

- 17.1.3 The bilingual premium will not be applicable under any circumstances except to an employee who possesses second language competency. Management reserves the right to test for second language appropriate competency prior to a Bilingual Premium Pay Differential.
- 17.1.4 The City may designate an employee to receive either the 5% or 2% Bilingual Premium Pay Differential on a temporary basis for a specified period provided the employee met the requirements contained in the first or second paragraph of this Section.

## **17.2 Mental Health Clinics Differential**

Employees in Unit K-1 or K-2 who are regularly assigned to work in Mental Health Programs, in direct contact with clinic patients, shall receive a five percent (5%) differential. This Mental Health Clinics Differential will be reported to CalPERS as Hazard Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

## **17.3 Summer Youth Supervision Differential**

Employees who supervise two or more Summer Youth or Court Assignees shall receive a five percent (5%) differential. This Summer Youth Supervision Differential will be reported to CalPERS as Lead Worker/Supervisor Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

## **17.4 Construction Equipment Operators Differential**

Construction Equipment Operators shall receive a seven and one-half percent (7½%) differential for hours worked operating the D-8, the Tracked Front End Loader, the Low Boy Tractor Trailer and grader effective January 1, 1991. This Construction Equipment Operators Differential will be reported to CalPERS as Heavy/Special Equipment Operator Special Assignment Pay. However, any hours

worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

## 17.5 Training

17.5.1 **Training Differential:** Employees assigned in writing by the department head and approved by the Director of Human Resources as qualified trainers or instructors for specific specialized skills (identified by departments in consultation with Human Resources) shall be compensated for hours actually worked training at five percent (5%) differential. This Training Differential will be reported to CalPERS as Training Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

17.5.2 **Public Safety Dispatcher Police Desk Training Premium:** Employees in the classification of Public Safety Dispatcher II and assigned in writing by the Chief of Police of his or her designee and approved by the Director of Human Resources as qualified trainers or instructors for specific specialized skills on the Police Desk shall be compensated for hours actually worked training at ten percent (10%) differential. This Training Differential will be reported to CalPERS as Training Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

## 17.6 Sewer Work Pay

Streets and Sanitation Division personnel assigned through annual designation to sewer work (any work in the sewer involving installing, repairing, rodding, and jetting) shall be paid a premium of ninety cents (\$0.90) per hour which premium shall be added to and considered a part of their pay. Personnel assigned intermittently to sewer work during regular duty hours shall be paid ninety cents (\$0.90) per hour premium pay for each regular hour worked that day for a minimum of eight (8) hours. Personnel assigned intermittently to sewer work during overtime shall be paid at time and one-half times the sewer premium pay. This Sewer Work Pay will be reported to CalPERS as Sewer Crew Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

**17.7 Parking Enforcement Training**

The City to pay 5% differential to Parking Enforcement Representative assigned to train new employees in lieu of Supervisor and Assistant Supervisor. This Parking Enforcement Training Differential will be reported to CalPERS as Training Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

**17.8 Smog Technician License Premium Differential**

Employees in the classifications of Mechanic, Mechanic Supervisor or Service Technician who obtain and maintain a valid California Basic Area Smog Technician License issued by the Bureau of Automotive Repair shall receive a 2% differential to normal base salary. This Smog Technician License Premium Differential will be reported to CalPERS as Mechanic Premium Educational Pay. However, any hours worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

**17.9 Special Response Team**

An employee in Representation Unit J who is assigned as an active member of the Special Response Team (SRT) shall receive a five percent (5%) salary differential when involved in an active SRT incident. If an employee is assigned as a member of the SRT while on regular duty and not while on overtime, those hours worked as a SRT member on regular duty shall be reported to CalPERS as Hazard Premium Pay.

**17.10 Longevity Pay**

Effective June 28, 2009, employees completing twenty-four (24) years of service shall receive a three percent (3%) differential beginning with the anniversary date of beginning the twenty-fifth (25<sup>th</sup>) year of service and shall apply to all hours in a paid status. This Longevity Pay shall be reported to CalPERS as Longevity Pay Incentive Pay.

**17.11 Roll Off Container Truck**

An employee in the classification of Solid Waste Truck Driver who is assigned to operate the Roll Off Container Truck in the Solid Waste Division of the Public Works Department shall receive a differential of \$45 per month. This Roll Off Container Truck Differential will be reported to CalPERS as Heavy/Special Equipment Operator Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

**17.12 Handling of Narcotics Evidence in the Police Department Property Room**

A Community Service Officer and Community Service Officer Supervisor assigned to the handling of Police records of narcotics evidence in the Police Department Property Room will receive a differential of three percent (3%). This differential will be reported to CalPERS as Police Records Assignment Premium Pay. However, any hours worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

**17.13 Special Class Commercial Driver’s License Premium**

Effective June 26, 2011 employees required to possess and maintain a valid California Class A or Class B Commercial Driver’s License as a condition of employment shall receive a three percent (3%) differential to base pay. This differential shall be reported to CalPERS as Special Class Driver’s License Pay. However, any hours worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

**17.14 Emergency Medical Dispatching**

In the event Berkeley takes responsibility for emergency medical dispatching, the City and the Union agree to meet and confer over impacts on current terms and conditions of employment.

**17.15 Commercial and Residential Route Refuse Collector Premium**

Effective June 19, 2016, employees in the classification of Solid Waste Worker assigned to a Commercial or Residential Collection Route in the Zero Waste Division of the Public Works Department shall receive a two percent (2%) differential when assigned and performing duties on a Commercial or Residential Collection Route. Effective June 18, 2017, the differential shall be increased by an additional two percent (2%), for a total of four percent (4%). This Commercial and Residential Route Refuse Collector Premium will be reported to CalPERS as Refuse Collector Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

**17.16 Hazardous Substance Special Assignment Pay**

Employees assigned to a Citywide coordinated response to perform clean up services of established encampments shall receive a three percent (3%) salary differential to base pay for actual hours worked.

**17.17 One-Time Dispatcher Retention Bonus**

Effective upon ratification of this agreement, Public Safety Dispatcher II and Supervising Public Safety Dispatchers who have completed five (5) years of service in their classification shall receive the following one-time retention bonuses:

July 2019 \$750 minus applicable taxes\*  
July 2020 \$750 minus applicable taxes\*

\*Such amounts shall not be reported as PERSable compensation to CalPERS.

This Section 17.17 shall become null and void at the expiration of the contract on June 27, 2020 and shall not be included in a successor MOU unless negotiated and agreed to by both Employer and the Union.

## **SECTION 18: ZERO WASTE**

### **18.1 Assumed Work Day**

The City and the Union agree to continue the practice of the Assumed Work Day for employees in the Solid Waste Division of the Public Works Department assigned to residential and commercial collection routes and to Tractor Trailer Drivers assigned to transport solid waste to the landfill. For the purpose of this Agreement, an Assumed Work Day means an employee is assumed to have worked a shift of at least eight hours regardless of actual hours worked when assigned to residential and commercial collection routes or to a Tractor Trailer Driver assigned to transport solid waste to the landfill.

For employees assigned to an Assumed Work Day schedule, the following conditions apply with respect to compensation:

- 18.1.1 Overtime will be paid at one and one-half (1½) times the normal hourly rate for all hours worked over 40 in a week. For the purposes of this Section, the 40 hour work week includes all hours in a paid status except as provided in paragraph 4 below.
- 18.1.2 Overtime will also be paid for all hours worked on another regularly assigned residential or commercial collection route or different assignment on completion of the route assigned at the beginning of the shift. The rate of such compensation shall be determined by calculations made pursuant to the Fair Labor Standards Act (FLSA) and specifically 29 C.F.R. Section 778.312(a)(1).
- 18.1.3 If an employee is required to work on a Holiday as provided in Section 20.1.1 through 20.1.13 of this Agreement, the employee shall be compensated for overtime as provided in paragraphs 1 and 2 of this



Section, and shall be compensated at the Holiday overtime rates set forth in Section 20.4 of this Agreement.

- 18.1.4 Those employees who are not regularly assigned to an Assumed Work Day schedule and who are given a temporary assignment to an Assumed Work Day schedule on a given day will be compensated on an Assumed Work Day basis as provided in this Section provided that at least 50% of the Assumed Work Day assignment has not been completed on a residential or commercial collection route or any trip to the landfill after the second daily trip.

**18.2 Zero Waste Route Bid**

A Route Bid to determine Zero Waste Division collection route assignments will be conducted on a yearly or as needed basis due to the needs of the work unit. The parties acknowledge that if significant operational changes are occurring, for the purpose of maintaining continuity of service, the Route Bid may be delayed. Employees in a paid status at the time the Route Bid is issued may bid on a collection route in the Zero Waste Division.

A Route Bid Selection Criteria may include, but is not limited to the following:

- a) Seniority in Class
- b) Date of Hire (Drivers only)
- c) Attendance
- d) Safety Record

The parties agree to meet and confer over the impacts on route assignment as a result of either an elimination or creation of routes.

Details pertaining to how the Zero Waste Collection Route Bid is conducted are contained in Zero Waste Division Route Bid Selection Standard Operating Procedures regarding route bid selection.

**18.3 Zero Waste Vacation Scheduling**

Zero Waste shall designate an annual vacation schedule as outlined in the Zero Waste Division Standard Operating Procedures.

**18.4 Solid Waste Worker / Driver Check-Off**

Employees hired into the classification of Solid Waste Worker shall be provided with behind the wheel truck driver training within 180 days of appointment to the career classification.

**18.5 Truck Driver Safety**

Any driver who believes his or her truck is unsafe to operate shall immediately cease driving and notify his or her immediate supervisor. The driver shall be reassigned to another truck while his or her truck is out of service for safety reasons. The truck taken out of service for safety reasons, shall not be driven until cleared by the mechanic on duty. If the employee disagrees with the City's clearance of the truck for safety reasons and is directed to operate it, the employee or the Union on behalf of the employee may request a meeting with the City's Safety Officer or his or her designee within 24-hours of the directive. At the employee's request, such meeting may include the employee's Union representative.

## LEAVES

### **SECTION 19: VACATION**

#### **19.1 Eligibility**

All employees who have worked for the City six (6) months or more and have worked half-time or more in the preceding calendar year shall be entitled to vacation leave.

#### **19.2 Scheduling**

The times during the calendar year at which an employee shall take vacation shall be determined by the Department Head with due regard for the wishes of the employee and particular regard for the needs of the service. Wherever practical, employees working in the same classifications within a division shall be given preference of vacation time by seniority. If the requirements of the service are such that a Department Head cannot permit an employee within the department to take an annual vacation leave or any part of such leave within a particular calendar year, the City Manager may permit such employee to take the deferred vacation during the following year.

With advance supervisory approval, vacations may be in increments of one (1) hour.

#### **19.3 Accrual**

The vacation accrual rate shall be as follows:

<b>Years of Service</b>	<b>Authorized Annual Vacation (in work weeks)</b>	<b>Vacation Leave Credits (in workdays per month of svc.)</b>	<b>Vacation Leave Credits (in hours earned per month of svc.)</b>
Through the first three years of service	2	0.833	6.667
Fourth through eleventh years of service	3	1.25	10
Twelfth through seventeenth years of service	4	1.667	13.333
Eighteenth through twenty-fourth years of service	5	2.083	16.667

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Years of Service	Authorized Annual Vacation (in work weeks)	Vacation Leave Credits (in workdays per month of svc.)	Vacation Leave Credits (in hours earned per month of svc.)
Twenty-fifth year of service and each year thereafter	6	2.5	20

**19.4 Eligibility - First Two (2) Years**

Each employee, during that portion of the calendar year in which the employee was originally appointed and during that next succeeding calendar year, shall be entitled to vacation leave credits at the rate of .833 work days for each calendar month of service. Each such employee shall be entitled to take, during these two (2) calendar years, only such annual vacation leave as the employee earns.

After two (2) years of service, employees may request, and upon approval, to take up to a maximum of two (2) weeks of their annual vacation, in advance of actual earning. Approval of requests for advance vacation shall be solely at the discretion of management.

**19.5 Eligibility - Effects of Part-Time and Interrupted Service**

For an employee who has worked on a part-time or intermittent basis or has been on leave of absence without pay for a total of six (6) months or more or who has been terminated and subsequently reemployed, the actual years of service with the City shall be used for the purpose of computing length of service in determining eligibility for vacation at the two (2), three (3), four (4), five (5) and six (6) weeks' rate.

19.5.1 Employees working on an intermittent or part-time basis who have worked half-time or more in the preceding calendar year without termination of employment, shall be entitled to a prorated vacation leave based upon the actual years of service with the City and upon the actual amount of time worked in the preceding calendar year.

19.5.2 For the purpose of computing length of service in determining eligibility for vacation at the two (2), three (3), four (4), five (5) or six (6) weeks' rate, time spent on extended military leave shall be counted as time spent in the service of the City.

**19.6 Holidays during Scheduled Vacation**

In the event one or more municipal holidays fall within a vacation leave, such holidays shall not be charged as vacation leave, and the vacation leave shall be extended accordingly. The provisions of this Section shall not apply to those

positions in which holidays, due to the necessities of public health and safety, are normal working days.

### **19.7 Maximum Accumulation**

Employees may defer vacation earned to a maximum cumulative total of eight (8) weeks. An employee who has attained maximum accumulation may be required to take all excess earned vacation or receive pay in lieu thereof at the option of the City. Not later than October 1 of each year, the City will advise employees who have attained a maximum accumulation of vacation whether such excess earned vacation must be scheduled as time off prior to the end of the year. Such time off shall be scheduled in accordance with the provision of Section 19.2 (Scheduling).

The City shall require all employees to reduce their accrued vacation balances to no more than 320 hours, as of the last pay period in February of each year of this Agreement. To effectuate the requirement that employees not accrue more than 320 hours vacation leave, the parties agree that not later than November 15 of each year of this Agreement, the City will provide the Union and Department Heads with a report identifying all employees who have accrued two hundred and eighty (280) hours of vacation leave and appear in danger of exceeding the 320 hour limit. Employees who have accrued 280 hours of vacation leave, as of that date, will be advised by their supervisor that they must take vacation leave to reduce their vacation leave accrual by February of the following year.

Supervisors should be flexible in granting employee vacation requests to those employees above, or approaching the 320 hours limit, and further, that with regard to employees who are in danger of exceeding the 320 hour limit, no vacation request by such an employee shall be unreasonably denied. If an employee who is in danger of exceeding the 320 hour limit fails by December 31 of each year of this Agreement to schedule a vacation to be taken before the last pay period in February of each year of this Agreement, the City has the authority to direct the employee to go on vacation leave to reduce the employee's accrued vacation.

If, due to operational necessity, a department head denies an employee vacation leave and does not provide the employee with an alternate vacation date, and as a result causes the employee to exceed the 320 vacation leave limit, said employee shall nonetheless be entitled to use that vacation leave in the next calendar year to the extent necessary to reduce their accrued vacation to not more than 320 hours.

### **19.8 Effect of Military Leave or Break In Service**

An employee who has returned from extended military leave or any other extended leave of absence without pay or who has been reemployed or reinstated shall be entitled, during the calendar year in which the employee returns to the City service,

to a prorated vacation based upon the total years of service with the City and upon the total number of months of actual service with the City during the said calendar year. For succeeding calendar years, vacation shall be as provided in this Section 19.

**19.9 Payment / Reimbursement Upon Termination or Extended Leave**

If after six (6) months of continuous service, an employee is terminated, or is granted an extended military leave or other extended leave of absence without pay, such employee or his or her estate shall be paid for vacation credits in excess of the actual amount of vacation leave taken or such employee or his or her estate shall reimburse the City for the actual amount of vacation taken in excess of vacation leave credits, as the case may be.

Upon termination, extended military leave or other extended leave of absence without pay, vacation leave credits shall be totaled, and the actual amount of vacation leave taken, including any that may have been taken during the year in which the termination, extended military leave or other extended leave of absence without pay occurs, shall be deducted from the total credits. If the credits exceed the actual amount of vacation leave taken such employee or his or her estate shall be paid for the excess of credits on the basis hereinafter set forth. If the actual amount of vacation leave taken exceeds the credits, such employee or his or her estate shall reimburse the City on the same basis.

The basis for such payment by the City or for such reimbursement to the City shall be as follows:

The employee's normal hourly rate at date of termination, extended military leave or other extended leave of absence without pay, and multiplied by the number of vacation hours accrued but not used.

Upon termination, extended military leave or other extended leave of absence without pay, payment for excess of vacation leave credits shall be made in a lump sum at time of termination, extended leave without pay, or as soon thereafter as possible; provided, however, that an employee may elect to use excess vacation leave credits prior to termination, extended military leave or other extended leave of absence without pay, to the extent permitted by this Section 19 and receive a lump sum payment for the balance of vacation leave credits, if any. Notwithstanding the foregoing, accumulated but unused vacation credit at the time of retirement shall be paid off in a lump sum.

**SECTION 20: HOLIDAYS**

**20.1 Recognized Holidays**

Recognized holidays for employees in Representation Units D, J, K-1, and K-2 shall be:

- 20.1.1 New Year's Day
- 20.1.2 Martin Luther King, Jr.'s Birthday (3rd Monday of January)
- 20.1.3 Lincoln's Birthday
- 20.1.4 Washington's Birthday - observed on the 3rd Monday in February
- 20.1.5 Malcolm X's Birthday - observed on the Monday or Friday nearest May 19
- 20.1.6 Memorial Day
- 20.1.7 Independence Day
- 20.1.8 Labor Day - observed on the first Monday in September
- 20.1.9 Indigenous Peoples' Day - observed on the second Monday in October
- 20.1.10 Veterans Day
- 20.1.11 Thanksgiving Day
- 20.1.12 The day after Thanksgiving Day
- 20.1.13 Christmas Day

**20.2 Paid Status**

In order to be eligible for holiday pay, an employee must be on paid leave status on his or her regularly scheduled workday before the holiday.

**20.3 Floating Holidays**

Effective January 1, 1988, employees shall be granted three (3) floating holidays each calendar year.

Employees in the competitive service who have worked for the City six (6) months or more shall be granted three (3) floating holidays each calendar year. In the first calendar year of employment, employees shall be granted pro rata floating holidays as follows: Hired January 1 through April 30 – 3 days; hired May 1 through August 31 - 2 days; hired September 1 through December 31 - 1 day. Employees may take floating holidays in one-hour increments.

**20.4 Effects of Work Week**

Employees whose workweek is Monday through Friday shall be allowed all holidays with pay which fall within such work week. Those employees whose work week is other than Monday through Friday shall be entitled to the same number of holidays, with pay, during each calendar year as are allowed to employees whose work week is Monday through Friday. The procedure for allowing holidays for

employees whose workweek is other than Monday through Friday shall be established by the City Manager.

**20.5 Compensation for Holiday Work**

An employee required to work on any day which is a holiday for employees whose work week is Monday through Friday shall be paid for the number of hours worked during such day at the rate of one and one-half (1½) times the straight-time rate, based upon the employee's regular monthly salary, or shall be granted compensatory time off in an amount equal to one and one-half (1½) times the number of hours worked on such holiday. Any employee who works on Christmas Day or Thanksgiving Day shall be paid double time for that day. The hours worked on such a holiday and paid at the rate herein provided shall not be credited in computing the hours worked in the week for overtime purposes.

The holiday pay provided for shall be in addition to an employee's regular salary. In the event that the time worked on such a holiday is also overtime, as provided in Section 15 of this Agreement, payment will be made for the hours worked either as overtime under said Section 15, or as holiday pay under this Section 20, but will not be made under both Sections.

**SECTION 21: SICK LEAVE**

**21.1 Eligibility**

Any employee shall be entitled to take sick leave with full pay in case of sickness, disability, or serious illness within the immediate family of the employee in accordance with the provisions of Sections 21.2 (Accrual) to 21.6 (Family Sick Leave), inclusive.

**21.2 Accrual**

Each employee shall be credited with one (1) working day of sick leave with full pay for each month of service.

For the purposes of this Section 21, a month of service shall mean thirty (30) consecutive calendar days in the case of employees working on full-time or part-time basis, and shall mean 173 hours of work in the case of employees working on an intermittent basis.

**21.3 Use - Part-Time and Intermittent Employees**

An employee working on a part-time basis shall be entitled to use earned sick leave only on a pro rata basis; for example, if an employee works half time the employee shall be paid for time off on sick leave on a half-time basis.



An employee who works on an intermittent basis shall be entitled to use earned sick leave only for those days on which the employee would have worked if the employee had not been sick; provided, however, that an employee working on an intermittent basis who works only when called shall be entitled to use earned sick leave only when the employee becomes sick after reporting to work in response to such call.

**21.4 Accumulation / Cancellation / Restoration / Payout**

21.4.1 Such sick leave as provided in Section 21.2, when not used shall be cumulative; but the accumulated unused period of sick leave shall not exceed two hundred (200) working days, regardless of the length of service. When the maximum of two hundred (200) working days has been reached, and there after part of said maximum has been used, the used part of said maximum may subsequently be replenished at the applicable rate provided in Section 21.2.

21.4.2 Except as otherwise provided below, all accumulated sick leave shall be canceled when an employee terminates or is terminated, except that employees retiring or voluntarily terminating with a vested pension and at least twenty (20) and not more than twenty-eight (28) years of service shall be entitled to receive payment at retirement or termination with a vested pension of thirty eight percent (38%) accumulated unused sick leave days, but not in any case more than thirty eight percent (38%) of the two hundred (200) day maximum accumulation. Employees who voluntarily separate from service with a vested pension and at least twenty-eight (28) years of benefited City of Berkeley service shall be entitled to receive payment in an amount equal to 50% of their accrued sick leave days up to a maximum of two hundred unused sick leave days. The employee may choose to convert unused sick leave to retirement credit as provided by CalPERS in Government Code Section 20965.

The City has established an Internal Revenue Code Section 401(a) plan and trust agreement to address the liquidation of sick leave at time of retirement and has received a Determination Letter and a Private Letter Ruling on the plan and trust agreement. This provides employees with an irrevocable option to defer accrued but unused sick leave at time of retirement into a 401(a) plan or be paid out the balance of the accrued but unused sick leave less withholding of applicable federal and state taxes.

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- 21.4.3 Any employee retiring on permanent disability arising out of and incurred in the course and scope of his employment with the City shall be entitled to receive payment at retirement for thirty eight percent (38) of accumulated unused sick leave days, but not, in any event, more than thirty eight percent (38%) of the two hundred (200) day maximum accumulation. Employees retiring on permanent disability arising out of and incurred in the course and scope of their employment with the City with at least twenty-eight years of benefited service shall be entitled to receive payment in an amount equal to 50% of their accrued sick leave days up to a maximum of two hundred unused sick leave days.
- 21.4.4 Employees who regularly work one-half ( $\frac{1}{2}$ ) time or more and who have attained the two hundred (200) day maximum sick leave accumulation shall be entitled to receive payment for one-third ( $\frac{1}{3}$ ) of the first twelve (12) days of sick leave days, or if earning sick leave at the rate of two working days for each month of service, one-third ( $\frac{1}{3}$ ) of the first twenty four (24) days of sick leave days, for which they become eligible, do not use and would otherwise forfeit because of the two hundred (200) day maximum limitation. Determination of eligibility for such payment shall be made on an annual calendar-year basis, and payment for such sick leave for any calendar year shall be made no later than January 22nd of the following year. Such payment shall be made at the employee's salary rate in effect on the preceding December 31st and shall be made only in units of whole days and will not be made for any fraction of a day. However, the liquidation of accrued sick leave at time of retirement as provided in Section 21.4.2 will not result in a payout of accumulation of sick leave as provided in this Section.
- 21.4.5 Accumulated sick leave which has been canceled by reason of an employee's layoff in accordance with Section 44 shall be credited back to such employee if the employee returns to City employment within three (3) years of such layoff.

**21.5 Purpose / Definitions**

Sick leave shall not be considered as a privilege which an employee may use at the employee's discretion, but shall be allowed only in case of sickness or disability or in the case of serious illness within the immediate family of the employee.

**21.6 Family Sick Leave**

Not more than fifteen (15) working days (120 hours) in any calendar year may be taken as sick leave because of the illness of a member of the employee's immediate family. The immediate family of an employee, for the purpose of this Section, shall be defined as: a dependent residing in the employee's household or

parent, spouse, son or daughter, domestic partner or niece or nephew residing in the employee's household.

**21.7 Bonus for Unused Sick Leave**

For every six (6) months of perfect sick leave attendance, the employee will receive eight (8) hours of bonus time. This bonus time will be prorated for part-time employees. Such bonus time can be used for any leave purpose covered by this Agreement. Such bonus time shall be counted as vacation leave credits for purposes of determining eligibility for carry-over and liquidation at time of termination of employment. Such crediting shall occur no later than 45 working days after having been earned.

**21.8 Injury Incurred In Outside Employment**

No sick leave shall be allowed for time off for an injury incurred while working for another employer, provided that such injury is covered by the Workers' Compensation laws of the State of California, or other provision for payment for time off because of such injury is made by such other employer. In the event such injury is not covered by the Workers' Compensation laws of the State of California, and no other provision for payment for time off because of such injury is made by such other employer, sick leave in accordance with the provisions of this Section shall be allowed only if such outside employment has been approved by the City.

**21.9 Notice Required**

In order to receive compensation while absent on sick leave, the employee shall notify his/her Department Head prior to or within four (4) hours after the time set for beginning his or her daily duties, or as may be approved by the Head of his or her department. The employee will make every reasonable attempt to directly contact his or her designated supervisor within one hour of beginning of shift.

**21.10 Absenteeism / Sick Leave Abuse**

The City may establish a reasonable program for the control of abuse of sick leave and absenteeism, subject to Union review and comment.

21.10.1 The Union and the City agree to meet during the term of this 2015 through 2018 agreement, beginning no later than 90 days after Union ratification and Council approval on its regular agenda, on the City's practice with regard to the control of abuse of sick leave and absenteeism. This Section 21.10.1 shall sunset as of June 16, 2018.

**21.11 Calculations**

All sick leave shall be calculated upon actual paid hours. This provision shall go into effect upon implementation of necessary data processing changes.

**21.12 Voluntary Leave Exchange for Catastrophic Illness:**

21.12.1 Recovery Time Transfer is that system whereby an employee grants time from earned compensatory or vacation leave to another employee. Such transfer of time shall be limited to situations where the recipient of the transfer is, by reason of illness or injury, threatened with the loss of earnings due to his/her exhaustion of employment benefits. Such time transfer request must be in writing, and subject to the approval of the City Manager/Director of Library Services/Executive Director of the Rent Board. Such approval shall not be unreasonably denied. Such transfer shall be credited to the recipient at the donor's rate of pay. Recovery Transfer Time will not be used for industrial injuries or illnesses. The use or receipt of Recovery Transfer Time shall not preclude possible medical separation of the recipient employee. The City reserves the right to require medical verification by a qualified medical practitioner of the recipient employee's medical condition. The City may transfer an employee receiving Recovery Transfer Time into another position in the same classification.

21.12.2 An employee may donate accrued but unused sick leave as Recovery Transfer Time subject to the following conditions:

- a. The employee donating sick leave must maintain a sick leave balance of at least 120 hours after the donation of leave for Recovery Transfer Time. An employee donating sick leave coincidentally with terminating employment with the City shall be limited to a sick leave donation of no more than forty (40) hours regardless of the sick leave donation option(s) used.
- b. An employee may donate compensatory time off and/or vacation leave time; or
- c. An employee may donate up to forty (40) hours of sick leave per calendar year and be charged hour per hour for each hour of sick leave donated; or,
- d. After the first forty (40) hours of sick leave are donated, an employee may donate sick leave but the employee will be charged two hours of sick leave for each hour of sick leave donated for use as Recovery Transfer Time.

**SECTION 22: WORKERS' COMPENSATION**

Workers' Compensation payments shall commence according to law. Payments under the Workers' Compensation law for temporary disability, or a recurrence thereof, arising out of and in the course of employment, shall be paid for a period not to exceed 365 days at a maximum payment of the employee's pre-disability pay, but shall not exclude any salary adjustment to which the employee is entitled. Thereafter, the employee will continue to receive only the temporary disability payments provided under State Law and the City will cease to pay the difference. Temporary disability payments plus the moneys paid under the City's salary continuation program shall be equivalent to the employee's regular pre-disability pay. However, salary continuation payments above the statutorily required temporary disability payments shall not be reported by the City to CalPERS as compensation. In determining the employee's pre-disability pay the City may use either pre-disability net or gross pay based on administrative capabilities. This decision shall be applied uniformly and is not intended to reduce salary continuation benefits below those in effect under the prior Agreement.

**SECTION 23: STATE DISABILITY INSURANCE**

**State Disability Insurance Integration:** Any employee who is absent due to personal illness for more than seven (7) days (or for any period of time if hospitalized) may apply for State Disability Insurance benefits. Application forms shall be available from Human Resources.

The City shall integrate the employee's pay with the employee's State Disability benefits upon receipt of the "Notice of State Disability Claim Filed" in the following way:

- 23.1 The City will determine the weekly State Disability Insurance benefit amount based on the amount of wages earned with the City of Berkeley in the State Disability Insurance base period.
- 23.2 Where employee has accrued sick leave, the weekly benefit will be subtracted from the employee's normal weekly wage and the amount necessary to bring the total of State Disability plus wages to 100% will be deducted from the sick leave and paid on normal City payroll.
- 23.3 When employee receives State Disability Insurance check, he or she will contact payroll if the amount of the benefit is anything other than the maximum amount and payroll will make up the difference from sick leave, vacation, or comp time if the employee has any accrued to use for this purpose.

Any employee entitled to State Disability Insurance shall receive in addition thereto such portion of his or her accumulated sick leave as will meet but not exceed, the standard earnings of the employee for his or her normal work week, up to a maximum of five (5) days.

- 23.4 An Employee may integrate his/her vacation or comp time with State Disability Insurance as set forth above. If an employee wishes to exercise this option, he/she must notify the City prior to exhausting his/her sick leave integration.

## **SECTION 24: BEREAVEMENT LEAVE**

In the case of death within the immediate family of an employee such employee shall be entitled to remain absent from duty with pay in order to grieve the passing of a loved one, for a period not exceeding three (3) working days, or in the case of a funeral or memorial service conducted out of the State of California, for a period not exceeding five (5) working days. Bereavement leave need not be taken in consecutive days but shall be taken within twenty (20) working days of the death of the family member. The immediate family of an employee, for the purpose of this Section, shall be defined as a dependent or wife, husband or domestic partner, mother, father, sister, brother, child, grandmother, grandfather, mother-in-law father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law and grandchildren, aunts and uncles.

In order to be eligible for Bereavement Leave as noted above, employees are required to complete and submit the City of Berkeley Bereavement Leave Statement as provided in the City policy. Employees shall not be required to provide an obituary.

Leave of absence with pay because of death in an employee's immediate family is allowed solely for the purpose of participating in the grieving process, and such leave shall not be charged against vacation or sick leave which an employee may be entitled to, but shall be in addition thereto.

In special cases, with the approval of the Department Head, the City Manager may grant a death leave to allow an employee to attend funeral or memorial services because of the death of a person not included within the definition of the immediate family.

## **SECTION 25: MILITARY AND MARITIME LEAVE**

Military and Maritime Leave shall be governed by the provisions of the Federal Uniformed Services Employment and Reemployment Rights Act (USERRA) and any regulations promulgated to implement the Act, and the California Military and Veteran's Code.

**SECTION 26: PARENTAL LEAVE**

A continuous leave of up to one year will be granted to any employee with one (2,080 hours) or more years of employment with the City (or equivalent in the case of part-time employees) upon the birth of a child or the adoption of a child who is five (5) years or younger, providing that:

- 26.1 the one year parental leave must commence no later than thirteen (13) months from the date of birth or adoption and must expire no later than twenty-five (25) months from the date of the birth or adoption, and
- 26.2 approved parental leave shall not be deducted from the Seniority Service Date, and
- 26.3 to be eligible to exercise their rights under this Section, employees must provide thirty (30) working days notice prior to the anticipated commencement date of the parental leave, when possible.

The employee, at his or her option, may request that all or any portion of sick leave (up to a maximum of two hundred (200) days) or vacation leave that he or she has accumulated be paid in the same manner as it would if he or she had been absent due to illness or on vacation during the leave. In the event both parents are employed by the City, nothing in the Personnel Rules and Regulations shall prohibit both employees from taking simultaneous parental leave.

The foregoing leave shall be granted upon medical certification of pregnancy or the presentation of legal evidence of adoption.

During approved parental leave, after all earned leaves (except sick leave) are exhausted, the City agrees to maintain life and health insurance coverage for the duration of the approved parental leave, subject to any regular participation requirement of the employee. Thereafter the City agrees to continue coverage for the employee at the employee's expense.

**SECTION 27: LEAVE OF ABSENCE WITHOUT PAY**

**27.1 Request**

Upon request of the employee, a Department Head may grant a leave of absence to an employee within his/her department without pay for a period not to exceed

fifteen (15) working days. No leave without pay shall be granted for more than fifteen (15) working days, except upon the written request of an employee and approval of the City Manager or designee. Failure on the part of an employee on leave to report promptly at its expiration shall be cause for discharge. Employees shall, when possible, return to their original position upon return from an approved leave without pay.

## **27.2 Union Training Leave**

27.2.1 A union training leave without pay shall be granted at the request of an employee and the Union for the purpose of attending a training course sponsored by the Union. The maximum duration of such leave shall not exceed two (2) consecutive payroll periods in a calendar year. Failure on the part of an employee on leave to report promptly at its expiration shall be cause for discharge.

27.2.2 Conditional upon prior approval and upon receipt of certification of completion, the City shall reimburse an employee who is an elected official or steward of the Union for up to one half of his/her time spent in such training at the employee's permanent rate of pay, not to exceed twenty hours of paid leave in a calendar year.

27.2.3 Time spent by Union officials in retreats provided for in Section 6.5 (Official Attendance at Meetings) of this Agreement shall be counted toward the above 20 hour limit but may not be subject to the provision for payment of only half of the total time.

## **27.3 Eligibility**

No leave of absence shall be granted to any employee until the employee has utilized all accrued vacation time and any other time owed to the employee, except sick leave.

If the absence without leave is due to reasons for which the employee would be eligible for sick leave, then all sick leave must be exhausted first as well.

## **SECTION 28: JURY DUTY LEAVE**

An employee who is called or required to serve as a trial juror shall be entitled to be absent from work with pay during the period of jury duty or while required to be present in court as a result of a call to jury duty. Employees are required to submit a written proof of jury duty service issued by the court in order to receive payment for Jury Duty Leave. An



employee is required to be present at work when not serving as a trial juror or as a member of a jury selection panel. An employee will notify his or her supervisor of any unusual constraints (e.g., time to call in, time to report for jury service) made by the court that affect the employee's ability to simultaneously fulfill his or her jury duty service and employment obligations, and the supervisor will attempt to accommodate the employee based on the operational needs of the department. Absence from work to perform jury duty service shall apply to employees who work swing and graveyard shifts for those days on jury duty. Employees who serve jury duty on their days off shall be granted an equivalent number of days off during their normal workweek. The employee will keep any payment received for jury service including mileage reimbursement.

**28.1 Court Time**

The City will guarantee a minimum of four (4) hours pay for every court appearance required by an employee in the conduct of official City of Berkeley job duties on the employee's scheduled day off and four (4) hours minimum if on a workday but outside scheduled working hours. In addition, employees assigned to court phone standby in the conduct of official City of Berkeley job duties will be compensated by earning recovery time as follows: Duty day, outside of scheduled working hours, one hour minimum recovery time and hour for hour thereafter. Day off, two hour minimum recovery time and hour for hour thereafter.

## HEALTH AND WELFARE BENEFITS

### **SECTION 29: HOSPITAL-MEDICAL AND DENTAL COVERAGE**

#### **29.1 Health Insurance**

The City agrees to extend all medical and dental benefit coverages to dependents of City employees up to the date of their 26<sup>th</sup> birthday.

29.1.1 The City shall pay for the cost of health insurance coverage for employees who have such coverage under any group health insurance plan authorized by the City Council. If an employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for medical benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

29.1.2 The maximum amount the City shall be required to pay for medical insurance premiums shall be the applicable Kaiser S-1 Plan rate (i.e., single party, two party, or family), regardless of the City sponsored health plan selected by the employee.

29.1.3 For employees in a probationary or career benefited status as of January 1, 2003, the City will continue to pay 100% of the health care premium costs (employee and any dependents) for the health plan the employee is enrolled in as of this date as long as the employee remains employed in the bargaining unit. After January 1, 2003, if the employee transfers health coverage to a different health plan, the employee will assume responsibility for paying the difference, if any, between the Kaiser monthly premium rate (i.e., single party, two party, or family) and the plan chosen by the employee from that date forward. For these employees who were grandfathered under this section 29.1.3, effective April 1, 2016, the City will continue to pay 100% of the health care premium costs (employee and any dependents) for the Sutter Health Plus HMO plan as long as the employee remains employed in the bargaining unit. As stipulated above, if the employee transfers from Sutter Health Plus HMO to a different health plan, the employee will assume responsibility for paying the difference, if any, between the Kaiser monthly premium rate (i.e., single party; two-party; or family) and the plan chosen by the employee from that date forward.

29.1.4 **Medical Plan for Part-Time Employees:** Effective July 1, 2011, the

City will pay 75% of the cost of the medical plan which is fully paid for full-time employees for those part-time employees who work 20 to 29 hours per week. The City will pay 100% of the cost of the medical plan which is fully paid for full-time employees for those part-time employees who work 30 or more hours per week.

**Meet and Confer:** The Parties agree to meet and confer commencing no sooner than January 1, 2017. This negotiation shall be on methods to contain or reduce the City's health benefit costs and/or preventing that the City be required to pay any penalties associated with the Excise Tax, including but not limited to a new and/or replacement health plan. This meet and confer process will be subject to normal rules of collective bargaining, including applicable impasse, strike or lock-out procedures.

## 29.2 Dental Insurance

The City shall provide a dental care program for employees.

Effective January 1, 1995, benefits provided under the Dental Program shall be increased to an annual limit of \$2,000 for dental work and a lifetime limit of \$2,000 for orthodontics. The co-insurance rate shall be ninety percent (90%). If an employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for dental benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

29.2.1 **Dental Plan for Part-Time Employees:** Effective July 1, 2011, the City will pay 75% of the cost of the dental plan which is fully paid for full-time employees for those part-time employees who work 20 to 29 hours per week. The City will pay 100% of the cost of the dental plan which is fully paid for full-time employees for those part-time employees who work 30 or more hours per week.

## 29.3 Part-time Employees

Part-time employees who work 30 or more hours per week will receive 100% of the cost of the medical plan which is fully paid for full-time employees; for those part-time employees who work 20-29 hours per week, the City will pay 75% of the cost of the medical plan which is fully paid for full-time employees.

## 29.4 Flexible Spending Account

The City shall establish an Internal Revenue Code Section 125 Flexible Spending Account that allows an employee to elect pre-tax deductions from salary for the purpose of paying allowable medical expenses. Such plan shall be established no later than November 1, 2008.

**29.5 New Providers**

The City shall make reasonable efforts when contracting with any new providers for hospital and medical plans to contract with those providers which provide coverage for all dependents residing in the employee's household.

**29.6 Medical and Dental Benefits**

Medical and Dental benefits shall begin the first day of the calendar month following the date of hire, and end the last day of the month an employee is in pay status.

**29.7 Discipline and Treatment**

The union may request, where merited, on a case by case basis, that pending disciplinary action be held in abeyance pending successful completion of a treatment program by the employee, and thereafter as long as the employee maintains a positive performance and participates in an ongoing recovery program.

**29.8 Health Insurance In-Lieu Payment Effective January 1, 2016**

Effective January 1, 2016, for employees who show proof of alternate medical coverage, the City will compensate the employee \$576 per month, prorated for less than full time benefitted employees.

**SECTION 30: GROUP LIFE INSURANCE**

The City shall continue to provide group life insurance, by a carrier of the City's choice, for each employee in the amount of \$25,000 with a standard accidental death and dismemberment provision of a like amount. In addition, employees may purchase additional life insurance in increments of \$10,000 up to a maximum of \$300,000 at a rate offered by the City's insurance carrier and subject to any medical exam as required by the insurance carrier.

**SECTION 31: RETIREE MEDICAL COVERAGE**

The City and Union have agreed that the City will make available retiree health insurance coverage under certain terms and conditions described below. This retiree medical benefit shall be referred to as Plan Z2B Cap 3. The terms and conditions of this benefit shall be set forth in a separate document which shall contain a full plan description and shall control the administration of the retiree medical plan.

The City will begin to provide the retiree medical coverage set forth in this Section on July 1, 2000. An employee's entitlement to any and all benefits provided by the City under

this retiree medical coverage plan are subject to the funding limitations set forth in subsection 31.9 (City Funding of Retiree Health Benefits).

### **31.1 Amendment of Retiree Health Premium Assistance Plan VI, effective June 28, 1998, Restated and Amended effective March 22, 2011**

Employees who retire on or after July 5, 2015, shall be permitted, at their discretion, to enroll in non-City sponsored health plans. After Council approval of the successor Memorandum of Understanding, the City shall amend the Retiree Health Premium Assistance Plan VI (For Service Employees International Union, Local 1021 Maintenance and Clerical Chapters) as soon as practicable to allow enrollment in non-City sponsored health plans. In the event a retiree elects to enroll in a non-City sponsored health plan, the City shall make medical insurance premium payments directly to the health insurance provider in an amount equal to what the City would contribute to the City sponsored health plan. Retiree shall be solely responsible for all aspects of the requirements to enroll in a non-City sponsored health plan and maintain eligibility for such a plan; the City's sole obligation is to pay the medical insurance premium contribution required under this section, as directed by the retiree to a non-City sponsored health plan. The City shall not be responsible for any excess cost differentials associated with the direct payment of premiums to non-City sponsored plans. The City will only make payments through its third party administrator to provide medical insurance premium payments for an individual plan and will not make payments for a group plan. The retiree and/or surviving spouse or domestic partner that enroll in non-City sponsored health plans shall be solely responsible for paying the administrative set up fee, the monthly administrative fee, and/or any other fees established by the third party administrator, and said fees will be deducted directly from the retiree's monthly contribution. No cash payments will be paid directly to the retiree and/or the retiree's spouse/domestic partner. There shall be no cash in lieu payments made under this benefit.

The City and the Union agree that the City will also amend the Retiree Premium Assistance Plan VI to allow eligible retirees who retired prior to July 5, 2015 to enroll in a non-City sponsored health plan.

### **31.2 Eligibility**

An employee is eligible for the retiree health insurance coverage set forth in subsection 31.3 (Pre Age 65 Retiree Health Insurance) below if he/she meets all the following criteria:

- 31.2.1 retires on or after July 1, 2000,
- 31.2.2 is vested with CalPERS,
- 31.2.3 has at least eight (8) years of CalPERS qualifying service with the City,
- 31.2.4 is at least age 55.

**31.3 Pre Age 65 Retiree Health Insurance**

Beginning July 1, 2000, the City shall make available health insurance coverage to the employee and his/her spouse or domestic partner. The City will pay on the employee's behalf no more than \$181.56 per month for an employee electing single party health coverage and no more than \$363.12 per month for an employee electing two-party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the following chart:

<b>Years of CalPERS Qualifying Service</b>	<b>Percent of City Contribution</b>
8	30%
9	40%
10	50%
11	58%
12	66%
13	74%
14	82%
15	90%
16	92%
17	94%
18	96%
19	98%
20	100%

Employee will pay the difference between the City's monthly contribution and the actual monthly insurance premium charged by the health plan he/she has elected for retiree medical coverage. If during the term of this Agreement, the premiums for such health insurance are increased, the amount the City contributes shall increase no more than 4.5% above the previous year's contribution. No increases in the amount the City contributes shall occur before July 1, 2001. Thereafter, any increase in the amount contributed by the City will occur on July 1 each year thereafter.

**31.4 Retiree Benefits for Employees Age 65 and Over**

Once an employee or retiree reaches age 65, he or she is eligible for Medicare. As a result his/her eligibility for the retiree medical benefits set forth in subsection 31.3 (Pre Age 65 Retiree Health Insurance) ceases. On reaching age 65, the City

will make available health insurance coverage for a Medicare Risk Policy. When an employee or retiree reaches age 65, the City will contribute no more than \$17.65 per month on the employee's behalf for single party health insurance coverage and no more than \$35.32 per month for two party health coverage.

**31.5 Termination by City of Retiree Medical Benefit**

Failure of the retiree or surviving spouse to pay their monthly share of the health insurance premium will result in termination of the retiree medical benefit and relieve the City of any further obligation to provide any further benefits under this Section.

**31.6 Retiree Medical Benefit for Employees Retiring Between the Ages of 50 and 55**

An employee who is at least 50 years of age, but less than 55, and has at least eight years of CalPERS qualifying employment with the City will retain eligibility for the retiree medical benefits provided in subsection 31.3 (Pre Age 65 Retiree Health Insurance) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his/her termination from City employment until the employee's 55th birthday. If for any reason the employee has a lapse in health care coverage the employee forfeits his/her eligibility for the retiree health plan benefits upon reaching age 55 and the City has no further obligation to provide any benefits under this Section to the employee and/or his spouse or domestic partner.

**31.7 Employees Retiring between June 28, 1998 and June 25, 2000**

Employees retiring from City service between June 28, 1998 and June 25, 2000 will be eligible for the retiree medical benefits provided in this Section if they meet all of the eligibility criteria set forth in subsection 31.2 (Eligibility) and after their retirement from City service maintain continuous enrollment in a group health plan from the date of the employee's retirement until June 25, 2000. The employee shall be responsible for paying 100% of the monthly health plan premium from the date of the employee's retirement until June 25, 2000. Failure on the part of employee or surviving spouse to pay premiums and maintain continuous group health care coverage through June 25, 2000 will result in the employee forfeiting his/her eligibility for the retiree medical benefits provided in this Section and will relieve the City of any further obligation to provide benefits under this Section.

**31.8 Employees Retiring with a CalPERS Approved Disability Retirement**

If an employee retires from the City before age 55 with a CalPERS approved disability retirement, the employee will retain eligibility for the retiree medical benefits provided in subsection 31.3 (Pre Age 65 Retiree Health Insurance) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his/her termination from City employment until the

employee's 55th birthday. If for any reason the employee has a lapse in health care coverage the employee forfeits his/her eligibility for the retiree health plan benefits upon reaching age 55 and the City has no further obligation to provide any benefits under this Section to the employee and/or his/her spouse or domestic partner.

**31.9 City Funding of Retiree Health Benefit**

City contributions to the retiree medical benefit will begin on June 26, 2000. Funding of this benefit will be set aside in a trust to be established by the City.

Effective with the 1998-2002 Memorandum Agreement, the retiree medical benefit was funded by a charge of 0.50% of payroll in the third and fourth years of that Agreement, so that contributions are at 1% of the payroll in the fourth year of that Agreement. The City will fund the benefit at approximately 1% of the payroll for every year thereafter with the intent of achieving a funding level of 70% after 30 years. The funding will be ongoing to maintain a 70% funding level thereafter.

The Union understands and acknowledges that the City conducted an actuarial study to determine the percentage of payroll it needed to set aside each year and the rate of return of 7% it must achieve to fund the retiree health benefit provided in this Section. The City will conduct an actuarial study by an outside actuary of the retiree medical plan prior to June 30, 2002. After that time, the City will conduct an actuarial study by the outside actuary of the retiree medical plan every two to three years to review the funding status of the program. The outside actuary will be selected by mutual agreement of the parties. The Union and City agree that if the Actuary concludes that the City's funding of this benefit by contribution of 1% of the payroll for all miscellaneous employees is insufficient to fully fund the retiree medical benefits, the City shall not be required to increase its funding for this benefit to more than 1% of the payroll for miscellaneous employees. In the event that there are insufficient funds in the trust to cover all retirees' monthly health premiums, the City and the Union agree to meet and confer regarding the City's distribution of its 1% contribution.



## TERMS AND CONDITIONS OF EMPLOYMENT

### **SECTION 32: PROBATIONARY PERIOD**

#### **32.1 Length**

Original and promotional appointments from employment lists shall be tentative and subject to a probationary period of six (6) months (and a minimum of 1,040 hours) actual work exclusive of all leave and light duty and shall be completed within a one (1) year period. However, time spent on workers' compensation leave or on modified duty as a result of an industrial injury shall not be considered as actual service and shall not be included as time served toward completion of the probationary period.

In recognition of the safety and training requirements of several non-sworn paraprofessional classifications in the Police Department, the probationary period for those classifications is as follows:

- 32.1.1 For the classifications of Community Service Officer, and Community Service Officer Supervisor the probationary period shall be nine (9) months (and a minimum of 1,560 hours).
- 32.1.2 Employees who are hired in either the classification of Public Safety Dispatcher I or Public Safety Dispatcher II fifteen (15) months (and a minimum of 2,600 hours).
- 32.1.3 The hours counted for Community Service Officer and Community Service Officer Supervisor probation will be for actual service exclusive of all leave and light duty completed within eighteen (18) months.
- 32.1.4 The hours counted for Public Safety Dispatcher I and Public Safety Dispatcher II probation will be for actual service exclusive of all leave and light duty completed within twenty-four (24) months.

Probationary employees who are granted military leaves of absence shall complete the balance of their probationary period within a period of six (6) months following their return to City service. No provision of this Section shall be interpreted to preclude the City from establishing new classifications which may require a probationary period of more than six (6) months.

#### **32.2 Effect of Provisional Appointment**

If, before completing the required probationary period, an employee is provisionally appointed to a higher class in the same or a related series of classes, the time

served in such higher class shall be counted toward completion of the probationary period in the lower class.

**32.3 Completion**

If the service of the probationary employee has been satisfactory to the Department Head, the Department Head shall file with the Director of Human Resources a statement in writing to such effect and stating that the retention of such probationer in the service is desired. If such service has been unsatisfactory, the Department Head shall file with the Director of Human Resources such a statement, in writing, with the recommendation to the City Manager or designee that the employee be rejected.

Probationary employees may request periodic conferences with their supervisors regarding the adequacy of their performance.

**32.4 Rejection**

During the probationary period, an employee may be rejected at any time without right of appeal or hearing in any manner. An employee rejected from a position to which the employee has been promoted shall be reinstated to the position from which the employee was promoted unless charges are filed and the employee is discharged as provided in Section 39.

**SECTION 33: TRANSFER**

**33.1 General**

A transfer may be made at any time by the City Manager when a demonstrated need exists. Transfer shall not be used to effect a promotion, demotion, advancement or reduction, each of which may be accomplished only as provided elsewhere in this Agreement. No employee shall be transferred to a position for which the employee does not possess the minimum qualifications. An employee with permanent status who is transferred from one class to another class shall assume permanent status in the class to which the employee is transferred.

**33.2 Units D and J**

With respect to Units D and J only, in the event a Department Head determines to make a selection for a permanent vacancy from a transfer list existing for the same classification, the senior employee on the transfer list shall be selected.

**33.3 Transfer – Solid Waste**

The City will offer test skills training for any Solid Waste Worker so requesting on their own time in order to increase their ability to compete for positions such as Laborer.

**SECTION 34: PROMOTION**

- 34.1 Insofar as practicable and consistent with the best interests of the service, all vacancies in the competitive service shall be filled by promotion from within the competitive service after a promotional examination has been given and a promotional list established. In line with this, the City shall consider advancing career employees to vacancies in promotional positions before considering hiring temporary workers from outside the City service. Consistent with City of Berkeley Personnel Rules, each candidate for promotion must be either a permanent employee in the competitive service or a permanent employee on an active mandatory layoff reemployment list, and must possess the minimum qualifications as set forth in the specifications of the class to which promotion is sought. The right to compete in a promotional examination in a specific classification series is not limited to employees in the bargaining unit to which that classification is assigned.
- 34.2 If in the opinion of the City Manager, the City is facing staffing reductions which will result in displacement of employees, a waiver of minimum qualifications and/or substitution of related experience and education may be made in promotional examinations, with an understanding on the part of management and supervisory personnel that adequate on-the-job training which can be completed within no more than one year, will be provided to facilitate job adjustment and to compensate for waiver of qualification standards if that has occurred. The promotional recruitment announcement will state that minimum qualifications may be waived providing the applicant's experience and education demonstrates his or her on-the-job development potential, as stated above. In promotional appointments where the minimum qualifications have been waived, the probationary period will be one year to allow the employee time to demonstrate development of the necessary job knowledge and skills.
- 34.3 If, in the opinion of the City Manager, the best interests of the service can be served by an open, competitive examination instead of closed, promotional examination, and if there is not already a promotional list for the higher position, which list has not been abolished and from which the vacancy could be filled, then the City Manager may instruct the Director of Human Resources to call for applications for

the vacancy and arrange for an open, competitive examination and for the preparation and publication of an eligible list.

**34.4 Interview of City Employee**

A City employee who is on a closed promotional or an open competitive list shall have the option to interview for the vacancy. A City employee who is unsuccessful and who so requests shall be advised of steps she or he may take to increase her/his competitive standing for future promotional opportunities.

34.5 Employees who have qualified for promotional lists shall be considered for promotion based on the following factors: previous work performance, previous training and experience, merit, ability, and seniority.

34.6 If the City elects to give an open, competitive examination for a promotional position, the City shall establish two (2) lists. List A shall be a Promotional List, and shall rank successful candidates who are presently City of Berkeley career employees. List B shall rank all successful candidates who are not presently career employees. The City shall seriously consider all candidates on List A before hiring from List B.

**34.7 Step Increase**

If any employee is entitled to a step increase and receives a promotion within one month of the increase, said employee is to be placed at the second higher step.

**SECTION 35: DEMOTION**

35.1 The City Manager may demote an employee who so requests it, or whose ability to perform required duties falls below standard. No employee shall be demoted to a class for which the employee does not possess the minimum qualifications as determined by the Director of Human Resources.

35.2 Notice of the demotion shall be given the employee no later than two (2) weeks prior to the effective date of demotion and a copy of said notice shall be filed with the Director of Human Resources. Any employee who has been demoted shall be entitled to receive a written statement of the reason for such action.

35.3 An employee with permanent status who is demoted shall assume permanent status in the class to which the employee is demoted.

35.4 Upon request of the employee, demotion may be made to a vacant position as a substitution for layoff. In such cases the employee shall be restored to his or her

former position without further examination whenever such position is again to be filled in accordance with the reemployment provisions in Section 45.

### **SECTION 36: SUSPENSION**

36.1 The City Manager may suspend an employee from his/her position for disciplinary purposes based on just cause. Suspension without pay shall not exceed twenty (20) working days, nor shall any employee be penalized by suspension for more than twenty (20) working days in any fiscal year. Any employee to be suspended shall be entitled to receive a written statement of the reasons for such action.

36.2 A Department Head may suspend an employee for disciplinary purposes based on just cause for not more than three (3) working days for any one offense. Such suspension shall be reported immediately to the City Manager.

#### **36.3 Immediate Suspension**

An employee who the department head determines to be an immediate threat to the health and safety of co-workers or the public shall be placed on administrative leave with pay and sent home.

### **SECTION 37: DISCHARGE**

An employee may be discharged at any time by the City Manager, but if the probationary period has been completed, then such discharge must be for cause. Any employee who has been discharged shall be entitled to receive written statement of the reasons for such action.

### **SECTION 38: RESIGNATION**

An employee wishing to leave the competitive service in good standing shall file with the Department Head, at least two (2) weeks before leaving the service, a written resignation stating the effective date and reasons for leaving. The resignation shall be forwarded to the Director of Human Resources with a statement by the Department Head as to the resigned employee's service performance and other pertinent information concerning the cause for resignation. Failure of the employee to give the notice required shall be entered on the service record of the employee, and may be cause for denying future employment by the City. The resignation of an employee who fails to give notice shall be reported by the Department Head immediately.

**SECTION 39: REINSTATEMENT**

A permanent or probationary employee who has resigned with a good record may be reinstated within two (2) years to the employee's former position, if vacant, or to a vacant position in the same or comparable class without further competitive examination. This Section shall not be interpreted as a guarantee of reinstatement to an employee who has resigned with a good record and who requests reinstatement within two (2) years.

An employee who is reinstated under this Section who has completed probation in the classification to which the employee is being reinstated shall not serve a probationary period on reinstatement. An employee who is reinstated under this Section who has not completed probation in the classification to which the employee is being reinstated shall be required to serve a new probationary period on reinstatement. The duration of the probationary period determined by the classification and the provisions of Section 32 of this Agreement.

## GRIEVANCE AND DISCIPLINARY APPEAL PROCEDURE

### SECTION 40: GRIEVANCE AND DISCIPLINARY APPEAL PROCEDURE

#### 40.1 Definitions

For purposes of this section of this Agreement, the following definitions shall apply:

- 40.1.1 **Grievance:** A Grievance is any complaint of a member of the bargaining unit involving the interpretation, application, alleged violation, or any other matter of this Agreement or within the scope of representation of the Union.
- 40.1.2 **Administrative Complaint:** An Administrative Complaint is a grievance filed by a grievant or the Union specifically regarding payment of compensation or the interpretation and application of contract provisions and past practices, or allegations of past practice.
- 40.1.3 **Discrimination Complaint:** A Discrimination Complaint is a grievance filed by a grievant or the Union regarding a violation of Section 3 of this Agreement.
- 40.1.4 **Grievant:** A Grievant may be any member of the bargaining unit covered by the terms of this Agreement, or the grievant may designate the Union to act on his or her behalf or the Union itself may file a grievance on behalf of a member or group of members.
- 40.1.5 **Disciplinary Action:** The recommendation of or implementation by an employee's supervisor or Department Director related to the suspension, demotion, salary reduction or discharge of an employee covered by this Agreement.
- 40.1.6 **Disciplinary Appeal:** A Disciplinary Appeal is the procedure established hereunder to afford an employee his or her due process rights related to a pending disciplinary action. An employee may appeal the recommendation or imposition of suspension, demotion, salary reduction or discharge other than when such action is taken during the formal probationary period for that employee.

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- 40.1.7 **Salary Reduction:** Salary Reduction is the reduction of an employee's base compensation to a lower salary step within the employee's current salary range for a specified period of time.
- 40.1.8 **Suspension:** Suspension is the temporary removal of an employee from his or her duties without pay.
- 40.1.9 **Grievance Appeal Officer:** Appeals of grievances will be heard by the City Manager for general City operations, the Library Board of Trustees for Library employees may designate the Director of Library Services as the Appeals Officer and the Executive Director of the Rent Board for Rent Board employees. The City Manager may designate a Grievance Appeal Officer in his/her stead.
- 40.1.10 **Union:** The term Union used throughout this procedure shall include by reference the bargaining unit itself and the appropriate Chapter President and Chief Steward who may be representing an employee engaged in this Grievance and Disciplinary Appeal Procedure.
- 40.1.11 **Day:** A day is defined herein as any day in the calendar year on which the City of Berkeley is regularly open and providing full administrative services to the public.
- 40.1.12 **Written Reprimand:** In the event that an employee receives a written reprimand, the Union or the employee may request a meeting with the supervisor to discuss the reprimand. Such meeting shall occur within fifteen (15) days of the request. The employee may write a rebuttal to any written reprimand within thirty (30) calendar days of receiving the written reprimand or the meeting and such rebuttal will be placed in the Personnel File along with the written reprimand.

**40.2 Grievance Procedure**

**Initial Filing Period:** Formal written grievances must be filed at Step 1 of the grievance procedure within thirty (30) days of the date the incident occurred or within thirty (30) days of the date the grievant or the Union reasonably should have had knowledge of the matter.

- 40.2.1 **Informal Process:** *Complaints Filed With* - An employee or Union who believes that s/he/it has a grievance shall discuss the grievance informally with the applicable immediate non-bargaining unit supervisor. If this is not possible due to the absence of this supervisor, the employee



or his/her Union may discuss the grievance informally with the applicable Division Manager.

- a. **Filing Period:** Such informal grievances shall be verbally brought to the attention of either the immediate non-bargaining unit supervisor or, if unavailable, with the Division Manager within a reasonable period of time of the incident generating the grievance. (NOTE: In order to comply with formal grievance procedures, refer to Section 40.2, "Initial Filing Period", for absolute filing deadlines and time frames for formal grievances.)
- b. **Process:** The grievant shall be entitled to a personal conference with and an informal decision by, either the relevant supervisor or Division Manager within ten (10) days of making the request for an informal meeting. This informal decision terminates the informal process unless mutually agreed upon by employee, supervisor/manager and Union to extend informal discussions.

40.2.2 **Formal Process: STEP 1 – First-Level Manager: *Complaints Filed With*** - If the grievant is not satisfied with the results of the informal process, the grievant may file a formal written grievance following the conclusion of the informal conference process. Such written grievance shall be presented to the applicable Division Manager with a copy to the Department Director and the Union.

- a. **Interpretation of Agreement and Past Practice:** Questions regarding the interpretation of the Agreement or allegations of violations of Past Practice shall initially be filed in writing with the Director of Human Resources of the City.
- b. **Compensation:** All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Director of Human Resources of the City.
- c. **EEO:** All complaints concerning discrimination or other Section 3 matters shall be initially filed in writing with the Equal Employment Opportunity and Diversity Officer of the City. However, complaints alleging violation of any applicable laws pertaining to protected union activity will be filed with the Director of Human Resources of the City.

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40.2.3 **Filing Period:** This written grievance must be filed within ten (10) days following the conclusion of the informal conference process, except as follows:

- a. **Compensation:** Administrative Complaints regarding issues concerning payment of compensation may be filed within 90 days of the last day of the alleged under or over compensation.
- b. **EEO:** The allowed time for filing of a complaint under this Section shall be governed by the EEO Complaint Investigation and Resolution Procedure of the City of Berkeley's EEO/Affirmative Action Program (attached herein as Appendix B).

40.2.4 **Process:** The grievance must be presented in writing on a form provided by the City, and approved by the Union. The written statement shall be a clear, concise statement of the grievance including specific provisions of this Agreement alleged to have been violated, the circumstances involved, the decision rendered at the informal conference, and the specific remedy sought. Within ten (10) days of receiving the written grievance, the grievant shall be entitled to a personal conference with the Division Manager if requested. Other than issues of Contract Interpretation and Past Practices, Compensation or EEO, within ten (10) days, the Division Manager shall communicate a written decision to the grievant and the Union with a copy to the Director of Human Resources and the Department Director. Such action will terminate Step 1.

- a. **Compensation:** In the case of issues of compensation, the Director of Human Resources or his/her designee shall respond in writing within thirty (30) days of receiving the written complaint. In such cases, no adjustment shall be retroactive for more than thirty (30) calendar days from the date upon which the complaint was filed or thirty (30) calendar days from the date when an employee and/or the Union may reasonably be expected to have learned of said claimed violation. Only complaints which allege that employees are not being compensated in accordance with the rules, regulations, and resolutions of the City Council or in accordance with the understanding contained in any Agreement which has resulted from the meeting and conferring process shall be considered.

Any other matters of compensation are to be resolved in the meeting and conferring process, and, if not detailed in the operative Agreement which results from such meeting and conferring process,

shall be deemed withdrawn until the meeting and conferring is next opened for such discussion.

- b. **EEO:** Discrimination complaints shall be processed in accordance with the EEO Complaint Investigation and Resolution Procedure of the City of Berkeley EEO/Affirmative Action Program (attached herein as Appendix B) except that:
  - i. The employee has the right to be represented by a Union representative at all stages of the informal and formal complaint investigation and resolution procedure;
  - ii. The Equal Employment Opportunity and Diversity Officer shall meet with and report to only the City Manager during the formal resolution process; and
  - iii. The City Manager shall make the final decision on the complaint which may be appealed by the Union to an impartial arbitrator within ten (10) days of receipt by the Union of the City Manager's decision. Such an appeal shall be processed in accordance with the above defined grievance procedure of this Agreement. The City shall promptly notify the Union of the filing of all formal complaints, as well as their acceptance or rejection.

The City Manager or his or her designee will notify the Union of a proposed decision on a formal complaint, and the reasons therefore, and upon a request within ten (10) days, shall meet with the Union prior to issuing a final decision.

If a grievance also alleges a violation of another Section of the contract in addition to Section 3, Section 40.2.2.3.2 shall apply only to that part of the grievance which alleges a violation of Section 3 unless otherwise mutually agreed.

Complaints challenging, disputing, or seeking to modify or change any policy component of the City's EEO/Affirmative Action Program, including but not limited to the assignment of responsibilities, workforce utilization analysis, and affirmative action goals and timetables, shall not be subject to the grievance/arbitration procedures of this Agreement. This in no way limits the right of the Union to grieve violations of the City's EEO/Affirmative Action Plan.

- c. **Interpretation and Past Practice:** In the case of issues of interpretation of the Agreement, past practices, payment of compensation or violations of Section 3 of the Agreement (Discrimination, etc.), if the grievant is not satisfied, s/he may move the complaint directly to Step 3 of this grievance procedure.

40.2.3 **Formal Process: STEP 2 – Department Director:** *Complaints Filed With* - If the grievant is not satisfied with the results rendered in Step 1, the grievant may appeal the decision in writing to the applicable Department Director or his/her designee with a copy to the Union.

Contract Interpretation and Past Practice, Compensation and EEO complaints would go directly to Step 3 of this process. (NOTE: See Section 40.2.2.)

- a. **Filing Period:** Such written appeal must be submitted to the Department Director or his/her designee within ten (10) days from the date the grievant received the decision of the Division Manager.
- b. **Process:** The written appeal shall include a copy of the original grievance, a description of the informal process and results, the decision rendered at Step 1 and a clear, concise statement of the reasons for the appeal. Within ten (10) days of receiving the written grievance, the grievant shall be entitled to a personal conference with the Department Director or his/her designee if requested. Within ten (10) days of the personal conference, the Department Director or his/her designee shall communicate a written decision to the grievant and the union with a copy to the Director of Human Resources. Such action will terminate Step 2.

40.2.4 **Formal Process: STEP 3 – Grievance Appeal Officer:** *Complaints Filed With* - If the grievant is not satisfied with the results rendered in Step 2 for general grievances and Step 1 for issues of Contract Interpretation and Past Practice, Compensation or EEO, the grievant may appeal the decision in writing to the applicable Grievance Appeal Officer with a copy to the Department Director, the Director of Human Resources and the Union.

- a. **Filing Period:** Such written appeal must be submitted to the appropriate Grievance Appeal Officer within ten (10) days from the date the grievant received the decision rendered in Step 2.

- b. **Process:** The written appeal shall include a copy of the original grievance, a description of the informal process and results, the decision rendered at Step 1 and 2 and a clear, concise statement of the reasons for the appeal. Within ten (10) days of receiving the written grievance, the grievant shall be entitled to a personal conference with the Grievance Appeal Officer or his/her designee if requested. Within ten (10) days of the personal conference, the Grievance Appeal Officer or his/her designee shall communicate a written decision to the grievant and the union with a copy to the Director of Human Resources and the Department Director. Such action will terminate Step 3.

40.2.5 **Formal Process: STEP 4 – Arbitration:** *Complaints Filed With* - If the Union is not satisfied with the results rendered in Step 3, the Union may require that the grievance be referred to an impartial arbitrator by notifying the applicable Grievance Appeal Officer.

- a. **Filing Period:** Such notification of desire to go to arbitration must be filed in writing with the Grievance Appeal Officer within thirty (30) days of the conclusion of Step 3 with a copy to the Director of Human Resources. Provided further that the Union shall forward to the City the Union's portion of the California State Mediation and Conciliation Services (CSMCS) fee within sixty (60) days of receipt of the Grievance Appeal Officer's (City Manager) response. Failure by the Union to meet either the thirty (30) day or sixty (60) day deadline for both referral to Arbitration and payment of the CSMCS fee shall be deemed as a full and complete waiver by the Union to appeal the Grievance Appeal Officer (City Manager) decision to Arbitration and the City Manager decision shall be final and binding on all parties.
- b. **Process:** The impartial arbitrator shall be selected from the California State Mediation and Conciliation Services (CSMCS) unless another party is mutually agreed upon. CSMCS will provide a list of five (5) arbitrators. The City and the Union will alternately strike a name until one remains. The remaining name will be the arbitrator. The cost of the arbitrator's decision shall be borne equally by the parties.

The arbitrator may hear testimony, receive written briefs, interview witnesses, and conduct any investigations she or he deems appropriate, and shall render a final and binding decision to the parties which will end the formal grievance process.

No Arbitrator shall entertain, hear, decide or make recommendations on any dispute involving a deposition over which a formally recognized employee organization has jurisdiction unless such dispute falls within the definition of a grievance as specified in this Section.

Proposals to add or to change the Agreement or written agreements or addenda supplementary hereto shall not be arbitrable and no proposal to modify, amend or terminate the Agreement, nor any matter or subject arising out of or in connection with such proposal may be referred to arbitration under this Section; and neither any Arbitrator shall have the power to amend or modify or recommend amendment or modification of the Agreement, or any written agreements or addenda supplementary hereto or to establish or recommend establishment of any new terms and conditions of employment.

No changes in this Agreement or interpretation thereof (except interpretations resulting from arbitration proceedings hereunder) will be recognized unless agreed to by the City Manager and the Union.

#### 40.2.6 **General Conditions of a Formal Grievance**

- a. **Union Representation:** The grievant shall be entitled upon request to representation by the Union at all levels of the grievance procedure. In situations where the Union has not been requested to represent the grievant, the City will not agree to a final resolution of the grievance until the Union has received a copy of the grievance and the proposed resolution, and has been given the opportunity to respond and state its view on the matter. The Union will be given ten (10) days in which to respond.
- b. **Time Limits:** Failure by the Union to file or appeal a grievance within the time limits specified constitutes a dropping of the grievance. Failure by the City to respond by the specified times shall entitle the Union to move the matter to the next higher step of the grievance procedure. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.
- c. **Witnesses:** The City and/or the grievant may call witnesses.
- d. **Release Time:** If an employee covered by this Agreement gives testimony in connection with the grievance procedure during working

hours, the employee shall suffer no loss of pay. If the grievant's hearing is scheduled during working hours, the grievant shall suffer no loss of pay in order to present his or her grievance.

### 40.3 Disciplinary Appeals

40.3.1 **Union Representation:** An employee may request the presence of a Union steward during an interview with his or her supervisor when the employee reasonably believes the interview may result in disciplinary action, and where there is no assurance from the supervisor that disciplinary action is not intended. If at any time during an interview without a steward in attendance, it becomes apparent that disciplinary action could result, either party may adjourn the interview until a steward can be present. The City commits itself to the application and enforcement of a uniform policy of progressive discipline.

40.3.2 **Sole Mechanism:** The provisions of this Section shall be the sole mechanism for resolving Disciplinary Appeals pertaining to suspensions, demotions, salary reductions and terminations and shall be processed in the following manner:

#### 40.3.3 Disciplinary Process: STEP 1 – Department Director

- a. **Review of Recommendation:** The Department Director must receive and review all departmental recommendations for suspension, reduction in salary or a termination. However, for employees of the Library, the Deputy Director of Library Services will have this responsibility.
- b. **Period of Review and Process** The Department Director or his or her designee, or for Library employees the Deputy Director of Library Services, receiving a recommendation proposing a suspension, reduction in salary, or a termination shall hold a meeting with the employee and his or her Union representative to hear an appeal of the recommendation, or the affected employee may choose to make an appeal in written form. If the employee chooses to respond in written form, the Department Director may use his or her discretion on whether a personal conference is necessary.

If a personal conference must be held with the employee and his or her Union, the personal conference must be held within ten (10) days of receiving the recommendation from departmental staff or within ten days of receiving the written appeal from the employee whichever

occurred later. The proposed action and the reasons therefore shall be discussed with the employee. The Department Director or his or her designee shall issue a decision sustaining, modifying or rejecting the discipline within ten (10) days after the completion of the personal conference with the affected employee, or if the employee chose to make an appeal in written form, receipt of the written appeal. This shall conclude Step 1 of the Disciplinary Appeal Procedure.

#### 40.3.4 **Disciplinary Process: STEP 2 – Appeal of the Decision**

- a. ***Appeals Filed With:*** If the employee or his or her Union is not satisfied with the decision in the case of suspensions of three days or less, or recommendation in the case of suspension of more than three (3) days, of the Department Director or his or her designee resulting from Step 1, the employee or the Union may require that the disciplinary appeal be referred to the City Manager who shall designate a Grievance Appeal Officer to hear the appeal and in the Library to the Board of Library Trustees who may designate the Director of Library Services as the Grievance Appeal Officer.

For Suspensions of Three Days or Less: If the employee or his or her Union do not appeal the decision of the Department Director or his or her designee resulting from Step 1, the disciplinary action shall be implemented in accordance with the provisions of Section 38 (Suspension) and the Disciplinary Appeal Procedure will end here.

For Disciplinary Action of Suspensions of Greater than three days or Discharge: If the employee or his or her Union do not appeal the recommendation of the Department Director or his or her designee resulting from Step 1, the disciplinary actions involving suspension greater than three days, salary reduction or discharge will be referred to the City Manager for review. The City Manager may review or modify the recommendation of the Department Director. If the City Manager does not modify the recommendation of the Department Director, the disciplinary action shall be implemented in accordance with the provisions of the Agreement and the Disciplinary Appeal Procedure will end here.

If the City Manager contemplates modification of the recommendation of the Department Director, the employee and the union will be notified in writing of their right to a disciplinary appeal meeting with the Grievance Appeal Officer. Such notice shall be



issued within ten days of receipt of the Department Director recommendation. The Grievance Appeal Officer will hold a meeting and issue a decision issue as provided in Section 40.3.4.3 below.

- b. **Filing Period:** Said appeal must be filed in writing within ten (10) days of the conclusion of Step 1 above; and must contain the originally recommended action, the written decision of the Department Director and all other correspondence exchanged from the start of the original recommended action and Step 1 activities.
- c. **Process:** The Grievance Appeal Officer or his or her designee receiving an appeal of a proposed disciplinary action shall hold a meeting with the employee and his or her Union representative. The personal conference must be held with the employee and his/her Union within ten (10) days of receiving the written appeal. The Grievance Appeal Officer shall issue a written decision sustaining, modifying or rejecting the discipline within ten (10) days after the completion of the personal conference with the affected employee and/or the receipt of the written appeal. This shall conclude Step 2 of the Disciplinary Appeal Procedure. Any decision to suspend, implement a reduction in salary or terminate an employee will become effective at the conclusion of Step 2 of the Disciplinary Appeal Procedure.

#### 40.3.5 Disciplinary Process: STEP 3 – Arbitration

- a. **Appeals Filed With:** If the Union is not satisfied with the decision of the Grievance Appeal Officer or his or her designee resulting from Step 2, the Union may require that the disciplinary appeal be referred to an impartial arbitrator by notifying the City Manager, with a copy of the Director of Human Resources.
- b. **Filing Period:** Said appeal must be filed in writing with the City Manager or his or her designee within thirty (30) days of the conclusion of Step 2 above. Provided further that the Union shall forward to the City the Union's portion of the California State Mediation and Conciliation Services (CSMCS) fee within sixty (60) days of receipt of the Grievance Appeal Officer's (City Manager) response. Failure by the Union to meet either the thirty (30) day or sixty (60) day deadline for both referral to Arbitration and payment of the CSMCS fee shall be deemed as a full and complete waiver by the Union to appeal the Grievance Appeal Officer (City Manager)

decision to Arbitration and the City Manager decision shall be final and binding on all parties.

- c. **Process:** The impartial arbitrator shall be selected from the California State Mediation and Conciliation Services (CSMCS) unless another party is mutually agreed upon. CSMCS will provide a list of five (5) arbitrators. The City and the grievant will alternately strike a name until one remains. The remaining name will be the arbitrator.

The arbitrator may hear testimony, receive written briefs, interview witnesses, and conduct any investigations she or he deems appropriate, and shall render a final and binding decision to the parties which will end the formal disciplinary appeal process.

The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the employee (or his or her Union) and the City. Each party, however, shall bear the cost of its own presentations including preparation and post-hearing briefs, if any. Arbitrator decisions on matters properly before them which pertain to the disciplinary actions involving the suspension, demotion, pay reduction, or discharge of an employee shall be final and binding on both parties.

#### 40.4 General Conditions for Disciplinary Appeals

The City commits itself to the application and enforcement of a uniform policy of progressive discipline.

- 40.4.1 **Union Representation:** The employee who is the recipient of the recommended discipline shall be entitled upon request to representation by the Union at all levels of the disciplinary appeal process.
- 40.4.2 **Time Limits:** Failure by the employee or the Union to file an appeal of the proposed discipline within the time limits specified constitutes a dropping of the disciplinary appeal. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.
- 40.4.3 **Witnesses:** The City and/or the appellant may call witnesses.
- 40.4.4 **Release Time:** If an employee covered by this Agreement gives testimony in connection with the disciplinary appeal procedure during working hours, the employee shall suffer no loss of pay. If the employee's appeal is scheduled during working hours, the employee shall suffer no loss of pay in order to present his or her appeal.

## MISCELLANEOUS TERMS AND CONDITIONS

### SECTION 41: GENERAL PROVISIONS

#### 41.1 Personal Conduct

- 41.1.1 No employee shall accept appointment to the deputyship or assistantship of any County or State Office or position, or otherwise incur an obligation of civil public position, or otherwise incur an obligation of civil public service outside his/her regular municipal employment without first obtaining the recommendation of the head of his/her department and of the City Manager or designee.
- 41.1.2 No employee shall be disciplined for off-the-job activities which do not affect the performance of the employee.
- 41.1.3 Employees shall so arrange their personal financial affairs so that the demands of creditors and collection agencies shall not impose recurring burden upon the offices of the City Manager or designee, the Department Heads or the Director of Human Resources for the purpose of making collections.
- 41.1.4 Full-time City employees may not carry on concurrently with their public service any private business or undertaking, attention to which affects the time or quality of their work or which casts discredit upon or creates embarrassment for the City government.
- 41.1.5 No official or employee who wears a badge or other official insignia as evidence of his/her authority and identity shall permit such badge or insignia to be used or worn by any other person of the same or another department, or otherwise to leave his/her possession, without approval by the head of his/her department. The Department Head shall not grant such approval except as to persons regularly and formally appointed by the City Manager or designee to the position designated by the badge or insignia.

#### 41.2 Protective Clothing and Equipment

- 41.2.1 **Rain Gear** - The City will provide rain gear (which shall include hat, jacket, pants and boots) for employees in Representation Unit D and provide rain gear that includes rain jacket, rain pants, and a traffic safety

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reflective vest to Community Services Officers working in Crime Scene Investigation (CSI) assigned to work in inclement weather.

- 41.2.2 **Safety Shoes** - An annual allowance of two hundred dollars (\$200) shall be paid to employees specified in "F" (Shoes, Tools and Uniforms) toward the purchase of safety shoes.
- 41.2.3 **Gloves** - Parking Meter Mechanics, Parking Meter Maintenance Workers, Tool Lending Specialists, and City Services Aides shall be furnished with appropriate work gloves.
- 41.2.4 **Ear Plugs and Face Shields** - Employees who request earplugs will be furnished same. Machinery Operators will be provided with a face shield.
- 41.2.5 **Coveralls:** The City agrees to provide 3 changes of coveralls per week for sewer crew and construction crew.
- 41.2.6 **Bulletproof Vests:** Community Service Officers and Community Service Officer Supervisors and Animal Control Officers have the right to purchase bulletproof vests at their own expense at the City's wholesale cost.
- 41.2.7 **VDT Glasses** - The City shall provide glasses as medically required for operators of Video Display Terminals.
- 41.2.8 **Clothing** - The City will issue guidelines permitting safe substitution of pant/shirt combination for coveralls. There will be no cost to the employee. (Note: For example only, 4 pair coveralls and 3 pairs pant/shirts could be substituted for 7 pair coveralls. Applies only to employees qualifying under safety guidelines within Equipment Maintenance, Solid Waste and Streets and Sanitation divisions.)

**41.3 Tools**

Each employee regularly assigned to the classifications of Building Maintenance Mechanic, Building Maintenance Mechanic Trainee, Building Maintenance Supervisor, Mechanic Supervisor, Welder Mechanic, and Mechanic who is presently required to provide tools of the trade or other equipment will continue to do so but shall receive a flat annual tool replacement allowance of five hundred dollars (\$500) per year effective June 29, 2008.

Each employee regularly assigned to the classification of Parking Meter Mechanic or Senior Parking Mechanic shall receive a flat annual tool replacement allowance

of two hundred fifty dollars (\$250) per year, and Service Technician and Container Maintenance Welder two hundred twenty dollars (\$220) per year, effective June 29, 2008.

Tool allowances shall be paid by August 1st of each calendar year.

The parties reconfirm that such payments constitute a tool replacement allowance.

#### 41.4 Training

- 41.4.1 The City agrees to develop and implement an employee development and training policy and program. Responsibility for developing and coordinating training programs for employees shall be assumed by the City. Such training programs may include lecture courses, demonstrations, assignment of reading matter or such other devices as may be available for the purpose of improving the efficiency and broadening the knowledge of municipal employees in the performance of their duties. An Advisory Committee on Training shall be established by the City and shall include representation from the Union.
- 41.4.2 Participation in and successful completion of special training courses will be considered in making advancements and promotions. For training to qualify for consideration in advancements and promotion, the City will require one or all of the following: City approval of the class curriculum, evidence of successful completion of class, and proficiency testing. Evidence of such activity shall be filed with the Director of Human Resources by the Department Head.
- 41.4.3 The City shall reimburse all Equipment Maintenance employees for mileage and tuition expenses related for attendance at job-related courses. Provided that the employee must have prior authorization from his/her department head and the course has been approved by the City.
- 41.4.4 All parking enforcement officers shall be given training in the handling of difficult citizens. The City shall provide Customer Service training to all Parking Enforcement Officers within twelve (12) months of the execution of this agreement and as needed during the life of this agreement.
- 41.4.5 Training Program for Building Maintenance Mechanic Trainee, Landscape Gardner Trainee, Forestry Climber Trainee, and Weighmaster Trainee to be limited to two (2) year up and out plan.

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- 41.4.6 The City and the Union agree to establish a Joint Labor, Management and Community Committee by 120 days after the execution of this (2018 to 2020) agreement to review the creation of a program for community training and apprenticeships to build the capacity of Berkeley residents and make a joint recommendation to the City of Berkeley Cannabis Commission and City of Berkeley Commission on Labor.

**41.5 Driver's Training**

Public Works Department shall initiate a Driver's Training Program which shall include periodic refresher courses, for all employees required to operate a City vehicle. Upon successful completion of the Program, the City shall issue an Operator Certificate specifying which vehicles the employee is qualified to operate. After the Program is in full operation, continued provisional and permanent assignment to the operation of specific vehicles shall be contingent upon appropriate certification.

**41.6 Safety**

- 41.6.1 The City and the Union will make every effort to maintain workplaces free of health and safety hazards. No employee shall be required to perform work with unsafe equipment or in situations which can be injurious to their health or safety.

To achieve this goal the City shall appoint an industrial hygienist who will be responsible for the development, maintenance and continuity of the City's safety program with the advice and assistance of a City Safety Committee. The Committee will include two (2) members from the Union. Representatives to the City-wide Safety Committee shall meet for organizational purposes within one month of ratification of this agreement and every other month thereafter.

Members shall be advised of City Safety Committee meetings and their agendas in advance.

As assigned and scheduled the City Safety Committee members will be responsible for conducting workplace safety and health surveys to identify safety and health hazards at worksites.

The City departments and divisions as appropriate shall establish safety committees comprised of union representatives and supervisory personnel to develop written accident prevention programs which will include:

- a. worksite and work practice hazard inspection check lists for use by affected employees,
- b. a training program instructing employees in safe work practices plus specific instruction with regard to hazards unique to a particular job,
- c. scheduled periodic inspections to identify and correct unsafe conditions and work practices which are found,
- d. defining the responsibility of employees and management to follow safe work practices, to report hazards in the work area, and to comply with occupational safety and health standards applicable to their own actions, and
- e. provision of Material Safety Data Sheets in an appropriate place, easily accessible to affected employees, for all materials being used at a worksite.

41.6.3 The Public Works Safety Committee shall provide one (1) Union representative from each Division. The Parking Division Union representative may also attend the monthly Public Works Department Safety Committee meeting. Each committee shall meet at least once a month.

Employee members shall be advised of Committee meetings at least three (3) days in advance of meeting dates and shall be furnished with an agenda at such time. Employee members may have specific items placed on the agenda. Copies of minutes of each departmental meeting shall be distributed to members of the Committee.

The Occupational Health and Safety Coordinator and/or the Safety Committee shall have authority and obligation to inspect work locations and equipment in regard to safety and health considerations. The Safety Inspection Team shall consist of the Coordinator and two members of the Safety Committee to be chosen by the Coordinator. The Inspection Team may make written recommendations for safety and health improvement and the department shall give a written response as to corrective measures within fifteen (15) working days or sooner. The Occupational Health and Safety Coordinator and/or the Safety Committee shall determine when a situation requires response in less than the time limits specified herein.

The Safety Committee shall have the authority to investigate and report on all substances currently being used by City employees and all proposed for use in the future.

- 41.6.4 The Police Department Officer Safety Committee shall include one Community Service Officer and one Parking Division representative chosen by the Union.

**41.7 Use of Automobiles**

The City Manager shall govern the use of City-owned automotive equipment and privately-owned automotive equipment by such rules and regulation as he or she may establish. The cash allowance will be equal to the amount established by the Internal Revenue Service, and will change as necessary to comply with IRS Standard Mileage Rate.

**41.8 Sewer Crew Assignment**

No employee of the Public Works Department below the level of Sewer Maintenance Assistant Supervisor shall be required to accept regular assignment to sewer crews in excess of one (1) continuous year; provided, however that these provisions shall not prevent assignment to sewer crews in emergencies as deemed necessary by the Department Head. The Union and the City shall as soon as possible arrange the implementation of the rotation system.

**41.9 Annual Physical Examination**

The City will provide one (1) physical examination (based on the City's specification as to scope of examination and examiner) each year to each employee in a classification categorized as a "high risk" classification. This exam is mandatory for all affected employees. The parties agree that the classification of Police Service Assistant is a "high risk" classification.

The City will provide annual T.B. screening test, at no cost to employees, who, in the course of their work are subject to health hazards. Such screening tests shall be on City time.

**41.10 Subcontracting**

For the purpose of preserving work and job opportunities for employees covered by this agreement, if the City intends to subcontract bargaining unit work, and such would result in the layoff of a permanent employee, the City will notify the Union in advance of such action, and upon written request, will meet and confer in accordance with the MMBA prior to subcontracting the work in an effort to find alternatives.



Each month, the City will provide the union with a copy of the “Proposal to Contract Work” report prepared for the City Council that lists proposals for contracting out work in excess of \$25,000. The report shall be provided to the Union at the same time the report is transmitted to the City Council. Information will include nature of project, the name of department requesting the work, and the budget code. Within five (5) working days of receipt of the information, the union may submit a written request to the Purchasing Manager. The City will provide a copy of the actual bid specifications within five (5) working days of the bid specifications being finalized and approved by the department issuing the contract, or of receipt of the written request, whichever applies.

Within ten (10) working days of receipt of the bid specifications, the Union may submit a written request to the Department Director or designee proposing to procure outside contractual services. The Department Director or designee will meet and discuss the scope of work being proposed to be performed by outside contractors before a Request for Proposal or Bid Specification is issued for competitive bid. Five days prior to the meeting, the union will provide a description of the issues and concerns it wishes to discuss at the meeting.

For work related to building maintenance estimated to cost less than \$25,000 per year and normally handled by the Facilities Maintenance Division, record or summaries of any such work contracted shall be made available to the Union on a monthly basis. In cases where the Union believes that work either subcontracted or given out for bid should be done by the bargaining unit, it may request a meeting with the City. The Department Director or designee will meet with the Union to discuss the scope of work. Five (5) days prior to the meeting the Union will provide a description of the issues and concerns it wishes to discuss at the meeting.

**41.10.1 No Subcontracting of Janitorial Services:** The City agrees that for the term of this Agreement, it will not contract out any janitorial services currently being performed by employees represented by SEIU Local 1021. Notwithstanding the foregoing, it is understood by the parties that the City currently contracts out janitorial services at several different City locations, and the parties agree that this Agreement does not affect the City’s ability to renew and/or continue to contract out janitorial services that the City currently has contracted out. Further, the parties agree that this provision does not affect the City’s managerial discretion to determine whether to fill a vacancy that may arise during the term of this Agreement

#### **41.11 Commuter Check Subsidy Benefits**

Upon request, the City shall provide a Commuter check subsidy valued at twenty dollars (\$20) per month to an employee for transit, biking, or van pool. Commuter

check subsidies are only intended for use by the employee while employed with the City of Berkeley and may expire due to inactivity.

#### **41.12 Recreation Coordinators**

41.12.1 There shall be scheduled monthly meetings of Recreation Coordinators and their District Supervisors. Appropriate subjects of discussion shall include planning of events and current budget status. Recreation Coordinator shall receive up to two (2) days per year administrative leave for the purpose of attending classes and conferences.

41.12.2 Recreation Coordinators will receive two (2) weeks advance notice of changes in their regular work schedules except for schedule changes due to emergencies, sick leave and vacation.

#### **41.13 Community Service Officer Work Assignments**

Property Clerks shall be selected from among Community Service Officer Supervisors on the basis of qualifications. When qualifications of applicants are substantially equal, seniority and other job related criteria will be the deciding factors.

#### **41.14 Uniforms**

41.14.1 Effective June 29, 2008, employees in the classifications of Community Service Officer, Community Service Officer Supervisor, Animal Control Officer, Parking Enforcement Officer, Parking Enforcement Officer Supervisor, Public Safety Dispatcher I, Public Safety Dispatcher II, Supervising Public Safety Dispatcher, Parking Meter Mechanic and Parking Meter Maintenance Worker shall receive a uniform allowance of \$1,400 per year. Payment of such annual uniform allowances noted above shall continue to be paid in two (2) equal installments, in December and June, of each year. The amount the City contributes toward the uniform allowance is subject to federal and state income tax withholding.

41.14.2 Community Service Officer, and Community Service Officer Supervisor uniforms shall be blue.

41.14.3 Employees are to pay the full cost of maintenance of their uniforms.

41.14.4 Animal Control Officers shall be provided with a set of coveralls for performance of duties when necessary.

- 41.14.5 **Special Response Team Tactical Uniform:** Effective June 17, 2018, Unit J employees covered by this MA and assigned to the Police Department Special Response Team (SRT) shall be eligible for a one-time reimbursement of up to seven hundred dollars (\$700.00) towards the purchase of the following SRT uniform: Two (2) shirts (1- long and 1-short sleeve, including necessary embroidery and patches); 2 pairs of BDU pants; 1 pair all-weather shoes; 1-all-weather 3-in-1 coat; 1-outdoor head set.

Employees shall be required to submit a reimbursement request, along with receipts verifying the purchase of the SRT uniform within sixty (60) days of purchase. Reimbursements will be paid in accordance with the City's reimbursement procedures.

#### 41.15 Video Display Equipment

- 41.15.1 **Working Conditions:** The City and the Union agree that employees working on video display equipment shall have safe and healthy work environments. These environments shall avoid excessive noise, crowding, contact with fumes, and other unhealthy conditions.

The City agrees wherever practicable to design the flow of work to avoid long, uninterrupted use of video display equipment by City employees.

- 41.15.2 **Pregnancies:** The City will accommodate requests for transfer from pregnant employees whose job duties require frequent exposures to video display equipment subject to the following:

41.15.2.1 such transfer will be limited to other positions which are vacant which the transferee is qualified to perform;

41.15.2.2.to voluntary trading of positions where both parties are competent to perform the new assignments;

41.15.2.3.to any position held by a temporary employee if the pregnant employee is qualified.

- 41.15.3. **Screening:** The City will develop a visual screening and education program effective July 1, 1988 for employees who in the course of their employment operate VDT terminals more than half the time. This program will include visual screening at or near employment, a referral system for employees with possible VDT related vision problems, and a regular follow-up screening at approximately two years.

**41.16 Introduction of New Technology**

The Union shall be given reasonable advance notice of the introduction of new equipment or new processes which may result in the layoff of employees in the bargaining unit. Thereafter, the City and the Union shall meet for the purpose of discussing means of mitigating the impact of the introduction of said equipment upon affected employees. The City shall provide counseling to any displaced employee and shall assist the employee in securing training opportunities which may qualify him/her to be employed in another position with the City. The City shall train employees required to operate such new equipment.

**41.17 Assignments for Temporarily Disabled Employees**

- 41.17.1 The City may accommodate, when feasible, employees covered by this Agreement under the provisions of Workers' Compensation, and such work assignments are to incorporate the following provisions:
- a. The assignment shall be consistent with medical limitations as determined by the physician of record.
  - b. The assignment shall be within the City of Berkeley and may include hours and days of work other than the employee's regular assignment, at no loss of pay.
- 41.17.2 The City may accommodate an employee disabled with a non-industrial disability by providing a modified work assignment in that employee's classification. To be eligible for such a modified assignment, the employee must provide the Human Resources Department with a medical statement from his/her treating physician that clearly states the medical limitations and abilities of the employee. If modification of that position does not serve the best interests of the City, other classifications may be considered, subject to the approval of the Director of Human Resources. Compensation will be provided at the level of the classification in which the temporarily disabled employee works during the disability. The employee must meet standards of satisfactory performance for the duration of the work assignment.
- 41.17.3 In the case of a medically certified pregnancy related disability, in which the normal duties clearly threaten the health and safety of the employee or the unborn child, the Human Resources Department will endeavor to place the employee in a position which best serves the interest of the City with no loss of pay, but in no event will such placement exceed three (3) months in duration.

**41.18 Part-Time Employment - Unit K-1**

The Human Resources Department shall maintain a list of career employees in Unit K-1 who are interested in part-time career employment (20 hours or more). The lists shall be maintained by classification and the requests for less than full-time work shall be handled in the same manner as requests for transfer and reinstatement. Employees shall be certified by classification to departments with a vacancy and shall be considered for part-time employment on the same basis as employees requesting transfer or reinstatement.

**41.19 Annual Performance Evaluation**

The City and the Union shall conduct a joint study of the annual performance evaluation process and make recommendations to the City Manager.

Annual performance evaluations shall be conducted by the employee's immediate supervisor and reviewed by additional levels of supervision. Each employee may make written comments on the evaluation which shall be made part of the employee's personnel records.

Prior to annual evaluation, the supervisor must have observed the employee's performance for at least three (3) months in that evaluation period. If extended leave or other circumstances prevent three (3) months observation, the performance evaluation shall be postponed until this minimum time has elapsed. In special circumstances of relief or rotating employees who regularly do not work consecutive periods of over three (3) months with the same supervisor, the evaluation shall be completed as regularly due with the primary supervisors providing a joint evaluation.

**41.20 Official Personnel File**

41.20.1 All official records of the employee's personnel history are maintained in the Human Resources Department, including applications for appointment, performance appraisal forms, employee transaction forms, formal disciplinary actions and other documents pertinent to the employee's official personnel history. Copies of these records may be retained by the employee's department, as a departmental personnel file.

41.20.2 Employees have the right to inspect their departmental individual personnel files and the official file which is maintained in the Human Resources Department during normal business hours, as provided by law. No material of any kind, except documents submitted by the employee, shall be placed in an employee's official personnel file or the

departmental personnel file after the date of employment without a copy being given to the employee. The employee may provide a concise written response to any material which is maintained in either personnel file.

- 41.20.3 If the employee believes that any material has been placed in the official personnel file in the Human Resources Department in violation of this provision, the employee may send a written request for its removal to the Director of Human Resources with a copy to the Department Head. The Director of Human Resources will make a determination of the appropriateness of the inclusion of the material and will notify the employee of the final disposition.

If the employee believes that any material has been placed in the Departmental Personnel file in violation of this provision, the employee may send a written request for its removal to the Department, with a copy to the Director of Human Resources. The Department Head will make a determination of the appropriateness of the inclusion of the material and will notify the employee of the final disposition.

- 41.20.4 In responding to inquiries from prospective future employers, only information available in the individual's official personnel file will be provided.
- 41.20.5 Records of grievances filed by an employee which do not relate to any disciplinary action taken against that employee shall not be maintained in the individual's Departmental or Human Resources Department file. Such records may be separately maintained but shall not be regarded or treated as part of the individual's Departmental or official Human Resources Department file.
- 41.20.6 Except as otherwise required by applicable law, any material related to disciplinary action which is subsequently overturned or rescinded shall be removed from the employee's Departmental and official Human Resources Department file.
- 41.20.7 Formal letters of reprimand or formal counseling concerning work rules or time and attendance shall be removed from an employees' official files upon request after 24 months provided the employee has maintained satisfactory performance. Letters of reprimand concerning all other subjects shall be removed from an employee's official personnel file upon request after 48 months provided the employee has maintained satisfactory performance.

Records of disciplinary actions involving a suspension of any length shall remain in the employee's official personnel file for as long as the City maintains the file, with one exception as follows: Upon mutual agreement between the City and the Union, a suspension of five (5) days or less shall be removed from an employee's official personnel file upon request, provided the employee has maintained satisfactory performance for five (5) years after the date of the suspension (i.e., no written reprimands or suspensions during the five (5) year period).

#### **41.21 Supplemental Retirement / Disability Insurance Plan**

Effective January 1, 1983, the majority of miscellaneous employees under the City's contract with the State of California Public Employees' Retirement System who were covered by the integrated Social Security Program voted to withdraw from participation in the Federal Social Security Program.

In lieu of Social Security payments, the City has agreed to pay an amount equal to that percent of individual pay (6.7% payable on the first \$32,400 of salary paid in the calendar year) which had been paid by the City to Social Security as of December 31, 1982 to a Supplemental Retirement and Income Plan which provides investment and long-term disability benefits for those employees previously covered under the integrated PERS/Social Security Plan. Provisions of this plan are described in, Berkeley Municipal Code Section 04.36.101 et seq. as amended. This payment is also applicable to those employees hired on or after 1/1/83.

All employees hired after July 22, 1988 are in SRIP II. Provisions of this plan are described in Municipal Code Section 04.38.101 et seq., as amended. All employees hired prior to July 22, 1988 are in SRIP I unless they chose to enroll in SRIP II prior to December 17, 1988.

The City will assume payment of the cost of current enrollees in the SRIP II optional long-term disability plan effective December 4, 1994. The City will assume the cost for long-term disability insurance for all SRIP II members upon completion of contract negotiations with the insurance carrier, but no later than February 26, 1995.

#### **41.22 Reclassification of Positions / Job Audits**

City agrees to honor up to one audit request per employee in each twelve-month period. The departmental manager must review and comment on the completed position description questionnaire and submit it to the Human Resources Department within 90 days of receipt from the employee. The employee shall be notified by the Human Resources Department within a reasonable time of receipt

of the completed position description questionnaire. Status updates regarding the position audit will be provided to the employee every six months until the position audit is completed.

If a bargaining unit position is upgraded or otherwise reclassified, it shall automatically be included in the bargaining unit if the work performed belongs under the jurisdiction of the Union as determined by the City after a review of the position by the Human Resources Department.

In the event the City reclassifies a position from a lower level classification to a higher level classification, an incumbent occupying such position shall be reclassified without competitive examination provided they have performed the duties of the new class for six (6) months and have not received an unsatisfactory evaluation. All other employees shall pass an examination for the higher class and shall serve the normal probationary period. If a position is reclassified, the employee shall receive back pay to the date of the beginning of the closest pay period that the position description questionnaire is received by the Department Head. Position description questionnaires shall be available at all times in each department.

**41.23 Reallocation of Positions**

The City will notify the Union of a decision to eliminate or reallocate bargaining unit positions and the City shall satisfy any meet and confer obligations on impact requirement in accordance with the MMBA.

**41.24 Break Facilities**

Each work location shall include a room that is reserved for use of employees for rest breaks and lunch breaks. Employees who wish to take rest or lunch breaks in these rooms shall have first priority for the use of such rooms unless alternative break facilities are provided.

**41.25 Educational Leave**

The employee shall be eligible for reimbursement for tuition, and textbooks for training that is required by the City or for training that is mutually acceptable to the employee and the City Manager or designee as follows.

41.25.1 After one (1) year of service (2080 hours of work), the City shall allow up to twenty-five (25) hours off with pay per year to employees:

- a. Who are required by law or as a condition of employment to obtain a license, a registration, or other certification, and in order to do so, must take courses which are not offered as part of their basic curriculum, or;



- b. Who are required by law or as a condition of employment to obtain continuing education units;

41.25.2 To obtain education and training related to job skills, to enhance performance of assigned duties or to promote employee development.

Employees seeking time off to take courses for an initial license or certificate which is a requirement of the job or related to job skills, or to enhance performance of assigned duties or promote development will require pre-approval by a department manager prior to undertaking the coursework.

#### **41.26 Jail Closure**

In the event that the City decides to consider closing the Berkeley City jail, the City will notify the Union at least ninety (90) days prior to the effective date of the closure. The City will meet and confer on the impact of the City's decision to close the jail. If the City decides to proceed with the Jail closure, employees currently assigned to work in the jail will be reassigned within the Police Department as positions are available. If there are not enough allocated budgeted positions available for all employees, the City will explore creating Community Service Officer position within the Police Department.

If there are not enough available allocated budgeted Community Service Officer and Community Service Officer Supervisor positions in the Police Department to place employees assigned to the Jail prior to closure, employees will be flexibly placed first to vacant allocated budgeted positions within the Police Department. If there are insufficient vacant allocated budgeted positions within the Police Department to place staff, then employees will be offered flexible placement into other vacant allocated budgeted positions within the City. Employees who are flexibly placed as a result of closure of the Jail shall preserve their pay for one year in keeping with the City's practice on flexible placement.

#### **41.27 YMCA**

Effective January 1, 1999, the cost of YMCA membership will be divided between the City and the employees, with the City contribution to be 75% of the monthly membership fee. The amount the City contributes toward the employee's monthly membership fee is subject to federal and state income tax withholding.

Use of a YMCA membership by a City of Berkeley employee, as provided for in this Agreement, is non-compensable, is not a part of the employee's work-related duties, is not required for employment and is not condoned as part of a physical

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fitness program, or required to maintain top physical conditioning for the employee's job performance.

The City of Berkeley or its Claims Administrator may not be liable for any injury which arises out of a City of Berkeley employee's participation in and use of a YMCA membership.

**41.28 Address and Phone Number**

Employees have the responsibility to provide the City with their current address and telephone number.

**41.29 Legal Representation**

The City will consider on a case-by-case basis legal representation for employees in cases arising out of the lawful performance of their assigned job duties.

**41.30 Physical Exams**

The City may require physical exams by a physician of the City's choice for reasonable cause related to fitness for duty.

**41.31 Crimes against Employees**

The Police Department will promptly respond to any calls regarding criminal acts committed against a City employee while engaged in his or her employment. Reports of assault or other acts of criminal misconduct committed against a City employee will be promptly investigated. The results of the investigation will be submitted to the District Attorney for disposition.

**41.32 Classification Changes/New Classifications**

The City will meet and confer with the Union on the impact of the City's decision to a) change existing classifications or b) upon creation of new classifications. Such notice to the Union shall be given at least twenty (20) working days prior to the Personnel Board meeting that the City intends to bring the matter forward.

**41.33 Clerical Classification Upward Mobility Committee**

During the term of this contract (July 5, 2015 to June 16, 2018), the parties agree to establish an upward mobility committee for the purpose of meeting and discussing barriers to upward mobility of employees in the clerical classifications and to determine if the current classification series and the mechanism to advance through these is effective. The committee shall be composed of no more than four (4) representatives from the City and no more than four (4) representatives from the Union.

**41.34 Participation in Examinations and Interviews**

Employees shall be allowed time to participate in examinations administered by

the Human Resources Department or departmental selection interviews or testing, which are scheduled during an employee's regular working hours. Employees shall provide at least 48 hour notice to their supervisor of their participation in an examination or interview, and such time should be coded as regular work hours on their time sheet. Employees are not compensated for participating in examinations or selection processes that occur outside of their regular work hours. Employee who fails to provide notice as provided herein shall be required to use his or her own accrued leave.

#### **41.35 Commercial Driver Reassignment**

An employee who is required to possess a valid California Class A or Class B driver's license as a condition of employment and whose license has been temporarily suspended by either the Department of Motor Vehicles or the court system as a result of conduct occurring off the job shall be placed temporarily in a vacant budgeted allocated position which does not require driving subject to the following conditions:

- 41.35.1 Compliance with California Vehicle Code Section 15224: "Any driver who has a driver's license or privilege suspended, revoked, or canceled by any state for any period, or who is disqualified from driving a commercial motor vehicle for any period, shall notify his or her employer of the suspension, revocation, cancellation, or disqualification, before the end of the business day following the action."
- 41.35.2 The driver's license suspension in excess of thirty (30) days but no longer than one (1) year.
- 41.35.3 The employee will be required to take accumulated leave or leave without pay for the first thirty (30) days of the driver's license suspension.
- 41.35.4 The employee will be provided a temporary non-driving assignment only one time during his/her employment with the City.
- 41.35.5 An employee must have at least five (5) years of service with the City to qualify for a temporary non-driving assignment.
- 41.35.6 An employee must have a satisfactory performance evaluation with an overall rating of "Meets Requirements" (if the employee has not been evaluated within a year of the date of the temporary assignment, he/she will be considered to have satisfactory performance).
- 41.35.7 An employee must have no disciplinary suspension within three (3) years prior to the loss of his/her license.

- 41.35.8 An employee will not be eligible for this program if the employee at any time during his or her career has been suspended for any duration as a result of a positive drug or alcohol test result administered under the Omnibus Transportation Employee Testing Act of 1996 (OTETA).
- 41.35.9 No more than three (3) employees in a work unit and no more than 5 employees at any one time can be reassigned under this program. For the purposes of this policy, a work unit is defined as a subdivision of a department (e.g., Solid Waste Division of Public Works, Landscape Maintenance Division of the Parks, Recreation and Waterfront Department).
- 41.35.10 If the employee's job requirements are performed without the use of a vehicle, the employee will remain in his/her classification and retain full salary.
- 41.35.11 If an employee's job requirements are performed while using a vehicle (i.e., street sweeper), the employee will be temporarily reassigned to another vacant budgeted allocated position in the Maintenance Chapter in which his/her inability to drive can be accommodated. In such case, the employee's salary will be temporarily changed to the same step in the classification to which the employee is assigned. The employee will be returned to his/her former position upon reinstatement of his/her license.
- 41.35.12 In the event that there are no vacant budgeted allocated positions available, the employee will be placed on an approved leave until a vacancy exists or his or her license is reinstated, whichever occurs first.
- 41.35.13 Employees who have their Class A or B Commercial Driver License suspended or revoked shall have their Special Assignment Pay authorized under Section 17.14 (Special Class Commercial Driver's License Premium) suspended or cancelled upon the effective date of the revocation or loss of driving privileges. The Special Assignment Pay as provided in Section 17.14 (Special Class Commercial Driver's License Premium) shall be reactivated upon reinstatement of the employee's Class A or B Commercial Driver License.

#### **41.36 ERMA (Enterprise Resources Management Application) System**

The City agrees to meet and confer with the Union over the impact to wages, hours, or working conditions governed by this MOU related to the implementation of

ERMA (Enterprise Resources Management Application) system. This meet and confer shall begin no later than August 30, 2018.

## **SECTION 42: DEPENDENT CARE**

The City has established a Dependent Care Plan under Internal Revenue Code Sections 125 and 129 to allow employees to designate a specific amount of salary, consistent with applicable law, to be redirected to pay for dependent care costs prior to withholding of taxes.

## PUBLIC EMPLOYEES' RETIREMENT SYSTEM

### **SECTION 43: PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

#### **43.1 Participation**

The City shall continue participation under the Miscellaneous Employees Plan of the Public Employees' Retirement System.

#### **43.2 "Classic Employees" Definition**

Classic Employees are defined as current employees and future employees who do not qualify as "New Members" under the California Public Employees' Pension Reform Act of 2013 (PEPRA).

#### **43.3 "New Members" Definition**

New Members are as defined in the Public Employees' Pension Reform Act of 2013 (PEPRA), Government Code Section 7522.04(f).

#### **43.4 CalPERS Retirement Formula for Members as Defined Under the Public Employees' Pension Reform Act of 2013 (PEPRA)**

"New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the retirement formula set forth in PEPRA.

#### **43.5 CalPERS Retirement Formula and Employer Paid Member Contribution for Classic Employees, i.e., current employees and future employees who do not qualify as "New Members" under the California Public Employees' Pension Reform Act of 2013 (PEPRA)**

Effective January 5, 2003, the City agrees to provide the 2.7% at age 55 retirement formula benefit improvement, the City's contribution to CalPERS on behalf of the employee will increase from 7% to 8%. Effective July 3, 1994, contributions made pursuant to this section shall be reported to CalPERS as "special compensation" as provided in Government Code Section 20636(c)(4) pursuant to Section 20691. Said contributions shall not apply in the case of temporary or provisional employees.

The aforesaid contribution shall not be considered as a part of an employee's salary for the purpose of computing straight time earnings, compensation for overtime worked, or education incentive pay; nor shall such contribution be taken into account in determining the level of any other benefit which is a function of or percentage of salary. The City reserves the right to take said contribution into account for the purpose of salary comparisons with other employees.

The City will not treat these contributions as compensation subject to income tax withholding unless the Internal Revenue Service or Franchise Tax Board indicates that such contributions are taxable income subject to withholding. Each employee shall be solely and personally responsible for any federal, state or local tax liability of the employee that may arise out of the implementation of this section or any penalty that may be imposed therefore.

#### **43.6 New Members Payment of Employer Paid Member Contribution**

New Members as defined by PEPRA who are hired by the City on or after January 1, 2013 will be required to pay 50% of the normal cost, as provided by CalPERS. New Members shall receive any other additional optional CalPERS benefits that the City provides to Classic Employees as allowed by PEPRA.

#### **43.7 Optional Benefits**

The City's contract with CalPERS includes the following optional benefits:

- 43.7.1 **Classic Employees – One-Year Final Compensation:** : Classic Employees, as defined in Section 43.2, shall be eligible to receive retirement allowance based on One-Year Final Compensation as provided in Section 20042 (July 9, 1978).
- 43.7.2 **New Members – Three Years Final Compensation:** Provided further that New Members as defined by PEPRA hired on or after January 1, 2013 shall be eligible to receive retirement allowance based on three (3) highest consecutive years of compensation under the plan as provided in the California Public Employees Pension Reform Act of 2013, or as subsequently amended.
- 43.7.3 Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (December 16, 1973).
- 43.7.4 Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).
- 43.7.5 Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988).
- 43.7.6 1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (December 16, 1973).
- 43.7.7 Third Level of 1959 Survivor Benefits as provided in Section 21573 (November 28, 1996).

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- 43.7.8 2% @ 55 for Local Miscellaneous Members as provided in Section 21354 (June 30, 1992).
- 43.7.9 Military Service as Public Service as provided in Section 21024 (April 9, 1999)
- 43.7.10 Public Service Credit for Peace Corps or AmeriCorps/VISTA Service as provided in Section 21023.5 (April 14, 2000).

The conversion of unused sick leave to Retirement credit benefit (Section 20965) offered by CalPERS as an optional benefit to contracting agencies shall be made available to Unit members.

**43.8 Classic Members' Pension Contribution**

- 43.8.1 Effective June 4, 2017, employees will contribute one percent (1.0%) towards the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allows such contributions via automatic payroll deduction on a pre-tax basis, in exchange for the City granting the salary increase set forth in Section 11, paragraph 11.1.9 of this Memorandum Agreement. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.
- 43.8.2 Effective December 31, 2017, employees will contribute an additional seven percent (7.0%) towards the City's CalPERS employer share of pension through a 20516 CalPERS contract amendment that allows such contributions on a pre-tax basis, for a total of eight percent (8.0%) via automatic payroll deduction on a pre-tax basis, in exchange for the City granting the salary increase (total of 5.58%) set forth in Section 11, paragraph 11.1.12 of this Memorandum Agreement. Such employee deductions by the City shall be used towards the City's CalPERS required contributions. The parties recognize that the Employer Paid Member Contributions (EPMC) shall remain in effect as long as the CalPERS amendment stays in effect.
- 43.8.3 If legislation is enacted requiring employees under the CalPERS retirement system to pay all of the employee's share of retirement, thus eliminating the EPMC, the parties agree as soon as possible to convert the employee's contribution to the employer's share under this 20516 CalPERS contract amendment to the employee's share towards retirement and the City will continue to pay the wage increase as described in Section 11, paragraphs 11.1.9 and 11.1.12 (maximum of 5.58%) associated with this cost neutral provision.



### 43.9 New Members' Pension Contributions

- 43.9.1 New Members, as defined in the California Public Employees' Pension Reform Act of 2013 (PEPRA), shall continue to pay 50% of the Normal Cost required under PEPRA.
- 43.9.2 Effective June 4, 2017, in addition to the contribution in Section 43.9.1, New Members will contribute one percent (1.0%) towards the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allows such contributions as pre-tax via automatic payroll deduction, in exchange for the City granting the salary increase (0.69%) set forth in Section 11, paragraph 11.1.9 of this Memorandum Agreement. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.
- 43.9.3 Effective December 31, 2017, in addition to the contributions in Sections 43.9.1 and 43.9.2, New Members will contribute an additional seven percent (7.0%) towards the City's CalPERS employer share of pension through a 20516 CalPERS contract amendment that allows such contributions as pre-tax, for a total of eight percent (8.0%) via automatic payroll deduction, in exchange for the City granting the salary increase (4.89%, for a total of 5.58%) set forth in Section 11, paragraph 11.1.12 of this Memorandum Agreement. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.
- 43.9.4 The parties recognize that the CalPERS 20516 employee contributions towards the employer rate is in addition to the required 50% of the normal cost of "new members" benefits and made in consideration of additional salary increases in Section 11 paragraphs 11.1.9 and 11.1.12 above (a total of 5.58% salary increase in exchange for employees paying an additional eight percent (8.0%) towards PERS pension cost).
- 43.9.5 If legislation is enacted and becomes effective during this agreement requiring "classic members" as defined by PEPRA to pay all of the employees' share of retirement thus requiring the discontinuation of the 20516 employee contribution towards the employer rate as described in Section 43.8.3 above, the parties agree that as soon as possible the City shall convert the "new members" eight percent (8.0%) contribution under the 20516 contract amendment to an equivalent payroll deduction. Such employee deductions by the City shall be used towards the City's CalPERS required contribution. No later than 60 days following execution of this Agreement (July 5, 2015 to June 16, 2018), the City will request, from the

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IRS, a private letter ruling to determine whether or not the IRS permits the employee's payroll deduction of eight percent (8.0%) to be treated on a pretax basis. The City shall make such deductions on a post-tax basis unless and until it receives an IRS private letter ruling that confirms that such deductions can be treated on a pretax basis. If the IRS private letter stipulates that such deductions need to be made on a post-tax basis for "new members", the parties shall meet and confer over methods to ensure the cost-neutrality for both parties of the swap described in Section 11, paragraphs 11.1.9 and 11.1.12; and Sections 43.9.2 and 43.9.3 above.

## LAYOFF PROCEDURE

### **SECTION 44: LAYOFF**

This layoff policy for the City of Berkeley is intended to provide the maximum employment protection to the City staff should a layoff become necessary. The policy also aims to minimize the impact such a layoff might have on the City's affirmative action accomplishments.

#### **44.1 Announcement of Layoff**

- 44.1.1 The City Council, City Manager, and Department Heads shall make every reasonable effort to manage and budget the City's resources effectively, and to plan for the delivery of City services in a manner which will avoid the necessity of laying off career City employees. If a reduction in the work force is necessitated by, but not limited to, the following: a material change in duties and organization, adverse working conditions, return of employee from leave of absence or shortage of work or funds, the City Manager shall notify the Director of Human Resources of the intended action and the reason for the layoff.
- 44.1.2 Immediately following a decision which may involve the potential layoff of career City employees, the City Manager shall freeze all current City vacancies in the competitive service in similar and related classifications to those likely to be targeted for layoff, as well as all related full-time, temporary positions which are expected to last six (6) months or more, and notify all Department Heads that such current and anticipated vacancies will be frozen until further notice, in order to implement the provisions of Section 44.6. In notifying department heads of a freeze required by this section, the City Manager shall require that requisitions continue to be submitted for any budgeted positions which the department intends to fill and for which funding is available.
- 44.1.3 After the City has announced the need for a reduction in work force, including the magnitude of such reduction, and has informed employees of their prospective layoff or retreat, but before any actual layoff, the City shall seriously consider employee requests for alternative action, including job sharing.

## 44.2 Seniority Service Date

44.2.1 All service in the employ of the City shall be counted toward the establishment of an employee's Seniority Service Date, including, for example, permanent, probationary provisional, temporary (full-time and intermittent), seasonal, exempt employment, as well as leaves of absences for obligatory military service and approved parental leave while an employee of the City. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the Seniority Service Date. Time off as a result of formal disciplinary action will be subtracted from the Seniority Service Date.

All leaves of absence without pay, regardless of duration, shall be subtracted from the employee's seniority service date. This provision will go into effect immediately upon implementation of necessary data processing and programming changes.

44.2.2 The Human Resources Department will maintain up-to-date and current Seniority Dates for all City employees holding probationary and permanent appointments. Approved parental leaves shall not be deducted from seniority service dates.

## 44.3 Establishment of Seniority Lists

44.3.1 Whenever a layoff of one or more career employees becomes necessary, as defined above, such layoffs shall be made according to City-wide classification Seniority Lists. Upon receiving notification that the City Manager must proceed with a possible reduction in the work force, and following receipt of information concerning the specific positions, programs and departments involved, the Human Resources Department will immediately establish separate Probationary and Permanent Seniority Lists for each classification targeted for layoff.

44.3.2 The names of all City employees holding permanent and probationary appointments in a given classification will be listed on the appropriate list in descending order by Seniority Service Date. Employees on both lists shall be laid off on the basis of their Seniority Service Date, i.e., employees with the least amount of total service shall be laid off first. Non-career employees and temporary agency personnel working in classifications similar to those identified for layoff must be terminated prior to the layoff of probationary or permanent employees. Employees on the Probationary Seniority List for a specific classification will be laid off prior to employees on the Permanent Seniority List for that class.

- 44.3.3 Probationary or permanent employees temporarily acting out of classification and holding a provisional appointment in another classification will only be listed on a Seniority List of the class targeted for layoff in which they hold permanent or probationary status. Any provisional appointment must be terminated prior to the retreat or layoff of a career employee with permanent or probationary status in the same classification.
- 44.3.4 If two (2) or more employees on a Seniority List have an identical Seniority Service Date, the tie shall be broken in the following order:
  - a. Time in classification - the employee having least time in the class shall be released first;
  - b. By lot.

#### **44.4 Employee Retreat Rights/Out Placement**

- 44.4.1 Before an employee with permanent or probationary status may be released from employment with the City of Berkeley, the Human Resources Department must consider the employee's right to retreat to lower level classification through which he or she was originally promoted or any subsequently created intermediate level career classification which provides normal progression through the classification series. Retreat rights shall also extend to employees who have not previously been promoted through a classification but for whom the classification is a natural progression or beginning in the classification series.
- 44.4.2 In addition to providing the employee with the appropriate retreat offer, when it is determined to be in the best interest of the service, the City Manager may authorize the Human Resources Department to offer the affected employee the option of out placement. The out placement offer would provide a designated amount of funds to be paid to the employee for use by the employee for career development. The employee could either accept the retreat offer (offer to bump another employee) or accept the out placement offer. If the employee accepts the out placement offer, the employee forfeits his or her rights including but not limited to retreat rights, flexible placement and re-employment rights, under the layoff policy and will be laid off. All offers of out placement will be made in a manner to comply with general law and the affected

employee will be required to sign a waiver and release of all claims in consideration for receiving this benefit.

- 44.4.3 In the process of retreating, the same rules concerning the length of service, classification, Seniority Lists, etc., apply as in the first stage of the layoff process. In order to retreat, the targeted employee must be higher on the Seniority List for the classification into which he or she is retreating than at least one of the incumbents on the probationary or permanent Seniority List for that class.
- 44.4.4 If an employee is qualified for retreat into more than one classification with comparable salary ranges or if a vacancy exists in a classification to which an employee is entitled to retreat, the options shall be discussed with the employee, and due consideration shall be given to the employee's preferences. However, it is the prerogative of the City Manager to determine the final placement offer to the employee.
- 44.4.5 The retreating employee has a right to be retained in the highest salary range possible which is equal to or less than his or her present salary range. An employee involved in layoff does not have a right of mandatory placement to positions with a higher salary range, i.e., promotion.
- 44.4.6 An employee who is transferred in lieu of layoff when his/her position has been eliminated shall have automatic return rights to the previous position if it is restored within one (1) year of the date of the transfer. If an employee with a full time position is offered a reduction in hours in that position or in a lower classification, the employee may elect to be targeted for layoff for purpose of consideration under Section 44.6 (Flexible Placement Program.) If there is no flexible placement available for the employee, the employee may accept the reduction in hours, in lieu of layoff.
- 44.4.7 Supervising Clerks shall be entitled to retreat rights into any of the senior clerical positions regardless of whether or not they have served in that position, if their skills meet the minimum qualifications of the lower classification.

#### **44.5 Employee / Union Notification**

- 44.5.1 Temporary employees shall be notified individually, in writing of pending layoff as soon as possible, but no definite time period is required. However, at least two (2) weeks notification is desirable if possible.
- 44.5.2 Employees with provisional appointments shall be notified individually, in writing, of pending layoff as soon as possible, with no less than fifteen (15) calendar days notification if targeted for release or reassignment.
- 44.5.3 All notices of layoff under Section 44.5 shall be issued to the union simultaneously with notice to the affected employee(s). Together with any layoff notices sent to the union, a list shall be included of all vacancies which are authorized for filling.

If an employee fails to accept a bona fide offer, in lieu of layoff, ten (10) calendar days after the offer has been made, he or she forfeits further right to employment retention. Acceptance of a reassignment does not remove the right of appeal under Section 44.9.

#### **44.6 Flexible Placement Program/Out Placement**

- 44.6.1 In order to minimize the negative impact of a layoff, the City Manager will, as previously stated in Section 44.1, impose a City-wide freeze on all appropriate vacancies as soon as it has been determined that a layoff of career City employees may be necessary.
- 44.6.2 Following the release of all non-career employees, in classes similar to those targeted for layoff, and as soon as employees targeted for layoff have been identified and the provisions under Section 44.4 have been carried out, the Human Resources Department will review and identify the frozen vacant classifications into which employees ultimately targeted for layoff may be placed on the basis of total experience and education. In making this decision, a waiver of minimum qualification standards, and/or the substitution of related experience and education may be made, with an understanding on the part of management and supervisory personnel that adequate on-the-job training which can be completed within no more than six (6) months, will be provided to facilitate job adjustment, and to compensate for the waiver of qualification standards if that has occurred. The employee, the supervisor and the training officer will meet to develop a training program. The employee will be advised of his/her progress after two, four, and six months in the new classification. If at the end of this time,

the employee is unable to adequately perform the assignment, then the employee shall again be subject to the layoff process.

- 44.6.3 In addition to providing the employee with the flexible placement offer, when it is determined to be in the best interest of the service, the City Manager may authorize the Human Resources Department to offer the affected employee the option of out placement. The out placement offer would provide a designated amount of funds to be paid to the employee for use by the employee for career development. The employee could either accept the flexible placement offer (offer to be flexibly placed in a vacant position) or accept the out placement offer. If the employee accepts the out placement offer, the employee forfeits his or her rights including but not limited to retreat rights, flexible placement and re-employment rights, under the layoff policy and will be laid off. All offers of out placement will be made in a manner to comply with general law and the affected employee will be required to sign a waiver and release of all claims in consideration for receiving this benefit.
- 44.6.4 Assignments under the Flexible Placement Program shall be limited to positions in the same or lesser salary range as the classification from which the employee is to be laid off, except that the City Manager may authorize the offer of a flexible placement to position with a maximum salary of no more than five (5) percent above the salary range as the classification from which layoff is targeted, when it is in the best interest of the City service to do so. Whenever flexible placement is made to a classification with a greater salary range, the appointment shall be probationary, in accordance with the terms of that classification.
- 44.6.5 Offers to positions under the Flexible Placement Program shall be made according to Seniority Service Date and in accordance with the Probationary and Permanent Seniority List certification process outlined in Section 44.3. All offers and placements made under this provision of the layoff policy shall be documented in detail, with records available for audit and review at all times.
- 44.6.6 If an employee fails to accept a bona fide written offer of an alternative job within ten (10) calendar days after the offer has been made he or she forfeits further rights to employment retention. Acceptance of an alternative job under the Flexible Placement Program in no way jeopardizes an employee's standing on the Reemployment Priority Lists on which his or her name has been placed in accordance with Section 44.7 (Reemployment Lists).



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- 44.6.7 The union shall be notified when flexible placement is to occur within Units D, J, K-1, K-2.
- 44.6.8 Offers to positions under the Flexible placement Program shall be made according to Seniority Service Date and in accordance with the Probationary and Permanent Seniority List certification process outlined in Section 44.3 and in accordance with the following procedures:
- a. Full time vacancies authorized to be filled shall be listed in order from highest to lowest based on the actual maximum salary.
  - b. Part-time vacancies authorized to be filled shall be included in the above list in order based on the actual monthly maximum salary for the hours involved.
  - c. The individual with the earliest Seniority Service Date (SSD) targeted for layoff will be considered for flexible placement the top position in the above list.
  - d. If it is determined that the person with the earliest SSD is eligible and qualified for flexible placement in the top position on the list, the Human Resources Department shall offer the employee the position.
  - e. If the Human Resources Department or the City Manager determines that the employee is not eligible or not qualified for the top position, the Director of Human Resources shall proceed down the list of vacancies in an effort to identify the next highest position for which the employee is eligible and qualified for flexible placement. Upon identification of such a match, the Director of Human Resources shall offer that position to the employee.
  - f. This process shall be repeated until either a match is identified or the list of vacancies has been exhausted.
  - g. The above process shall then be repeated for the employee with the second highest SSD, and subsequently in order from earliest to most recent SSD for each of the other employees targeted for layoff.
- 44.6.9 All offers and placements made under this provision of the layoff policy shall be documented in detail, with records available for audit and review at all times. Upon request, a written statement of the reasons for not offering an employee a particular position shall be made to the employee and/or the Union.

## 44.7 Reemployment Lists

- 44.7.1 The names of all probationary and permanent employees released from positions in the competitive service as a result of layoff must be placed on Reemployment Priority Lists for those classifications from which they were separated, as well as all other classifications to which they have retreat rights in accordance with Section 44.4.
- 44.7.2 A Reemployment Priority List shall remain in effect for three (3) years. Said list shall remain in effect indefinitely for employees who are retreated and remain employed with the City.
- 44.7.3 Departments with vacancies in any classification for which there is an active Reemployment Priority List must use the Reemployment Priority List to fill their positions and may not use any other recruitment or appointment method to fill a vacancy until appropriate Reemployment Lists have been exhausted.
- 44.7.4 When a vacancy occurs in a class for which there is a Reemployment Priority List, the employee on the appropriate Reemployment Priority List with the highest Seniority Date shall be given the offer of employment with a copy sent to the department head. Employees so certified from the Reemployment Priority List must be appointed to the existing vacancy.
- 44.7.4.1 If two (2) or more employees on the Reemployment Priority List have an identical Seniority Service Date, the tie shall be broken in the following order:
- a. Time in classification - the employee having least time in the class shall be released first;
  - b. By lot.
- 44.7.5 If a former employee fails to accept a bona fide written offer of reemployment within fifteen (15) calendar days, his or her name will be removed permanently from the Reemployment Priority List from which the offer was made. Failure to accept an offer of reemployment to the class with the highest salary range for which the employee is eligible for reemployment will result in automatic removal from all Reemployment Priority Lists. However, the employee may decline (or accept) reemployment to lower salary range classifications without jeopardizing

his or her standing on the Reemployment Priority List for the classification from which he or she was originally terminated.

- 44.7.6 Upon reappointment to the classification from which the employee was originally separated or demoted, the employee has the right to be placed at the step of the salary range which the employee held at the time of layoff or demotion.

#### **44.8 Career-Exempt Employees**

Only those employees holding full-time, benefited, exempt positions who, in the past, have achieved permanent status and have been continuously employed without a break in service between their career and exempt appointment, have the right to retreat to previously held career classifications, placement on the Reemployment Priority Lists, and all other provisions governing layoff procedures. For the purpose of layoff, such employees shall be referred to as "career exempt."

#### **44.9 Appeal Procedures**

Any permanent, probationary, or career-exempt employee who is laid off, demoted, reassigned or transferred as a result of layoff and who believes that the layoff procedure has been improperly administered as it pertains to the employee's case, may appeal the action under Section 40. In addition, employees may, at all times, before, during and subsequent to layoff, review all records, including Seniority Lists, Reemployment Priority Lists, documentation pertaining to appointments under the Flexible Placement Program, etc., which pertain to their classification and their rights under the provisions of the layoff policy.

#### **44.10 Audit**

- 44.10.1 If it is determined that a vacancy has been filled by a non Reemployment Priority List eligible, in a classification for which a Reemployment Priority List existed and which included available applicants at the time, the former employee with reemployment rights shall be hired and given retroactive pay from the date that the vacancy occurred.
- 44.10.2 When a layoff has occurred, and a reemployment eligibility lists exists, and the union so requests, the City Manager shall order an outside audit of all vacant positions filled in each department and authorized positions which have not been filled, to determine whether the vacancies occurred in classifications for which Reemployment Priority Lists were in existence, and, if so, whether the appointments made by the selecting official were in accordance with the procedures outlined in Section 44.7. In the event vacancies, for which Reemployment Priority Lists were in existence remained unfilled, the auditor shall offer an opinion as to

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whether or not the reasons for leaving the positions vacant appear to be legitimate. A report of the audit must be transmitted to the City Manager and the City Council.

44.11 Reclassification or reallocation of positions shall not be used as a mechanism, the sole purpose of which is to improperly circumvent the provisions of this agreement, including provisions relating to layoff, transfer, demotion or promotion.

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## SIGNATURE PAGE

SEIU Local 1021:

City of Berkeley:

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Jose Martinez, Chief Negotiator, SEIU Local 1021

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Dee Williams-Ridley, City Manager

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Sandra Lewis, Clerical Chapter President

---

Dania Torres-Wong, Chief Negotiator

---

Danny Walker, Maintenance Chapter President

---

Jovan Grogan, Deputy City Manager

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Mafileo (Vina) Akoteu, Maintenance Chapter Steward

---

LaTanya Bellow, Director of Human Resources

---

Michael Ayers, Maintenance Chapter Chief Steward

---

Andrew Brozyna, Deputy Director of Public Works

---

Jay Elliot, Maintenance Chapter Steward

---

Scott Ferris, Director of Parks, Recreation and Waterfront

---

Wesley Gage, Maintenance Chapter Vice President

---

Jennifer Louis, Police Captain

---

Tamika Griffin-Singh, Clerical Chapter Steward

---

Jay Kelekian, Executive Director Rent Stabilization Board for the Rent Stabilization Board

---

Kimberly Reeve, Maintenance Chapter Steward

---

Elliot Warren, Acting Director of Library Services

---

Jenny Seay, Clerical Chapter Vice President

---

Margarita Zamora, Employee Relations Manager

---

Rebecca Webb, Clerical Chapter Chief Steward

---

Maya Wilson, Clerical Chapter Steward

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**EXHIBIT A - Salary Ranges as of June 16, 2018**

Job Code	Classification Title	Rep Unit	Grade	Step 1	Step 2	Step 3	Step 4	Step 5
42390	ACCT OFF SPEC II MC	K1	802	0.0000	0.0000	29.1437	30.4182	31.7431
42400	ACCT OFF SPEC III MC	K1	672	0.0000	0.0000	33.7558	35.2484	36.7999
42430	ACCT OFF SPEC SUP MC	K2	673	34.0660	35.7517	37.5043	39.3577	41.0183
31060	ACCT TECHNICIAN	K1	584	33.2190	34.8461	36.5650	38.3681	39.9868
41070	ADMIN ASSISTANT MC	K1	674	33.4521	35.1378	36.8904	38.7437	40.4045
60050	ANIMAL CONTROL OFFICER	D	521	0.0000	0.0000	31.5737	32.5214	33.4688
66170	ANIMAL SVCS ASSISTANT	D	437	0.0000	0.0000	27.8502	28.5882	29.4184
14490	AQUATICS COORDINATOR	K1	092	33.5109	34.8108	36.1106	37.5530	38.9032
64250	AQUATICS FACILITIES SUP	K1	743	26.6421	27.9807	29.3756	30.8512	32.3914
25860	ASST AQUATICS COORD	K1	200	28.2777	29.4687	30.5924	31.6658	32.8819
25850	ASST REC COORDINATOR	K1	199	28.2789	29.4722	30.5932	31.6657	32.8832
51060	BUILDING MAINT MECH	D	343	0.0000	0.0000	37.7845	39.0188	40.3070
61060	BUILDING MAINT MECH TRN	D	374	0.0000	0.0000	30.2526	31.2011	32.2562
51170	BUILDING MAINT SUPV	D	354	0.0000	0.0000	41.9706	43.2946	44.7707
72320	COM SERVICE OFFC SUP	J	733	35.7700	37.1974	38.6889	40.4147	42.2288
72330	COM SERVICE OFFICER	J	554	31.9188	33.1896	34.5207	35.8183	37.1811
53020	CONCRETE FINISHER	D	370	0.0000	0.0000	37.3521	38.4420	39.5316
53030	CONSTRUCTION EQUIP OPERAT	D	371	0.0000	0.0000	34.9812	36.0609	37.2311
63260	CONTAINER MAINTENA WELDER	D	389	0.0000	0.0000	31.1363	32.0976	33.0239
47150	CUSTOMER SVC SPEC II	K1	818	0.0000	0.0000	29.8393	31.4108	33.0665
47060	CUSTOMER SVC SPEC III	K1	683	0.0000	0.0000	33.7558	35.2484	36.7999
47070	CUSTOMER SVC SPVSR	K2	675	34.0660	35.7517	37.5043	39.3577	41.0183
52020	EQUIPMENT PARTS TECH	D	358	0.0000	29.9384	31.6576	33.1670	33.9302
51130	FORESTRY CLIMBER	D	351	0.0000	0.0000	35.9495	37.0707	38.2413
51120	FORESTRY CLIMBER SUP	D	350	0.0000	0.0000	41.8216	43.0545	44.3012
67020	FORESTRY CLIMBER TRNEE	D	440	0.0000	0.0000	27.7410	28.9067	30.0809
51160	FORESTRY TECHNICIAN	D	607	0.0000	0.0000	41.8216	43.0545	44.3012
67050	GROUNDKEEPER	D	444	0.0000	0.0000	27.8501	28.5833	29.4183
66020	JANITOR	D	434	0.0000	0.0000	25.8041	26.4497	27.1962
66010	JANITOR SUPERVISOR	D	433	0.0000	0.0000	30.0809	31.1375	32.0516
63110	LABORER	D	380	0.0000	0.0000	29.1512	29.9801	30.9412
54010	LANDSCAPE EQUIP OPER	D	372	0.0000	0.0000	35.2669	36.3398	37.4055
67030	LANDSCAPE GARDENER	D	441	0.0000	0.0000	32.2613	33.1588	34.2573
67080	LANDSCAPE GARDENER SUP	D	448	0.0000	0.0000	40.9743	42.1905	43.3895
67040	LANDSCAPE GARDENER TRAIN	D	443	0.0000	0.0000	27.1962	27.9591	28.7392
44010	MAIL SERVICES AIDE	K1	316	0.0000	0.0000	26.3661	27.2967	28.3199
71310	MARINA ASSISTANT MC	D	476	0.0000	0.0000	30.1625	31.0109	31.9763
52070	MECHANIC	D	362	0.0000	0.0000	39.6273	40.8255	42.0095
52090	MECHANIC LEAD	D	619	0.0000	0.0000	42.3926	43.6744	44.9630

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52080	MECHANIC SUPERVISOR	D	363	0.0000	0.0000	45.3533	46.6902	48.1183
63090	MECHANICAL SWEEPR OPER	D	379	0.0000	0.0000	34.5914	35.6291	36.6042
47040	OFFICE SPEC I M&C	K1	339	0.0000	0.0000	24.7895	25.8963	27.0367
47030	OFFICE SPEC II M&C	K1	303	0.0000	0.0000	28.5296	29.8043	31.1293
47050	OFFICE SPEC III M&C	K1	291	0.0000	0.0000	33.1419	34.6345	36.1860
47080	OFFICE SPEC SUP M&C	K2	676	33.4521	35.1378	36.8904	38.7437	40.4045
71240	PARKING ENFORCEMENT OFF	D	471	0.0000	0.0000	30.7402	31.6179	32.5250
71030	PARKING ENFORCEMENT SUP	D	457	0.0000	33.5635	35.2382	37.0081	38.8515
65020	PARKING METER M&C SUP	D	734	35.5739	37.3517	39.2218	40.4378	41.7291
52050	PARKING METER MECH TRNE	D	360	0.0000	0.0000	28.1523	28.9321	29.8629
52110	PARKING METER MECHANIC	D	365	0.0000	0.0000	31.7245	32.7224	33.7794
65050	PARKING METER MNT WORK	D	402	0.0000	0.0000	28.1523	28.9321	29.8629
81480	POLICE CAPTAIN	E	483	78.8681	81.5017	84.1952	87.0244	89.9210
72240	PUBLIC SFTY DISPATCH I	J	611	0.0000	0.0000	29.4520	30.8945	32.1861
72230	PUBLIC SFTY DISPATCH II	J	527	0.0000	0.0000	40.8580	42.5596	44.3415
51280	PUBLIC WORKS SUPERVISOR	D	356	0.0000	0.0000	41.3202	42.6991	44.1897
44020	RECORDS ASSISTANT	K1	707	0.0000	29.9384	31.6576	33.1670	33.9302
14480	RECREATION COORDINATOR	K1	091	33.5109	34.8108	36.1106	37.5530	38.9032
65780	REG VETERINARY TECH	D	821	0.0000	0.0000	28.1646	29.6514	31.2131
51140	ROSARIAN	D	352	0.0000	0.0000	33.6114	34.6598	35.7249
90110	SENIOR ANIMAL CONT OFCR	D	686	0.0000	0.0000	34.7352	35.7752	36.8066
72020	SENIOR CRIME SCENE TECH	J	713	0.0000	0.0000	39.9431	41.4946	43.1047
51150	SENIOR FORESTRY CLIMBER	D	353	0.0000	0.0000	37.7468	38.9308	40.1496
67100	SENIOR GROUNDSKEEPER	D	450	0.0000	0.0000	30.4164	31.2886	32.3285
67010	SENIOR LNDSCP GRDNR	D	439	0.0000	0.0000	34.4101	35.4371	36.5718
71320	SENIOR MARINA ASSIST	D	477	0.0000	0.0000	30.7097	31.5737	32.6051
52120	SERVICE TECHNICIAN	D	366	0.0000	0.0000	33.2678	34.2848	35.3018
51110	SEWER MAINT ASST SUPV	D	349	0.0000	0.0000	38.8541	40.1357	41.4524
63130	SKILLED LABORER	D	383	0.0000	0.0000	30.9412	31.8885	32.8914
65170	SOLID WASTE LOADER OPR	D	411	28.9923	31.1264	32.6851	34.3213	36.0286
65270	SOLID WASTE TRUCK DRIVR	D	415	0.0000	0.0000	35.3852	36.8271	37.8304
65130	SOLID WASTE WORKER	D	406	0.0000	0.0000	29.7640	31.1155	32.0210
72220	SUPERV PUBLIC SFTY DISP	J	529	0.0000	0.0000	46.8655	48.8089	50.8569
63010	TOOL LENDING SPECIALIST	D	375	0.0000	0.0000	31.4395	33.0942	34.8360
65140	TRACTOR TRAILER DRIVER	D	408	32.6851	34.3213	36.0285	37.8394	39.7247
51070	TRAFFIC MAINT SUPV	D	721	0.0000	0.0000	39.2219	40.4294	41.7291
63070	TRAFFIC MAINT WORKER I	D	377	0.0000	0.0000	29.1167	29.9467	30.9197
63080	TRAFFIC MAINT WORKER II	D	378	0.0000	30.9197	31.8589	32.8569	33.8045
52160	WAREHOUSE OPERATON SPEC	D	589	0.0000	34.3913	36.1022	37.8130	39.5069
65150	WEIGHMASTER	D	409	0.0000	30.4667	32.2194	33.7540	34.5256
65160	WEIGHMASTER TRAINEE	D	410	0.0000	0.0000	29.7372	31.0875	31.9930

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52060	WELDER MECHANIC	D	361	0.0000	0.0000	40.1429	41.3619	42.5807
63250	YARDMASTER	D	388	0.0000	0.0000	32.9264	33.9781	34.9813



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## EXHIBIT B - Salary Ranges as of July 29, 2018 (3.0% Cost of Living Adjustment)

Job Code	Classification Title	Rep Unit	Grade	Step 1	Step 2	Step 3	Step 4	Step 5
42390	ACCT OFF SPEC II MC	K1	802	0.0000	0.0000	30.0180	31.3307	32.6954
42400	ACCT OFF SPEC III MC	K1	672	0.0000	0.0000	34.7685	36.3059	37.9039
42430	ACCT OFF SPEC SUP MC	K2	673	35.0880	36.8243	38.6294	40.5384	42.2488
31060	ACCT TECHNICIAN	K1	584	34.2156	35.8915	37.6620	39.5191	41.1864
41070	ADMIN ASSISTANT MC	K1	674	34.4557	36.1919	37.9971	39.9060	41.6166
60050	ANIMAL CONTROL OFFICER	D	521	0.0000	0.0000	32.5209	33.4970	34.4729
66170	ANIMAL SVCS ASSISTANT	D	437	0.0000	0.0000	28.6857	29.4458	30.3010
14490	AQUATICS COORDINATOR	K1	092	34.5162	35.8551	37.1939	38.6796	40.0703
64250	AQUATICS FACILITIES SUP	K1	743	27.4414	28.8201	30.2569	31.7767	33.3631
25860	ASST AQUATICS COORD	K1	200	29.1260	30.3528	31.5102	32.6158	33.8684
25850	ASST REC COORDINATOR	K1	199	29.1273	30.3564	31.5110	32.6157	33.8697
51060	BUILDING MAINT MECH	D	343	0.0000	0.0000	38.9180	40.1894	41.5162
61060	BUILDING MAINT MECH TRN	D	374	0.0000	0.0000	31.1602	32.1371	33.2239
51170	BUILDING MAINT SUPV	D	354	0.0000	0.0000	43.2297	44.5934	46.1138
72320	COM SERVICE OFFC SUP	J	733	36.8431	38.3133	39.8496	41.6271	43.4957
72330	COM SERVICE OFFICER	J	554	32.8764	34.1853	35.5563	36.8928	38.2965
53020	CONCRETE FINISHER	D	370	0.0000	0.0000	38.4727	39.5953	40.7175
53030	CONSTRUCTION EQUIP OPERAT	D	371	0.0000	0.0000	36.0306	37.1427	38.3480
63260	CONTAINER MAINTENA WELDER	D	389	0.0000	0.0000	32.0704	33.0605	34.0146
47150	CUSTOMER SVC SPEC II	K1	818	0.0000	0.0000	30.7345	32.3531	34.0585
47060	CUSTOMER SVC SPEC III	K1	683	0.0000	0.0000	34.7685	36.3059	37.9039
47070	CUSTOMER SVC SPVSR	K2	675	35.0880	36.8243	38.6294	40.5384	42.2488
52020	EQUIPMENT PARTS TECH	D	358	0.0000	30.8366	32.6073	34.1620	34.9481
51130	FORESTRY CLIMBER	D	351	0.0000	0.0000	37.0280	38.1828	39.3885
51120	FORESTRY CLIMBER SUP	D	350	0.0000	0.0000	43.0762	44.3461	45.6302
67020	FORESTRY CLIMBER TRNEE	D	440	0.0000	0.0000	28.5732	29.7739	30.9833
51160	FORESTRY TECHNICIAN	D	607	0.0000	0.0000	43.0762	44.3461	45.6302
67050	GROUNDSKEEPER	D	444	0.0000	0.0000	28.6856	29.4408	30.3008
66020	JANITOR	D	434	0.0000	0.0000	26.5782	27.2432	28.0121
66010	JANITOR SUPERVISOR	D	433	0.0000	0.0000	30.9833	32.0716	33.0131
63110	LABORER	D	380	0.0000	0.0000	30.0257	30.8795	31.8694
54010	LANDSCAPE EQUIP OPER	D	372	0.0000	0.0000	36.3249	37.4300	38.5277
67030	LANDSCAPE GARDENER	D	441	0.0000	0.0000	33.2291	34.1536	35.2850
67080	LANDSCAPE GARDENER SUP	D	448	0.0000	0.0000	42.2035	43.4562	44.6912
67040	LANDSCAPE GARDENER TRAIN	D	443	0.0000	0.0000	28.0121	28.7979	29.6014
44010	MAIL SERVICES AIDE	K1	316	0.0000	0.0000	27.1571	28.1156	29.1695
71310	MARINA ASSISTANT MC	D	476	0.0000	0.0000	31.0674	31.9412	32.9356
52070	MECHANIC	D	362	0.0000	0.0000	40.8161	42.0503	43.2698
52090	MECHANIC LEAD	D	619	0.0000	0.0000	43.6644	44.9846	46.3119
52080	MECHANIC SUPERVISOR	D	363	0.0000	0.0000	46.7139	48.0909	49.5618
63090	MECHANICAL SWEEP OPER	D	379	0.0000	0.0000	35.6291	36.6980	37.7023
47040	OFFICE SPEC I M&C	K1	339	0.0000	0.0000	25.5332	26.6732	27.8478
47030	OFFICE SPEC II M&C	K1	303	0.0000	0.0000	29.3855	30.6984	32.0632
47050	OFFICE SPEC III M&C	K1	291	0.0000	0.0000	34.1362	35.6735	37.2716
47080	OFFICE SPEC SUP M&C	K2	676	34.4557	36.1919	37.9971	39.9060	41.6166
71240	PARKING ENFORCEMENT OFF	D	471	0.0000	0.0000	31.6624	32.5664	33.5008
71030	PARKING ENFORCEMENT SUP	D	457	0.0000	34.5704	36.2953	38.1183	40.0170
65020	PARKING METER M&C SUP	D	734	36.6411	38.4723	40.3985	41.6509	42.9810

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52050	PARKING METER MECH TRNE	D	360	0.0000	0.0000	28.9969	29.8001	30.7588
52110	PARKING METER MECHANIC	D	365	0.0000	0.0000	32.6762	33.7041	34.7928
65050	PARKING METER MNT WORK	D	402	0.0000	0.0000	28.9969	29.8001	30.7588
72240	PUBLIC SFTY DISPATCH I	J	611	0.0000	0.0000	30.3356	31.8213	33.1517
72230	PUBLIC SFTY DISPATCH II	J	527	0.0000	0.0000	42.0837	43.8364	45.6717
51280	PUBLIC WORKS SUPERVISOR	D	356	0.0000	0.0000	42.5598	43.9801	45.5154
44020	RECORDS ASSISTANT	K1	707	0.0000	30.8366	32.6073	34.1620	34.9481
14480	RECREATION COORDINATOR	K1	091	34.5162	35.8551	37.1939	38.6796	40.0703
65780	REG VETERINARY TECH	D	821	0.0000	0.0000	29.0095	30.5409	32.1495
51140	ROSARIAN	D	352	0.0000	0.0000	34.6197	35.6996	36.7966
90110	SENIOR ANIMAL CONT OFCR	D	686	0.0000	0.0000	35.7773	36.8485	37.9108
72020	SENIOR CRIME SCENE TECH	J	713	0.0000	0.0000	41.1414	42.7394	44.3978
51150	SENIOR FORESTRY CLIMBER	D	353	0.0000	0.0000	38.8792	40.0987	41.3541
67100	SENIOR GROUNDSKEEPER	D	450	0.0000	0.0000	31.3289	32.2273	33.2984
67010	SENIOR LNDSCP GRDNR	D	439	0.0000	0.0000	35.4424	36.5002	37.6690
71320	SENIOR MARINA ASSIST	D	477	0.0000	0.0000	31.6310	32.5209	33.5833
52120	SERVICE TECHNICIAN	D	366	0.0000	0.0000	34.2658	35.3133	36.3609
51110	SEWER MAINT ASST SUPV	D	349	0.0000	0.0000	40.0197	41.3398	42.6960
63130	SKILLED LABORER	D	383	0.0000	0.0000	31.8694	32.8452	33.8781
65170	SOLID WASTE LOADER OPR	D	411	29.8621	32.0602	33.6657	35.3509	37.1095
65270	SOLID WASTE TRUCK DRVR	D	415	0.0000	0.0000	36.4468	37.9319	38.9653
65130	SOLID WASTE WORKER	D	406	0.0000	0.0000	30.6569	32.0490	32.9816
72220	SUPERV PUBLIC SFTY DISP	J	529	0.0000	0.0000	48.2715	50.2732	52.3826
63010	TOOL LENDING SPECIALIST	D	375	0.0000	0.0000	32.3827	34.0870	35.8811
65140	TRACTOR TRAILER DRIVER	D	408	33.6657	35.3509	37.1094	38.9746	40.9164
51070	TRAFFIC MAINT SUPV	D	721	0.0000	0.0000	40.3986	41.6423	42.9810
63070	TRAFFIC MAINT WORKER I	D	377	0.0000	0.0000	29.9902	30.8451	31.8473
63080	TRAFFIC MAINT WORKER II	D	378	0.0000	31.8473	32.8147	33.8426	34.8186
52160	WAREHOUSE OPERATON SPEC	D	589	0.0000	35.4230	37.1853	38.9474	40.6921
65150	WEIGHMASTER	D	409	0.0000	31.3807	33.1860	34.7666	35.5614
65160	WEIGHMASTER TRAINEE	D	410	0.0000	0.0000	30.6293	32.0201	32.9528
52060	WELDER MECHANIC	D	361	0.0000	0.0000	41.3472	42.6028	43.8581
63250	YARDMASTER	D	388	0.0000	0.0000	33.9142	34.9974	36.0307

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## EXHIBIT C - Salary Ranges as of June 30, 2019 (2% Cost of Living Adjustment)

Job Code	Classification Title	Rep Unit	Grade	Step 1	Step 2	Step 3	Step 4	Step 5
42390	ACCT OFF SPEC II MC	K1	802	0.0000	0.0000	30.6184	31.9574	33.3493
42400	ACCT OFF SPEC III MC	K1	672	0.0000	0.0000	35.4638	37.0320	38.6620
42430	ACCT OFF SPEC SUP MC	K2	673	35.7897	37.5607	39.4020	41.3492	43.0938
31060	ACCT TECHNICIAN	K1	584	34.8999	36.6093	38.4152	40.3095	42.0101
41070	ADMIN ASSISTANT MC	K1	674	35.1448	36.9158	38.7571	40.7041	42.4490
60050	ANIMAL CONTROL OFFICER	D	521	0.0000	0.0000	33.1713	34.1670	35.1623
66170	ANIMAL SVCS ASSISTANT	D	437	0.0000	0.0000	29.2594	30.0348	30.9070
14490	AQUATICS COORDINATOR	K1	092	35.2066	36.5722	37.9378	39.4532	40.8717
64250	AQUATICS FACILITIES SUP	K1	743	27.9902	29.3965	30.8620	32.4123	34.0304
25860	ASST AQUATICS COORD	K1	200	29.7086	30.9598	32.1404	33.2681	34.5457
25850	ASST REC COORDINATOR	K1	199	29.7098	30.9635	32.1412	33.2680	34.5471
51060	BUILDING MAINT MECH	D	343	0.0000	0.0000	39.6964	40.9932	42.3465
61060	BUILDING MAINT MECH TRN	D	374	0.0000	0.0000	31.7834	32.7799	33.8884
51170	BUILDING MAINT SUPV	D	354	0.0000	0.0000	44.0943	45.4853	47.0361
72320	COM SERVICE OFFC SUP	J	733	37.5800	39.0796	40.6466	42.4597	44.3656
72330	COM SERVICE OFFICER	J	554	33.5339	34.8690	36.2674	37.6307	39.0625
53020	CONCRETE FINISHER	D	370	0.0000	0.0000	39.2421	40.3872	41.5319
53030	CONSTRUCTION EQUIP OPERAT	D	371	0.0000	0.0000	36.7512	37.8856	39.1150
63260	CONTAINER MAINTENA WELDER	D	389	0.0000	0.0000	32.7118	33.7217	34.6949
47150	CUSTOMER SVC SPEC II	K1	818	0.0000	0.0000	31.3492	33.0002	34.7397
47060	CUSTOMER SVC SPEC III	K1	683	0.0000	0.0000	35.4638	37.0320	38.6620
47070	CUSTOMER SVC SPVSR	K2	675	35.7897	37.5607	39.4020	41.3492	43.0938
52020	EQUIPMENT PARTS TECH	D	358	0.0000	31.4533	33.2595	34.8453	35.6471
51130	FORESTRY CLIMBER	D	351	0.0000	0.0000	37.7685	38.9465	40.1763
51120	FORESTRY CLIMBER SUP	D	350	0.0000	0.0000	43.9378	45.2331	46.5428
67020	FORESTRY CLIMBER TRNEE	D	440	0.0000	0.0000	29.1447	30.3694	31.6030
51160	FORESTRY TECHNICIAN	D	607	0.0000	0.0000	43.9378	45.2331	46.5428
67050	GROUNDSKEEPER	D	444	0.0000	0.0000	29.2593	30.0296	30.9069
66020	JANITOR	D	434	0.0000	0.0000	27.1098	27.7881	28.5723
66010	JANITOR SUPERVISOR	D	433	0.0000	0.0000	31.6030	32.7131	33.6734
63110	LABORER	D	380	0.0000	0.0000	30.6263	31.4971	32.5068
54010	LANDSCAPE EQUIP OPER	D	372	0.0000	0.0000	37.0514	38.1786	39.2982
67030	LANDSCAPE GARDENER	D	441	0.0000	0.0000	33.8937	34.8366	35.9907
67080	LANDSCAPE GARDENER SUP	D	448	0.0000	0.0000	43.0476	44.3253	45.5850
67040	LANDSCAPE GARDENER TRAIN	D	443	0.0000	0.0000	28.5723	29.3738	30.1934
44010	MAIL SERVICES AIDE	K1	316	0.0000	0.0000	27.7002	28.6779	29.7529
71310	MARINA ASSISTANT MC	D	476	0.0000	0.0000	31.6887	32.5801	33.5943
52070	MECHANIC	D	362	0.0000	0.0000	41.6324	42.8913	44.1352
52090	MECHANIC LEAD	D	619	0.0000	0.0000	44.5377	45.8843	47.2381
52080	MECHANIC SUPERVISOR	D	363	0.0000	0.0000	47.6482	49.0527	50.5531
63090	MECHANICAL SWEEPR OPER	D	379	0.0000	0.0000	36.3417	37.4319	38.4564
47040	OFFICE SPEC I M&C	K1	339	0.0000	0.0000	26.0438	27.2067	28.4048
47030	OFFICE SPEC II M&C	K1	303	0.0000	0.0000	29.9732	31.3124	32.7044
47050	OFFICE SPEC III M&C	K1	291	0.0000	0.0000	34.8189	36.3870	38.0170
47080	OFFICE SPEC SUP M&C	K2	676	35.1448	36.9158	38.7571	40.7041	42.4490
71240	PARKING ENFORCEMENT OFF	D	471	0.0000	0.0000	32.2957	33.2178	34.1708
71030	PARKING ENFORCEMENT SUP	D	457	0.0000	35.2618	37.0213	38.8807	40.8174
65020	PARKING METER M&C SUP	D	734	37.3739	39.2417	41.2064	42.4840	43.8406

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52050	PARKING METER MECH TRNE	D	360	0.0000	0.0000	29.5768	30.3961	31.3740
52110	PARKING METER MECHANIC	D	365	0.0000	0.0000	33.3298	34.3782	35.4886
65050	PARKING METER MNT WORK	D	402	0.0000	0.0000	29.5768	30.3961	31.3740
72240	PUBLIC SFTY DISPATCH I	J	611	0.0000	0.0000	30.9423	32.4578	33.8147
72230	PUBLIC SFTY DISPATCH II	J	527	0.0000	0.0000	42.9254	44.7131	46.5852
51280	PUBLIC WORKS SUPERVISOR	D	356	0.0000	0.0000	43.4110	44.8597	46.4257
44020	RECORDS ASSISTANT	K1	707	0.0000	31.4533	33.2595	34.8453	35.6471
14480	RECREATION COORDINATOR	K1	091	35.2066	36.5722	37.9378	39.4532	40.8717
65780	REG VETERINARY TECH	D	821	0.0000	0.0000	29.5897	31.1518	32.7925
51140	ROSARIAN	D	352	0.0000	0.0000	35.3121	36.4136	37.5326
90110	SENIOR ANIMAL CONT OFCR	D	686	0.0000	0.0000	36.4928	37.5854	38.6690
72020	SENIOR CRIME SCENE TECH	J	713	0.0000	0.0000	41.9642	43.5942	45.2858
51150	SENIOR FORESTRY CLIMBER	D	353	0.0000	0.0000	39.6568	40.9007	42.1812
67100	SENIOR GROUNDSKEEPER	D	450	0.0000	0.0000	31.9555	32.8718	33.9643
67010	SENIOR LNDSCP GRDNR	D	439	0.0000	0.0000	36.1513	37.2302	38.4223
71320	SENIOR MARINA ASSIST	D	477	0.0000	0.0000	32.2636	33.1713	34.2549
52120	SERVICE TECHNICIAN	D	366	0.0000	0.0000	34.9512	36.0196	37.0881
51110	SEWER MAINT ASST SUPV	D	349	0.0000	0.0000	40.8201	42.1666	43.5499
63130	SKILLED LABORER	D	383	0.0000	0.0000	32.5068	33.5021	34.5557
65170	SOLID WASTE LOADER OPR	D	411	30.4593	32.7014	34.3390	36.0580	37.8516
65270	SOLID WASTE TRUCK DRIVR	D	415	0.0000	0.0000	37.1757	38.6906	39.7446
65130	SOLID WASTE WORKER	D	406	0.0000	0.0000	31.2701	32.6899	33.6413
72220	SUPERV PUBLIC SFTY DISP	J	529	0.0000	0.0000	49.2369	51.2786	53.4303
63010	TOOL LENDING SPECIALIST	D	375	0.0000	0.0000	33.0303	34.7688	36.5987
65140	TRACTOR TRAILER DRIVER	D	408	34.3390	36.0580	37.8515	39.7541	41.7348
51070	TRAFFIC MAINT SUPV	D	721	0.0000	0.0000	41.2065	42.4751	43.8406
63070	TRAFFIC MAINT WORKER I	D	377	0.0000	0.0000	30.5900	31.4620	32.4842
63080	TRAFFIC MAINT WORKER II	D	378	0.0000	32.4842	33.4710	34.5195	35.5150
52160	WAREHOUSE OPERATON SPEC	D	589	0.0000	36.1315	37.9290	39.7263	41.5059
65150	WEIGHMASTER	D	409	0.0000	32.0083	33.8497	35.4620	36.2726
65160	WEIGHMASTER TRAINEE	D	410	0.0000	0.0000	31.2419	32.6605	33.6118
52060	WELDER MECHANIC	D	361	0.0000	0.0000	42.1741	43.4548	44.7353
63250	YARDMASTER	D	388	0.0000	0.0000	34.5925	35.6974	36.7514

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**EXHIBIT D - VACATION LEAVE ACCRUAL HISTORY**

<b>YEARS DURING WHICH SERVICES RENDERED</b>	<b>YEARS OF SERVICE</b>	<b>AUTHORIZED ANNUAL VACATION LEAVE (in work weeks)</b>
All years prior to January 1, 1950		2
January 1, 1950 through December 1, 1956	1st 10 years of service	2
	Years of service in excess of 10	3
January 1, 1957 through December 31, 1961	1st 5 years of service	2
	6 - 25 years of service	3
	Years of service in excess of 25	4
January 1, 1962 through December 31, 1965	1st 5 years of service	2
	6 - 20 years of service	3
	Years of service in excess of 20	4
January 1, 1966 through June 30, 1970	1st 5 years of service	2
	6 - 20 years of service	3
	21 - 25 years of service	4
	Years of service in excess of 25	5
Subsequent to June 30, 1970	1st 5 years of service	2
	6 - 15 years of service	3
	16 - 25 years of service	4
	Years of service in excess of 25	5
January 1, 1978	1st 5 years of service	2
	6 - 15 years of service	3
	16 - 25 years of service	4
	Years of service in excess of 20	5
January 1, 1981	1st 4 years of service	2
	5 - 12 years of service	3
	13 - 20 years of service	4
	Years of service in excess of 20	5
July 1, 1983	1st 3 years of service	2
	4 - 11 years of service	3
	12 - 17 years of service	4
	Years of service in excess of 18	5

This Exhibit is included for historical reference only. Current vacation rates are shown in Section 19.

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## EXHIBIT E - HOURS AND DAYS OF WORK

1. **Units D and J Work Hours:** The hours and days of work applicable to employees in Representation Units D (Manual Occupations) and J (Para-professional Employees-Police Department), as set by the City Manager, are presently as follows:
  - a. **Hours Per Day**

Office Hours: 8:00 a.m. to 5:00 p.m., Monday through Friday.  
Closed on Saturday.

Field Operations: 8 hours per day - 5 days per week. (Working arrangements may vary as to shifts for field operations in the different departments.)
  - b. **Hours Per Week (Basic)**

Office: 40 hours  
Field Operations: 40 hours
  - c. **Work Week**

The work week will begin at 12:01 a.m. Sunday and end at Saturday midnight. Regular days off will be considered to be Saturday and Sunday.
  
2. **Units K-1 and K-2:** The hours and days of work applicable to employees in Representation Unit K-1 (career non-confidential office and clerical employees) and K-2 (supervisory clerical employees), as set by the City Manager, are presently as follows:
  - a. **Hours Per Day**

Office Hours: 8:00 a.m. to 5:00 p.m., Monday through Friday  
Police: 8 hours per day - 5 days per week.  
Shop and Field: 8 hours per day - 5 days per week (presently includes):  
Information Technology, and Mail assignments.  
Shifts: Working arrangements may vary as to shifts for Police,  
Shop and Field operations in the different departments.

Flex Time: Working arrangements may vary as to hours of work in  
departments having a Flex-Time program.

Subject to the final approval of the Department Head and taking into consideration the recommendation of the Division Head, employees may request variable



working hours, such to include but not limited to, requests that the employee be scheduled four days per week, ten hours per day.

However, employees in work units that provide a six (6) or seven (7) day operation may be required to flex their work schedule based on the needs of the work unit. Flexing of work schedule will be assigned on the basis of inverse seniority unless more senior employees prefer to accept such work. The required flexing of work schedules will be on a day-for-day basis. When an employee is required to work on a regularly scheduled day off, the department will provide that employee with an alternative day off in the same work week when the required flexing occurs

b. **Hours Per Week (Basic):**

Office: 40 hours

Police: 40 hours

Shop and Field: 40 hours

c. **Work Week**

The work week will begin at 12:01 a.m. Sunday and end at Saturday midnight. Regular days off will be considered to be Saturday and Sunday except in those departments with work units that provide six (6) or seven (7) day operations.

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**EXHIBIT F - SHOES, TOOLS AND UNIFORMS**

<b>Rep Unit</b>	<b>Classification Title</b>	<b>Annual Shoe Allowance</b>	<b>Annual Tool Allowance</b>	<b>Annual Uniform Allowance</b>
D	Animal Control Officer			\$1,400
D	Building Maintenance Mechanic	\$200	\$500	
D	Building Maintenance Mechanic Trainee	\$200	\$500	
D	Building Maintenance Supervisor	\$200	\$500	
K1	City Services Aide	\$200		
J	Community Services Officer			\$1,400
J	Community Service Officer Supervisor			\$1,400
D	Concrete Finisher	\$200		
D	Construction Equipment Operator	\$200		
D	Container Maintenance Welder	\$200	\$220	
D	Equipment Parts Technician	\$200		
D	Forestry Climber	\$200		
D	Forestry Climber Supervisor	\$200		
D	Forestry Climber Trainee	\$200		
D	Forestry Technician	\$200		
D	Groundskeeper	\$200		
D	Janitor	\$200		
D	Janitor Supervisor	\$200		
D	Laborer	\$200		
D	Landscape Equipment Operator	\$200		
D	Landscape Gardener	\$200		
D	Landscape Gardener Supervisor	\$200		
D	Landscape Gardener Trainee	\$200		
D	Marina Assistant	\$200		
D	Mechanic	\$200	\$500	
D	Mechanic Supervisor	\$200	\$500	
D	Mechanical Sweeper Operator	\$200		
K1	Offset Equipment Operator	\$200		
J	Parking Enforcement Officer			\$1,400
D	Parking Meter Maintenance Collection Supervisor	\$200	\$250	\$1,400
D	Parking Meter Maintenance Worker	\$200		\$1,400
D	Parking Meter Mechanic	\$200	\$250	\$1,400
D	Parking Meter Mechanic Trainee	\$200		
K2	Printing Services Supervisor	\$200		
J	Public Safety Dispatcher I			\$1,400
J	Public Safety Dispatcher II			\$1,400
D	Public Works Supervisor	\$200		
D	Solid Waste Truck Driver	\$200		
D	Solid Waste Worker	\$200		

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Rep Unit	Classification Title	Annual Shoe Allowance	Annual Tool Allowance	Annual Uniform Allowance
D	Rosarian	\$200		
D	Security Attendant	\$200		
D	Senior Animal Control Officer	\$200		\$1,400
D	Senior Forestry Climber	\$200		
D	Senior Groundskeeper	\$200		
D	Senior Landscape Gardener	\$200		
J	Senior Police Service Assistant			\$1,400
D	Service Technician	\$200	\$220	
D	Sewer Maintenance Assistant Supervisor	\$200		
D	Skilled Laborer	\$200		
D	Parking Enforcement Officer Supervisor			\$1,400
D	Supervising Parking Meter Mechanic	\$200	\$250	\$1,400
J	Supervising Public Safety Dispatcher			\$1,400
D	Tool Lending Specialist	\$200		
D	Tractor Trailer Driver	\$200		
D	Traffic Maintenance Supervisor	\$200		
D	Traffic Maintenance Worker I	\$200		
D	Traffic Maintenance Worker II	\$200		
D	Warehouse Operations Specialist	\$200		
D	Weighmaster	\$200		
D	Weighmaster Trainee	\$200		
D	Welder Mechanic	\$200	\$500	
D	Wheeled Loader Operator	\$200		

## APPENDIX A - STREETS AND SANITATION – OVERTIME POLICY

### **Scheduled Overtime (does not include staff on standby or on-call)**

For Streets and Sanitation, scheduled overtime shall be defined as an overtime assignment which is known at least **twenty four (24)** hours in advance.

### **Work Groups**

There are three work groups in Streets and Sanitation:

Sewer Maintenance Operation

Street Cleaning/Clean City Program

Construction Operation which consists of Street Concrete/Paving, Patch/Structural Repair and Stormwater Maintenance

Overtime assignments will be offered first to employees in the work group which is currently assigned to perform the type of work involved. Work shall be offered to the employees in that work group on a rotating seniority basis, starting with the most senior employee and proceeding down the list. When all employees on the list have worked or been provided the opportunity to work and refused such work, offers of work shall start again with the most senior employee and proceed down the list. In the event that no employee in the work group volunteers to perform the work, the work may be offered to employees in other work groups.

### **Notification of Overtime Work Opportunities**

In the event that scheduled overtime becomes available, the Public Works Maintenance Superintendent, or his/her designee, shall do the following:

1. Post in a designated predetermined area a list of the available overtime assignment; and
2. Broadcast the overtime assignment over the radio to notify employees an overtime assignment is available.

### **Unscheduled Overtime**

Unscheduled overtime shall be defined as any overtime work which becomes available less than twenty-four (24) hours in advance of the work. For unscheduled overtime assignments, the Public Works Maintenance Superintendent, or his/her designee, shall use the radio to contact employees for their availability. Unscheduled overtime

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assignments will be offered first to employees in the work group which usually performs the type of work involved. As with scheduled overtime, work shall be offered on a rotating seniority basis, starting with the most senior employee and proceeding down the list. When all employees on the list have worked or been provided the opportunity to work and refused such work, offers of work shall start again with the most senior employee and proceed down the list. In the event that no employee in the work group volunteers to perform the work, the work may be offered to employees in other work groups who are qualified to perform the work.

## **APPENDIX B - SOLID WASTE AND RECYCLING MANAGEMENT DIVISION - OVERTIME POLICY**

### **Scheduled Overtime for Planned Special Events**

The following events are covered by this Section:

- July 4<sup>th</sup> Celebration
- Solano Stroll
- UC Football Home Game Days
- Kite Festival
- Cal Move Out

A schedule for these special events will be created at the beginning of the calendar year. No sooner than forty-five (45) days prior to the special event the overtime will be offered to employees in the classification who normally perform the work. Work shall be offered to employees on a rotating seniority basis, starting with the most senior employee and proceeding down the list. When all employees on the list have worked or been provided the opportunity to work and refused such work, offers of work shall start again with the most senior employee and proceed down the list. In the event that no employee volunteers to perform the work, the work may be offered to any other employees who are qualified to perform the work.

### **Scheduled Overtime**

Scheduled overtime shall be defined as an overtime assignment other than Planned Special Events which is known at least twenty four (24) hours in advance. Overtime will be offered to employees in the classification who normally perform the work. Work shall be offered to employees on a rotating seniority basis, starting with the most senior employee and proceeding down the list. When all employees on the list have worked or been provided the opportunity to work and refused such work, offers of work shall start again with the most senior employee and proceed down the list. In the event that no employee volunteers to perform the work the work, may be offered to any other employees who are qualified to perform the work.

### **Unscheduled Overtime**

Unscheduled overtime shall be defined as any overtime work which becomes available less than twenty-four (24) hours in advance of the work. Overtime will be offered to the employees in the classification who normally perform the work. Such work shall be offered first to employees who are on their day off and who are present at the work site and available to work. Work shall be offered to the employees who are present,

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commencing with the employee who would next be eligible for overtime on the seniority list and proceeding down the list. If overtime remains after all employees who are at the work site on their day off have been assigned, the remaining overtime will be offered next to employees who sign up on the unscheduled overtime list created for this purpose. Overtime will be then offered to all employees in the classification who normally perform the work based on a rotating seniority basis, commencing with the most senior employee and proceeding down the list until the last employee on the unscheduled overtime list has been offered an opportunity to work, overtime. When all the employees on the list have worked or been provided the opportunity to work and refused such work, offers of work shall start again with the most senior employee and proceed down the list.

EXHIBIT B



# **MEMORANDUM AGREEMENT**

**BETWEEN**

**CITY OF BERKELEY**

**AND**

**SERVICE EMPLOYEES INTERNATIONAL UNION  
LOCAL 1021**

**MAINTENANCE AND CLERICAL CHAPTERS**

**June 27, 2020 – June 26, 2021**



BACK COVER  
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COUNCIL RESOLUTION

COUNCIL SALARY RESOLUTION

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## ADMINISTRATION

### **SECTION 1: RECITALS**

This Memorandum Agreement, herein after referred to as "Agreement", is entered into pursuant to the Meyers-Milias- Brown Act (Government Code, Sections 3500 et seq.) as amended and has been jointly prepared by the parties.

The City Manager is the representative of the City of Berkeley, herein after referred to as "the City," in employer - employee relations as provided in Resolution No. 43,397-N.S. adopted by the City Council on October 14, 1969.

Local 1021, Service Employees International Union, is the Recognized Employee Organization for:

Representation Unit D (Manual Occupations),  
Representation Unit J (Para-professional Employees- Police Department),  
Representation Unit K-1 (career non-confidential office and clerical employees),  
Representation Unit K-2 (Supervisory Clerical Employees)

The employee positions in such Representation Unit are set forth herein and made a part hereof, and Local 1021, Service Employees International Union, hereinafter referred to as "the Union" is recognized as the sole representative of employees assigned to such positions. This Memorandum Agreement shall be presented to the City Council, Board of Library Trustees, and the Rent Stabilization Board as the joint recommendation of the undersigned.

The parties have met and conferred in good faith regarding wages, hours and other terms and conditions of employment of the employees in said Representation Units D, J, K-1, and K-2; have exchanged freely information opinions and proposals; and have endeavored to reach agreement on all matters relating to the employment conditions and employer-employee relations of such employees.

This Agreement shall be presented to the City Council as the joint recommendation of the undersigned, and therefore recognize this agreement as a binding and legal contract between the two parties.

Library and Rent Board employees working in classifications covered by this agreement shall have the same terms and conditions of employment as other employees covered by this Memorandum Agreement except as specifically modified by this agreement.

The Rent Stabilization Board and Library Board of Trustees shall ratify and sign this agreement.

## **SECTION 2: PARTIES TO AGREEMENT**

- 2.1 **The Union:** The Union is the exclusive representative of all employees within Representation Units D (Manual Occupations) [MC00], J (Para-professional Employees - Police Department) [MC00], and K-1 (career, non-confidential office and clerical) [MC01], and K-2 (Supervisory Clerical Employees) [MC02] and shall continue to be recognized as such unless, the Union is no longer certified as the Recognized Employee Organization for employees in Representation Units D, J, K-1 and K-2.
- 2.2 **City Management:** Responsibility for management of the City and direction of its work force is vested in City officials and the City Manager whose powers and duties are specified by law. In order to fulfill this responsibility, it is the exclusive right of City management to determine the mission of its constituent departments. Such rights and responsibilities shall be applied consistent with the Meyers-Milias-Brown Act.
- 2.3 The Union and the City shall create a working environment free from hostility, intimidation and disrespect.

## **SECTION 3: NO DISCRIMINATION**

The City and Union agree that they will not discriminate against any employee covered by this Agreement in a manner which would violate any applicable laws because of race, creed, color, ethnicity, ancestry, religion, political affiliation, sexual orientation, age, gender, national origin, marital or domestic partner status, gender identity or gender expression, parental status, pregnancy, disability or medical condition, Acquired Immune Deficiency (AIDS/HIV) or AIDS related condition, or any other status protected by applicable state or federal law. The City agrees that there shall be no discrimination on the basis of protected Union activity. Furthermore, the City and Union agree to comply with all applicable federal, state and local laws pertaining to non-discrimination and equal employment opportunity (Title VII of the Civil Rights Act of 1964, as amended (to include the pregnancy disability amendments), Equal Pay Act of 1963, Age Discrimination Employment Act, Executive Order 11246, Vietnam Era Veterans Readjustment Act, Rehabilitation Act of 1973, California Civil Rights Law, (Government Code Sections 12900-12996), City of Berkeley Ordinances, resolutions and policies). The City and Union will comply with the City's Harassment Prevention Policy.

The City of Berkeley Harassment Prevention Policy, as may be amended from time to time to comply with applicable state or federal law, is available on-line on the City's IntraWeb at: <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=10318>, in Department of Human Resources, or by contacting the City's Equal Employment Opportunity and Diversity Officer.

## **SECTION 4: UNION SECURITY**

### **4.1 Union Security**

4.1.1 Effective June 1, 1984, and for the term of the Agreement, all current and future employees of the City as described in Section 2, Parties to Agreement, hereof, shall, as a condition of continued employment, become and remain a member of the Union or, in lieu thereof, shall pay a service fee to the Union. Such service fee payment shall be equivalent to the standard initiation fee, periodic dues and general assessments (hereinafter collectively termed membership fees) of the Union.

4.1.2 **Religious Exemption:** Any employee of the City in a classification described in Section 1, Parties to Agreement, who is a member of a bona fide religion, body or sect which has historically held conscientious objection to joining or financially supporting a public employee organization and is recognized by the National Labor Relations Board to hold such objections to Union membership shall, upon presentation of membership and historical objection satisfactory to the City and the Union, along with verification of monthly transmittals of any charitable contributions, have sums equal to membership fees deducted and paid to one of the following charitable organizations as designated by the employee: (1) American Cancer Society; (2) Bay Area Black United Fund; (3) Over 60 Health Clinic; or (4) Sickle Cell Anemia Research and Education.

### **4.2 Voluntary Membership**

All employees in this bargaining unit who are, or hereafter voluntarily choose to become members of the Union, shall maintain such membership in good standing as a condition of continued employment for the duration of this Agreement; provided, however, that withdrawal shall be allowed during a period of not more than sixty (60) days nor less than thirty (30) days prior to the expiration date of the Agreement by sending written notice of withdrawal to the Union (with a copy to the Director of Human Resources of the City during said period), consistent with the law.

**4.3 Indemnification**

The Union shall indemnify and save harmless the City, its officers and employees, from and against any and all loss, damages, costs, expenses claims, attorney fees, demands, actions, suits, judgments and other proceedings arising out of any discharge action resulting from this Section or Section 5.

**4.4 Contract Distribution**

The Director of Human Resources or his/her designee shall issue a copy of the Agreement to all probationary and provisional employees entering the City's workforce on the date of hire.

The City shall print 200 copies of the Agreement and have it ready for distribution by the Union within 120 calendar days of final ratification. The City shall provide each permanent, probationary and provisional employee in the bargaining unit with an email copy of the new Agreement within 130 calendar days of final ratification.

Any additions or changes to the Agreement agreed to by both parties subsequent to the printing of the Agreement shall be distributed to all employees in the bargaining unit in a form that can be easily added to the printed Agreement.

**4.5 Orientation Meetings**

A representative of each Chapter of the Union will be given sixty (60) minutes of Union release time per quarter per calendar year to provide information on the Union to employees represented by the Union. The Union shall notify the City of the date, time and location of the quarterly orientation meetings at least one (1) month in advance of the meetings to ensure that departmental managers are able to release employees to attend the quarterly orientation meetings. The Union shall also provide the City with the names of the employees the Union expects to attend the quarterly meetings at least two (2) weeks in advance of the meeting. Employees attending the orientation will also be given sixty (60) minutes of Union release time to attend the scheduled orientation.

**4.6 Union Notification**

The City agrees that all notifications to the Union will include copy to the Union chapter presidents. Further, on all other correspondence involving investigatory interviews, intent to discipline, and grievance responses, the City shall also copy the relevant chapter chief steward, in addition to the relevant chapter president.

**4.7 New Employee Orientation**

This provision shall apply to new hire employees appointed to classifications covered by this Agreement and to existing employees newly appointed to classifications covered by this Agreement.

- 4.7.1 **Onboarding:** The parties acknowledge that the City provides a new employee orientation (onboarding) to each new employee hired by the City. As such, the Union will be provided with not less than 10 calendar days' advanced notice of the time, date, and location of the onboarding of any new employee represented by the Union. The Union will be given 30-minutes at the start of the new employee onboarding in a room designated by the City for no more than one (1) representative to present Union membership information. The City representative will excuse him or herself during the Union portion of the onboarding. The Union agrees in its portion of the onboarding not to engage in speech that could cause disruption or material interference with City activities.

The City will provide 30 minutes of Union Release Time to the Union representative presenting the Union membership information during the scheduled onboarding. The Union shall provide the Union representative's immediate supervisor with the Union representative's name at least five (5) days prior to the onboarding. The Union representative shall be released for this purpose unless unusual operation needs interfere with such release in which case the Union representative's immediate supervisor will provide a written explanation of why release could not be approved. If the Union representative is not released due to department operational needs, the Union representative may arrange an alternative date and time to meet with the newly hired employee within the first two (2) weeks of employment, subject to the 30-minutes onboarding and Union Release Time requirements as stipulated above.

- 4.7.2 **Information Provided:** On a quarterly basis (March, June, September, and December), the City will provide the Union with a digital file via email to the email address designated by the Union. The Union acknowledges and understands that the City is working diligently and in good faith to update its contact information database functionality to incorporate all the fields of contact information listed below. As a result, the City may not initially be able to provide the employee's work telephone number, personal phone number, and personal email address until the completion and implementation of the City's new Enterprise Resource Management Application (ERMA) system.

The City will provide the Union with the following information on file, to the extent the City has it on file:

- Name.
- Job Title.

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- Department.
- Work Location.
- Home telephone number.
- Home address.
- Personal cellular telephone number (new hires hired on or after October 1, 2017).
- Work telephone number (*upon implementing ERMA*).
- Personal email addresses on file with the City (*upon implementing ERMA*).

Notwithstanding the foregoing, limited to the express purpose of the requirements of Government Code section 3558 only, an employee may opt out via written request to the City (copy to the Union) to direct the City to withhold disclosure of the employee's: Home address; home telephone number; personal cellular telephone number; personal email address; and date of birth.

## **SECTION 5: PAYROLL DEDUCTIONS**

Effective the first complete pay period commencing after July 1, 1984 and in each month thereafter, the City shall make membership fee or service fee deductions, as appropriate, from the regular periodic payroll warrant of each City employee described in Section 1. Employees hired on or after July 1, 1984, shall receive and complete at the time of employment an authorization to deduct membership or agency fee as a condition of continued employment. Failure to complete the authorization form within 30 calendar days of employment shall result in automatic agency fee deductions.

The City shall promptly pay over to the Union all sums withheld for membership or service fees. The City shall also provide with each payment a list of employees paying service fees. All such lists shall contain the employee's name, employee number, classification, department, and the amount deducted. A list of all employees in represented classes shall be provided to the Union each month.

The City shall continue to deduct insurance premiums, COPE contributions, and other such deductions as may be specified by the employee in accordance with past practice.

## **SECTION 6: UNION REPRESENTATIVES**

6.1 **Release Time – General:** Union representatives employed and recognized by the City shall assist employees in resolving grievances at the lowest possible administrative level. These employees shall be afforded reasonable time for the investigation and processing of grievances and for meetings with management without loss of pay or benefits upon notification to their first level supervisor not in the bargaining unit. Union representatives shall request Union release time from their first level supervisor not in the bargaining unit or his/her designee prior to engaging in union business. Such request for release time shall be made at the earliest possible time and, except in emergency cases, no later than 48 hours in advance before leaving the work assignment. The Union release request shall include the location, and area of activity, the approximate time needed and the general nature of union business involved. Such request shall not be unreasonably denied. Failure to meet the 48 hours requirement may result in denial of release time.

### **6.2 Release Time - Maximum Number of Representatives**

6.2.1 **Meet & Confer:** With respect to the meet and confer process, ten (10) Union representatives shall be the maximum number who will be allowed concurrent paid time off.

- 6.2.2 **Informal Grievance Procedure:** With respect to the informal level of the grievance procedure, one (1) Union representative will be allowed paid time off.
- 6.2.3 **First Level Grievance Procedure:** With respect to the first level of the grievance procedure or the pre-disciplinary meeting, two (2) Union representatives will be allowed concurrent paid time off.
- 6.2.4 **Second Level Grievance Procedure:** With respect to the second level of the grievance process, the Skelly meeting, or Arbitration hearing, three (3) Union representatives shall be allowed concurrent paid time off.
- 6.2.5 **All Other Matters:** For all other matters, where the participation of the Union is agreed to, the Union may designate two (2) representative from each Representation Unit, up to a maximum of six (6).
- 6.2.6 **Possible Grievance Release:** The City will provide release time to Union members to meet with a Union representative for the purpose of discussing a possible grievance. The member shall contact the Chapter President or Chief Steward who will then contact the supervisor/department director to notify the supervisor/department director of the necessity for the meeting. The release time shall be granted within 48 hours of the request subject to operational necessity.
- 6.2.7 **City of Berkeley Union Council:** The City will provide release time for Union Steward representatives to attend City of Berkeley Union Steward Council Meetings. Each steward representative shall receive a maximum of four (4) hours per month to attend the meeting. A maximum of sixteen (16) stewards shall be released to attend each meeting. The President or Chief Steward will notify Human Resources at least two (2) weeks in advance of the scheduled Steward Council Meeting and will provide Human Resources with the names of stewards, the name of the steward's immediate supervisor, the department and work unit of those stewards that will be attending the Steward Council Meeting. Failure to comply with the notice requirements will result in the denial of release time. In the event that there are conflicts in work schedules, which may create problems with a designated steward attending the meeting, the President or Chief Steward will work with the affected department supervisors to schedule steward attendance in a manner which minimizes disruption of work.



**6.3 Union / Management Meetings**

Monthly meetings shall be held between the union and the City Manager or his or her designee. Release time shall be granted for up to six (6) union officials. Agendas for such meetings shall be set one week in advance between the union Chapter Presidents and the City Manager or his or her designee. In preparation for the monthly meeting with the City Manager, release time shall be granted for up to two (2) hours and up to two (2) Union officials to confer with Union staff representatives on matters within the scope of representation.

Meetings within departments may be held when necessary at the request of either party and release time will be in advance in accordance with Section 6.2.5.

**6.4 Joint Labor/Management Committee**

A quarterly departmental Joint Labor/Management (JLM) Committee may be established to discuss and review issues affecting employees in each Department. The JLM may consist of two (2) Union representatives and Department Director and/or his or her designee(s). Agendas for such meetings shall be set one (1) week in advance between the Union and Department Director or his or her. Additional meetings may be scheduled upon advanced mutual agreement.

At the first Police Department labor/management committee after the effective date of this contract (2018 to 2020), the parties agree to discuss concerns related to applicable sections of General Order P-26 as it relates to the Police Department's process for handling personnel complaints of Clerical employees and Parking Enforcement Officers.

**6.5 Official Attendance at Meetings**

Any employee requested by the City Manager or his/her designee to attend conferences, seminars, governmental agencies or bodies shall be compensated with pay or release time.

**6.6 Memorandum Agreement Orientation**

The City and the Union will conduct orientation sessions on the Agreement at least once during the term of the contract. Additional sessions for stewards and supervisors may also be provided.

**6.7 Union Business Release Time**

**Clerical Chapter:** The Union will be entitled to up to one-hundred and twenty (120) hours of paid leave of absence each calendar year to be granted collectively to employees in the Clerical Chapter who are designated elected officials or stewards of the Union, subject to prior approval by employee's Department Head, to attend seminars, conferences, or conventions away from the job site. The Department

Head may, in his or her discretion, approve additional Union requests. Time spent on such Union business will be recorded with the appropriate code on time sheets.

**Maintenance Chapter:** The Union will be entitled to up to one-hundred and twenty (120) hours of paid leave of absence each calendar year to be granted collectively to employees in the Maintenance Chapter who are designated elected officials or stewards of the Union, subject to prior approval by employee's Department Head, to attend seminars, conferences, or conventions away from the job site. The Department Head may, in his or her discretion, approve additional Union requests. Time spent on such Union business will be recorded with the appropriate code on time sheets.

## **SECTION 7: SEPARABILITY OF PROVISIONS**

In the event that any provisions of this Agreement is declared by a court of competent jurisdiction to be illegal or unenforceable, that provision of this Agreement shall be null and void, but such nullification shall not affect any other provisions of this Agreement, all of which other provisions shall remain in full force and effect.

## **SECTION 8: EXISTING MEMORANDA AGREEMENT**

This Agreement shall supersede all existing Agreements between the City and the Union. Working conditions and practices will not be continued unless they are included in this Agreement or have been or are hereafter specifically authorized by ordinance or by resolution of the City Council, or unless they are 1) not the subject of bargaining during the development of this Agreement, and 2) a continuing practice which was general, not individual in application, and mutually agreed to by the parties.

## **SECTION 9: FINALITY OF RECOMMENDATIONS**

The recommendations set forth above are final. No change or modifications shall be offered, urged, or otherwise presented by the Union or the City Manager prior to June 27, 2020 provided, however, that nothing herein shall prevent the parties to this Agreement from meeting and conferring and making modifications herein by mutual consent and ratification.

**SECTION 10: DURATION**

This Agreement covers the period of June 17, 2018 through June 27, 2020. New provisions are effective June 17, 2018, except as otherwise provided herein and shall remain in full force and effect to and including June 27, 2020. This Agreement and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at midnight June 27, 2020.

## SALARIES, HOURS OF WORK AND COMPENSATION ISSUES

### **SECTION 11: SALARIES**

#### **11.1 Salary Resolution**

Salary rates for the period of June 17, 2018 through June 27, 2020, for all classes of positions in Units D, J, K-1 and K-2, shall be set according to the classifications and salary ranges assigned to those classifications listed in Exhibits “A” through “C” and attached hereto and made part hereof as provided below.

- 11.1.1 The salary ranges for those classifications covered by this Agreement which went into effect on December 31, 2017, shall remain in effect through July 28, 2018 and are listed in Exhibit “A”.
- 11.1.2 Effective July 29, 2018 (the first full pay period after Union ratification and Council approval on its regular agenda), the salary ranges for those classifications covered by this Agreement as listed in Exhibit A will receive a salary increase of three percent (3.0%) and shall be shown in Exhibit B.
- 11.1.3 Effective the first full pay period after Union ratification and Council approval on its regular agenda (on the August 17, 2018 pay day), each employee on paid status as of approval by Council will receive a one-time lump sum payment of \$2,000.00, minus applicable local, state and/or federal taxes. The parties agree that this lump sum provision does not create or bind the City to any precedent or past practice.
- 11.1.4 Effective June 30, 2019, the salary ranges for those classifications covered by this Agreement and listed in Exhibit B will receive a cost of living increase of two percent (2.0%) and shall be shown in Exhibit C.

#### **11.2 Application of Rates**

Employees occupying a position in the competitive service shall be paid a salary or wage within the range established for that position's class as set forth in Exhibits “B” through “C”. The minimum rate for the class shall apply to employees upon original appointment of the position. Employees reinstated or reemployed after layoff shall receive a rate within the range established for the class. Transfers shall not affect an employee's salary rate. Employees appointed to any of the positions set forth herein in Exhibit “B” through “C” and employed or working on a part-time basis shall be paid in proportion to the time worked and described in their appointment.

**11.3 Salary Advancement**

No salary advancement shall be made so as to exceed the maximum rate established for the class to which the advanced employee's position is allocated. Advancement shall be in accordance with the compensation plan of the City and shall depend upon increased service value of an employee to the City as exemplified by recommendations of the Department Head, performance record, special training, length of service, and other pertinent evidence.

An employee's pay increase shall not be affected by any leave of absence without pay, if the employee is off the payroll for less than one hundred sixty (160) consecutive hours. If the employee is off the payroll for one hundred sixty (160) consecutive hours or more, the total amount of time off shall be made up before the employee shall be entitled to such pay increase.

**11.4 Y Rates**

Any employee occupying a position which is reallocated to a class, the maximum salary for which is less than the incumbent's present salary or occupying a position in a class the salary rate or range for which is reduced, shall continue to receive his/her present salary. Such salary shall be designated as a Y rate. When an employee on a Y rate vacates his/her position, subsequent appointments to that position shall be made in accordance with Section 11.2.

**11.5 Payment of Salaries (Bi-Weekly) - Pay Periods / Pay Days**

11.5.1 Payment of salaries herein established shall be bi-weekly. Each pay period shall begin at 12:01 a.m. Sunday to and including 12:00 midnight Saturday two weeks following. Each payment shall be made not later than the Friday following the ending of each payroll period and shall include payment for all earnings during the previous payroll period.

11.5.2 In those cases when payroll checks are available for distribution on Thursday afternoon, the Auditor's Office shall notify payroll sections of departments with employees on graveyard shifts. The department shall be responsible for distributing the checks to its graveyard shift employees by the end of the shift Friday morning. This procedure will remain in effect until the City's payroll system is fully automated, at which time payroll checks will routinely be made available to departments for distribution to employees by the end of the graveyard shift Friday morning.

11.5.3 Bi-weekly payment to full-time employees shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay

period. Except as specified below in Section 11.5.5, the hourly rate for such employees shall be determined as follows:

11.5.3.1 The hourly rate shall be the quotient of the annual salary (12 times the monthly salary specified herein) divided by 2080 hours.

11.5.3.2 For employees on a thirty-seven and one half (37.5) hour week, the monthly salary shall be the quotient of the hourly salary times 1950 hours, divided by 12.

11.5.4 Bi-weekly payment to part-time employees in a class for which monthly salary rate has been herein established shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period. Except as specified below in Section 11.5.5, the hourly rate for such part-time employees shall be computed in the same manner as for full time employees.

11.5.5 Bi-weekly payment to intermittent employees in a class for which an hourly rate has been specified herein shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period. The hourly rate for such intermittent employees shall be as specified herein.

11.5.6 Bi-weekly payment to employees in a class for which a daily rate rather than a monthly rate has been herein established shall be made on the basis of the actual days worked during the bi-weekly pay period multiplied by the daily rate.

11.5.7 Bi-weekly payment to employees in a class for which an hourly rate rather than a monthly rate has been herein established shall be made on the basis of the hourly rate multiplied by the number of hours worked during the pay period.

**11.6 Friday Bank Closures**

On Friday bank holidays, City employees shall be paid in accordance with present paycheck procedures for City Holidays that fall on Friday. Paychecks shall be dated the date received by employee.

**11.7 End of Year**

For excess leave only, the end of the year shall be treated as the last day of the last pay period nearest March 31st.

## 11.8 Equity Studies

Two (2) lists of comparison jurisdictions are established. List One: Concord, Fremont, Richmond, Palo Alto, City of Santa Clara, San Leandro, Alameda County, San Francisco, Hayward, Oakland, and Vallejo. For Refuse only, Northern California Waste Management Systems and Waste Management (Oakland) will be reviewed. Other jurisdictions may be added as required by agreement between the parties. Job classifications which fall below the median for these jurisdictions may be reviewed. It is the policy of the City that within available funding limits, equity adjustments which are in the interests of the service will be considered.

- 11.8.1 **Classification Review:** Beginning no sooner than six months and no later than 9 months after ratification of this Agreement (June 17, 2018 to June 27, 2020), the City agrees to work with two representatives designated by the Union with the intent of completing a classification and compensation review of the Customer Service Specialist classification series. The Union believes that the classifications in his series have evolved substantially and warrant a classification and compensation analysis.
- 11.8.2 **Parking Meter Maintenance Worker & Traffic Maintenance Worker:** No sooner than one hundred and twenty (120) days after ratification of this Agreement (June 17, 2018 to June 27, 2020), and no later than nine (9) months after the ratification, the City agrees to work with two representatives designated by the Union to complete a compensation and classification review of the Parking Meter Maintenance Worker (Job Code 65050) and Traffic Maintenance Worker (Job Code 63080) classifications.
- 11.8.3 **Tool Lending Specialist and Mail Service Aide:** No sooner than one hundred and twenty (120) days after ratification of this Agreement (June 17, 2018 to June 27, 2020), and no later than nine (9) months after the ratification, Library management agrees to work with two representatives designated by the union to review the Tool Lending Specialist (Job Code 63010) and Mail Service Aide (Job Code 44010) classifications service needs and make a joint recommendation on staffing and service levels to the Board of Library Trustees.

## 11.9 Anniversary Dates

Step increases shall be effective, for payroll purposes only, on the first day of the pay period nearest to the anniversary date. Personnel records will maintain actual dates and will be used to resolve any discrepancies or questions that may arise.

**SECTION 12: PAYROLL ERRORS**

To ensure that system or other errors which affect an employee's pay are processed in an efficient and effective manner, the City shall notify the affected employee(s) as soon as practicable. Payroll errors detected by an employee shall, as soon as practicable, be communicated to the employee's Departmental Payroll Clerk. In the case of under payments, the Payroll Clerk shall submit the appropriate adjustments as soon as practicable.

Payroll errors identified by the Auditor will be communicated to the employee either directly by Auditor staff or through the Departmental Payroll Clerk. Under payments will be processed as soon as practicable.

In the event of an overpayment, the Auditor's Office will notify the employee of the nature and the amount of overpayment and will determine a reasonable repayment schedule and inform the employee of the schedule directly, or through the Department Payroll Clerk. The affected employee shall be given an opportunity to discuss the schedule of repayment and, if necessary, to request an alternative repayment schedule. The total overpayment of \$100 or more shall be recaptured at the rate at which the overpayment occurred but not less than \$50 per pay period. For a total overpayment of \$99.99 or less, the overpayment shall be recouped in two (2) equal amounts over two consecutive pay periods.

Overpayments shall not be recaptured at a more rapid rate than the rate at which the overpayment occurred, except by permission of the affected employee. Should an employee with a repayment schedule leave the employ of the City before repaying the City the full amount of any overpayment, the outstanding debt shall be deducted from any salary and leave balances for which the employee would otherwise be paid upon separating from the City. Where an employee requests and the City concludes that s/he has justified a modified repayment schedule, the City may, in its sole discretion, permit exceptions to these standards.

The City and the Union agree that the City is authorized to recover any salary overpayment made to the employee from the employee's wages. In the event that (1) the employee does not respond within ten (10) working days of being notified of the overpayment, or (2) mutual agreement on the repayment schedule is not achieved within fifteen (15) working days of the employee being notified of the overpayment, the Auditor's Office will proceed to implement a reasonable repayment schedule.



## **SECTION 13: TEMPORARY, PROVISIONAL AND PROJECT BASED APPOINTMENTS, HIGHER CLASS ASSIGNMENT PAY AND TEMPORARY AGENCY EMPLOYEES**

### **13.1 Higher Class Assignments**

Department heads will work all employees within their classification. The City Manager or his/her designee shall approve higher-class assignments in advance.

### **13.2 Working in Higher Classification**

Departments with prior approval from the City Manager or City Manager's designee, may assign an employee to work in a higher class provided the employee meets the minimum qualifications for the assignment. Such assignments shall be in writing and shall indicate the reasons, length and duties of the assignment. To be eligible for higher-class pay, the employee must meet the minimum qualifications and perform a majority of the duties of the higher class to qualify. Employees shall be compensated for higher class pay on an hour-for-hour basis. An approved annual blanket authorization must be on file for any employee who is so assigned. Employees meeting these requirements will be compensated at the lowest step of the higher classification that provides at least a five percent (5%) differential for the time worked.

### **13.3 Temporary Appointments**

Temporary promotional vacancies that are available for a period of thirty-one (31) through ninety (90) days shall be filled from within the department that has the vacancy. The department may decide not to fill the vacant position at a promotional level. If the department decides to fill the vacant higher-class position, the selection shall be made from among those qualified departmental employees on the basis of merit, job knowledge and skills. If a selection cannot be made from within department staff, the department shall contact the Human Resources Department for additional candidates from other departments and the temporary appointment shall be made from among those employees.

Temporary appointment opportunities exceeding 90 days in bargaining unit classifications will be noticed in *Berkeley Matters* prior to making the temporary appointment. In cases where timing or other circumstances prohibit the use of *Berkeley Matters*, career employees on eligible and/or transfer lists for the specific classification will be notified directly of the temporary appointment opportunity prior to appointment and the opportunity will be published on the City's Intranet.

When a temporary vacancy is to be filled in a classification for which there is an existing eligibility list, the City shall attempt to make the temporary appointment from that list. Provided there are City employee applicants meeting the minimum

qualifications, temporary vacancies of greater than 90 days shall be filled by existing City of Berkeley employees from existing eligibility lists except as otherwise provided in Section 44 (Layoff). However, if no person is available for appointment, or if the hiring official is unable to select a person from the existing eligible list, the hiring official may select a qualified person from the labor market to fill the temporary vacancy.

#### **13.4 Provisional Appointments**

A career employee who is appointed to serve temporarily in a higher classification shall be designated as a provisional employee. No employee shall hold a provisional appointment in the same position for more than 12 months. The City Manager may extend the provisional appointment beyond this 12-month limitation with mutual agreement of the parties. No provisional appointment in the same position will be extended beyond 24 months, except where the employee in the provisional appointment is replacing an employee who is on the extended approved leave. No employee shall hold a provisional appointment(s) in one or more positions for more than 24 consecutive months within a 30 consecutive month period, except where the employee in the provisional appointment is replacing an employee who is on an extended approved leave.

An employee who holds provisional status in a classification shall receive step increases in such classification as if the employee held permanent appointment thereto.

The City does not guarantee a permanent promotion to the employee working as a provisional employee. An employee who is removed from a provisional appointment, shall have the right to be reinstated to his/her former classification at the appropriate pay level, before the provisional appointment. The employee shall suffer no loss of classification seniority in his/her original classification as a result of holding provisional status.

Upon career promotion to another class, an employee may request within 30 days to have any time served provisionally in the new class within the prior year credited to his/her class seniority.

#### **13.5 Working in a Classification outside the Bargaining Unit**

An employee provisionally appointed to a classification outside the bargaining unit shall work the work schedule and receive the salary of the classification of the provisional appointment. Such employees shall receive whatever vehicle assignments, subject to normal application and use procedures, which are associated with that higher position, and, if assigned in excess of 30 days, the employee shall be subject to the overtime provisions that apply to the higher-level classification. All the health and welfare benefits and all other terms and conditions

of employment set forth in this agreement shall apply to an employee provisionally appointed to a classification outside the bargaining unit.

### **13.6 Temporary Assignment Training Pay**

For training purposes, employees not meeting all of the minimum qualifications for a supervisory position may be temporarily assigned for a minimum of three (3) consecutive working days, to perform the duties of supervisor and will receive a five percent (5%) increase in their current salary.

### **13.7 Project Based Position Employee**

An employment status of “Project Based Position” means a position, regardless of funding source, of limited duration not to exceed three years to be utilized to complete a project or for an external grant funded position whose funding is uncertain as to amount or duration. An employee receiving an initial appointment to such “Project Based Position” may be terminated no later than upon completion of the project or the duration of the external grant funding but in any case no longer than three years from the date of the original appointment. An employee receiving an initial appointment to a Project Based Position shall be fully benefited. In the event of a layoff under Section 44, employees holding “Project Based Positions” will be terminated without right of recall prior to the layoff of any career employee, provided that a qualified career employee is available to fill the position. An employee holding a “Project Based Position” shall not be covered by the provisions of Section 44 (Layoff) and may be terminated for cause at any time by the City Manager. An employee appointed to a Project Based Position will be subject to the provisions of Section 2.1 of the Agreement.

If a career employee is appointed to a “Project Based Position” the City will be permitted to fill the vacated position with another “Project Based Position” appointment.

### **13.8 Temporary Agency Employees**

An employee hired through a temporary agency shall not be retained longer than six (6) months, unless the employee is replacing a career employee on leave of absence or on a temporary assignment to another department. In no case shall the said retention period exceed the duration of the absence. The City will not attempt to extend the six (6) month period by replacing or exchanging temporary agency employees. However, nothing shall preclude temporary agency employees from competing for positions in the career service.

## **SECTION 14: HOURS AND DAYS OF WORK**

### **14.1 Rules**

Hours and days of work shall be governed by rules established by the City Manager or designee. (At the present time, hours and days of work are as shown in Exhibit E (Hours and Days of Work).)

### **14.2 Community Service Officers Assigned to the Jail**

Community Service Officers assigned to the Jail shall work shifts that are composed of eight (8) hours and fifteen (15) minutes each day. The shift shall include a thirty (30) minute lunch of which fifteen (15) minutes will be unpaid.

The City and the Union will continue to explore shift schedules that provide alternatives to the eight (8) hour and fifteen (15) minute shift.

### **14.3 Parking Division/Police Department**

The regular workweek for Parking Enforcement Officers shall include Sunday. Parking Enforcement Officers may be required to work between the hours of 7:00 a.m. and 10:00 p.m.; provided that regular shift premiums shall be applicable as set forth in Section 16, and shift selection shall be as set forth in Section 14.4, that is, Sunday work in the Parking Division will be assigned on the basis of inverse seniority unless more senior employees prefer to accept such work.

### **14.4 Shift Selection and Assignments**

Within a given classification, shift assignments (Swing, Night and Day) shall first be offered to employees by classification seniority on a voluntary basis. In the event shift assignments are not filled voluntarily, such shift assignments shall be made on the basis of inverse classification seniority.

14.4.1 In Unit J, the selection of shifts, days off and assignments, may be directed in order to ensure appropriate coverage of male and female staff for management of the City Jail facility.

#### **14.4.2 Types of Shifts:**

- a. **Swing shift** means authorized work schedules regularly assigned in which at least four (4) hours worked are between the hours of 5:00 p.m. and 12:00 midnight of each workday.

- b. **Night shift** means authorized work schedules regularly assigned in which at least four (4) hours worked are between the hours of 12:00 midnight and 7:00 a.m. of each workday.
- c. **Day shift** means any authorized work schedules assigned except rotating, swing, or night shifts as defined in this section.

#### 14.5 Clerical Unit Work Schedule

For the Clerical Unit, a change in the daily work schedule that requires an employee to work beyond the regular work schedule shall not require the employee to flex his or her hours except by mutual consent of the employee and the supervisor. However, employees in work units that provide a six (6) or seven (7) day operation may be required to flex their work schedule, based on the needs of the work unit. Flexing of work schedule will be assigned on the basis of inverse seniority unless more senior employees prefer to accept such work. The required flexing of work schedules will be on a day-for-day basis. When an employee is required to work on a regularly scheduled day off, the department will provide the employee with an alternative day off in the same work week when the required flexing occurs.

In the event that the City changes a clerical employee's work hours on a permanent basis, the City will provide the employee notice at least thirty (30) calendar days in advance of the date of the change. For the purposes of this Section, the schedule change shall mean a change in the employee's work hours of at least one (1) hour. If the employee is unable to work the newly scheduled hours, the City will seek volunteers in the same classification in the Department or work area who are willing to work the newly scheduled hours. In the event that a volunteer exists, the new schedule shall be given to the volunteer. If no employee is able to work the new schedule, the City will offer the affected employee a transfer to a budgeted vacant position that is available to be filled as determined by the City Manager in the same classification in the City. If no vacancy exists, the employee's work hours will be changed as scheduled.

#### 14.6 Flexible Scheduling

Employees shall be permitted to request variable working hours such as, but not limited to, 10 hours a day four days a week, job sharing, and working under a flexible arrangement. Flexible scheduling may also include the option of a one-half hour lunch break. This option shall be available in all departments in the City and will be considered seriously if all City functions within units can be accomplished through flexible scheduling.

**14.7 Shift Trades - Community Service Officer**

The Police Department policy on Shift Trades among sworn personnel shall be equally applicable among Community Service Officers.

**14.8 Work Assignment**

Each new employee shall be provided with a written description of his/her job class, and each supervisor shall discuss with the new employee the duties of his/her position as a part of the departments' orientation. Moreover, within 30 days of appointment to a new position and as part of the department orientation process, an employee in Representation Unit K1 or K2 may request a written description of the employee's major areas of responsibilities. The description of the employee's major areas of responsibilities may be amended from time to time based on the needs of the workunit and it is not intended to capture all duties that can be assigned to an employee that are within the scope of responsibility outlined in the employee's specific job classification.

**14.9 Building Maintenance**

For Building Maintenance Mechanics, Building Maintenance Mechanic Trainees, and Building Maintenance Supervisor: Hours of work will be adjusted effective January 7, 1990 to 37.5 hours per week. Monthly rate of pay adjusted to reflect actual hours.

Schedule of rotation and days off determined by the City, in the same general manner as currently applies to Electrical unit.

Effective June 29, 2008 each employee in the classifications of Building Maintenance Mechanic, Building Maintenance Mechanic Trainee and Building Maintenance Mechanic Supervisor shall have the option to retain a 37.5 hour work week schedule or to change his/her work schedule to forty hours per week with an increase in pay to reflect the additional hours. Additionally, any employee may increase to forty hours per week after July 1, provided that such change shall be made at the beginning of the pay period. An employee who has changed to a 40-hour workweek shall have a one-time option to return to a 37.5-hour workweek. If the employee exercises the option to return to 37.5 hours and then changes to a 40-hour workweek, the employee will remain at 40 hours per week for the remainder of his work time in the position. Any employee who is hired after June 29, 2008 will work a forty (40) hour per week schedule and will have no option to change his/her schedule to 37.5 hours.

The City and the Union may agree in writing to alternate work schedules other than those set forth in this agreement including a 9/80 work schedule which contains an 80 hour pay period with hours worked in 9 days. The City will take into consideration its operational needs, including the impact of potential overtime, in

deciding whether to approve an alternate work schedule. However, such alternate work will not be unreasonably denied.

#### **14.10 Daylight Saving Time**

- 14.10.1 **Spring:** In the Spring when transitioning to Daylight Saving Time (DST), employees working during the one (1) hour transition from Standard Time to DST will be paid only for actual hours worked. Employees working on a shift which includes the one (1) hour transition may be granted an option by the Department Head or his or her designee, to work an additional hour or use compensatory time, floating holiday, or vacation to make up the lost work hour.
- 14.10.2 **Fall:** In the Fall when transitioning from DST, employees working during the one (1) hour transition will be paid for all hours worked including overtime at one and one-half (1½) times the straight-time rate of pay for hours worked in excess of the regular workweek as set forth in Section 15 of this Agreement.

#### **14.11 Family Friendly and Environment Friendly Workplace**

The City shall comply with the applicable provisions of the Berkeley Family Friendly and Environmental Friendly Workplace Ordinance 13.101 to members of this bargaining unit. As such, employees may request variable working hours such as, but not limited to, 10 hours a day, four (4) days a week, flexing start and end times, and working under a flexible arrangement. Management may approve, in advance, an employees' request to temporarily flex their work schedule between the hours of 6:00 a.m. and 8:00 p.m. on a particular day, or over a specific period of time, by adjustment to the employee's start time and end time, or lunch break. Any denial of an employee's request for flexible scheduling shall explain the denial in a written response that sets out a business reason for the denial.

#### **14.12 Work Schedule Change**

Except as provided in Section 14.5 (Clerical Unit Work Schedule) and/or under emergency action as provided in Section 15.6 (Natural Disaster/Declared Emergency), the City will provide employees with at least a two (2) week advance notice of a permanent work schedule change.

## **SECTION 15: OVERTIME**

Employees required to work in excess of their basic workweek shall be compensated for such overtime services as follows:

### **15.1 Overtime Pay Eligibility and Rates**

Except for employees working an Assumed Work Day (Section 18 - Assumed Work Day) all work in excess of eight (8) hours in any 24-hour period, which begins with the employees' scheduled or actual starting time, whichever is earlier, shall be paid for at one and one-half (1½) times the regular rate for the first four (4) hours of such excess and at two (2) times the regular rate for the balance of such excess. This provision shall not be applicable when excess hours are required by a schedule adjustment requested by the employee or part of a regular flextime schedule requested by the employee. Regular flextime schedules which include work in excess of 10 hours in any day must be approved by the Union prior to requesting such a schedule.

See Appendix A and Appendix B for the scheduling of overtime for Maintenance Chapter employees in the Streets and Sanitation and Solid Waste and Recycling Divisions of the Public Works Department.

**15.1.1 Mandatory Overtime for Employees in Unit K1 and K2:** Except as otherwise provided in Section 15.2 (Compensatory Time), when an employee in Representation Unit K1 or K2 is directed to work in excess of his or her basic work week, the employee shall be paid at the rate of one-and-one-half (1½) times the employee's regular rate of pay. Based on the needs of the work unit, the manager may offer the employee being directed to work overtime the option of earning Compensatory time in lieu of overtime pay, subject to the maximum accumulation requirement in Section 15.2 (Compensatory Time).

### **15.2 Compensatory Time**

Compensatory time off may be earned in lieu of overtime pay at the rate of one and one-half (1½) hours for each overtime hour worked up to a maximum of sixty (60) hours of such compensatory time.

Accumulation of compensatory time off in excess of sixty (60) hours may be allowed at the discretion of the Department Head. Utilization of compensatory time shall be determined by the Department Head with due regard for the wishes of the employee and particular regard for the needs of the service. As used herein, sixty (60) hours is equal to ninety (90) hours of time off work. In the event of layoff or



termination, the employee shall be compensated for all compensatory time accrued but still unused.

Whether an employee shall be compensated for overtime by compensatory time off or by payment shall be at the sole discretion of the employee's Department Head.

Employees who have an accrued compensatory time bank shall be permitted, at the employee's option, to use such compensatory time in lieu of vacation time for any scheduled vacation days.

**15.3 Payment Upon Termination**

In the event that an employee resigns or is terminated, the employee shall be entitled to compensation for his or her accumulated overtime.

**15.4 Work Week**

For the purpose of computing overtime, the workweek shall be defined as beginning at 12:01 a.m. Sunday morning and ending at 12:00 midnight Saturday.

**15.5 Emergency Overtime**

Employees who are called from their living quarters for emergency work or duty on days other than normal work days or on normal work days outside of their regular work hours shall be paid emergency overtime compensation for actual time worked; provided, however, that in any case of emergency overtime as herein provided the minimum time for which such overtime compensation shall be paid shall be three (3) hours; and provided, further, that if such overtime work is performed prior to the beginning of the regularly scheduled work period and such overtime continues into such regularly scheduled work period without a break in service, compensation shall be paid only for the actual time worked. In no case shall an employee be compensated for more than 24 hours at applicable rates in any one 24 hour period, unless the department head or his/her designee approves in advance.

In the event that the employee on scheduled standby is not called, and another employee has been called to perform the emergency overtime assignment, both the employee who performed the assignment and the employee on scheduled standby status will receive the minimum overtime compensation as provided in Section 15.5.

**15.6 Natural Disaster/Declared Emergency**

If an emergency is declared by the City, county, state or national authority:

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- 15.6.1 If an employee is called outside of normal working hours, the employee gets time and one half (1½) the normal rate of pay for the first whole shift regardless of the number of hours worked. If the employee is not called from home the regular rules apply (i.e., overtime for hours worked above eight in a day).
- 15.6.2 Thereafter: the first eight hours at regular rate and 7½% for hours worked between 5:00 p.m. and midnight; 10% for hours worked from midnight to 7:00 a.m. For hours greater than eight in a shift, the employee gets time and one-half (1½) the normal rate of pay but no shift differential on those hours above eight.
- 15.6.3 There will be no reduction in the number of hours in the regular work week schedule (either 32 for employees working a 37.5 hour work week or 40).

**15.7 Clerical Unit Overtime and Scheduling**

- 15.7.1 The parties recognize that employees may be required to work overtime from time to time and that employees may have personal constraints that limit the ability of the employee to work overtime.
- 15.7.2 The City will notify Clerical unit employees at least 5 days in advance of the need to work overtime. However, the parties acknowledge that there may be unforeseen, unpredictable circumstances which arise in which the City is unable to provide 5-day advance notice of the need for overtime. In such case the City will provide as much notice as possible of the needed overtime. The City will seek volunteers to perform the work. If no volunteers are available, overtime may be mandated based on the needs of the work.
- 15.7.3 The City will use flexible scheduling in the work unit to ensure coverage with the intent to limit overtime. The City shall solicit input from staff on flexible scheduling to set a schedule that works best for the employees and meets the needs of the division/department.

## **SECTION 16: PREMIUM PAY**

### **16.1 Shift Differential**

16.1.1 **Swing Shift:** Employees who regularly work a full shift of eight (8) hours or more on swing shift as defined in Section 14.4.2 (Types of Shifts), which includes four (4) hours or more between the hours of 5:00 p.m. and 12:00 midnight, shall be paid their regular salary plus seven and one-half percent (7½%) of their monthly salary per month.

16.1.2 **Night Shift:** Employees who regularly work a full shift of eight (8) hours or more on night shift as defined in Section 14.4.2 (Types of Shifts), which includes four (4) hours or more between the hours of 12:00 midnight and 7:00 a.m., shall be paid their regular salary plus ten (10) percent of their monthly salary per month provided, however, that in the case of any such employee who is regularly assigned to such night-shift work for less than an entire work week, the additional payment shall be made only for the portion of the work week worked on the night-shift assignment.

16.1.3 **Mechanical Sweeper Operator Shifts:** Employees in the classification of Mechanical Sweeper Operator (Job Code 63090) who regularly work a combination of a "swing" and "night" shifts, which shifts include eight (8) hours or more and further include four (4) hours or more between either the hours of 5:00 p.m. and 12:00 midnight (swing shift), or the hours of 12:00 midnight and 7:00 a.m. (night shift), shall be paid in addition to their regular salary, ten percent (10%) of their regular salary for those periods said employees work a combination of "swing" and "night" shifts.

### **16.2 Standby - Units D**

Except as provided below, employees in Unit D who are assigned to standby service shall be paid for such service an amount equal to ten (10) hours work during each week that they are assigned to such standby services at an overtime rate based upon their regular monthly salaries. For the purposes of this Section, week shall mean the seven (7) consecutive calendar days following assignment to standby service. In no case shall an employee be compensated for more than 24 hours at applicable rates in any one 24 hour period, unless the department head or his/her designee approves in advance.

Standby service shall mean being available for service outside of regular working hours at any time when called. If an employee assigned to standby service is not available when called or is unable or fails for any reason to perform the service when called, the employee shall not receive the standby pay provided for herein. Employees absent from work on vacation leave, compensatory time or sick leave will not be eligible to be assigned to Standby service.

The standby pay provided for herein is a minimum guarantee to an employee assigned to standby service. An employee assigned to standby duty shall receive ten (10) hours of overtime compensation in addition to any overtime worked while on standby. The City shall provide the standby employee with a vehicle. Said employee shall be responsible for taking all reasonable steps to insure the safety of the tools and equipment on that vehicle. In no case shall an employee be compensated for more than 24 hours at applicable rates in any one 24 hour period, unless the department head or his/her designee approves in advance.

**Scheduled Overtime during Standby:** The employee who is on scheduled standby status may perform scheduled overtime tasks on a voluntary basis. The standby premium shall not be pro-rated. If an emergency call occurs during the time that the employee is performing scheduled overtime tasks that call shall be paid at the time and one-half rate and not at the call back rate set forth in Section 15.5. If other employees are concurrently performing scheduled overtime tasks, the Director of Public Works may, at his or her discretion, assign the work to employees present within the City performing the scheduled overtime tasks at the regular overtime rate of pay.

### **16.3 Standby - Units K-1 and K-2**

With respect to employees in Units K-1 and K-2 only, the City agrees to arrange for standby compensation prior to any requirement that employees be assigned standby duty.

### **16.4 Emergency Standby – Unit J; Unit D Parking Enforcement Officers and Unit D Parking Enforcement Supervisors**

Employees in Unit J and Unit D Parking Enforcement Officers and Unit D Parking Enforcement Supervisors who are assigned to Emergency Standby service by the department shall be paid or given compensatory time off for being placed on Standby status as follows:

16.4.1 An employee in Unit J; and Unit D Parking Enforcement Officer and Unit D Parking Enforcement Supervisor who is placed on Standby service by the department on his or her regular scheduled work day shall be paid for a minimum of one hour and at a one-quarter time rate (i.e., 0.25 multiplied by

the hourly rate and multiplied by the number of hours placed on Standby status).

16.4.2 An employee in Unit J as well Unit D Parking Enforcement Officer and Unit D Parking Enforcement Supervisor who is placed on Standby service by the department on his or her regularly scheduled day off shall be paid for a minimum of two (2) hours at a one-quarter time rate (i.e., 0.25 multiplied by the hourly rate and multiplied by the number of hours placed on Standby status).

16.4.3 An employee in Unit J as well as a Parking Enforcement Officer and Parking Enforcement Supervisor in Unit D who is placed on Standby service as provided for in 16.4.1 and 16.4.2 above, is required to be available for service outside of regular working hours at any time when called and during the period of time as specifically assigned by the supervisor. If an employee assigned to Emergency Standby service is not available when called, is unable to respond, or fails for any reason to report for duty when called, the employee shall not receive the Emergency Standby pay provided for herein. In no case shall an employee be compensated for more than 24 hours at applicable rates in any one 24 hour period, unless the department head or his/her designee approves in advance.

## **SECTION 17: SPECIAL ASSIGNMENT PAY**

### **17.1 Bilingual Premium Pay**

17.1.1 An employee who is required as an essential part of his or her job to provide non-English language services, including Braille and sign language, routinely and consistently as part of his or her regular job assignment as determined by the City will receive a Bilingual Premium Pay Differential of 5%. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of 5% will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

17.1.2 An employee who is required as an essential part of his or her job to provide non-English language services, including Braille and sign language, when either a) assigned by management, or b) at the request

of the employee with the supervisor's agreement, or, c) after a job audit and who must utilize these skills on an occasional basis will receive a Bilingual Premium Pay Differential of 2%. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of 2% will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

- 17.1.3 The bilingual premium will not be applicable under any circumstances except to an employee who possesses second language competency. Management reserves the right to test for second language appropriate competency prior to a Bilingual Premium Pay Differential.
- 17.1.4 The City may designate an employee to receive either the 5% or 2% Bilingual Premium Pay Differential on a temporary basis for a specified period provided the employee met the requirements contained in the first or second paragraph of this Section.

## **17.2 Mental Health Clinics Differential**

Employees in Unit K-1 or K-2 who are regularly assigned to work in Mental Health Programs, in direct contact with clinic patients, shall receive a five percent (5%) differential. This Mental Health Clinics Differential will be reported to CalPERS as Hazard Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

## **17.3 Summer Youth Supervision Differential**

Employees who supervise two or more Summer Youth or Court Assignees shall receive a five percent (5%) differential. This Summer Youth Supervision Differential will be reported to CalPERS as Lead Worker/Supervisor Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

## **17.4 Construction Equipment Operators Differential**

Construction Equipment Operators shall receive a seven and one-half percent (7½%) differential for hours worked operating the D-8, the Tracked Front End Loader, the Low Boy Tractor Trailer and grader effective January 1, 1991. This Construction Equipment Operators Differential will be reported to CalPERS as Heavy/Special Equipment Operator Special Assignment Pay. However, any hours

worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

## 17.5 Training

17.5.1 **Training Differential:** Employees assigned in writing by the department head and approved by the Director of Human Resources as qualified trainers or instructors for specific specialized skills (identified by departments in consultation with Human Resources) shall be compensated for hours actually worked training at five percent (5%) differential. This Training Differential will be reported to CalPERS as Training Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

17.5.2 **Public Safety Dispatcher Police Desk Training Premium:** Employees in the classification of Public Safety Dispatcher II and assigned in writing by the Chief of Police of his or her designee and approved by the Director of Human Resources as qualified trainers or instructors for specific specialized skills on the Police Desk shall be compensated for hours actually worked training at ten percent (10%) differential. This Training Differential will be reported to CalPERS as Training Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

## 17.6 Sewer Work Pay

Streets and Sanitation Division personnel assigned through annual designation to sewer work (any work in the sewer involving installing, repairing, rodding, and jetting) shall be paid a premium of ninety cents (\$0.90) per hour which premium shall be added to and considered a part of their pay. Personnel assigned intermittently to sewer work during regular duty hours shall be paid ninety cents (\$0.90) per hour premium pay for each regular hour worked that day for a minimum of eight (8) hours. Personnel assigned intermittently to sewer work during overtime shall be paid at time and one-half times the sewer premium pay. This Sewer Work Pay will be reported to CalPERS as Sewer Crew Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

**17.7 Parking Enforcement Training**

The City to pay 5% differential to Parking Enforcement Representative assigned to train new employees in lieu of Supervisor and Assistant Supervisor. This Parking Enforcement Training Differential will be reported to CalPERS as Training Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

**17.8 Smog Technician License Premium Differential**

Employees in the classifications of Mechanic, Mechanic Supervisor or Service Technician who obtain and maintain a valid California Basic Area Smog Technician License issued by the Bureau of Automotive Repair shall receive a 2% differential to normal base salary. This Smog Technician License Premium Differential will be reported to CalPERS as Mechanic Premium Educational Pay. However, any hours worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

**17.9 Special Response Team**

An employee in Representation Unit J who is assigned as an active member of the Special Response Team (SRT) shall receive a five percent (5%) salary differential when involved in an active SRT incident. If an employee is assigned as a member of the SRT while on regular duty and not while on overtime, those hours worked as a SRT member on regular duty shall be reported to CalPERS as Hazard Premium Pay.

**17.10 Longevity Pay**

Effective June 28, 2009, employees completing twenty-four (24) years of service shall receive a three percent (3%) differential beginning with the anniversary date of beginning the twenty-fifth (25<sup>th</sup>) year of service and shall apply to all hours in a paid status. This Longevity Pay shall be reported to CalPERS as Longevity Pay Incentive Pay.

**17.11 Roll Off Container Truck**

An employee in the classification of Solid Waste Truck Driver who is assigned to operate the Roll Off Container Truck in the Solid Waste Division of the Public Works Department shall receive a differential of \$45 per month. This Roll Off Container Truck Differential will be reported to CalPERS as Heavy/Special Equipment Operator Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.



**17.12 Handling of Narcotics Evidence in the Police Department Property Room**

A Community Service Officer and Community Service Officer Supervisor assigned to the handling of Police records of narcotics evidence in the Police Department Property Room will receive a differential of three percent (3%). This differential will be reported to CalPERS as Police Records Assignment Premium Pay. However, any hours worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

**17.13 Special Class Commercial Driver’s License Premium**

Effective June 26, 2011 employees required to possess and maintain a valid California Class A or Class B Commercial Driver’s License as a condition of employment shall receive a three percent (3%) differential to base pay. This differential shall be reported to CalPERS as Special Class Driver’s License Pay. However, any hours worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

**17.14 Emergency Medical Dispatching**

In the event Berkeley takes responsibility for emergency medical dispatching, the City and the Union agree to meet and confer over impacts on current terms and conditions of employment.

**17.15 Commercial and Residential Route Refuse Collector Premium**

Effective June 19, 2016, employees in the classification of Solid Waste Worker assigned to a Commercial or Residential Collection Route in the Zero Waste Division of the Public Works Department shall receive a two percent (2%) differential when assigned and performing duties on a Commercial or Residential Collection Route. Effective June 18, 2017, the differential shall be increased by an additional two percent (2%), for a total of four percent (4%). This Commercial and Residential Route Refuse Collector Premium will be reported to CalPERS as Refuse Collector Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported “compensation earnable” in California Government Code Section 20635.

**17.16 Hazardous Substance Special Assignment Pay**

Employees assigned to a Citywide coordinated response to perform clean up services of established encampments shall receive a three percent (3%) salary differential to base pay for actual hours worked.

**17.17 One-Time Dispatcher Retention Bonus**

Effective upon ratification of this agreement, Public Safety Dispatcher II and Supervising Public Safety Dispatchers who have completed five (5) years of service in their classification shall receive the following one-time retention bonuses:

July 2019 \$750 minus applicable taxes\*  
July 2020 \$750 minus applicable taxes\*

\*Such amounts shall not be reported as PERSable compensation to CalPERS.

This Section 17.17 shall become null and void at the expiration of the contract on June 27, 2020 and shall not be included in a successor MOU unless negotiated and agreed to by both Employer and the Union.

## **SECTION 18: ZERO WASTE**

### **18.1 Assumed Work Day**

The City and the Union agree to continue the practice of the Assumed Work Day for employees in the Solid Waste Division of the Public Works Department assigned to residential and commercial collection routes and to Tractor Trailer Drivers assigned to transport solid waste to the landfill. For the purpose of this Agreement, an Assumed Work Day means an employee is assumed to have worked a shift of at least eight hours regardless of actual hours worked when assigned to residential and commercial collection routes or to a Tractor Trailer Driver assigned to transport solid waste to the landfill.

For employees assigned to an Assumed Work Day schedule, the following conditions apply with respect to compensation:

- 18.1.1 Overtime will be paid at one and one-half (1½) times the normal hourly rate for all hours worked over 40 in a week. For the purposes of this Section, the 40 hour work week includes all hours in a paid status except as provided in paragraph 4 below.
- 18.1.2 Overtime will also be paid for all hours worked on another regularly assigned residential or commercial collection route or different assignment on completion of the route assigned at the beginning of the shift. The rate of such compensation shall be determined by calculations made pursuant to the Fair Labor Standards Act (FLSA) and specifically 29 C.F.R. Section 778.312(a)(1).
- 18.1.3 If an employee is required to work on a Holiday as provided in Section 20.1.1 through 20.1.13 of this Agreement, the employee shall be compensated for overtime as provided in paragraphs 1 and 2 of this

Section, and shall be compensated at the Holiday overtime rates set forth in Section 20.4 of this Agreement.

- 18.1.4 Those employees who are not regularly assigned to an Assumed Work Day schedule and who are given a temporary assignment to an Assumed Work Day schedule on a given day will be compensated on an Assumed Work Day basis as provided in this Section provided that at least 50% of the Assumed Work Day assignment has not been completed on a residential or commercial collection route or any trip to the landfill after the second daily trip.

## 18.2 Zero Waste Route Bid

A Route Bid to determine Zero Waste Division collection route assignments will be conducted on a yearly or as needed basis due to the needs of the work unit. The parties acknowledge that if significant operational changes are occurring, for the purpose of maintaining continuity of service, the Route Bid may be delayed. Employees in a paid status at the time the Route Bid is issued may bid on a collection route in the Zero Waste Division.

A Route Bid Selection Criteria may include, but is not limited to the following:

- a) Seniority in Class
- b) Date of Hire (Drivers only)
- c) Attendance
- d) Safety Record

The parties agree to meet and confer over the impacts on route assignment as a result of either an elimination or creation of routes.

Details pertaining to how the Zero Waste Collection Route Bid is conducted are contained in Zero Waste Division Route Bid Selection Standard Operating Procedures regarding route bid selection.

## 18.3 Zero Waste Vacation Scheduling

Zero Waste shall designate an annual vacation schedule as outlined in the Zero Waste Division Standard Operating Procedures.

## 18.4 Solid Waste Worker / Driver Check-Off

Employees hired into the classification of Solid Waste Worker shall be provided with behind the wheel truck driver training within 180 days of appointment to the career classification.

**18.5 Truck Driver Safety**

Any driver who believes his or her truck is unsafe to operate shall immediately cease driving and notify his or her immediate supervisor. The driver shall be reassigned to another truck while his or her truck is out of service for safety reasons. The truck taken out of service for safety reasons, shall not be driven until cleared by the mechanic on duty. If the employee disagrees with the City's clearance of the truck for safety reasons and is directed to operate it, the employee or the Union on behalf of the employee may request a meeting with the City's Safety Officer or his or her designee within 24-hours of the directive. At the employee's request, such meeting may include the employee's Union representative.

## LEAVES

### **SECTION 19: VACATION**

**19.1 Eligibility**

All employees who have worked for the City six (6) months or more and have worked half-time or more in the preceding calendar year shall be entitled to vacation leave.

**19.2 Scheduling**

The times during the calendar year at which an employee shall take vacation shall be determined by the Department Head with due regard for the wishes of the employee and particular regard for the needs of the service. Wherever practical, employees working in the same classifications within a division shall be given preference of vacation time by seniority. If the requirements of the service are such that a Department Head cannot permit an employee within the department to take an annual vacation leave or any part of such leave within a particular calendar year, the City Manager may permit such employee to take the deferred vacation during the following year.

With advance supervisory approval, vacations may be in increments of one (1) hour.

**19.3 Accrual**

The vacation accrual rate shall be as follows:

<b>Years of Service</b>	<b>Authorized Annual Vacation (in work weeks)</b>	<b>Vacation Leave Credits (in workdays per month of svc.)</b>	<b>Vacation Leave Credits (in hours earned per month of svc.)</b>
Through the first three years of service	2	0.833	6.667
Fourth through eleventh years of service	3	1.25	10
Twelfth through seventeenth years of service	4	1.667	13.333
Eighteenth through twenty-fourth years of service	5	2.083	16.667

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Years of Service	Authorized Annual Vacation (in work weeks)	Vacation Leave Credits (in workdays per month of svc.)	Vacation Leave Credits (in hours earned per month of svc.)
Twenty-fifth year of service and each year thereafter	6	2.5	20

**19.4 Eligibility - First Two (2) Years**

Each employee, during that portion of the calendar year in which the employee was originally appointed and during that next succeeding calendar year, shall be entitled to vacation leave credits at the rate of .833 work days for each calendar month of service. Each such employee shall be entitled to take, during these two (2) calendar years, only such annual vacation leave as the employee earns.

After two (2) years of service, employees may request, and upon approval, to take up to a maximum of two (2) weeks of their annual vacation, in advance of actual earning. Approval of requests for advance vacation shall be solely at the discretion of management.

**19.5 Eligibility - Effects of Part-Time and Interrupted Service**

For an employee who has worked on a part-time or intermittent basis or has been on leave of absence without pay for a total of six (6) months or more or who has been terminated and subsequently reemployed, the actual years of service with the City shall be used for the purpose of computing length of service in determining eligibility for vacation at the two (2), three (3), four (4), five (5) and six (6) weeks' rate.

19.5.1 Employees working on an intermittent or part-time basis who have worked half-time or more in the preceding calendar year without termination of employment, shall be entitled to a prorated vacation leave based upon the actual years of service with the City and upon the actual amount of time worked in the preceding calendar year.

19.5.2 For the purpose of computing length of service in determining eligibility for vacation at the two (2), three (3), four (4), five (5) or six (6) weeks' rate, time spent on extended military leave shall be counted as time spent in the service of the City.

**19.6 Holidays during Scheduled Vacation**

In the event one or more municipal holidays fall within a vacation leave, such holidays shall not be charged as vacation leave, and the vacation leave shall be extended accordingly. The provisions of this Section shall not apply to those

positions in which holidays, due to the necessities of public health and safety, are normal working days.

### **19.7 Maximum Accumulation**

Employees may defer vacation earned to a maximum cumulative total of eight (8) weeks. An employee who has attained maximum accumulation may be required to take all excess earned vacation or receive pay in lieu thereof at the option of the City. Not later than October 1 of each year, the City will advise employees who have attained a maximum accumulation of vacation whether such excess earned vacation must be scheduled as time off prior to the end of the year. Such time off shall be scheduled in accordance with the provision of Section 19.2 (Scheduling).

The City shall require all employees to reduce their accrued vacation balances to no more than 320 hours, as of the last pay period in February of each year of this Agreement. To effectuate the requirement that employees not accrue more than 320 hours vacation leave, the parties agree that not later than November 15 of each year of this Agreement, the City will provide the Union and Department Heads with a report identifying all employees who have accrued two hundred and eighty (280) hours of vacation leave and appear in danger of exceeding the 320 hour limit. Employees who have accrued 280 hours of vacation leave, as of that date, will be advised by their supervisor that they must take vacation leave to reduce their vacation leave accrual by February of the following year.

Supervisors should be flexible in granting employee vacation requests to those employees above, or approaching the 320 hours limit, and further, that with regard to employees who are in danger of exceeding the 320 hour limit, no vacation request by such an employee shall be unreasonably denied. If an employee who is in danger of exceeding the 320 hour limit fails by December 31 of each year of this Agreement to schedule a vacation to be taken before the last pay period in February of each year of this Agreement, the City has the authority to direct the employee to go on vacation leave to reduce the employee's accrued vacation.

If, due to operational necessity, a department head denies an employee vacation leave and does not provide the employee with an alternate vacation date, and as a result causes the employee to exceed the 320 vacation leave limit, said employee shall nonetheless be entitled to use that vacation leave in the next calendar year to the extent necessary to reduce their accrued vacation to not more than 320 hours.

### **19.8 Effect of Military Leave or Break In Service**

An employee who has returned from extended military leave or any other extended leave of absence without pay or who has been reemployed or reinstated shall be entitled, during the calendar year in which the employee returns to the City service,

to a prorated vacation based upon the total years of service with the City and upon the total number of months of actual service with the City during the said calendar year. For succeeding calendar years, vacation shall be as provided in this Section 19.

**19.9 Payment / Reimbursement Upon Termination or Extended Leave**

If after six (6) months of continuous service, an employee is terminated, or is granted an extended military leave or other extended leave of absence without pay, such employee or his or her estate shall be paid for vacation credits in excess of the actual amount of vacation leave taken or such employee or his or her estate shall reimburse the City for the actual amount of vacation taken in excess of vacation leave credits, as the case may be.

Upon termination, extended military leave or other extended leave of absence without pay, vacation leave credits shall be totaled, and the actual amount of vacation leave taken, including any that may have been taken during the year in which the termination, extended military leave or other extended leave of absence without pay occurs, shall be deducted from the total credits. If the credits exceed the actual amount of vacation leave taken such employee or his or her estate shall be paid for the excess of credits on the basis hereinafter set forth. If the actual amount of vacation leave taken exceeds the credits, such employee or his or her estate shall reimburse the City on the same basis.

The basis for such payment by the City or for such reimbursement to the City shall be as follows:

The employee's normal hourly rate at date of termination, extended military leave or other extended leave of absence without pay, and multiplied by the number of vacation hours accrued but not used.

Upon termination, extended military leave or other extended leave of absence without pay, payment for excess of vacation leave credits shall be made in a lump sum at time of termination, extended leave without pay, or as soon thereafter as possible; provided, however, that an employee may elect to use excess vacation leave credits prior to termination, extended military leave or other extended leave of absence without pay, to the extent permitted by this Section 19 and receive a lump sum payment for the balance of vacation leave credits, if any. Notwithstanding the foregoing, accumulated but unused vacation credit at the time of retirement shall be paid off in a lump sum.



**SECTION 20: HOLIDAYS**

**20.1 Recognized Holidays**

Recognized holidays for employees in Representation Units D, J, K-1, and K-2 shall be:

- 20.1.1 New Year's Day
- 20.1.2 Martin Luther King, Jr.'s Birthday (3rd Monday of January)
- 20.1.3 Lincoln's Birthday
- 20.1.4 Washington's Birthday - observed on the 3rd Monday in February
- 20.1.5 Malcolm X's Birthday - observed on the Monday or Friday nearest May 19
- 20.1.6 Memorial Day
- 20.1.7 Independence Day
- 20.1.8 Labor Day - observed on the first Monday in September
- 20.1.9 Indigenous Peoples' Day - observed on the second Monday in October
- 20.1.10 Veterans Day
- 20.1.11 Thanksgiving Day
- 20.1.12 The day after Thanksgiving Day
- 20.1.13 Christmas Day

**20.2 Paid Status**

In order to be eligible for holiday pay, an employee must be on paid leave status on his or her regularly scheduled workday before the holiday.

**20.3 Floating Holidays**

Effective January 1, 1988, employees shall be granted three (3) floating holidays each calendar year.

Employees in the competitive service who have worked for the City six (6) months or more shall be granted three (3) floating holidays each calendar year. In the first calendar year of employment, employees shall be granted pro rata floating holidays as follows: Hired January 1 through April 30 – 3 days; hired May 1 through August 31 - 2 days; hired September 1 through December 31 - 1 day. Employees may take floating holidays in one-hour increments.

**20.4 Effects of Work Week**

Employees whose workweek is Monday through Friday shall be allowed all holidays with pay which fall within such work week. Those employees whose work week is other than Monday through Friday shall be entitled to the same number of holidays, with pay, during each calendar year as are allowed to employees whose work week is Monday through Friday. The procedure for allowing holidays for

employees whose workweek is other than Monday through Friday shall be established by the City Manager.

## **20.5 Compensation for Holiday Work**

An employee required to work on any day which is a holiday for employees whose work week is Monday through Friday shall be paid for the number of hours worked during such day at the rate of one and one-half (1½) times the straight-time rate, based upon the employee's regular monthly salary, or shall be granted compensatory time off in an amount equal to one and one-half (1½) times the number of hours worked on such holiday. Any employee who works on Christmas Day or Thanksgiving Day shall be paid double time for that day. The hours worked on such a holiday and paid at the rate herein provided shall not be credited in computing the hours worked in the week for overtime purposes.

The holiday pay provided for shall be in addition to an employee's regular salary. In the event that the time worked on such a holiday is also overtime, as provided in Section 15 of this Agreement, payment will be made for the hours worked either as overtime under said Section 15, or as holiday pay under this Section 20, but will not be made under both Sections.

## **SECTION 21: SICK LEAVE**

### **21.1 Eligibility**

Any employee shall be entitled to take sick leave with full pay in case of sickness, disability, or serious illness within the immediate family of the employee in accordance with the provisions of Sections 21.2 (Accrual) to 21.6 (Family Sick Leave), inclusive.

### **21.2 Accrual**

Each employee shall be credited with one (1) working day of sick leave with full pay for each month of service.

For the purposes of this Section 21, a month of service shall mean thirty (30) consecutive calendar days in the case of employees working on full-time or part-time basis, and shall mean 173 hours of work in the case of employees working on an intermittent basis.

### **21.3 Use - Part-Time and Intermittent Employees**

An employee working on a part-time basis shall be entitled to use earned sick leave only on a pro rata basis; for example, if an employee works half time the employee shall be paid for time off on sick leave on a half-time basis.

An employee who works on an intermittent basis shall be entitled to use earned sick leave only for those days on which the employee would have worked if the employee had not been sick; provided, however, that an employee working on an intermittent basis who works only when called shall be entitled to use earned sick leave only when the employee becomes sick after reporting to work in response to such call.

#### **21.4 Accumulation / Cancellation / Restoration / Payout**

21.4.1 Such sick leave as provided in Section 21.2, when not used shall be cumulative; but the accumulated unused period of sick leave shall not exceed two hundred (200) working days, regardless of the length of service. When the maximum of two hundred (200) working days has been reached, and there after part of said maximum has been used, the used part of said maximum may subsequently be replenished at the applicable rate provided in Section 21.2.

21.4.2 Except as otherwise provided below, all accumulated sick leave shall be canceled when an employee terminates or is terminated, except that employees retiring or voluntarily terminating with a vested pension and at least twenty (20) and not more than twenty-eight (28) years of service shall be entitled to receive payment at retirement or termination with a vested pension of thirty eight percent (38%) accumulated unused sick leave days, but not in any case more than thirty eight percent (38%) of the two hundred (200) day maximum accumulation. Employees who voluntarily separate from service with a vested pension and at least twenty-eight (28) years of benefited City of Berkeley service shall be entitled to receive payment in an amount equal to 50% of their accrued sick leave days up to a maximum of two hundred unused sick leave days. The employee may choose to convert unused sick leave to retirement credit as provided by CalPERS in Government Code Section 20965.

The City has established an Internal Revenue Code Section 401(a) plan and trust agreement to address the liquidation of sick leave at time of retirement and has received a Determination Letter and a Private Letter Ruling on the plan and trust agreement. This provides employees with an irrevocable option to defer accrued but unused sick leave at time of retirement into a 401(a) plan or be paid out the balance of the accrued but unused sick leave less withholding of applicable federal and state taxes.

- 21.4.3 Any employee retiring on permanent disability arising out of and incurred in the course and scope of his employment with the City shall be entitled to receive payment at retirement for thirty eight percent (38) of accumulated unused sick leave days, but not, in any event, more than thirty eight percent (38%) of the two hundred (200) day maximum accumulation. Employees retiring on permanent disability arising out of and incurred in the course and scope of their employment with the City with at least twenty-eight years of benefited service shall be entitled to receive payment in an amount equal to 50% of their accrued sick leave days up to a maximum of two hundred unused sick leave days.
- 21.4.4 Employees who regularly work one-half ( $\frac{1}{2}$ ) time or more and who have attained the two hundred (200) day maximum sick leave accumulation shall be entitled to receive payment for one-third ( $\frac{1}{3}$ ) of the first twelve (12) days of sick leave days, or if earning sick leave at the rate of two working days for each month of service, one-third ( $\frac{1}{3}$ ) of the first twenty four (24) days of sick leave days, for which they become eligible, do not use and would otherwise forfeit because of the two hundred (200) day maximum limitation. Determination of eligibility for such payment shall be made on an annual calendar-year basis, and payment for such sick leave for any calendar year shall be made no later than January 22nd of the following year. Such payment shall be made at the employee's salary rate in effect on the preceding December 31st and shall be made only in units of whole days and will not be made for any fraction of a day. However, the liquidation of accrued sick leave at time of retirement as provided in Section 21.4.2 will not result in a payout of accumulation of sick leave as provided in this Section.
- 21.4.5 Accumulated sick leave which has been canceled by reason of an employee's layoff in accordance with Section 44 shall be credited back to such employee if the employee returns to City employment within three (3) years of such layoff.

## 21.5 Purpose / Definitions

Sick leave shall not be considered as a privilege which an employee may use at the employee's discretion, but shall be allowed only in case of sickness or disability or in the case of serious illness within the immediate family of the employee.

## 21.6 Family Sick Leave

Not more than fifteen (15) working days (120 hours) in any calendar year may be taken as sick leave because of the illness of a member of the employee's immediate family. The immediate family of an employee, for the purpose of this Section, shall be defined as: a dependent residing in the employee's household or

parent, spouse, son or daughter, domestic partner or niece or nephew residing in the employee's household.

**21.7 Bonus for Unused Sick Leave**

For every six (6) months of perfect sick leave attendance, the employee will receive eight (8) hours of bonus time. This bonus time will be prorated for part-time employees. Such bonus time can be used for any leave purpose covered by this Agreement. Such bonus time shall be counted as vacation leave credits for purposes of determining eligibility for carry-over and liquidation at time of termination of employment. Such crediting shall occur no later than 45 working days after having been earned.

**21.8 Injury Incurred In Outside Employment**

No sick leave shall be allowed for time off for an injury incurred while working for another employer, provided that such injury is covered by the Workers' Compensation laws of the State of California, or other provision for payment for time off because of such injury is made by such other employer. In the event such injury is not covered by the Workers' Compensation laws of the State of California, and no other provision for payment for time off because of such injury is made by such other employer, sick leave in accordance with the provisions of this Section shall be allowed only if such outside employment has been approved by the City.

**21.9 Notice Required**

In order to receive compensation while absent on sick leave, the employee shall notify his/her Department Head prior to or within four (4) hours after the time set for beginning his or her daily duties, or as may be approved by the Head of his or her department. The employee will make every reasonable attempt to directly contact his or her designated supervisor within one hour of beginning of shift.

**21.10 Absenteeism / Sick Leave Abuse**

The City may establish a reasonable program for the control of abuse of sick leave and absenteeism, subject to Union review and comment.

21.10.1 The Union and the City agree to meet during the term of this 2015 through 2018 agreement, beginning no later than 90 days after Union ratification and Council approval on its regular agenda, on the City's practice with regard to the control of abuse of sick leave and absenteeism. This Section 21.10.1 shall sunset as of June 16, 2018.

**21.11 Calculations**

All sick leave shall be calculated upon actual paid hours. This provision shall go into effect upon implementation of necessary data processing changes.

**21.12 Voluntary Leave Exchange for Catastrophic Illness:**

- 21.12.1 Recovery Time Transfer is that system whereby an employee grants time from earned compensatory or vacation leave to another employee. Such transfer of time shall be limited to situations where the recipient of the transfer is, by reason of illness or injury, threatened with the loss of earnings due to his/her exhaustion of employment benefits. Such time transfer request must be in writing, and subject to the approval of the City Manager/Director of Library Services/Executive Director of the Rent Board. Such approval shall not be unreasonably denied. Such transfer shall be credited to the recipient at the donor's rate of pay. Recovery Transfer Time will not be used for industrial injuries or illnesses. The use or receipt of Recovery Transfer Time shall not preclude possible medical separation of the recipient employee. The City reserves the right to require medical verification by a qualified medical practitioner of the recipient employee's medical condition. The City may transfer an employee receiving Recovery Transfer Time into another position in the same classification.
- 21.12.2 An employee may donate accrued but unused sick leave as Recovery Transfer Time subject to the following conditions:
- a. The employee donating sick leave must maintain a sick leave balance of at least 120 hours after the donation of leave for Recovery Transfer Time. An employee donating sick leave coincidentally with terminating employment with the City shall be limited to a sick leave donation of no more than forty (40) hours regardless of the sick leave donation option(s) used.
  - b. An employee may donate compensatory time off and/or vacation leave time; or
  - c. An employee may donate up to forty (40) hours of sick leave per calendar year and be charged hour per hour for each hour of sick leave donated; or,
  - d. After the first forty (40) hours of sick leave are donated, an employee may donate sick leave but the employee will be charged two hours of sick leave for each hour of sick leave donated for use as Recovery Transfer Time.

**SECTION 22: WORKERS' COMPENSATION**

Workers' Compensation payments shall commence according to law. Payments under the Workers' Compensation law for temporary disability, or a recurrence thereof, arising out of and in the course of employment, shall be paid for a period not to exceed 365 days at a maximum payment of the employee's pre-disability pay, but shall not exclude any salary adjustment to which the employee is entitled. Thereafter, the employee will continue to receive only the temporary disability payments provided under State Law and the City will cease to pay the difference. Temporary disability payments plus the moneys paid under the City's salary continuation program shall be equivalent to the employee's regular pre-disability pay. However, salary continuation payments above the statutorily required temporary disability payments shall not be reported by the City to CalPERS as compensation. In determining the employee's pre-disability pay the City may use either pre-disability net or gross pay based on administrative capabilities. This decision shall be applied uniformly and is not intended to reduce salary continuation benefits below those in effect under the prior Agreement.

**SECTION 23: STATE DISABILITY INSURANCE**

**State Disability Insurance Integration:** Any employee who is absent due to personal illness for more than seven (7) days (or for any period of time if hospitalized) may apply for State Disability Insurance benefits. Application forms shall be available from Human Resources.

The City shall integrate the employee's pay with the employee's State Disability benefits upon receipt of the "Notice of State Disability Claim Filed" in the following way:

- 23.1 The City will determine the weekly State Disability Insurance benefit amount based on the amount of wages earned with the City of Berkeley in the State Disability Insurance base period.
- 23.2 Where employee has accrued sick leave, the weekly benefit will be subtracted from the employee's normal weekly wage and the amount necessary to bring the total of State Disability plus wages to 100% will be deducted from the sick leave and paid on normal City payroll.
- 23.3 When employee receives State Disability Insurance check, he or she will contact payroll if the amount of the benefit is anything other than the maximum amount and payroll will make up the difference from sick leave, vacation, or comp time if the employee has any accrued to use for this purpose.

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Any employee entitled to State Disability Insurance shall receive in addition thereto such portion of his or her accumulated sick leave as will meet but not exceed, the standard earnings of the employee for his or her normal work week, up to a maximum of five (5) days.

- 23.4 An Employee may integrate his/her vacation or comp time with State Disability Insurance as set forth above. If an employee wishes to exercise this option, he/she must notify the City prior to exhausting his/her sick leave integration.

**SECTION 24: BEREAVEMENT LEAVE**

In the case of death within the immediate family of an employee such employee shall be entitled to remain absent from duty with pay in order to grieve the passing of a loved one, for a period not exceeding three (3) working days, or in the case of a funeral or memorial service conducted out of the State of California, for a period not exceeding five (5) working days. Bereavement leave need not be taken in consecutive days but shall be taken within twenty (20) working days of the death of the family member. The immediate family of an employee, for the purpose of this Section, shall be defined as a dependent or wife, husband or domestic partner, mother, father, sister, brother, child, grandmother, grandfather, mother-in-law father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law and grandchildren, aunts and uncles.

In order to be eligible for Bereavement Leave as noted above, employees are required to complete and submit the City of Berkeley Bereavement Leave Statement as provided in the City policy. Employees shall not be required to provide an obituary.

Leave of absence with pay because of death in an employee's immediate family is allowed solely for the purpose of participating in the grieving process, and such leave shall not be charged against vacation or sick leave which an employee may be entitled to, but shall be in addition thereto.

In special cases, with the approval of the Department Head, the City Manager may grant a death leave to allow an employee to attend funeral or memorial services because of the death of a person not included within the definition of the immediate family.

**SECTION 25: MILITARY AND MARITIME LEAVE**

Military and Maritime Leave shall be governed by the provisions of the Federal Uniformed Services Employment and Reemployment Rights Act (USERRA) and any regulations promulgated to implement the Act, and the California Military and Veteran's Code.



**SECTION 26: PARENTAL LEAVE**

A continuous leave of up to one year will be granted to any employee with one (2,080 hours) or more years of employment with the City (or equivalent in the case of part-time employees) upon the birth of a child or the adoption of a child who is five (5) years or younger, providing that:

- 26.1 the one year parental leave must commence no later than thirteen (13) months from the date of birth or adoption and must expire no later than twenty-five (25) months from the date of the birth or adoption, and
- 26.2 approved parental leave shall not be deducted from the Seniority Service Date, and
- 26.3 to be eligible to exercise their rights under this Section, employees must provide thirty (30) working days notice prior to the anticipated commencement date of the parental leave, when possible.

The employee, at his or her option, may request that all or any portion of sick leave (up to a maximum of two hundred (200) days) or vacation leave that he or she has accumulated be paid in the same manner as it would if he or she had been absent due to illness or on vacation during the leave. In the event both parents are employed by the City, nothing in the Personnel Rules and Regulations shall prohibit both employees from taking simultaneous parental leave.

The foregoing leave shall be granted upon medical certification of pregnancy or the presentation of legal evidence of adoption.

During approved parental leave, after all earned leaves (except sick leave) are exhausted, the City agrees to maintain life and health insurance coverage for the duration of the approved parental leave, subject to any regular participation requirement of the employee. Thereafter the City agrees to continue coverage for the employee at the employee's expense.

**SECTION 27: LEAVE OF ABSENCE WITHOUT PAY**

**27.1 Request**

Upon request of the employee, a Department Head may grant a leave of absence to an employee within his/her department without pay for a period not to exceed

fifteen (15) working days. No leave without pay shall be granted for more than fifteen (15) working days, except upon the written request of an employee and approval of the City Manager or designee. Failure on the part of an employee on leave to report promptly at its expiration shall be cause for discharge. Employees shall, when possible, return to their original position upon return from an approved leave without pay.

## **27.2 Union Training Leave**

27.2.1 A union training leave without pay shall be granted at the request of an employee and the Union for the purpose of attending a training course sponsored by the Union. The maximum duration of such leave shall not exceed two (2) consecutive payroll periods in a calendar year. Failure on the part of an employee on leave to report promptly at its expiration shall be cause for discharge.

27.2.2 Conditional upon prior approval and upon receipt of certification of completion, the City shall reimburse an employee who is an elected official or steward of the Union for up to one half of his/her time spent in such training at the employee's permanent rate of pay, not to exceed twenty hours of paid leave in a calendar year.

27.2.3 Time spent by Union officials in retreats provided for in Section 6.5 (Official Attendance at Meetings) of this Agreement shall be counted toward the above 20 hour limit but may not be subject to the provision for payment of only half of the total time.

## **27.3 Eligibility**

No leave of absence shall be granted to any employee until the employee has utilized all accrued vacation time and any other time owed to the employee, except sick leave.

If the absence without leave is due to reasons for which the employee would be eligible for sick leave, then all sick leave must be exhausted first as well.

## **SECTION 28: JURY DUTY LEAVE**

An employee who is called or required to serve as a trial juror shall be entitled to be absent from work with pay during the period of jury duty or while required to be present in court as a result of a call to jury duty. Employees are required to submit a written proof of jury duty service issued by the court in order to receive payment for Jury Duty Leave. An

employee is required to be present at work when not serving as a trial juror or as a member of a jury selection panel. An employee will notify his or her supervisor of any unusual constraints (e.g., time to call in, time to report for jury service) made by the court that affect the employee's ability to simultaneously fulfill his or her jury duty service and employment obligations, and the supervisor will attempt to accommodate the employee based on the operational needs of the department. Absence from work to perform jury duty service shall apply to employees who work swing and graveyard shifts for those days on jury duty. Employees who serve jury duty on their days off shall be granted an equivalent number of days off during their normal workweek. The employee will keep any payment received for jury service including mileage reimbursement.

### **28.1 Court Time**

The City will guarantee a minimum of four (4) hours pay for every court appearance required by an employee in the conduct of official City of Berkeley job duties on the employee's scheduled day off and four (4) hours minimum if on a workday but outside scheduled working hours. In addition, employees assigned to court phone standby in the conduct of official City of Berkeley job duties will be compensated by earning recovery time as follows: Duty day, outside of scheduled working hours, one hour minimum recovery time and hour for hour thereafter. Day off, two hour minimum recovery time and hour for hour thereafter.

## HEALTH AND WELFARE BENEFITS

### **SECTION 29: HOSPITAL-MEDICAL AND DENTAL COVERAGE**

#### **29.1 Health Insurance**

The City agrees to extend all medical and dental benefit coverages to dependents of City employees up to the date of their 26<sup>th</sup> birthday.

29.1.1 The City shall pay for the cost of health insurance coverage for employees who have such coverage under any group health insurance plan authorized by the City Council. If an employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for medical benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

29.1.2 The maximum amount the City shall be required to pay for medical insurance premiums shall be the applicable Kaiser S-1 Plan rate (i.e., single party, two party, or family), regardless of the City sponsored health plan selected by the employee.

29.1.3 For employees in a probationary or career benefited status as of January 1, 2003, the City will continue to pay 100% of the health care premium costs (employee and any dependents) for the health plan the employee is enrolled in as of this date as long as the employee remains employed in the bargaining unit. After January 1, 2003, if the employee transfers health coverage to a different health plan, the employee will assume responsibility for paying the difference, if any, between the Kaiser monthly premium rate (i.e., single party, two party, or family) and the plan chosen by the employee from that date forward. For these employees who were grandfathered under this section 29.1.3, effective April 1, 2016, the City will continue to pay 100% of the health care premium costs (employee and any dependents) for the Sutter Health Plus HMO plan as long as the employee remains employed in the bargaining unit. As stipulated above, if the employee transfers from Sutter Health Plus HMO to a different health plan, the employee will assume responsibility for paying the difference, if any, between the Kaiser monthly premium rate (i.e., single party; two-party; or family) and the plan chosen by the employee from that date forward.

29.1.4 **Medical Plan for Part-Time Employees:** Effective July 1, 2011, the

City will pay 75% of the cost of the medical plan which is fully paid for full-time employees for those part-time employees who work 20 to 29 hours per week. The City will pay 100% of the cost of the medical plan which is fully paid for full-time employees for those part-time employees who work 30 or more hours per week.

**Meet and Confer:** The Parties agree to meet and confer commencing no sooner than January 1, 2017. This negotiation shall be on methods to contain or reduce the City's health benefit costs and/or preventing that the City be required to pay any penalties associated with the Excise Tax, including but not limited to a new and/or replacement health plan. This meet and confer process will be subject to normal rules of collective bargaining, including applicable impasse, strike or lock-out procedures.

## 29.2 Dental Insurance

The City shall provide a dental care program for employees.

Effective January 1, 1995, benefits provided under the Dental Program shall be increased to an annual limit of \$2,000 for dental work and a lifetime limit of \$2,000 for orthodontics. The co-insurance rate shall be ninety percent (90%). If an employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for dental benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

29.2.1 **Dental Plan for Part-Time Employees:** Effective July 1, 2011, the City will pay 75% of the cost of the dental plan which is fully paid for full-time employees for those part-time employees who work 20 to 29 hours per week. The City will pay 100% of the cost of the dental plan which is fully paid for full-time employees for those part-time employees who work 30 or more hours per week.

## 29.3 Part-time Employees

Part-time employees who work 30 or more hours per week will receive 100% of the cost of the medical plan which is fully paid for full-time employees; for those part-time employees who work 20-29 hours per week, the City will pay 75% of the cost of the medical plan which is fully paid for full-time employees.

## 29.4 Flexible Spending Account

The City shall establish an Internal Revenue Code Section 125 Flexible Spending Account that allows an employee to elect pre-tax deductions from salary for the purpose of paying allowable medical expenses. Such plan shall be established no later than November 1, 2008.

**29.5 New Providers**

The City shall make reasonable efforts when contracting with any new providers for hospital and medical plans to contract with those providers which provide coverage for all dependents residing in the employee's household.

**29.6 Medical and Dental Benefits**

Medical and Dental benefits shall begin the first day of the calendar month following the date of hire, and end the last day of the month an employee is in pay status.

**29.7 Discipline and Treatment**

The union may request, where merited, on a case by case basis, that pending disciplinary action be held in abeyance pending successful completion of a treatment program by the employee, and thereafter as long as the employee maintains a positive performance and participates in an ongoing recovery program.

**29.8 Health Insurance In-Lieu Payment Effective January 1, 2016**

Effective January 1, 2016, for employees who show proof of alternate medical coverage, the City will compensate the employee \$576 per month, prorated for less than full time benefitted employees.

**SECTION 30: GROUP LIFE INSURANCE**

The City shall continue to provide group life insurance, by a carrier of the City's choice, for each employee in the amount of \$25,000 with a standard accidental death and dismemberment provision of a like amount. In addition, employees may purchase additional life insurance in increments of \$10,000 up to a maximum of \$300,000 at a rate offered by the City's insurance carrier and subject to any medical exam as required by the insurance carrier.

**SECTION 31: RETIREE MEDICAL COVERAGE**

The City and Union have agreed that the City will make available retiree health insurance coverage under certain terms and conditions described below. This retiree medical benefit shall be referred to as Plan Z2B Cap 3. The terms and conditions of this benefit shall be set forth in a separate document which shall contain a full plan description and shall control the administration of the retiree medical plan.

The City will begin to provide the retiree medical coverage set forth in this Section on July 1, 2000. An employee's entitlement to any and all benefits provided by the City under

this retiree medical coverage plan are subject to the funding limitations set forth in subsection 31.9 (City Funding of Retiree Health Benefits).

### **31.1 Amendment of Retiree Health Premium Assistance Plan VI, effective June 28, 1998, Restated and Amended effective March 22, 2011**

Employees who retire on or after July 5, 2015, shall be permitted, at their discretion, to enroll in non-City sponsored health plans. After Council approval of the successor Memorandum of Understanding, the City shall amend the Retiree Health Premium Assistance Plan VI (For Service Employees International Union, Local 1021 Maintenance and Clerical Chapters) as soon as practicable to allow enrollment in non-City sponsored health plans. In the event a retiree elects to enroll in a non-City sponsored health plan, the City shall make medical insurance premium payments directly to the health insurance provider in an amount equal to what the City would contribute to the City sponsored health plan. Retiree shall be solely responsible for all aspects of the requirements to enroll in a non-City sponsored health plan and maintain eligibility for such a plan; the City's sole obligation is to pay the medical insurance premium contribution required under this section, as directed by the retiree to a non-City sponsored health plan. The City shall not be responsible for any excess cost differentials associated with the direct payment of premiums to non-City sponsored plans. The City will only make payments through its third party administrator to provide medical insurance premium payments for an individual plan and will not make payments for a group plan. The retiree and/or surviving spouse or domestic partner that enroll in non-City sponsored health plans shall be solely responsible for paying the administrative set up fee, the monthly administrative fee, and/or any other fees established by the third party administrator, and said fees will be deducted directly from the retiree's monthly contribution. No cash payments will be paid directly to the retiree and/or the retiree's spouse/domestic partner. There shall be no cash in lieu payments made under this benefit.

The City and the Union agree that the City will also amend the Retiree Premium Assistance Plan VI to allow eligible retirees who retired prior to July 5, 2015 to enroll in a non-City sponsored health plan.

### **31.2 Eligibility**

An employee is eligible for the retiree health insurance coverage set forth in subsection 31.3 (Pre Age 65 Retiree Health Insurance) below if he/she meets all the following criteria:

- 31.2.1 retires on or after July 1, 2000,
- 31.2.2 is vested with CalPERS,
- 31.2.3 has at least eight (8) years of CalPERS qualifying service with the City,
- 31.2.4 is at least age 55.

**31.3 Pre Age 65 Retiree Health Insurance**

Beginning July 1, 2000, the City shall make available health insurance coverage to the employee and his/her spouse or domestic partner. The City will pay on the employee's behalf no more than \$181.56 per month for an employee electing single party health coverage and no more than \$363.12 per month for an employee electing two-party coverage. The actual monthly amount of money the City will contribute on the employee's behalf will be based on the employee's total years of CalPERS service as provided in the following chart:

<b>Years of CalPERS Qualifying Service</b>	<b>Percent of City Contribution</b>
8	30%
9	40%
10	50%
11	58%
12	66%
13	74%
14	82%
15	90%
16	92%
17	94%
18	96%
19	98%
20	100%

Employee will pay the difference between the City's monthly contribution and the actual monthly insurance premium charged by the health plan he/she has elected for retiree medical coverage. If during the term of this Agreement, the premiums for such health insurance are increased, the amount the City contributes shall increase no more than 4.5% above the previous year's contribution. No increases in the amount the City contributes shall occur before July 1, 2001. Thereafter, any increase in the amount contributed by the City will occur on July 1 each year thereafter.

**31.4 Retiree Benefits for Employees Age 65 and Over**

Once an employee or retiree reaches age 65, he or she is eligible for Medicare. As a result his/her eligibility for the retiree medical benefits set forth in subsection 31.3 (Pre Age 65 Retiree Health Insurance) ceases. On reaching age 65, the City



will make available health insurance coverage for a Medicare Risk Policy. When an employee or retiree reaches age 65, the City will contribute no more than \$17.65 per month on the employee's behalf for single party health insurance coverage and no more than \$35.32 per month for two party health coverage.

### **31.5 Termination by City of Retiree Medical Benefit**

Failure of the retiree or surviving spouse to pay their monthly share of the health insurance premium will result in termination of the retiree medical benefit and relieve the City of any further obligation to provide any further benefits under this Section.

### **31.6 Retiree Medical Benefit for Employees Retiring Between the Ages of 50 and 55**

An employee who is at least 50 years of age, but less than 55, and has at least eight years of CalPERS qualifying employment with the City will retain eligibility for the retiree medical benefits provided in subsection 31.3 (Pre Age 65 Retiree Health Insurance) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his/her termination from City employment until the employee's 55th birthday. If for any reason the employee has a lapse in health care coverage the employee forfeits his/her eligibility for the retiree health plan benefits upon reaching age 55 and the City has no further obligation to provide any benefits under this Section to the employee and/or his spouse or domestic partner.

### **31.7 Employees Retiring between June 28, 1998 and June 25, 2000**

Employees retiring from City service between June 28, 1998 and June 25, 2000 will be eligible for the retiree medical benefits provided in this Section if they meet all of the eligibility criteria set forth in subsection 31.2 (Eligibility) and after their retirement from City service maintain continuous enrollment in a group health plan from the date of the employee's retirement until June 25, 2000. The employee shall be responsible for paying 100% of the monthly health plan premium from the date of the employee's retirement until June 25, 2000. Failure on the part of employee or surviving spouse to pay premiums and maintain continuous group health care coverage through June 25, 2000 will result in the employee forfeiting his/her eligibility for the retiree medical benefits provided in this Section and will relieve the City of any further obligation to provide benefits under this Section.

### **31.8 Employees Retiring with a CalPERS Approved Disability Retirement**

If an employee retires from the City before age 55 with a CalPERS approved disability retirement, the employee will retain eligibility for the retiree medical benefits provided in subsection 31.3 (Pre Age 65 Retiree Health Insurance) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his/her termination from City employment until the

employee's 55th birthday. If for any reason the employee has a lapse in health care coverage the employee forfeits his/her eligibility for the retiree health plan benefits upon reaching age 55 and the City has no further obligation to provide any benefits under this Section to the employee and/or his/her spouse or domestic partner.

### **31.9 City Funding of Retiree Health Benefit**

City contributions to the retiree medical benefit will begin on June 26, 2000. Funding of this benefit will be set aside in a trust to be established by the City.

Effective with the 1998-2002 Memorandum Agreement, the retiree medical benefit was funded by a charge of 0.50% of payroll in the third and fourth years of that Agreement, so that contributions are at 1% of the payroll in the fourth year of that Agreement. The City will fund the benefit at approximately 1% of the payroll for every year thereafter with the intent of achieving a funding level of 70% after 30 years. The funding will be ongoing to maintain a 70% funding level thereafter.

The Union understands and acknowledges that the City conducted an actuarial study to determine the percentage of payroll it needed to set aside each year and the rate of return of 7% it must achieve to fund the retiree health benefit provided in this Section. The City will conduct an actuarial study by an outside actuary of the retiree medical plan prior to June 30, 2002. After that time, the City will conduct an actuarial study by the outside actuary of the retiree medical plan every two to three years to review the funding status of the program. The outside actuary will be selected by mutual agreement of the parties. The Union and City agree that if the Actuary concludes that the City's funding of this benefit by contribution of 1% of the payroll for all miscellaneous employees is insufficient to fully fund the retiree medical benefits, the City shall not be required to increase its funding for this benefit to more than 1% of the payroll for miscellaneous employees. In the event that there are insufficient funds in the trust to cover all retirees' monthly health premiums, the City and the Union agree to meet and confer regarding the City's distribution of its 1% contribution.

## TERMS AND CONDITIONS OF EMPLOYMENT

### **SECTION 32: PROBATIONARY PERIOD**

#### **32.1 Length**

Original and promotional appointments from employment lists shall be tentative and subject to a probationary period of six (6) months (and a minimum of 1,040 hours) actual work exclusive of all leave and light duty and shall be completed within a one (1) year period. However, time spent on workers' compensation leave or on modified duty as a result of an industrial injury shall not be considered as actual service and shall not be included as time served toward completion of the probationary period.

In recognition of the safety and training requirements of several non-sworn paraprofessional classifications in the Police Department, the probationary period for those classifications is as follows:

- 32.1.1 For the classifications of Community Service Officer, and Community Service Officer Supervisor the probationary period shall be nine (9) months (and a minimum of 1,560 hours).
- 32.1.2 Employees who are hired in either the classification of Public Safety Dispatcher I or Public Safety Dispatcher II fifteen (15) months (and a minimum of 2,600 hours).
- 32.1.3 The hours counted for Community Service Officer and Community Service Officer Supervisor probation will be for actual service exclusive of all leave and light duty completed within eighteen (18) months.
- 32.1.4 The hours counted for Public Safety Dispatcher I and Public Safety Dispatcher II probation will be for actual service exclusive of all leave and light duty completed within twenty-four (24) months.

Probationary employees who are granted military leaves of absence shall complete the balance of their probationary period within a period of six (6) months following their return to City service. No provision of this Section shall be interpreted to preclude the City from establishing new classifications which may require a probationary period of more than six (6) months.

#### **32.2 Effect of Provisional Appointment**

If, before completing the required probationary period, an employee is provisionally appointed to a higher class in the same or a related series of classes, the time

served in such higher class shall be counted toward completion of the probationary period in the lower class.

### **32.3 Completion**

If the service of the probationary employee has been satisfactory to the Department Head, the Department Head shall file with the Director of Human Resources a statement in writing to such effect and stating that the retention of such probationer in the service is desired. If such service has been unsatisfactory, the Department Head shall file with the Director of Human Resources such a statement, in writing, with the recommendation to the City Manager or designee that the employee be rejected.

Probationary employees may request periodic conferences with their supervisors regarding the adequacy of their performance.

### **32.4 Rejection**

During the probationary period, an employee may be rejected at any time without right of appeal or hearing in any manner. An employee rejected from a position to which the employee has been promoted shall be reinstated to the position from which the employee was promoted unless charges are filed and the employee is discharged as provided in Section 39.

## **SECTION 33: TRANSFER**

### **33.1 General**

A transfer may be made at any time by the City Manager when a demonstrated need exists. Transfer shall not be used to effect a promotion, demotion, advancement or reduction, each of which may be accomplished only as provided elsewhere in this Agreement. No employee shall be transferred to a position for which the employee does not possess the minimum qualifications. An employee with permanent status who is transferred from one class to another class shall assume permanent status in the class to which the employee is transferred.

### **33.2 Units D and J**

With respect to Units D and J only, in the event a Department Head determines to make a selection for a permanent vacancy from a transfer list existing for the same classification, the senior employee on the transfer list shall be selected.

**33.3 Transfer – Solid Waste**

The City will offer test skills training for any Solid Waste Worker so requesting on their own time in order to increase their ability to compete for positions such as Laborer.

**SECTION 34: PROMOTION**

- 34.1 Insofar as practicable and consistent with the best interests of the service, all vacancies in the competitive service shall be filled by promotion from within the competitive service after a promotional examination has been given and a promotional list established. In line with this, the City shall consider advancing career employees to vacancies in promotional positions before considering hiring temporary workers from outside the City service. Consistent with City of Berkeley Personnel Rules, each candidate for promotion must be either a permanent employee in the competitive service or a permanent employee on an active mandatory layoff reemployment list, and must possess the minimum qualifications as set forth in the specifications of the class to which promotion is sought. The right to compete in a promotional examination in a specific classification series is not limited to employees in the bargaining unit to which that classification is assigned.
  
- 34.2 If in the opinion of the City Manager, the City is facing staffing reductions which will result in displacement of employees, a waiver of minimum qualifications and/or substitution of related experience and education may be made in promotional examinations, with an understanding on the part of management and supervisory personnel that adequate on-the-job training which can be completed within no more than one year, will be provided to facilitate job adjustment and to compensate for waiver of qualification standards if that has occurred. The promotional recruitment announcement will state that minimum qualifications may be waived providing the applicant's experience and education demonstrates his or her on-the-job development potential, as stated above. In promotional appointments where the minimum qualifications have been waived, the probationary period will be one year to allow the employee time to demonstrate development of the necessary job knowledge and skills.
  
- 34.3 If, in the opinion of the City Manager, the best interests of the service can be served by an open, competitive examination instead of closed, promotional examination, and if there is not already a promotional list for the higher position, which list has not been abolished and from which the vacancy could be filled, then the City Manager may instruct the Director of Human Resources to call for applications for

the vacancy and arrange for an open, competitive examination and for the preparation and publication of an eligible list.

**34.4 Interview of City Employee**

A City employee who is on a closed promotional or an open competitive list shall have the option to interview for the vacancy. A City employee who is unsuccessful and who so requests shall be advised of steps she or he may take to increase her/his competitive standing for future promotional opportunities.

34.5 Employees who have qualified for promotional lists shall be considered for promotion based on the following factors: previous work performance, previous training and experience, merit, ability, and seniority.

34.6 If the City elects to give an open, competitive examination for a promotional position, the City shall establish two (2) lists. List A shall be a Promotional List, and shall rank successful candidates who are presently City of Berkeley career employees. List B shall rank all successful candidates who are not presently career employees. The City shall seriously consider all candidates on List A before hiring from List B.

**34.7 Step Increase**

If any employee is entitled to a step increase and receives a promotion within one month of the increase, said employee is to be placed at the second higher step.

**SECTION 35: DEMOTION**

35.1 The City Manager may demote an employee who so requests it, or whose ability to perform required duties falls below standard. No employee shall be demoted to a class for which the employee does not possess the minimum qualifications as determined by the Director of Human Resources.

35.2 Notice of the demotion shall be given the employee no later than two (2) weeks prior to the effective date of demotion and a copy of said notice shall be filed with the Director of Human Resources. Any employee who has been demoted shall be entitled to receive a written statement of the reason for such action.

35.3 An employee with permanent status who is demoted shall assume permanent status in the class to which the employee is demoted.

35.4 Upon request of the employee, demotion may be made to a vacant position as a substitution for layoff. In such cases the employee shall be restored to his or her

former position without further examination whenever such position is again to be filled in accordance with the reemployment provisions in Section 45.

### **SECTION 36: SUSPENSION**

36.1 The City Manager may suspend an employee from his/her position for disciplinary purposes based on just cause. Suspension without pay shall not exceed twenty (20) working days, nor shall any employee be penalized by suspension for more than twenty (20) working days in any fiscal year. Any employee to be suspended shall be entitled to receive a written statement of the reasons for such action.

36.2 A Department Head may suspend an employee for disciplinary purposes based on just cause for not more than three (3) working days for any one offense. Such suspension shall be reported immediately to the City Manager.

#### **36.3 Immediate Suspension**

An employee who the department head determines to be an immediate threat to the health and safety of co-workers or the public shall be placed on administrative leave with pay and sent home.

### **SECTION 37: DISCHARGE**

An employee may be discharged at any time by the City Manager, but if the probationary period has been completed, then such discharge must be for cause. Any employee who has been discharged shall be entitled to receive written statement of the reasons for such action.

### **SECTION 38: RESIGNATION**

An employee wishing to leave the competitive service in good standing shall file with the Department Head, at least two (2) weeks before leaving the service, a written resignation stating the effective date and reasons for leaving. The resignation shall be forwarded to the Director of Human Resources with a statement by the Department Head as to the resigned employee's service performance and other pertinent information concerning the cause for resignation. Failure of the employee to give the notice required shall be entered on the service record of the employee, and may be cause for denying future employment by the City. The resignation of an employee who fails to give notice shall be reported by the Department Head immediately.

**SECTION 39: REINSTATEMENT**

A permanent or probationary employee who has resigned with a good record may be reinstated within two (2) years to the employee's former position, if vacant, or to a vacant position in the same or comparable class without further competitive examination. This Section shall not be interpreted as a guarantee of reinstatement to an employee who has resigned with a good record and who requests reinstatement within two (2) years.

An employee who is reinstated under this Section who has completed probation in the classification to which the employee is being reinstated shall not serve a probationary period on reinstatement. An employee who is reinstated under this Section who has not completed probation in the classification to which the employee is being reinstated shall be required to serve a new probationary period on reinstatement. The duration of the probationary period determined by the classification and the provisions of Section 32 of this Agreement.



## GRIEVANCE AND DISCIPLINARY APPEAL PROCEDURE

### SECTION 40: GRIEVANCE AND DISCIPLINARY APPEAL PROCEDURE

#### 40.1 Definitions

For purposes of this section of this Agreement, the following definitions shall apply:

- 40.1.1 **Grievance:** A Grievance is any complaint of a member of the bargaining unit involving the interpretation, application, alleged violation, or any other matter of this Agreement or within the scope of representation of the Union.
- 40.1.2 **Administrative Complaint:** An Administrative Complaint is a grievance filed by a grievant or the Union specifically regarding payment of compensation or the interpretation and application of contract provisions and past practices, or allegations of past practice.
- 40.1.3 **Discrimination Complaint:** A Discrimination Complaint is a grievance filed by a grievant or the Union regarding a violation of Section 3 of this Agreement.
- 40.1.4 **Grievant:** A Grievant may be any member of the bargaining unit covered by the terms of this Agreement, or the grievant may designate the Union to act on his or her behalf or the Union itself may file a grievance on behalf of a member or group of members.
- 40.1.5 **Disciplinary Action:** The recommendation of or implementation by an employee's supervisor or Department Director related to the suspension, demotion, salary reduction or discharge of an employee covered by this Agreement.
- 40.1.6 **Disciplinary Appeal:** A Disciplinary Appeal is the procedure established hereunder to afford an employee his or her due process rights related to a pending disciplinary action. An employee may appeal the recommendation or imposition of suspension, demotion, salary reduction or discharge other than when such action is taken during the formal probationary period for that employee.

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- 40.1.7 **Salary Reduction:** Salary Reduction is the reduction of an employee's base compensation to a lower salary step within the employee's current salary range for a specified period of time.
- 40.1.8 **Suspension:** Suspension is the temporary removal of an employee from his or her duties without pay.
- 40.1.9 **Grievance Appeal Officer:** Appeals of grievances will be heard by the City Manager for general City operations, the Library Board of Trustees for Library employees may designate the Director of Library Services as the Appeals Officer and the Executive Director of the Rent Board for Rent Board employees. The City Manager may designate a Grievance Appeal Officer in his/her stead.
- 40.1.10 **Union:** The term Union used throughout this procedure shall include by reference the bargaining unit itself and the appropriate Chapter President and Chief Steward who may be representing an employee engaged in this Grievance and Disciplinary Appeal Procedure.
- 40.1.11 **Day:** A day is defined herein as any day in the calendar year on which the City of Berkeley is regularly open and providing full administrative services to the public.
- 40.1.12 **Written Reprimand:** In the event that an employee receives a written reprimand, the Union or the employee may request a meeting with the supervisor to discuss the reprimand. Such meeting shall occur within fifteen (15) days of the request. The employee may write a rebuttal to any written reprimand within thirty (30) calendar days of receiving the written reprimand or the meeting and such rebuttal will be placed in the Personnel File along with the written reprimand.

## 40.2 Grievance Procedure

**Initial Filing Period:** Formal written grievances must be filed at Step 1 of the grievance procedure within thirty (30) days of the date the incident occurred or within thirty (30) days of the date the grievant or the Union reasonably should have had knowledge of the matter.

- 40.2.1 **Informal Process:** *Complaints Filed With* - An employee or Union who believes that s/he/it has a grievance shall discuss the grievance informally with the applicable immediate non-bargaining unit supervisor. If this is not possible due to the absence of this supervisor, the employee

or his/her Union may discuss the grievance informally with the applicable Division Manager.

- a. **Filing Period:** Such informal grievances shall be verbally brought to the attention of either the immediate non-bargaining unit supervisor or, if unavailable, with the Division Manager within a reasonable period of time of the incident generating the grievance. (NOTE: In order to comply with formal grievance procedures, refer to Section 40.2, "Initial Filing Period", for absolute filing deadlines and time frames for formal grievances.)
- b. **Process:** The grievant shall be entitled to a personal conference with and an informal decision by, either the relevant supervisor or Division Manager within ten (10) days of making the request for an informal meeting. This informal decision terminates the informal process unless mutually agreed upon by employee, supervisor/manager and Union to extend informal discussions.

40.2.2 **Formal Process: STEP 1 – First-Level Manager: *Complaints Filed With*** - If the grievant is not satisfied with the results of the informal process, the grievant may file a formal written grievance following the conclusion of the informal conference process. Such written grievance shall be presented to the applicable Division Manager with a copy to the Department Director and the Union.

- a. **Interpretation of Agreement and Past Practice:** Questions regarding the interpretation of the Agreement or allegations of violations of Past Practice shall initially be filed in writing with the Director of Human Resources of the City.
- b. **Compensation:** All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Director of Human Resources of the City.
- c. **EEO:** All complaints concerning discrimination or other Section 3 matters shall be initially filed in writing with the Equal Employment Opportunity and Diversity Officer of the City. However, complaints alleging violation of any applicable laws pertaining to protected union activity will be filed with the Director of Human Resources of the City.

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40.2.3 **Filing Period:** This written grievance must be filed within ten (10) days following the conclusion of the informal conference process, except as follows:

- a. **Compensation:** Administrative Complaints regarding issues concerning payment of compensation may be filed within 90 days of the last day of the alleged under or over compensation.
- b. **EEO:** The allowed time for filing of a complaint under this Section shall be governed by the EEO Complaint Investigation and Resolution Procedure of the City of Berkeley's EEO/Affirmative Action Program (attached herein as Appendix B).

40.2.4 **Process:** The grievance must be presented in writing on a form provided by the City, and approved by the Union. The written statement shall be a clear, concise statement of the grievance including specific provisions of this Agreement alleged to have been violated, the circumstances involved, the decision rendered at the informal conference, and the specific remedy sought. Within ten (10) days of receiving the written grievance, the grievant shall be entitled to a personal conference with the Division Manager if requested. Other than issues of Contract Interpretation and Past Practices, Compensation or EEO, within ten (10) days, the Division Manager shall communicate a written decision to the grievant and the Union with a copy to the Director of Human Resources and the Department Director. Such action will terminate Step 1.

- a. **Compensation:** In the case of issues of compensation, the Director of Human Resources or his/her designee shall respond in writing within thirty (30) days of receiving the written complaint. In such cases, no adjustment shall be retroactive for more than thirty (30) calendar days from the date upon which the complaint was filed or thirty (30) calendar days from the date when an employee and/or the Union may reasonably be expected to have learned of said claimed violation. Only complaints which allege that employees are not being compensated in accordance with the rules, regulations, and resolutions of the City Council or in accordance with the understanding contained in any Agreement which has resulted from the meeting and conferring process shall be considered.

Any other matters of compensation are to be resolved in the meeting and conferring process, and, if not detailed in the operative Agreement which results from such meeting and conferring process,

shall be deemed withdrawn until the meeting and conferring is next opened for such discussion.

- b. **EEO:** Discrimination complaints shall be processed in accordance with the EEO Complaint Investigation and Resolution Procedure of the City of Berkeley EEO/Affirmative Action Program (attached herein as Appendix B) except that:
  - i. The employee has the right to be represented by a Union representative at all stages of the informal and formal complaint investigation and resolution procedure;
  - ii. The Equal Employment Opportunity and Diversity Officer shall meet with and report to only the City Manager during the formal resolution process; and
  - iii. The City Manager shall make the final decision on the complaint which may be appealed by the Union to an impartial arbitrator within ten (10) days of receipt by the Union of the City Manager's decision. Such an appeal shall be processed in accordance with the above defined grievance procedure of this Agreement. The City shall promptly notify the Union of the filing of all formal complaints, as well as their acceptance or rejection.

The City Manager or his or her designee will notify the Union of a proposed decision on a formal complaint, and the reasons therefore, and upon a request within ten (10) days, shall meet with the Union prior to issuing a final decision.

If a grievance also alleges a violation of another Section of the contract in addition to Section 3, Section 40.2.2.3.2 shall apply only to that part of the grievance which alleges a violation of Section 3 unless otherwise mutually agreed.

Complaints challenging, disputing, or seeking to modify or change any policy component of the City's EEO/Affirmative Action Program, including but not limited to the assignment of responsibilities, workforce utilization analysis, and affirmative action goals and timetables, shall not be subject to the grievance/arbitration procedures of this Agreement. This in no way limits the right of the Union to grieve violations of the City's EEO/Affirmative Action Plan.

- c. **Interpretation and Past Practice:** In the case of issues of interpretation of the Agreement, past practices, payment of compensation or violations of Section 3 of the Agreement (Discrimination, etc.), if the grievant is not satisfied, s/he may move the complaint directly to Step 3 of this grievance procedure.

- 40.2.3 **Formal Process: STEP 2 – Department Director:** *Complaints Filed With* - If the grievant is not satisfied with the results rendered in Step 1, the grievant may appeal the decision in writing to the applicable Department Director or his/her designee with a copy to the Union.

Contract Interpretation and Past Practice, Compensation and EEO complaints would go directly to Step 3 of this process. (NOTE: See Section 40.2.2.)

- a. **Filing Period:** Such written appeal must be submitted to the Department Director or his/her designee within ten (10) days from the date the grievant received the decision of the Division Manager.
- b. **Process:** The written appeal shall include a copy of the original grievance, a description of the informal process and results, the decision rendered at Step 1 and a clear, concise statement of the reasons for the appeal. Within ten (10) days of receiving the written grievance, the grievant shall be entitled to a personal conference with the Department Director or his/her designee if requested. Within ten (10) days of the personal conference, the Department Director or his/her designee shall communicate a written decision to the grievant and the union with a copy to the Director of Human Resources. Such action will terminate Step 2.

- 40.2.4 **Formal Process: STEP 3 – Grievance Appeal Officer:** *Complaints Filed With* - If the grievant is not satisfied with the results rendered in Step 2 for general grievances and Step 1 for issues of Contract Interpretation and Past Practice, Compensation or EEO, the grievant may appeal the decision in writing to the applicable Grievance Appeal Officer with a copy to the Department Director, the Director of Human Resources and the Union.

- a. **Filing Period:** Such written appeal must be submitted to the appropriate Grievance Appeal Officer within ten (10) days from the date the grievant received the decision rendered in Step 2.

- b. **Process:** The written appeal shall include a copy of the original grievance, a description of the informal process and results, the decision rendered at Step 1 and 2 and a clear, concise statement of the reasons for the appeal. Within ten (10) days of receiving the written grievance, the grievant shall be entitled to a personal conference with the Grievance Appeal Officer or his/her designee if requested. Within ten (10) days of the personal conference, the Grievance Appeal Officer or his/her designee shall communicate a written decision to the grievant and the union with a copy to the Director of Human Resources and the Department Director. Such action will terminate Step 3.

40.2.5 **Formal Process: STEP 4 – Arbitration:** *Complaints Filed With* - If the Union is not satisfied with the results rendered in Step 3, the Union may require that the grievance be referred to an impartial arbitrator by notifying the applicable Grievance Appeal Officer.

- a. **Filing Period:** Such notification of desire to go to arbitration must be filed in writing with the Grievance Appeal Officer within thirty (30) days of the conclusion of Step 3 with a copy to the Director of Human Resources. Provided further that the Union shall forward to the City the Union's portion of the California State Mediation and Conciliation Services (CSMCS) fee within sixty (60) days of receipt of the Grievance Appeal Officer's (City Manager) response. Failure by the Union to meet either the thirty (30) day or sixty (60) day deadline for both referral to Arbitration and payment of the CSMCS fee shall be deemed as a full and complete waiver by the Union to appeal the Grievance Appeal Officer (City Manager) decision to Arbitration and the City Manager decision shall be final and binding on all parties.
- b. **Process:** The impartial arbitrator shall be selected from the California State Mediation and Conciliation Services (CSMCS) unless another party is mutually agreed upon. CSMCS will provide a list of five (5) arbitrators. The City and the Union will alternately strike a name until one remains. The remaining name will be the arbitrator. The cost of the arbitrator's decision shall be borne equally by the parties.

The arbitrator may hear testimony, receive written briefs, interview witnesses, and conduct any investigations she or he deems appropriate, and shall render a final and binding decision to the parties which will end the formal grievance process.

No Arbitrator shall entertain, hear, decide or make recommendations on any dispute involving a deposition over which a formally recognized employee organization has jurisdiction unless such dispute falls within the definition of a grievance as specified in this Section.

Proposals to add or to change the Agreement or written agreements or addenda supplementary hereto shall not be arbitrable and no proposal to modify, amend or terminate the Agreement, nor any matter or subject arising out of or in connection with such proposal may be referred to arbitration under this Section; and neither any Arbitrator shall have the power to amend or modify or recommend amendment or modification of the Agreement, or any written agreements or addenda supplementary hereto or to establish or recommend establishment of any new terms and conditions of employment.

No changes in this Agreement or interpretation thereof (except interpretations resulting from arbitration proceedings hereunder) will be recognized unless agreed to by the City Manager and the Union.

#### 40.2.6 **General Conditions of a Formal Grievance**

- a. **Union Representation:** The grievant shall be entitled upon request to representation by the Union at all levels of the grievance procedure. In situations where the Union has not been requested to represent the grievant, the City will not agree to a final resolution of the grievance until the Union has received a copy of the grievance and the proposed resolution, and has been given the opportunity to respond and state its view on the matter. The Union will be given ten (10) days in which to respond.
- b. **Time Limits:** Failure by the Union to file or appeal a grievance within the time limits specified constitutes a dropping of the grievance. Failure by the City to respond by the specified times shall entitle the Union to move the matter to the next higher step of the grievance procedure. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.
- c. **Witnesses:** The City and/or the grievant may call witnesses.
- d. **Release Time:** If an employee covered by this Agreement gives testimony in connection with the grievance procedure during working



hours, the employee shall suffer no loss of pay. If the grievant's hearing is scheduled during working hours, the grievant shall suffer no loss of pay in order to present his or her grievance.

### 40.3 Disciplinary Appeals

40.3.1 **Union Representation:** An employee may request the presence of a Union steward during an interview with his or her supervisor when the employee reasonably believes the interview may result in disciplinary action, and where there is no assurance from the supervisor that disciplinary action is not intended. If at any time during an interview without a steward in attendance, it becomes apparent that disciplinary action could result, either party may adjourn the interview until a steward can be present. The City commits itself to the application and enforcement of a uniform policy of progressive discipline.

40.3.2 **Sole Mechanism:** The provisions of this Section shall be the sole mechanism for resolving Disciplinary Appeals pertaining to suspensions, demotions, salary reductions and terminations and shall be processed in the following manner:

#### 40.3.3 Disciplinary Process: STEP 1 – Department Director

- a. **Review of Recommendation:** The Department Director must receive and review all departmental recommendations for suspension, reduction in salary or a termination. However, for employees of the Library, the Deputy Director of Library Services will have this responsibility.
- b. **Period of Review and Process** The Department Director or his or her designee, or for Library employees the Deputy Director of Library Services, receiving a recommendation proposing a suspension, reduction in salary, or a termination shall hold a meeting with the employee and his or her Union representative to hear an appeal of the recommendation, or the affected employee may choose to make an appeal in written form. If the employee chooses to respond in written form, the Department Director may use his or her discretion on whether a personal conference is necessary.

If a personal conference must be held with the employee and his or her Union, the personal conference must be held within ten (10) days of receiving the recommendation from departmental staff or within ten days of receiving the written appeal from the employee whichever

occurred later. The proposed action and the reasons therefore shall be discussed with the employee. The Department Director or his or her designee shall issue a decision sustaining, modifying or rejecting the discipline within ten (10) days after the completion of the personal conference with the affected employee, or if the employee chose to make an appeal in written form, receipt of the written appeal. This shall conclude Step 1 of the Disciplinary Appeal Procedure.

#### 40.3.4 **Disciplinary Process: STEP 2 – Appeal of the Decision**

- a. ***Appeals Filed With:*** If the employee or his or her Union is not satisfied with the decision in the case of suspensions of three days or less, or recommendation in the case of suspension of more than three (3) days, of the Department Director or his or her designee resulting from Step 1, the employee or the Union may require that the disciplinary appeal be referred to the City Manager who shall designate a Grievance Appeal Officer to hear the appeal and in the Library to the Board of Library Trustees who may designate the Director of Library Services as the Grievance Appeal Officer.

For Suspensions of Three Days or Less: If the employee or his or her Union do not appeal the decision of the Department Director or his or her designee resulting from Step 1, the disciplinary action shall be implemented in accordance with the provisions of Section 38 (Suspension) and the Disciplinary Appeal Procedure will end here.

For Disciplinary Action of Suspensions of Greater than three days or Discharge: If the employee or his or her Union do not appeal the recommendation of the Department Director or his or her designee resulting from Step 1, the disciplinary actions involving suspension greater than three days, salary reduction or discharge will be referred to the City Manager for review. The City Manager may review or modify the recommendation of the Department Director. If the City Manager does not modify the recommendation of the Department Director, the disciplinary action shall be implemented in accordance with the provisions of the Agreement and the Disciplinary Appeal Procedure will end here.

If the City Manager contemplates modification of the recommendation of the Department Director, the employee and the union will be notified in writing of their right to a disciplinary appeal meeting with the Grievance Appeal Officer. Such notice shall be

issued within ten days of receipt of the Department Director recommendation. The Grievance Appeal Officer will hold a meeting and issue a decision issue as provided in Section 40.3.4.3 below.

- b. **Filing Period:** Said appeal must be filed in writing within ten (10) days of the conclusion of Step 1 above; and must contain the originally recommended action, the written decision of the Department Director and all other correspondence exchanged from the start of the original recommended action and Step 1 activities.
- c. **Process:** The Grievance Appeal Officer or his or her designee receiving an appeal of a proposed disciplinary action shall hold a meeting with the employee and his or her Union representative. The personal conference must be held with the employee and his/her Union within ten (10) days of receiving the written appeal. The Grievance Appeal Officer shall issue a written decision sustaining, modifying or rejecting the discipline within ten (10) days after the completion of the personal conference with the affected employee and/or the receipt of the written appeal. This shall conclude Step 2 of the Disciplinary Appeal Procedure. Any decision to suspend, implement a reduction in salary or terminate an employee will become effective at the conclusion of Step 2 of the Disciplinary Appeal Procedure.

#### 40.3.5 Disciplinary Process: STEP 3 – Arbitration

- a. **Appeals Filed With:** If the Union is not satisfied with the decision of the Grievance Appeal Officer or his or her designee resulting from Step 2, the Union may require that the disciplinary appeal be referred to an impartial arbitrator by notifying the City Manager, with a copy of the Director of Human Resources.
- b. **Filing Period:** Said appeal must be filed in writing with the City Manager or his or her designee within thirty (30) days of the conclusion of Step 2 above. Provided further that the Union shall forward to the City the Union's portion of the California State Mediation and Conciliation Services (CSMCS) fee within sixty (60) days of receipt of the Grievance Appeal Officer's (City Manager) response. Failure by the Union to meet either the thirty (30) day or sixty (60) day deadline for both referral to Arbitration and payment of the CSMCS fee shall be deemed as a full and complete waiver by the Union to appeal the Grievance Appeal Officer (City Manager)

decision to Arbitration and the City Manager decision shall be final and binding on all parties.

- c. *Process:*** The impartial arbitrator shall be selected from the California State Mediation and Conciliation Services (CSMCS) unless another party is mutually agreed upon. CSMCS will provide a list of five (5) arbitrators. The City and the grievant will alternately strike a name until one remains. The remaining name will be the arbitrator.

The arbitrator may hear testimony, receive written briefs, interview witnesses, and conduct any investigations she or he deems appropriate, and shall render a final and binding decision to the parties which will end the formal disciplinary appeal process.

The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the employee (or his or her Union) and the City. Each party, however, shall bear the cost of its own presentations including preparation and post-hearing briefs, if any. Arbitrator decisions on matters properly before them which pertain to the disciplinary actions involving the suspension, demotion, pay reduction, or discharge of an employee shall be final and binding on both parties.

#### **40.4 General Conditions for Disciplinary Appeals**

The City commits itself to the application and enforcement of a uniform policy of progressive discipline.

- 40.4.1 ***Union Representation:*** The employee who is the recipient of the recommended discipline shall be entitled upon request to representation by the Union at all levels of the disciplinary appeal process.
- 40.4.2 ***Time Limits:*** Failure by the employee or the Union to file an appeal of the proposed discipline within the time limits specified constitutes a dropping of the disciplinary appeal. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.
- 40.4.3 ***Witnesses:*** The City and/or the appellant may call witnesses.
- 40.4.4 ***Release Time:*** If an employee covered by this Agreement gives testimony in connection with the disciplinary appeal procedure during working hours, the employee shall suffer no loss of pay. If the employee's appeal is scheduled during working hours, the employee shall suffer no loss of pay in order to present his or her appeal.

## MISCELLANEOUS TERMS AND CONDITIONS

### SECTION 41: GENERAL PROVISIONS

#### 41.1 Personal Conduct

- 41.1.1 No employee shall accept appointment to the deputyship or assistantship of any County or State Office or position, or otherwise incur an obligation of civil public position, or otherwise incur an obligation of civil public service outside his/her regular municipal employment without first obtaining the recommendation of the head of his/her department and of the City Manager or designee.
- 41.1.2 No employee shall be disciplined for off-the-job activities which do not affect the performance of the employee.
- 41.1.3 Employees shall so arrange their personal financial affairs so that the demands of creditors and collection agencies shall not impose recurring burden upon the offices of the City Manager or designee, the Department Heads or the Director of Human Resources for the purpose of making collections.
- 41.1.4 Full-time City employees may not carry on concurrently with their public service any private business or undertaking, attention to which affects the time or quality of their work or which casts discredit upon or creates embarrassment for the City government.
- 41.1.5 No official or employee who wears a badge or other official insignia as evidence of his/her authority and identity shall permit such badge or insignia to be used or worn by any other person of the same or another department, or otherwise to leave his/her possession, without approval by the head of his/her department. The Department Head shall not grant such approval except as to persons regularly and formally appointed by the City Manager or designee to the position designated by the badge or insignia.

#### 41.2 Protective Clothing and Equipment

- 41.2.1 **Rain Gear** - The City will provide rain gear (which shall include hat, jacket, pants and boots) for employees in Representation Unit D and provide rain gear that includes rain jacket, rain pants, and a traffic safety

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reflective vest to Community Services Officers working in Crime Scene Investigation (CSI) assigned to work in inclement weather.

- 41.2.2 **Safety Shoes** - An annual allowance of two hundred dollars (\$200) shall be paid to employees specified in "F" (Shoes, Tools and Uniforms) toward the purchase of safety shoes.
- 41.2.3 **Gloves** - Parking Meter Mechanics, Parking Meter Maintenance Workers, Tool Lending Specialists, and City Services Aides shall be furnished with appropriate work gloves.
- 41.2.4 **Ear Plugs and Face Shields** - Employees who request earplugs will be furnished same. Machinery Operators will be provided with a face shield.
- 41.2.5 **Coveralls:** The City agrees to provide 3 changes of coveralls per week for sewer crew and construction crew.
- 41.2.6 **Bulletproof Vests:** Community Service Officers and Community Service Officer Supervisors and Animal Control Officers have the right to purchase bulletproof vests at their own expense at the City's wholesale cost.
- 41.2.7 **VDT Glasses** - The City shall provide glasses as medically required for operators of Video Display Terminals.
- 41.2.8 **Clothing** - The City will issue guidelines permitting safe substitution of pant/shirt combination for coveralls. There will be no cost to the employee. (Note: For example only, 4 pair coveralls and 3 pairs pant/shirts could be substituted for 7 pair coveralls. Applies only to employees qualifying under safety guidelines within Equipment Maintenance, Solid Waste and Streets and Sanitation divisions.)

**41.3 Tools**

Each employee regularly assigned to the classifications of Building Maintenance Mechanic, Building Maintenance Mechanic Trainee, Building Maintenance Supervisor, Mechanic Supervisor, Welder Mechanic, and Mechanic who is presently required to provide tools of the trade or other equipment will continue to do so but shall receive a flat annual tool replacement allowance of five hundred dollars (\$500) per year effective June 29, 2008.

Each employee regularly assigned to the classification of Parking Meter Mechanic or Senior Parking Mechanic shall receive a flat annual tool replacement allowance

of two hundred fifty dollars (\$250) per year, and Service Technician and Container Maintenance Welder two hundred twenty dollars (\$220) per year, effective June 29, 2008.

Tool allowances shall be paid by August 1st of each calendar year.

The parties reconfirm that such payments constitute a tool replacement allowance.

#### **41.4 Training**

41.4.1 The City agrees to develop and implement an employee development and training policy and program. Responsibility for developing and coordinating training programs for employees shall be assumed by the City. Such training programs may include lecture courses, demonstrations, assignment of reading matter or such other devices as may be available for the purpose of improving the efficiency and broadening the knowledge of municipal employees in the performance of their duties. An Advisory Committee on Training shall be established by the City and shall include representation from the Union.

41.4.2 Participation in and successful completion of special training courses will be considered in making advancements and promotions. For training to qualify for consideration in advancements and promotion, the City will require one or all of the following: City approval of the class curriculum, evidence of successful completion of class, and proficiency testing. Evidence of such activity shall be filed with the Director of Human Resources by the Department Head.

41.4.3 The City shall reimburse all Equipment Maintenance employees for mileage and tuition expenses related for attendance at job-related courses. Provided that the employee must have prior authorization from his/her department head and the course has been approved by the City.

41.4.4 All parking enforcement officers shall be given training in the handling of difficult citizens. The City shall provide Customer Service training to all Parking Enforcement Officers within twelve (12) months of the execution of this agreement and as needed during the life of this agreement.

41.4.5 Training Program for Building Maintenance Mechanic Trainee Landscape Gardner Trainee, Forestry Climber Trainee, and Weighmaster Trainee to be limited to two (2) year up and out plan.

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- 41.4.6 The City and the Union agree to establish a Joint Labor, Management and Community Committee by 120 days after the execution of this (2018 to 2020) agreement to review the creation of a program for community training and apprenticeships to build the capacity of Berkeley residents and make a joint recommendation to the City of Berkeley Cannabis Commission and City of Berkeley Commission on Labor.

**41.5 Driver's Training**

Public Works Department shall initiate a Driver's Training Program which shall include periodic refresher courses, for all employees required to operate a City vehicle. Upon successful completion of the Program, the City shall issue an Operator Certificate specifying which vehicles the employee is qualified to operate. After the Program is in full operation, continued provisional and permanent assignment to the operation of specific vehicles shall be contingent upon appropriate certification.

**41.6 Safety**

- 41.6.1 The City and the Union will make every effort to maintain workplaces free of health and safety hazards. No employee shall be required to perform work with unsafe equipment or in situations which can be injurious to their health or safety.

To achieve this goal the City shall appoint an industrial hygienist who will be responsible for the development, maintenance and continuity of the City's safety program with the advice and assistance of a City Safety Committee. The Committee will include two (2) members from the Union. Representatives to the City-wide Safety Committee shall meet for organizational purposes within one month of ratification of this agreement and every other month thereafter.

Members shall be advised of City Safety Committee meetings and their agendas in advance.

As assigned and scheduled the City Safety Committee members will be responsible for conducting workplace safety and health surveys to identify safety and health hazards at worksites.

The City departments and divisions as appropriate shall establish safety committees comprised of union representatives and supervisory personnel to develop written accident prevention programs which will include:



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- a. worksite and work practice hazard inspection check lists for use by affected employees,
- b. a training program instructing employees in safe work practices plus specific instruction with regard to hazards unique to a particular job,
- c. scheduled periodic inspections to identify and correct unsafe conditions and work practices which are found,
- d. defining the responsibility of employees and management to follow safe work practices, to report hazards in the work area, and to comply with occupational safety and health standards applicable to their own actions, and
- e. provision of Material Safety Data Sheets in an appropriate place, easily accessible to affected employees, for all materials being used at a worksite.

41.6.3 The Public Works Safety Committee shall provide one (1) Union representative from each Division. The Parking Division Union representative may also attend the monthly Public Works Department Safety Committee meeting. Each committee shall meet at least once a month.

Employee members shall be advised of Committee meetings at least three (3) days in advance of meeting dates and shall be furnished with an agenda at such time. Employee members may have specific items placed on the agenda. Copies of minutes of each departmental meeting shall be distributed to members of the Committee.

The Occupational Health and Safety Coordinator and/or the Safety Committee shall have authority and obligation to inspect work locations and equipment in regard to safety and health considerations. The Safety Inspection Team shall consist of the Coordinator and two members of the Safety Committee to be chosen by the Coordinator. The Inspection Team may make written recommendations for safety and health improvement and the department shall give a written response as to corrective measures within fifteen (15) working days or sooner. The Occupational Health and Safety Coordinator and/or the Safety Committee shall determine when a situation requires response in less than the time limits specified herein.

The Safety Committee shall have the authority to investigate and report on all substances currently being used by City employees and all proposed for use in the future.

- 41.6.4 The Police Department Officer Safety Committee shall include one Community Service Officer and one Parking Division representative chosen by the Union.

**41.7 Use of Automobiles**

The City Manager shall govern the use of City-owned automotive equipment and privately-owned automotive equipment by such rules and regulation as he or she may establish. The cash allowance will be equal to the amount established by the Internal Revenue Service, and will change as necessary to comply with IRS Standard Mileage Rate.

**41.8 Sewer Crew Assignment**

No employee of the Public Works Department below the level of Sewer Maintenance Assistant Supervisor shall be required to accept regular assignment to sewer crews in excess of one (1) continuous year; provided, however that these provisions shall not prevent assignment to sewer crews in emergencies as deemed necessary by the Department Head. The Union and the City shall as soon as possible arrange the implementation of the rotation system.

**41.9 Annual Physical Examination**

The City will provide one (1) physical examination (based on the City's specification as to scope of examination and examiner) each year to each employee in a classification categorized as a "high risk" classification. This exam is mandatory for all affected employees. The parties agree that the classification of Police Service Assistant is a "high risk" classification.

The City will provide annual T.B. screening test, at no cost to employees, who, in the course of their work are subject to health hazards. Such screening tests shall be on City time.

**41.10 Subcontracting**

For the purpose of preserving work and job opportunities for employees covered by this agreement, if the City intends to subcontract bargaining unit work, and such would result in the layoff of a permanent employee, the City will notify the Union in advance of such action, and upon written request, will meet and confer in accordance with the MMBA prior to subcontracting the work in an effort to find alternatives.

Each month, the City will provide the union with a copy of the “Proposal to Contract Work” report prepared for the City Council that lists proposals for contracting out work in excess of \$25,000. The report shall be provided to the Union at the same time the report is transmitted to the City Council. Information will include nature of project, the name of department requesting the work, and the budget code. Within five (5) working days of receipt of the information, the union may submit a written request to the Purchasing Manager. The City will provide a copy of the actual bid specifications within five (5) working days of the bid specifications being finalized and approved by the department issuing the contract, or of receipt of the written request, whichever applies.

Within ten (10) working days of receipt of the bid specifications, the Union may submit a written request to the Department Director or designee proposing to procure outside contractual services. The Department Director or designee will meet and discuss the scope of work being proposed to be performed by outside contractors before a Request for Proposal or Bid Specification is issued for competitive bid. Five days prior to the meeting, the union will provide a description of the issues and concerns it wishes to discuss at the meeting.

For work related to building maintenance estimated to cost less than \$25,000 per year and normally handled by the Facilities Maintenance Division, record or summaries of any such work contracted shall be made available to the Union on a monthly basis. In cases where the Union believes that work either subcontracted or given out for bid should be done by the bargaining unit, it may request a meeting with the City. The Department Director or designee will meet with the Union to discuss the scope of work. Five (5) days prior to the meeting the Union will provide a description of the issues and concerns it wishes to discuss at the meeting.

**41.10.1 No Subcontracting of Janitorial Services:** The City agrees that for the term of this Agreement, it will not contract out any janitorial services currently being performed by employees represented by SEIU Local 1021. Notwithstanding the foregoing, it is understood by the parties that the City currently contracts out janitorial services at several different City locations, and the parties agree that this Agreement does not affect the City’s ability to renew and/or continue to contract out janitorial services that the City currently has contracted out. Further, the parties agree that this provision does not affect the City’s managerial discretion to determine whether to fill a vacancy that may arise during the term of this Agreement

#### **41.11 Commuter Check Subsidy Benefits**

Upon request, the City shall provide a Commuter check subsidy valued at twenty dollars (\$20) per month to an employee for transit, biking, or van pool. Commuter

check subsidies are only intended for use by the employee while employed with the City of Berkeley and may expire due to inactivity.

#### **41.12 Recreation Coordinators**

41.12.1 There shall be scheduled monthly meetings of Recreation Coordinators and their District Supervisors. Appropriate subjects of discussion shall include planning of events and current budget status. Recreation Coordinator shall receive up to two (2) days per year administrative leave for the purpose of attending classes and conferences.

41.12.2 Recreation Coordinators will receive two (2) weeks advance notice of changes in their regular work schedules except for schedule changes due to emergencies, sick leave and vacation.

#### **41.13 Community Service Officer Work Assignments**

Property Clerks shall be selected from among Community Service Officer Supervisors on the basis of qualifications. When qualifications of applicants are substantially equal, seniority and other job related criteria will be the deciding factors.

#### **41.14 Uniforms**

41.14.1 Effective June 29, 2008, employees in the classifications of Community Service Officer, Community Service Officer Supervisor, Animal Control Officer, Parking Enforcement Officer, Parking Enforcement Officer Supervisor, Public Safety Dispatcher I, Public Safety Dispatcher II, Supervising Public Safety Dispatcher, Parking Meter Mechanic and Parking Meter Maintenance Worker shall receive a uniform allowance of \$1,400 per year. Payment of such annual uniform allowances noted above shall continue to be paid in two (2) equal installments, in December and June, of each year. The amount the City contributes toward the uniform allowance is subject to federal and state income tax withholding.

41.14.2 Community Service Officer, and Community Service Officer Supervisor uniforms shall be blue.

41.14.3 Employees are to pay the full cost of maintenance of their uniforms.

41.14.4 Animal Control Officers shall be provided with a set of coveralls for performance of duties when necessary.

- 41.14.5 **Special Response Team Tactical Uniform:** Effective June 17, 2018, Unit J employees covered by this MA and assigned to the Police Department Special Response Team (SRT) shall be eligible for a one-time reimbursement of up to seven hundred dollars (\$700.00) towards the purchase of the following SRT uniform: Two (2) shirts (1- long and 1-short sleeve, including necessary embroidery and patches); 2 pairs of BDU pants; 1 pair all-weather shoes; 1-all-weather 3-in-1 coat; 1-outdoor head set.

Employees shall be required to submit a reimbursement request, along with receipts verifying the purchase of the SRT uniform within sixty (60) days of purchase. Reimbursements will be paid in accordance with the City's reimbursement procedures.

#### 41.15 Video Display Equipment

- 41.15.1 **Working Conditions:** The City and the Union agree that employees working on video display equipment shall have safe and healthy work environments. These environments shall avoid excessive noise, crowding, contact with fumes, and other unhealthy conditions.

The City agrees wherever practicable to design the flow of work to avoid long, uninterrupted use of video display equipment by City employees.

- 41.15.2 **Pregnancies:** The City will accommodate requests for transfer from pregnant employees whose job duties require frequent exposures to video display equipment subject to the following:

41.15.2.1 such transfer will be limited to other positions which are vacant which the transferee is qualified to perform;

41.15.2.2.to voluntary trading of positions where both parties are competent to perform the new assignments;

41.15.2.3.to any position held by a temporary employee if the pregnant employee is qualified.

- 41.15.3. **Screening:** The City will develop a visual screening and education program effective July 1, 1988 for employees who in the course of their employment operate VDT terminals more than half the time. This program will include visual screening at or near employment, a referral system for employees with possible VDT related vision problems, and a regular follow-up screening at approximately two years.

**41.16 Introduction of New Technology**

The Union shall be given reasonable advance notice of the introduction of new equipment or new processes which may result in the layoff of employees in the bargaining unit. Thereafter, the City and the Union shall meet for the purpose of discussing means of mitigating the impact of the introduction of said equipment upon affected employees. The City shall provide counseling to any displaced employee and shall assist the employee in securing training opportunities which may qualify him/her to be employed in another position with the City. The City shall train employees required to operate such new equipment.

**41.17 Assignments for Temporarily Disabled Employees**

- 41.17.1 The City may accommodate, when feasible, employees covered by this Agreement under the provisions of Workers' Compensation, and such work assignments are to incorporate the following provisions:
- a. The assignment shall be consistent with medical limitations as determined by the physician of record.
  - b. The assignment shall be within the City of Berkeley and may include hours and days of work other than the employee's regular assignment, at no loss of pay.
- 41.17.2 The City may accommodate an employee disabled with a non-industrial disability by providing a modified work assignment in that employee's classification. To be eligible for such a modified assignment, the employee must provide the Human Resources Department with a medical statement from his/her treating physician that clearly states the medical limitations and abilities of the employee. If modification of that position does not serve the best interests of the City, other classifications may be considered, subject to the approval of the Director of Human Resources. Compensation will be provided at the level of the classification in which the temporarily disabled employee works during the disability. The employee must meet standards of satisfactory performance for the duration of the work assignment.
- 41.17.3 In the case of a medically certified pregnancy related disability, in which the normal duties clearly threaten the health and safety of the employee or the unborn child, the Human Resources Department will endeavor to place the employee in a position which best serves the interest of the City with no loss of pay, but in no event will such placement exceed three (3) months in duration.

**41.18 Part-Time Employment - Unit K-1**

The Human Resources Department shall maintain a list of career employees in Unit K-1 who are interested in part-time career employment (20 hours or more). The lists shall be maintained by classification and the requests for less than full-time work shall be handled in the same manner as requests for transfer and reinstatement. Employees shall be certified by classification to departments with a vacancy and shall be considered for part-time employment on the same basis as employees requesting transfer or reinstatement.

**41.19 Annual Performance Evaluation**

The City and the Union shall conduct a joint study of the annual performance evaluation process and make recommendations to the City Manager.

Annual performance evaluations shall be conducted by the employee's immediate supervisor and reviewed by additional levels of supervision. Each employee may make written comments on the evaluation which shall be made part of the employee's personnel records.

Prior to annual evaluation, the supervisor must have observed the employee's performance for at least three (3) months in that evaluation period. If extended leave or other circumstances prevent three (3) months observation, the performance evaluation shall be postponed until this minimum time has elapsed. In special circumstances of relief or rotating employees who regularly do not work consecutive periods of over three (3) months with the same supervisor, the evaluation shall be completed as regularly due with the primary supervisors providing a joint evaluation.

**41.20 Official Personnel File**

41.20.1 All official records of the employee's personnel history are maintained in the Human Resources Department, including applications for appointment, performance appraisal forms, employee transaction forms, formal disciplinary actions and other documents pertinent to the employee's official personnel history. Copies of these records may be retained by the employee's department, as a departmental personnel file.

41.20.2 Employees have the right to inspect their departmental individual personnel files and the official file which is maintained in the Human Resources Department during normal business hours, as provided by law. No material of any kind, except documents submitted by the employee, shall be placed in an employee's official personnel file or the

departmental personnel file after the date of employment without a copy being given to the employee. The employee may provide a concise written response to any material which is maintained in either personnel file.

- 41.20.3 If the employee believes that any material has been placed in the official personnel file in the Human Resources Department in violation of this provision, the employee may send a written request for its removal to the Director of Human Resources with a copy to the Department Head. The Director of Human Resources will make a determination of the appropriateness of the inclusion of the material and will notify the employee of the final disposition.

If the employee believes that any material has been placed in the Departmental Personnel file in violation of this provision, the employee may send a written request for its removal to the Department, with a copy to the Director of Human Resources. The Department Head will make a determination of the appropriateness of the inclusion of the material and will notify the employee of the final disposition.

- 41.20.4 In responding to inquiries from prospective future employers, only information available in the individual's official personnel file will be provided.
- 41.20.5 Records of grievances filed by an employee which do not relate to any disciplinary action taken against that employee shall not be maintained in the individual's Departmental or Human Resources Department file. Such records may be separately maintained but shall not be regarded or treated as part of the individual's Departmental or official Human Resources Department file.
- 41.20.6 Except as otherwise required by applicable law, any material related to disciplinary action which is subsequently overturned or rescinded shall be removed from the employee's Departmental and official Human Resources Department file.
- 41.20.7 Formal letters of reprimand or formal counseling concerning work rules or time and attendance shall be removed from an employees' official files upon request after 24 months provided the employee has maintained satisfactory performance. Letters of reprimand concerning all other subjects shall be removed from an employee's official personnel file upon request after 48 months provided the employee has maintained satisfactory performance.



Records of disciplinary actions involving a suspension of any length shall remain in the employee's official personnel file for as long as the City maintains the file, with one exception as follows: Upon mutual agreement between the City and the Union, a suspension of five (5) days or less shall be removed from an employee's official personnel file upon request, provided the employee has maintained satisfactory performance for five (5) years after the date of the suspension (i.e., no written reprimands or suspensions during the five (5) year period).

#### **41.21 Supplemental Retirement / Disability Insurance Plan**

Effective January 1, 1983, the majority of miscellaneous employees under the City's contract with the State of California Public Employees' Retirement System who were covered by the integrated Social Security Program voted to withdraw from participation in the Federal Social Security Program.

In lieu of Social Security payments, the City has agreed to pay an amount equal to that percent of individual pay (6.7% payable on the first \$32,400 of salary paid in the calendar year) which had been paid by the City to Social Security as of December 31, 1982 to a Supplemental Retirement and Income Plan which provides investment and long-term disability benefits for those employees previously covered under the integrated PERS/Social Security Plan. Provisions of this plan are described in, Berkeley Municipal Code Section 04.36.101 et seq. as amended. This payment is also applicable to those employees hired on or after 1/1/83.

All employees hired after July 22, 1988 are in SRIP II. Provisions of this plan are described in Municipal Code Section 04.38.101 et seq., as amended. All employees hired prior to July 22, 1988 are in SRIP I unless they chose to enroll in SRIP II prior to December 17, 1988.

The City will assume payment of the cost of current enrollees in the SRIP II optional long-term disability plan effective December 4, 1994. The City will assume the cost for long-term disability insurance for all SRIP II members upon completion of contract negotiations with the insurance carrier, but no later than February 26, 1995.

#### **41.22 Reclassification of Positions / Job Audits**

City agrees to honor up to one audit request per employee in each twelve-month period. The departmental manager must review and comment on the completed position description questionnaire and submit it to the Human Resources Department within 90 days of receipt from the employee. The employee shall be notified by the Human Resources Department within a reasonable time of receipt

of the completed position description questionnaire. Status updates regarding the position audit will be provided to the employee every six months until the position audit is completed.

If a bargaining unit position is upgraded or otherwise reclassified, it shall automatically be included in the bargaining unit if the work performed belongs under the jurisdiction of the Union as determined by the City after a review of the position by the Human Resources Department.

In the event the City reclassifies a position from a lower level classification to a higher level classification, an incumbent occupying such position shall be reclassified without competitive examination provided they have performed the duties of the new class for six (6) months and have not received an unsatisfactory evaluation. All other employees shall pass an examination for the higher class and shall serve the normal probationary period. If a position is reclassified, the employee shall receive back pay to the date of the beginning of the closest pay period that the position description questionnaire is received by the Department Head. Position description questionnaires shall be available at all times in each department.

#### **41.23 Reallocation of Positions**

The City will notify the Union of a decision to eliminate or reallocate bargaining unit positions and the City shall satisfy any meet and confer obligations on impact requirement in accordance with the MMBA.

#### **41.24 Break Facilities**

Each work location shall include a room that is reserved for use of employees for rest breaks and lunch breaks. Employees who wish to take rest or lunch breaks in these rooms shall have first priority for the use of such rooms unless alternative break facilities are provided.

#### **41.25 Educational Leave**

The employee shall be eligible for reimbursement for tuition, and textbooks for training that is required by the City or for training that is mutually acceptable to the employee and the City Manager or designee as follows.

41.25.1 After one (1) year of service (2080 hours of work), the City shall allow up to twenty-five (25) hours off with pay per year to employees:

- a. Who are required by law or as a condition of employment to obtain a license, a registration, or other certification, and in order to do so, must take courses which are not offered as part of their basic curriculum, or;

- b. Who are required by law or as a condition of employment to obtain continuing education units;

41.25.2 To obtain education and training related to job skills, to enhance performance of assigned duties or to promote employee development.

Employees seeking time off to take courses for an initial license or certificate which is a requirement of the job or related to job skills, or to enhance performance of assigned duties or promote development will require pre-approval by a department manager prior to undertaking the coursework.

#### **41.26 Jail Closure**

In the event that the City decides to consider closing the Berkeley City jail, the City will notify the Union at least ninety (90) days prior to the effective date of the closure. The City will meet and confer on the impact of the City's decision to close the jail. If the City decides to proceed with the Jail closure, employees currently assigned to work in the jail will be reassigned within the Police Department as positions are available. If there are not enough allocated budgeted positions available for all employees, the City will explore creating Community Service Officer position within the Police Department.

If there are not enough available allocated budgeted Community Service Officer and Community Service Officer Supervisor positions in the Police Department to place employees assigned to the Jail prior to closure, employees will be flexibly placed first to vacant allocated budgeted positions within the Police Department. If there are insufficient vacant allocated budgeted positions within the Police Department to place staff, then employees will be offered flexible placement into other vacant allocated budgeted positions within the City. Employees who are flexibly placed as a result of closure of the Jail shall preserve their pay for one year in keeping with the City's practice on flexible placement.

#### **41.27 YMCA**

Effective January 1, 1999, the cost of YMCA membership will be divided between the City and the employees, with the City contribution to be 75% of the monthly membership fee. The amount the City contributes toward the employee's monthly membership fee is subject to federal and state income tax withholding.

Use of a YMCA membership by a City of Berkeley employee, as provided for in this Agreement, is non-compensable, is not a part of the employee's work-related duties, is not required for employment and is not condoned as part of a physical

fitness program, or required to maintain top physical conditioning for the employee's job performance.

The City of Berkeley or its Claims Administrator may not be liable for any injury which arises out of a City of Berkeley employee's participation in and use of a YMCA membership.

**41.28 Address and Phone Number**

Employees have the responsibility to provide the City with their current address and telephone number.

**41.29 Legal Representation**

The City will consider on a case-by-case basis legal representation for employees in cases arising out of the lawful performance of their assigned job duties.

**41.30 Physical Exams**

The City may require physical exams by a physician of the City's choice for reasonable cause related to fitness for duty.

**41.31 Crimes against Employees**

The Police Department will promptly respond to any calls regarding criminal acts committed against a City employee while engaged in his or her employment. Reports of assault or other acts of criminal misconduct committed against a City employee will be promptly investigated. The results of the investigation will be submitted to the District Attorney for disposition.

**41.32 Classification Changes/New Classifications**

The City will meet and confer with the Union on the impact of the City's decision to a) change existing classifications or b) upon creation of new classifications. Such notice to the Union shall be given at least twenty (20) working days prior to the Personnel Board meeting that the City intends to bring the matter forward.

**41.33 Clerical Classification Upward Mobility Committee**

During the term of this contract (July 5, 2015 to June 16, 2018), the parties agree to establish an upward mobility committee for the purpose of meeting and discussing barriers to upward mobility of employees in the clerical classifications and to determine if the current classification series and the mechanism to advance through these is effective. The committee shall be composed of no more than four (4) representatives from the City and no more than four (4) representatives from the Union.

**41.34 Participation in Examinations and Interviews**

Employees shall be allowed time to participate in examinations administered by

the Human Resources Department or departmental selection interviews or testing, which are scheduled during an employee's regular working hours. Employees shall provide at least 48 hour notice to their supervisor of their participation in an examination or interview, and such time should be coded as regular work hours on their time sheet. Employees are not compensated for participating in examinations or selection processes that occur outside of their regular work hours. Employee who fails to provide notice as provided herein shall be required to use his or her own accrued leave.

#### **41.35 Commercial Driver Reassignment**

An employee who is required to possess a valid California Class A or Class B driver's license as a condition of employment and whose license has been temporarily suspended by either the Department of Motor Vehicles or the court system as a result of conduct occurring off the job shall be placed temporarily in a vacant budgeted allocated position which does not require driving subject to the following conditions:

- 41.35.1 Compliance with California Vehicle Code Section 15224: "Any driver who has a driver's license or privilege suspended, revoked, or canceled by any state for any period, or who is disqualified from driving a commercial motor vehicle for any period, shall notify his or her employer of the suspension, revocation, cancellation, or disqualification, before the end of the business day following the action."
- 41.35.2 The driver's license suspension in excess of thirty (30) days but no longer than one (1) year.
- 41.35.3 The employee will be required to take accumulated leave or leave without pay for the first thirty (30) days of the driver's license suspension.
- 41.35.4 The employee will be provided a temporary non-driving assignment only one time during his/her employment with the City.
- 41.35.5 An employee must have at least five (5) years of service with the City to qualify for a temporary non-driving assignment.
- 41.35.6 An employee must have a satisfactory performance evaluation with an overall rating of "Meets Requirements" (if the employee has not been evaluated within a year of the date of the temporary assignment, he/she will be considered to have satisfactory performance).
- 41.35.7 An employee must have no disciplinary suspension within three (3) years prior to the loss of his/her license.

- 41.35.8 An employee will not be eligible for this program if the employee at any time during his or her career has been suspended for any duration as a result of a positive drug or alcohol test result administered under the Omnibus Transportation Employee Testing Act of 1996 (OTETA).
- 41.35.9 No more than three (3) employees in a work unit and no more than 5 employees at any one time can be reassigned under this program. For the purposes of this policy, a work unit is defined as a subdivision of a department (e.g., Solid Waste Division of Public Works, Landscape Maintenance Division of the Parks, Recreation and Waterfront Department).
- 41.35.10 If the employee's job requirements are performed without the use of a vehicle, the employee will remain in his/her classification and retain full salary.
- 41.35.11 If an employee's job requirements are performed while using a vehicle (i.e., street sweeper), the employee will be temporarily reassigned to another vacant budgeted allocated position in the Maintenance Chapter in which his/her inability to drive can be accommodated. In such case, the employee's salary will be temporarily changed to the same step in the classification to which the employee is assigned. The employee will be returned to his/her former position upon reinstatement of his/her license.
- 41.35.12 In the event that there are no vacant budgeted allocated positions available, the employee will be placed on an approved leave until a vacancy exists or his or her license is reinstated, whichever occurs first.
- 41.35.13 Employees who have their Class A or B Commercial Driver License suspended or revoked shall have their Special Assignment Pay authorized under Section 17.14 (Special Class Commercial Driver's License Premium) suspended or cancelled upon the effective date of the revocation or loss of driving privileges. The Special Assignment Pay as provided in Section 17.14 (Special Class Commercial Driver's License Premium) shall be reactivated upon reinstatement of the employee's Class A or B Commercial Driver License.

**41.36 ERMA (Enterprise Resources Management Application) System**

The City agrees to meet and confer with the Union over the impact to wages, hours, or working conditions governed by this MOU related to the implementation of

ERMA (Enterprise Resources Management Application) system. This meet and confer shall begin no later than August 30, 2018.

## **SECTION 42: DEPENDENT CARE**

The City has established a Dependent Care Plan under Internal Revenue Code Sections 125 and 129 to allow employees to designate a specific amount of salary, consistent with applicable law, to be redirected to pay for dependent care costs prior to withholding of taxes.

## PUBLIC EMPLOYEES' RETIREMENT SYSTEM

### **SECTION 43: PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

#### **43.1 Participation**

The City shall continue participation under the Miscellaneous Employees Plan of the Public Employees' Retirement System.

#### **43.2 "Classic Employees" Definition**

Classic Employees are defined as current employees and future employees who do not qualify as "New Members" under the California Public Employees' Pension Reform Act of 2013 (PEPRA).

#### **43.3 "New Members" Definition**

New Members are as defined in the Public Employees' Pension Reform Act of 2013 (PEPRA), Government Code Section 7522.04(f).

#### **43.4 CalPERS Retirement Formula for Members as Defined Under the Public Employees' Pension Reform Act of 2013 (PEPRA)**

"New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the retirement formula set forth in PEPRA.

#### **43.5 CalPERS Retirement Formula and Employer Paid Member Contribution for Classic Employees, i.e., current employees and future employees who do not qualify as "New Members" under the California Public Employees' Pension Reform Act of 2013 (PEPRA)**

Effective January 5, 2003, the City agrees to provide the 2.7% at age 55 retirement formula benefit improvement, the City's contribution to CalPERS on behalf of the employee will increase from 7% to 8%. Effective July 3, 1994, contributions made pursuant to this section shall be reported to CalPERS as "special compensation" as provided in Government Code Section 20636(c)(4) pursuant to Section 20691. Said contributions shall not apply in the case of temporary or provisional employees.

The aforesaid contribution shall not be considered as a part of an employee's salary for the purpose of computing straight time earnings, compensation for overtime worked, or education incentive pay; nor shall such contribution be taken into account in determining the level of any other benefit which is a function of or percentage of salary. The City reserves the right to take said contribution into account for the purpose of salary comparisons with other employees.



The City will not treat these contributions as compensation subject to income tax withholding unless the Internal Revenue Service or Franchise Tax Board indicates that such contributions are taxable income subject to withholding. Each employee shall be solely and personally responsible for any federal, state or local tax liability of the employee that may arise out of the implementation of this section or any penalty that may be imposed therefore.

#### **43.6 New Members Payment of Employer Paid Member Contribution**

New Members as defined by PEPRA who are hired by the City on or after January 1, 2013 will be required to pay 50% of the normal cost, as provided by CalPERS. New Members shall receive any other additional optional CalPERS benefits that the City provides to Classic Employees as allowed by PEPRA.

#### **43.7 Optional Benefits**

The City's contract with CalPERS includes the following optional benefits:

- 43.7.1 **Classic Employees – One-Year Final Compensation:** : Classic Employees, as defined in Section 43.2, shall be eligible to receive retirement allowance based on One-Year Final Compensation as provided in Section 20042 (July 9, 1978).
- 43.7.2 **New Members – Three Years Final Compensation:** Provided further that New Members as defined by PEPRA hired on or after January 1, 2013 shall be eligible to receive retirement allowance based on three (3) highest consecutive years of compensation under the plan as provided in the California Public Employees Pension Reform Act of 2013, or as subsequently amended.
- 43.7.3 Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (December 16, 1973).
- 43.7.4 Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).
- 43.7.5 Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988).
- 43.7.6 1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (December 16, 1973).
- 43.7.7 Third Level of 1959 Survivor Benefits as provided in Section 21573 (November 28, 1996).

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- 43.7.8 2% @ 55 for Local Miscellaneous Members as provided in Section 21354 (June 30, 1992).
- 43.7.9 Military Service as Public Service as provided in Section 21024 (April 9, 1999)
- 43.7.10 Public Service Credit for Peace Corps or AmeriCorps/VISTA Service as provided in Section 21023.5 (April 14, 2000).

The conversion of unused sick leave to Retirement credit benefit (Section 20965) offered by CalPERS as an optional benefit to contracting agencies shall be made available to Unit members.

**43.8 Classic Members' Pension Contribution**

- 43.8.1 Effective June 4, 2017, employees will contribute one percent (1.0%) towards the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allows such contributions via automatic payroll deduction on a pre-tax basis, in exchange for the City granting the salary increase set forth in Section 11, paragraph 11.1.9 of this Memorandum Agreement. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.
- 43.8.2 Effective December 31, 2017, employees will contribute an additional seven percent (7.0%) towards the City's CalPERS employer share of pension through a 20516 CalPERS contract amendment that allows such contributions on a pre-tax basis, for a total of eight percent (8.0%) via automatic payroll deduction on a pre-tax basis, in exchange for the City granting the salary increase (total of 5.58%) set forth in Section 11, paragraph 11.1.12 of this Memorandum Agreement. Such employee deductions by the City shall be used towards the City's CalPERS required contributions. The parties recognize that the Employer Paid Member Contributions (EPMC) shall remain in effect as long as the CalPERS amendment stays in effect.
- 43.8.3 If legislation is enacted requiring employees under the CalPERS retirement system to pay all of the employee's share of retirement, thus eliminating the EPMC, the parties agree as soon as possible to convert the employee's contribution to the employer's share under this 20516 CalPERS contract amendment to the employee's share towards retirement and the City will continue to pay the wage increase as described in Section 11, paragraphs 11.1.9 and 11.1.12 (maximum of 5.58%) associated with this cost neutral provision.

### 43.9 New Members' Pension Contributions

- 43.9.1 New Members, as defined in the California Public Employees' Pension Reform Act of 2013 (PEPRA), shall continue to pay 50% of the Normal Cost required under PEPRA.
- 43.9.2 Effective June 4, 2017, in addition to the contribution in Section 43.9.1, New Members will contribute one percent (1.0%) towards the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allows such contributions as pre-tax via automatic payroll deduction, in exchange for the City granting the salary increase (0.69%) set forth in Section 11, paragraph 11.1.9 of this Memorandum Agreement. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.
- 43.9.3 Effective December 31, 2017, in addition to the contributions in Sections 43.9.1 and 43.9.2, New Members will contribute an additional seven percent (7.0%) towards the City's CalPERS employer share of pension through a 20516 CalPERS contract amendment that allows such contributions as pre-tax, for a total of eight percent (8.0%) via automatic payroll deduction, in exchange for the City granting the salary increase (4.89%, for a total of 5.58%) set forth in Section 11, paragraph 11.1.12 of this Memorandum Agreement. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.
- 43.9.4 The parties recognize that the CalPERS 20516 employee contributions towards the employer rate is in addition to the required 50% of the normal cost of "new members" benefits and made in consideration of additional salary increases in Section 11 paragraphs 11.1.9 and 11.1.12 above (a total of 5.58% salary increase in exchange for employees paying an additional eight percent (8.0%) towards PERS pension cost).
- 43.9.5 If legislation is enacted and becomes effective during this agreement requiring "classic members" as defined by PEPRA to pay all of the employees' share of retirement thus requiring the discontinuation of the 20516 employee contribution towards the employer rate as described in Section 43.8.3 above, the parties agree that as soon as possible the City shall convert the "new members" eight percent (8.0%) contribution under the 20516 contract amendment to an equivalent payroll deduction. Such employee deductions by the City shall be used towards the City's CalPERS required contribution. No later than 60 days following execution of this Agreement (July 5, 2015 to June 16, 2018), the City will request, from the

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IRS, a private letter ruling to determine whether or not the IRS permits the employee's payroll deduction of eight percent (8.0%) to be treated on a pretax basis. The City shall make such deductions on a post-tax basis unless and until it receives an IRS private letter ruling that confirms that such deductions can be treated on a pretax basis. If the IRS private letter stipulates that such deductions need to be made on a post-tax basis for "new members", the parties shall meet and confer over methods to ensure the cost-neutrality for both parties of the swap described in Section 11, paragraphs 11.1.9 and 11.1.12; and Sections 43.9.2 and 43.9.3 above.

## LAYOFF PROCEDURE

### **SECTION 44: LAYOFF**

This layoff policy for the City of Berkeley is intended to provide the maximum employment protection to the City staff should a layoff become necessary. The policy also aims to minimize the impact such a layoff might have on the City's affirmative action accomplishments.

#### **44.1 Announcement of Layoff**

- 44.1.1 The City Council, City Manager, and Department Heads shall make every reasonable effort to manage and budget the City's resources effectively, and to plan for the delivery of City services in a manner which will avoid the necessity of laying off career City employees. If a reduction in the work force is necessitated by, but not limited to, the following: a material change in duties and organization, adverse working conditions, return of employee from leave of absence or shortage of work or funds, the City Manager shall notify the Director of Human Resources of the intended action and the reason for the layoff.
- 44.1.2 Immediately following a decision which may involve the potential layoff of career City employees, the City Manager shall freeze all current City vacancies in the competitive service in similar and related classifications to those likely to be targeted for layoff, as well as all related full-time, temporary positions which are expected to last six (6) months or more, and notify all Department Heads that such current and anticipated vacancies will be frozen until further notice, in order to implement the provisions of Section 44.6. In notifying department heads of a freeze required by this section, the City Manager shall require that requisitions continue to be submitted for any budgeted positions which the department intends to fill and for which funding is available.
- 44.1.3 After the City has announced the need for a reduction in work force, including the magnitude of such reduction, and has informed employees of their prospective layoff or retreat, but before any actual layoff, the City shall seriously consider employee requests for alternative action, including job sharing.

## 44.2 Seniority Service Date

- 44.2.1 All service in the employ of the City shall be counted toward the establishment of an employee's Seniority Service Date, including, for example, permanent, probationary provisional, temporary (full-time and intermittent), seasonal, exempt employment, as well as leaves of absences for obligatory military service and approved parental leave while an employee of the City. Less than full-time service will be consolidated in equivalences of full-time service for the purpose of establishing the Seniority Service Date. Time off as a result of formal disciplinary action will be subtracted from the Seniority Service Date.

All leaves of absence without pay, regardless of duration, shall be subtracted from the employee's seniority service date. This provision will go into effect immediately upon implementation of necessary data processing and programming changes.

- 44.2.2 The Human Resources Department will maintain up-to-date and current Seniority Dates for all City employees holding probationary and permanent appointments. Approved parental leaves shall not be deducted from seniority service dates.

## 44.3 Establishment of Seniority Lists

- 44.3.1 Whenever a layoff of one or more career employees becomes necessary, as defined above, such layoffs shall be made according to City-wide classification Seniority Lists. Upon receiving notification that the City Manager must proceed with a possible reduction in the work force, and following receipt of information concerning the specific positions, programs and departments involved, the Human Resources Department will immediately establish separate Probationary and Permanent Seniority Lists for each classification targeted for layoff.

- 44.3.2 The names of all City employees holding permanent and probationary appointments in a given classification will be listed on the appropriate list in descending order by Seniority Service Date. Employees on both lists shall be laid off on the basis of their Seniority Service Date, i.e., employees with the least amount of total service shall be laid off first. Non-career employees and temporary agency personnel working in classifications similar to those identified for layoff must be terminated prior to the layoff of probationary or permanent employees. Employees on the Probationary Seniority List for a specific classification will be laid off prior to employees on the Permanent Seniority List for that class.

- 44.3.3 Probationary or permanent employees temporarily acting out of classification and holding a provisional appointment in another classification will only be listed on a Seniority List of the class targeted for layoff in which they hold permanent or probationary status. Any provisional appointment must be terminated prior to the retreat or layoff of a career employee with permanent or probationary status in the same classification.
- 44.3.4 If two (2) or more employees on a Seniority List have an identical Seniority Service Date, the tie shall be broken in the following order:
  - a. Time in classification - the employee having least time in the class shall be released first;
  - b. By lot.

**44.4 Employee Retreat Rights/Out Placement**

- 44.4.1 Before an employee with permanent or probationary status may be released from employment with the City of Berkeley, the Human Resources Department must consider the employee's right to retreat to lower level classification through which he or she was originally promoted or any subsequently created intermediate level career classification which provides normal progression through the classification series. Retreat rights shall also extend to employees who have not previously been promoted through a classification but for whom the classification is a natural progression or beginning in the classification series.
- 44.4.2 In addition to providing the employee with the appropriate retreat offer, when it is determined to be in the best interest of the service, the City Manager may authorize the Human Resources Department to offer the affected employee the option of out placement. The out placement offer would provide a designated amount of funds to be paid to the employee for use by the employee for career development. The employee could either accept the retreat offer (offer to bump another employee) or accept the out placement offer. If the employee accepts the out placement offer, the employee forfeits his or her rights including but not limited to retreat rights, flexible placement and re-employment rights, under the layoff policy and will be laid off. All offers of out placement will be made in a manner to comply with general law and the affected

employee will be required to sign a waiver and release of all claims in consideration for receiving this benefit.

- 44.4.3 In the process of retreating, the same rules concerning the length of service, classification, Seniority Lists, etc., apply as in the first stage of the layoff process. In order to retreat, the targeted employee must be higher on the Seniority List for the classification into which he or she is retreating than at least one of the incumbents on the probationary or permanent Seniority List for that class.
- 44.4.4 If an employee is qualified for retreat into more than one classification with comparable salary ranges or if a vacancy exists in a classification to which an employee is entitled to retreat, the options shall be discussed with the employee, and due consideration shall be given to the employee's preferences. However, it is the prerogative of the City Manager to determine the final placement offer to the employee.
- 44.4.5 The retreating employee has a right to be retained in the highest salary range possible which is equal to or less than his or her present salary range. An employee involved in layoff does not have a right of mandatory placement to positions with a higher salary range, i.e., promotion.
- 44.4.6 An employee who is transferred in lieu of layoff when his/her position has been eliminated shall have automatic return rights to the previous position if it is restored within one (1) year of the date of the transfer. If an employee with a full time position is offered a reduction in hours in that position or in a lower classification, the employee may elect to be targeted for layoff for purpose of consideration under Section 44.6 (Flexible Placement Program.) If there is no flexible placement available for the employee, the employee may accept the reduction in hours, in lieu of layoff.
- 44.4.7 Supervising Clerks shall be entitled to retreat rights into any of the senior clerical positions regardless of whether or not they have served in that position, if their skills meet the minimum qualifications of the lower classification.



#### **44.5 Employee / Union Notification**

- 44.5.1 Temporary employees shall be notified individually, in writing of pending layoff as soon as possible, but no definite time period is required. However, at least two (2) weeks notification is desirable if possible.
- 44.5.2 Employees with provisional appointments shall be notified individually, in writing, of pending layoff as soon as possible, with no less than fifteen (15) calendar days notification if targeted for release or reassignment.
- 44.5.3 All notices of layoff under Section 44.5 shall be issued to the union simultaneously with notice to the affected employee(s). Together with any layoff notices sent to the union, a list shall be included of all vacancies which are authorized for filling.

If an employee fails to accept a bona fide offer, in lieu of layoff, ten (10) calendar days after the offer has been made, he or she forfeits further right to employment retention. Acceptance of a reassignment does not remove the right of appeal under Section 44.9.

#### **44.6 Flexible Placement Program/Out Placement**

- 44.6.1 In order to minimize the negative impact of a layoff, the City Manager will, as previously stated in Section 44.1, impose a City-wide freeze on all appropriate vacancies as soon as it has been determined that a layoff of career City employees may be necessary.
- 44.6.2 Following the release of all non-career employees, in classes similar to those targeted for layoff, and as soon as employees targeted for layoff have been identified and the provisions under Section 44.4 have been carried out, the Human Resources Department will review and identify the frozen vacant classifications into which employees ultimately targeted for layoff may be placed on the basis of total experience and education. In making this decision, a waiver of minimum qualification standards, and/or the substitution of related experience and education may be made, with an understanding on the part of management and supervisory personnel that adequate on-the-job training which can be completed within no more than six (6) months, will be provided to facilitate job adjustment, and to compensate for the waiver of qualification standards if that has occurred. The employee, the supervisor and the training officer will meet to develop a training program. The employee will be advised of his/her progress after two, four, and six months in the new classification. If at the end of this time,

the employee is unable to adequately perform the assignment, then the employee shall again be subject to the layoff process.

- 44.6.3 In addition to providing the employee with the flexible placement offer, when it is determined to be in the best interest of the service, the City Manager may authorize the Human Resources Department to offer the affected employee the option of out placement. The out placement offer would provide a designated amount of funds to be paid to the employee for use by the employee for career development. The employee could either accept the flexible placement offer (offer to be flexibly placed in a vacant position) or accept the out placement offer. If the employee accepts the out placement offer, the employee forfeits his or her rights including but not limited to retreat rights, flexible placement and re-employment rights, under the layoff policy and will be laid off. All offers of out placement will be made in a manner to comply with general law and the affected employee will be required to sign a waiver and release of all claims in consideration for receiving this benefit.
- 44.6.4 Assignments under the Flexible Placement Program shall be limited to positions in the same or lesser salary range as the classification from which the employee is to be laid off, except that the City Manager may authorize the offer of a flexible placement to position with a maximum salary of no more than five (5) percent above the salary range as the classification from which layoff is targeted, when it is in the best interest of the City service to do so. Whenever flexible placement is made to a classification with a greater salary range, the appointment shall be probationary, in accordance with the terms of that classification.
- 44.6.5 Offers to positions under the Flexible Placement Program shall be made according to Seniority Service Date and in accordance with the Probationary and Permanent Seniority List certification process outlined in Section 44.3. All offers and placements made under this provision of the layoff policy shall be documented in detail, with records available for audit and review at all times.
- 44.6.6 If an employee fails to accept a bona fide written offer of an alternative job within ten (10) calendar days after the offer has been made he or she forfeits further rights to employment retention. Acceptance of an alternative job under the Flexible Placement Program in no way jeopardizes an employee's standing on the Reemployment Priority Lists on which his or her name has been placed in accordance with Section 44.7 (Reemployment Lists).

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- 44.6.7 The union shall be notified when flexible placement is to occur within Units D, J, K-1, K-2.
- 44.6.8 Offers to positions under the Flexible placement Program shall be made according to Seniority Service Date and in accordance with the Probationary and Permanent Seniority List certification process outlined in Section 44.3 and in accordance with the following procedures:
- a. Full time vacancies authorized to be filled shall be listed in order from highest to lowest based on the actual maximum salary.
  - b. Part-time vacancies authorized to be filled shall be included in the above list in order based on the actual monthly maximum salary for the hours involved.
  - c. The individual with the earliest Seniority Service Date (SSD) targeted for layoff will be considered for flexible placement the top position in the above list.
  - d. If it is determined that the person with the earliest SSD is eligible and qualified for flexible placement in the top position on the list, the Human Resources Department shall offer the employee the position.
  - e. If the Human Resources Department or the City Manager determines that the employee is not eligible or not qualified for the top position, the Director of Human Resources shall proceed down the list of vacancies in an effort to identify the next highest position for which the employee is eligible and qualified for flexible placement. Upon identification of such a match, the Director of Human Resources shall offer that position to the employee.
  - f. This process shall be repeated until either a match is identified or the list of vacancies has been exhausted.
  - g. The above process shall then be repeated for the employee with the second highest SSD, and subsequently in order from earliest to most recent SSD for each of the other employees targeted for layoff.
- 44.6.9 All offers and placements made under this provision of the layoff policy shall be documented in detail, with records available for audit and review at all times. Upon request, a written statement of the reasons for not offering an employee a particular position shall be made to the employee and/or the Union.

## 44.7 Reemployment Lists

- 44.7.1 The names of all probationary and permanent employees released from positions in the competitive service as a result of layoff must be placed on Reemployment Priority Lists for those classifications from which they were separated, as well as all other classifications to which they have retreat rights in accordance with Section 44.4.
- 44.7.2 A Reemployment Priority List shall remain in effect for three (3) years. Said list shall remain in effect indefinitely for employees who are retreated and remain employed with the City.
- 44.7.3 Departments with vacancies in any classification for which there is an active Reemployment Priority List must use the Reemployment Priority List to fill their positions and may not use any other recruitment or appointment method to fill a vacancy until appropriate Reemployment Lists have been exhausted.
- 44.7.4 When a vacancy occurs in a class for which there is a Reemployment Priority List, the employee on the appropriate Reemployment Priority List with the highest Seniority Date shall be given the offer of employment with a copy sent to the department head. Employees so certified from the Reemployment Priority List must be appointed to the existing vacancy.
- 44.7.4.1 If two (2) or more employees on the Reemployment Priority List have an identical Seniority Service Date, the tie shall be broken in the following order:
- a. Time in classification - the employee having least time in the class shall be released first;
  - b. By lot.
- 44.7.5 If a former employee fails to accept a bona fide written offer of reemployment within fifteen (15) calendar days, his or her name will be removed permanently from the Reemployment Priority List from which the offer was made. Failure to accept an offer of reemployment to the class with the highest salary range for which the employee is eligible for reemployment will result in automatic removal from all Reemployment Priority Lists. However, the employee may decline (or accept) reemployment to lower salary range classifications without jeopardizing

his or her standing on the Reemployment Priority List for the classification from which he or she was originally terminated.

- 44.7.6 Upon reappointment to the classification from which the employee was originally separated or demoted, the employee has the right to be placed at the step of the salary range which the employee held at the time of layoff or demotion.

**44.8 Career-Exempt Employees**

Only those employees holding full-time, benefited, exempt positions who, in the past, have achieved permanent status and have been continuously employed without a break in service between their career and exempt appointment, have the right to retreat to previously held career classifications, placement on the Reemployment Priority Lists, and all other provisions governing layoff procedures. For the purpose of layoff, such employees shall be referred to as "career exempt."

**44.9 Appeal Procedures**

Any permanent, probationary, or career-exempt employee who is laid off, demoted, reassigned or transferred as a result of layoff and who believes that the layoff procedure has been improperly administered as it pertains to the employee's case, may appeal the action under Section 40. In addition, employees may, at all times, before, during and subsequent to layoff, review all records, including Seniority Lists, Reemployment Priority Lists, documentation pertaining to appointments under the Flexible Placement Program, etc., which pertain to their classification and their rights under the provisions of the layoff policy.

**44.10 Audit**

- 44.10.1 If it is determined that a vacancy has been filled by a non Reemployment Priority List eligible, in a classification for which a Reemployment Priority List existed and which included available applicants at the time, the former employee with reemployment rights shall be hired and given retroactive pay from the date that the vacancy occurred.

- 44.10.2 When a layoff has occurred, and a reemployment eligibility lists exists, and the union so requests, the City Manager shall order an outside audit of all vacant positions filled in each department and authorized positions which have not been filled, to determine whether the vacancies occurred in classifications for which Reemployment Priority Lists were in existence, and, if so, whether the appointments made by the selecting official were in accordance with the procedures outlined in Section 44.7. In the event vacancies, for which Reemployment Priority Lists were in existence remained unfilled, the auditor shall offer an opinion as to

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whether or not the reasons for leaving the positions vacant appear to be legitimate. A report of the audit must be transmitted to the City Manager and the City Council.

44.11 Reclassification or reallocation of positions shall not be used as a mechanism, the sole purpose of which is to improperly circumvent the provisions of this agreement, including provisions relating to layoff, transfer, demotion or promotion.

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## SIGNATURE PAGE

SEIU Local 1021:

City of Berkeley:

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Jose Martinez, Chief Negotiator, SEIU Local 1021

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Dee Williams-Ridley, City Manager

---

Sandra Lewis, Clerical Chapter President

---

Dania Torres-Wong, Chief Negotiator

---

Danny Walker, Maintenance Chapter President

---

Jovan Grogan, Deputy City Manager

---

Mafileo (Vina) Akoteu, Maintenance Chapter Steward

---

LaTanya Bellow, Director of Human Resources

---

Michael Ayers, Maintenance Chapter Chief Steward

---

Andrew Brozyna, Deputy Director of Public Works

---

Jay Elliot, Maintenance Chapter Steward

---

Scott Ferris, Director of Parks, Recreation and Waterfront

---

Wesley Gage, Maintenance Chapter Vice President

---

Jennifer Louis, Police Captain

---

Tamika Griffin-Singh, Clerical Chapter Steward

---

Jay Kelekian, Executive Director Rent Stabilization Board for the Rent Stabilization Board

---

Kimberly Reeve, Maintenance Chapter Steward

---

Elliot Warren, Acting Director of Library Services

---

Jenny Seay, Clerical Chapter Vice President

---

Margarita Zamora, Employee Relations Manager

---

Rebecca Webb, Clerical Chapter Chief Steward

---

Maya Wilson, Clerical Chapter Steward

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**EXHIBIT A - Salary Ranges as of June 16, 2018**

Job Code	Classification Title	Rep Unit	Grade	Step 1	Step 2	Step 3	Step 4	Step 5
42390	ACCT OFF SPEC II MC	K1	802	0.0000	0.0000	29.1437	30.4182	31.7431
42400	ACCT OFF SPEC III MC	K1	672	0.0000	0.0000	33.7558	35.2484	36.7999
42430	ACCT OFF SPEC SUP MC	K2	673	34.0660	35.7517	37.5043	39.3577	41.0183
31060	ACCT TECHNICIAN	K1	584	33.2190	34.8461	36.5650	38.3681	39.9868
41070	ADMIN ASSISTANT MC	K1	674	33.4521	35.1378	36.8904	38.7437	40.4045
60050	ANIMAL CONTROL OFFICER	D	521	0.0000	0.0000	31.5737	32.5214	33.4688
66170	ANIMAL SVCS ASSISTANT	D	437	0.0000	0.0000	27.8502	28.5882	29.4184
14490	AQUATICS COORDINATOR	K1	092	33.5109	34.8108	36.1106	37.5530	38.9032
64250	AQUATICS FACILITIES SUP	K1	743	26.6421	27.9807	29.3756	30.8512	32.3914
25860	ASST AQUATICS COORD	K1	200	28.2777	29.4687	30.5924	31.6658	32.8819
25850	ASST REC COORDINATOR	K1	199	28.2789	29.4722	30.5932	31.6657	32.8832
51060	BUILDING MAINT MECH	D	343	0.0000	0.0000	37.7845	39.0188	40.3070
61060	BUILDING MAINT MECH TRN	D	374	0.0000	0.0000	30.2526	31.2011	32.2562
51170	BUILDING MAINT SUPV	D	354	0.0000	0.0000	41.9706	43.2946	44.7707
72320	COM SERVICE OFFC SUP	J	733	35.7700	37.1974	38.6889	40.4147	42.2288
72330	COM SERVICE OFFICER	J	554	31.9188	33.1896	34.5207	35.8183	37.1811
53020	CONCRETE FINISHER	D	370	0.0000	0.0000	37.3521	38.4420	39.5316
53030	CONSTRUCTION EQUIP OPERAT	D	371	0.0000	0.0000	34.9812	36.0609	37.2311
63260	CONTAINER MAINTENA WELDER	D	389	0.0000	0.0000	31.1363	32.0976	33.0239
47150	CUSTOMER SVC SPEC II	K1	818	0.0000	0.0000	29.8393	31.4108	33.0665
47060	CUSTOMER SVC SPEC III	K1	683	0.0000	0.0000	33.7558	35.2484	36.7999
47070	CUSTOMER SVC SPVSR	K2	675	34.0660	35.7517	37.5043	39.3577	41.0183
52020	EQUIPMENT PARTS TECH	D	358	0.0000	29.9384	31.6576	33.1670	33.9302
51130	FORESTRY CLIMBER	D	351	0.0000	0.0000	35.9495	37.0707	38.2413
51120	FORESTRY CLIMBER SUP	D	350	0.0000	0.0000	41.8216	43.0545	44.3012
67020	FORESTRY CLIMBER TRNEE	D	440	0.0000	0.0000	27.7410	28.9067	30.0809
51160	FORESTRY TECHNICIAN	D	607	0.0000	0.0000	41.8216	43.0545	44.3012
67050	GROUNDKEEPER	D	444	0.0000	0.0000	27.8501	28.5833	29.4183
66020	JANITOR	D	434	0.0000	0.0000	25.8041	26.4497	27.1962
66010	JANITOR SUPERVISOR	D	433	0.0000	0.0000	30.0809	31.1375	32.0516
63110	LABORER	D	380	0.0000	0.0000	29.1512	29.9801	30.9412
54010	LANDSCAPE EQUIP OPER	D	372	0.0000	0.0000	35.2669	36.3398	37.4055
67030	LANDSCAPE GARDENER	D	441	0.0000	0.0000	32.2613	33.1588	34.2573
67080	LANDSCAPE GARDENER SUP	D	448	0.0000	0.0000	40.9743	42.1905	43.3895
67040	LANDSCAPE GARDENER TRAIN	D	443	0.0000	0.0000	27.1962	27.9591	28.7392
44010	MAIL SERVICES AIDE	K1	316	0.0000	0.0000	26.3661	27.2967	28.3199
71310	MARINA ASSISTANT MC	D	476	0.0000	0.0000	30.1625	31.0109	31.9763
52070	MECHANIC	D	362	0.0000	0.0000	39.6273	40.8255	42.0095
52090	MECHANIC LEAD	D	619	0.0000	0.0000	42.3926	43.6744	44.9630



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52080	MECHANIC SUPERVISOR	D	363	0.0000	0.0000	45.3533	46.6902	48.1183
63090	MECHANICAL SWEEPR OPER	D	379	0.0000	0.0000	34.5914	35.6291	36.6042
47040	OFFICE SPEC I M&C	K1	339	0.0000	0.0000	24.7895	25.8963	27.0367
47030	OFFICE SPEC II M&C	K1	303	0.0000	0.0000	28.5296	29.8043	31.1293
47050	OFFICE SPEC III M&C	K1	291	0.0000	0.0000	33.1419	34.6345	36.1860
47080	OFFICE SPEC SUP M&C	K2	676	33.4521	35.1378	36.8904	38.7437	40.4045
71240	PARKING ENFORCEMENT OFF	D	471	0.0000	0.0000	30.7402	31.6179	32.5250
71030	PARKING ENFORCEMENT SUP	D	457	0.0000	33.5635	35.2382	37.0081	38.8515
65020	PARKING METER M&C SUP	D	734	35.5739	37.3517	39.2218	40.4378	41.7291
52050	PARKING METER MECH TRNE	D	360	0.0000	0.0000	28.1523	28.9321	29.8629
52110	PARKING METER MECHANIC	D	365	0.0000	0.0000	31.7245	32.7224	33.7794
65050	PARKING METER MNT WORK	D	402	0.0000	0.0000	28.1523	28.9321	29.8629
81480	POLICE CAPTAIN	E	483	78.8681	81.5017	84.1952	87.0244	89.9210
72240	PUBLIC SFTY DISPATCH I	J	611	0.0000	0.0000	29.4520	30.8945	32.1861
72230	PUBLIC SFTY DISPATCH II	J	527	0.0000	0.0000	40.8580	42.5596	44.3415
51280	PUBLIC WORKS SUPERVISOR	D	356	0.0000	0.0000	41.3202	42.6991	44.1897
44020	RECORDS ASSISTANT	K1	707	0.0000	29.9384	31.6576	33.1670	33.9302
14480	RECREATION COORDINATOR	K1	091	33.5109	34.8108	36.1106	37.5530	38.9032
65780	REG VETERINARY TECH	D	821	0.0000	0.0000	28.1646	29.6514	31.2131
51140	ROSARIAN	D	352	0.0000	0.0000	33.6114	34.6598	35.7249
90110	SENIOR ANIMAL CONT OFCR	D	686	0.0000	0.0000	34.7352	35.7752	36.8066
72020	SENIOR CRIME SCENE TECH	J	713	0.0000	0.0000	39.9431	41.4946	43.1047
51150	SENIOR FORESTRY CLIMBER	D	353	0.0000	0.0000	37.7468	38.9308	40.1496
67100	SENIOR GROUNDSKEEPER	D	450	0.0000	0.0000	30.4164	31.2886	32.3285
67010	SENIOR LNDSCP GRDNR	D	439	0.0000	0.0000	34.4101	35.4371	36.5718
71320	SENIOR MARINA ASSIST	D	477	0.0000	0.0000	30.7097	31.5737	32.6051
52120	SERVICE TECHNICIAN	D	366	0.0000	0.0000	33.2678	34.2848	35.3018
51110	SEWER MAINT ASST SUPV	D	349	0.0000	0.0000	38.8541	40.1357	41.4524
63130	SKILLED LABORER	D	383	0.0000	0.0000	30.9412	31.8885	32.8914
65170	SOLID WASTE LOADER OPR	D	411	28.9923	31.1264	32.6851	34.3213	36.0286
65270	SOLID WASTE TRUCK DRIVR	D	415	0.0000	0.0000	35.3852	36.8271	37.8304
65130	SOLID WASTE WORKER	D	406	0.0000	0.0000	29.7640	31.1155	32.0210
72220	SUPERV PUBLIC SFTY DISP	J	529	0.0000	0.0000	46.8655	48.8089	50.8569
63010	TOOL LENDING SPECIALIST	D	375	0.0000	0.0000	31.4395	33.0942	34.8360
65140	TRACTOR TRAILER DRIVER	D	408	32.6851	34.3213	36.0285	37.8394	39.7247
51070	TRAFFIC MAINT SUPV	D	721	0.0000	0.0000	39.2219	40.4294	41.7291
63070	TRAFFIC MAINT WORKER I	D	377	0.0000	0.0000	29.1167	29.9467	30.9197
63080	TRAFFIC MAINT WORKER II	D	378	0.0000	30.9197	31.8589	32.8569	33.8045
52160	WAREHOUSE OPERATON SPEC	D	589	0.0000	34.3913	36.1022	37.8130	39.5069
65150	WEIGHMASTER	D	409	0.0000	30.4667	32.2194	33.7540	34.5256
65160	WEIGHMASTER TRAINEE	D	410	0.0000	0.0000	29.7372	31.0875	31.9930

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52060	WELDER MECHANIC	D	361	0.0000	0.0000	40.1429	41.3619	42.5807
63250	YARDMASTER	D	388	0.0000	0.0000	32.9264	33.9781	34.9813

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## EXHIBIT B - Salary Ranges as of July 29, 2018 (3.0% Cost of Living Adjustment)

Job Code	Classification Title	Rep Unit	Grade	Step 1	Step 2	Step 3	Step 4	Step 5
42390	ACCT OFF SPEC II MC	K1	802	0.0000	0.0000	30.0180	31.3307	32.6954
42400	ACCT OFF SPEC III MC	K1	672	0.0000	0.0000	34.7685	36.3059	37.9039
42430	ACCT OFF SPEC SUP MC	K2	673	35.0880	36.8243	38.6294	40.5384	42.2488
31060	ACCT TECHNICIAN	K1	584	34.2156	35.8915	37.6620	39.5191	41.1864
41070	ADMIN ASSISTANT MC	K1	674	34.4557	36.1919	37.9971	39.9060	41.6166
60050	ANIMAL CONTROL OFFICER	D	521	0.0000	0.0000	32.5209	33.4970	34.4729
66170	ANIMAL SVCS ASSISTANT	D	437	0.0000	0.0000	28.6857	29.4458	30.3010
14490	AQUATICS COORDINATOR	K1	092	34.5162	35.8551	37.1939	38.6796	40.0703
64250	AQUATICS FACILITIES SUP	K1	743	27.4414	28.8201	30.2569	31.7767	33.3631
25860	ASST AQUATICS COORD	K1	200	29.1260	30.3528	31.5102	32.6158	33.8684
25850	ASST REC COORDINATOR	K1	199	29.1273	30.3564	31.5110	32.6157	33.8697
51060	BUILDING MAINT MECH	D	343	0.0000	0.0000	38.9180	40.1894	41.5162
61060	BUILDING MAINT MECH TRN	D	374	0.0000	0.0000	31.1602	32.1371	33.2239
51170	BUILDING MAINT SUPV	D	354	0.0000	0.0000	43.2297	44.5934	46.1138
72320	COM SERVICE OFFC SUP	J	733	36.8431	38.3133	39.8496	41.6271	43.4957
72330	COM SERVICE OFFICER	J	554	32.8764	34.1853	35.5563	36.8928	38.2965
53020	CONCRETE FINISHER	D	370	0.0000	0.0000	38.4727	39.5953	40.7175
53030	CONSTRUCTION EQUIP OPERAT	D	371	0.0000	0.0000	36.0306	37.1427	38.3480
63260	CONTAINER MAINTENA WELDER	D	389	0.0000	0.0000	32.0704	33.0605	34.0146
47150	CUSTOMER SVC SPEC II	K1	818	0.0000	0.0000	30.7345	32.3531	34.0585
47060	CUSTOMER SVC SPEC III	K1	683	0.0000	0.0000	34.7685	36.3059	37.9039
47070	CUSTOMER SVC SPVSR	K2	675	35.0880	36.8243	38.6294	40.5384	42.2488
52020	EQUIPMENT PARTS TECH	D	358	0.0000	30.8366	32.6073	34.1620	34.9481
51130	FORESTRY CLIMBER	D	351	0.0000	0.0000	37.0280	38.1828	39.3885
51120	FORESTRY CLIMBER SUP	D	350	0.0000	0.0000	43.0762	44.3461	45.6302
67020	FORESTRY CLIMBER TRNEE	D	440	0.0000	0.0000	28.5732	29.7739	30.9833
51160	FORESTRY TECHNICIAN	D	607	0.0000	0.0000	43.0762	44.3461	45.6302
67050	GROUNDKEEPER	D	444	0.0000	0.0000	28.6856	29.4408	30.3008
66020	JANITOR	D	434	0.0000	0.0000	26.5782	27.2432	28.0121
66010	JANITOR SUPERVISOR	D	433	0.0000	0.0000	30.9833	32.0716	33.0131
63110	LABORER	D	380	0.0000	0.0000	30.0257	30.8795	31.8694
54010	LANDSCAPE EQUIP OPER	D	372	0.0000	0.0000	36.3249	37.4300	38.5277
67030	LANDSCAPE GARDENER	D	441	0.0000	0.0000	33.2291	34.1536	35.2850
67080	LANDSCAPE GARDENER SUP	D	448	0.0000	0.0000	42.2035	43.4562	44.6912
67040	LANDSCAPE GARDENER TRAIN	D	443	0.0000	0.0000	28.0121	28.7979	29.6014
44010	MAIL SERVICES AIDE	K1	316	0.0000	0.0000	27.1571	28.1156	29.1695
71310	MARINA ASSISTANT MC	D	476	0.0000	0.0000	31.0674	31.9412	32.9356
52070	MECHANIC	D	362	0.0000	0.0000	40.8161	42.0503	43.2698
52090	MECHANIC LEAD	D	619	0.0000	0.0000	43.6644	44.9846	46.3119
52080	MECHANIC SUPERVISOR	D	363	0.0000	0.0000	46.7139	48.0909	49.5618
63090	MECHANICAL SWEEP OPER	D	379	0.0000	0.0000	35.6291	36.6980	37.7023
47040	OFFICE SPEC I M&C	K1	339	0.0000	0.0000	25.5332	26.6732	27.8478
47030	OFFICE SPEC II M&C	K1	303	0.0000	0.0000	29.3855	30.6984	32.0632
47050	OFFICE SPEC III M&C	K1	291	0.0000	0.0000	34.1362	35.6735	37.2716
47080	OFFICE SPEC SUP M&C	K2	676	34.4557	36.1919	37.9971	39.9060	41.6166
71240	PARKING ENFORCEMENT OFF	D	471	0.0000	0.0000	31.6624	32.5664	33.5008
71030	PARKING ENFORCEMENT SUP	D	457	0.0000	34.5704	36.2953	38.1183	40.0170
65020	PARKING METER M&C SUP	D	734	36.6411	38.4723	40.3985	41.6509	42.9810

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Job Code	Classification Title	Rep Unit	Grade	Step 1	Step 2	Step 3	Step 4	Step 5
52050	PARKING METER MECH TRNE	D	360	0.0000	0.0000	28.9969	29.8001	30.7588
52110	PARKING METER MECHANIC	D	365	0.0000	0.0000	32.6762	33.7041	34.7928
65050	PARKING METER MNT WORK	D	402	0.0000	0.0000	28.9969	29.8001	30.7588
72240	PUBLIC SFTY DISPATCH I	J	611	0.0000	0.0000	30.3356	31.8213	33.1517
72230	PUBLIC SFTY DISPATCH II	J	527	0.0000	0.0000	42.0837	43.8364	45.6717
51280	PUBLIC WORKS SUPERVISOR	D	356	0.0000	0.0000	42.5598	43.9801	45.5154
44020	RECORDS ASSISTANT	K1	707	0.0000	30.8366	32.6073	34.1620	34.9481
14480	RECREATION COORDINATOR	K1	091	34.5162	35.8551	37.1939	38.6796	40.0703
65780	REG VETERINARY TECH	D	821	0.0000	0.0000	29.0095	30.5409	32.1495
51140	ROSARIAN	D	352	0.0000	0.0000	34.6197	35.6996	36.7966
90110	SENIOR ANIMAL CONT OFCR	D	686	0.0000	0.0000	35.7773	36.8485	37.9108
72020	SENIOR CRIME SCENE TECH	J	713	0.0000	0.0000	41.1414	42.7394	44.3978
51150	SENIOR FORESTRY CLIMBER	D	353	0.0000	0.0000	38.8792	40.0987	41.3541
67100	SENIOR GROUNDSKEEPER	D	450	0.0000	0.0000	31.3289	32.2273	33.2984
67010	SENIOR LNDSCP GRDNR	D	439	0.0000	0.0000	35.4424	36.5002	37.6690
71320	SENIOR MARINA ASSIST	D	477	0.0000	0.0000	31.6310	32.5209	33.5833
52120	SERVICE TECHNICIAN	D	366	0.0000	0.0000	34.2658	35.3133	36.3609
51110	SEWER MAINT ASST SUPV	D	349	0.0000	0.0000	40.0197	41.3398	42.6960
63130	SKILLED LABORER	D	383	0.0000	0.0000	31.8694	32.8452	33.8781
65170	SOLID WASTE LOADER OPR	D	411	29.8621	32.0602	33.6657	35.3509	37.1095
65270	SOLID WASTE TRUCK DRVR	D	415	0.0000	0.0000	36.4468	37.9319	38.9653
65130	SOLID WASTE WORKER	D	406	0.0000	0.0000	30.6569	32.0490	32.9816
72220	SUPERV PUBLIC SFTY DISP	J	529	0.0000	0.0000	48.2715	50.2732	52.3826
63010	TOOL LENDING SPECIALIST	D	375	0.0000	0.0000	32.3827	34.0870	35.8811
65140	TRACTOR TRAILER DRIVER	D	408	33.6657	35.3509	37.1094	38.9746	40.9164
51070	TRAFFIC MAINT SUPV	D	721	0.0000	0.0000	40.3986	41.6423	42.9810
63070	TRAFFIC MAINT WORKER I	D	377	0.0000	0.0000	29.9902	30.8451	31.8473
63080	TRAFFIC MAINT WORKER II	D	378	0.0000	31.8473	32.8147	33.8426	34.8186
52160	WAREHOUSE OPERATON SPEC	D	589	0.0000	35.4230	37.1853	38.9474	40.6921
65150	WEIGHMASTER	D	409	0.0000	31.3807	33.1860	34.7666	35.5614
65160	WEIGHMASTER TRAINEE	D	410	0.0000	0.0000	30.6293	32.0201	32.9528
52060	WELDER MECHANIC	D	361	0.0000	0.0000	41.3472	42.6028	43.8581
63250	YARDMASTER	D	388	0.0000	0.0000	33.9142	34.9974	36.0307

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## EXHIBIT C - Salary Ranges as of June 30, 2019 (2% Cost of Living Adjustment)

Job Code	Classification Title	Rep Unit	Grade	Step 1	Step 2	Step 3	Step 4	Step 5
42390	ACCT OFF SPEC II MC	K1	802	0.0000	0.0000	30.6184	31.9574	33.3493
42400	ACCT OFF SPEC III MC	K1	672	0.0000	0.0000	35.4638	37.0320	38.6620
42430	ACCT OFF SPEC SUP MC	K2	673	35.7897	37.5607	39.4020	41.3492	43.0938
31060	ACCT TECHNICIAN	K1	584	34.8999	36.6093	38.4152	40.3095	42.0101
41070	ADMIN ASSISTANT MC	K1	674	35.1448	36.9158	38.7571	40.7041	42.4490
60050	ANIMAL CONTROL OFFICER	D	521	0.0000	0.0000	33.1713	34.1670	35.1623
66170	ANIMAL SVCS ASSISTANT	D	437	0.0000	0.0000	29.2594	30.0348	30.9070
14490	AQUATICS COORDINATOR	K1	092	35.2066	36.5722	37.9378	39.4532	40.8717
64250	AQUATICS FACILITIES SUP	K1	743	27.9902	29.3965	30.8620	32.4123	34.0304
25860	ASST AQUATICS COORD	K1	200	29.7086	30.9598	32.1404	33.2681	34.5457
25850	ASST REC COORDINATOR	K1	199	29.7098	30.9635	32.1412	33.2680	34.5471
51060	BUILDING MAINT MECH	D	343	0.0000	0.0000	39.6964	40.9932	42.3465
61060	BUILDING MAINT MECH TRN	D	374	0.0000	0.0000	31.7834	32.7799	33.8884
51170	BUILDING MAINT SUPV	D	354	0.0000	0.0000	44.0943	45.4853	47.0361
72320	COM SERVICE OFFC SUP	J	733	37.5800	39.0796	40.6466	42.4597	44.3656
72330	COM SERVICE OFFICER	J	554	33.5339	34.8690	36.2674	37.6307	39.0625
53020	CONCRETE FINISHER	D	370	0.0000	0.0000	39.2421	40.3872	41.5319
53030	CONSTRUCTION EQUIP OPERAT	D	371	0.0000	0.0000	36.7512	37.8856	39.1150
63260	CONTAINER MAINTENA WELDER	D	389	0.0000	0.0000	32.7118	33.7217	34.6949
47150	CUSTOMER SVC SPEC II	K1	818	0.0000	0.0000	31.3492	33.0002	34.7397
47060	CUSTOMER SVC SPEC III	K1	683	0.0000	0.0000	35.4638	37.0320	38.6620
47070	CUSTOMER SVC SPVSR	K2	675	35.7897	37.5607	39.4020	41.3492	43.0938
52020	EQUIPMENT PARTS TECH	D	358	0.0000	31.4533	33.2595	34.8453	35.6471
51130	FORESTRY CLIMBER	D	351	0.0000	0.0000	37.7685	38.9465	40.1763
51120	FORESTRY CLIMBER SUP	D	350	0.0000	0.0000	43.9378	45.2331	46.5428
67020	FORESTRY CLIMBER TRNEE	D	440	0.0000	0.0000	29.1447	30.3694	31.6030
51160	FORESTRY TECHNICIAN	D	607	0.0000	0.0000	43.9378	45.2331	46.5428
67050	GROUNDKEEPER	D	444	0.0000	0.0000	29.2593	30.0296	30.9069
66020	JANITOR	D	434	0.0000	0.0000	27.1098	27.7881	28.5723
66010	JANITOR SUPERVISOR	D	433	0.0000	0.0000	31.6030	32.7131	33.6734
63110	LABORER	D	380	0.0000	0.0000	30.6263	31.4971	32.5068
54010	LANDSCAPE EQUIP OPER	D	372	0.0000	0.0000	37.0514	38.1786	39.2982
67030	LANDSCAPE GARDENER	D	441	0.0000	0.0000	33.8937	34.8366	35.9907
67080	LANDSCAPE GARDENER SUP	D	448	0.0000	0.0000	43.0476	44.3253	45.5850
67040	LANDSCAPE GARDENER TRAIN	D	443	0.0000	0.0000	28.5723	29.3738	30.1934
44010	MAIL SERVICES AIDE	K1	316	0.0000	0.0000	27.7002	28.6779	29.7529
71310	MARINA ASSISTANT MC	D	476	0.0000	0.0000	31.6887	32.5801	33.5943
52070	MECHANIC	D	362	0.0000	0.0000	41.6324	42.8913	44.1352
52090	MECHANIC LEAD	D	619	0.0000	0.0000	44.5377	45.8843	47.2381
52080	MECHANIC SUPERVISOR	D	363	0.0000	0.0000	47.6482	49.0527	50.5531
63090	MECHANICAL SWEEPR OPER	D	379	0.0000	0.0000	36.3417	37.4319	38.4564
47040	OFFICE SPEC I M&C	K1	339	0.0000	0.0000	26.0438	27.2067	28.4048
47030	OFFICE SPEC II M&C	K1	303	0.0000	0.0000	29.9732	31.3124	32.7044
47050	OFFICE SPEC III M&C	K1	291	0.0000	0.0000	34.8189	36.3870	38.0170
47080	OFFICE SPEC SUP M&C	K2	676	35.1448	36.9158	38.7571	40.7041	42.4490
71240	PARKING ENFORCEMENT OFF	D	471	0.0000	0.0000	32.2957	33.2178	34.1708
71030	PARKING ENFORCEMENT SUP	D	457	0.0000	35.2618	37.0213	38.8807	40.8174
65020	PARKING METER M&C SUP	D	734	37.3739	39.2417	41.2064	42.4840	43.8406

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52050	PARKING METER MECH TRNE	D	360	0.0000	0.0000	29.5768	30.3961	31.3740
52110	PARKING METER MECHANIC	D	365	0.0000	0.0000	33.3298	34.3782	35.4886
65050	PARKING METER MNT WORK	D	402	0.0000	0.0000	29.5768	30.3961	31.3740
72240	PUBLIC SFTY DISPATCH I	J	611	0.0000	0.0000	30.9423	32.4578	33.8147
72230	PUBLIC SFTY DISPATCH II	J	527	0.0000	0.0000	42.9254	44.7131	46.5852
51280	PUBLIC WORKS SUPERVISOR	D	356	0.0000	0.0000	43.4110	44.8597	46.4257
44020	RECORDS ASSISTANT	K1	707	0.0000	31.4533	33.2595	34.8453	35.6471
14480	RECREATION COORDINATOR	K1	091	35.2066	36.5722	37.9378	39.4532	40.8717
65780	REG VETERINARY TECH	D	821	0.0000	0.0000	29.5897	31.1518	32.7925
51140	ROSARIAN	D	352	0.0000	0.0000	35.3121	36.4136	37.5326
90110	SENIOR ANIMAL CONT OFCR	D	686	0.0000	0.0000	36.4928	37.5854	38.6690
72020	SENIOR CRIME SCENE TECH	J	713	0.0000	0.0000	41.9642	43.5942	45.2858
51150	SENIOR FORESTRY CLIMBER	D	353	0.0000	0.0000	39.6568	40.9007	42.1812
67100	SENIOR GROUNDSKEEPER	D	450	0.0000	0.0000	31.9555	32.8718	33.9643
67010	SENIOR LNDSCP GRDNR	D	439	0.0000	0.0000	36.1513	37.2302	38.4223
71320	SENIOR MARINA ASSIST	D	477	0.0000	0.0000	32.2636	33.1713	34.2549
52120	SERVICE TECHNICIAN	D	366	0.0000	0.0000	34.9512	36.0196	37.0881
51110	SEWER MAINT ASST SUPV	D	349	0.0000	0.0000	40.8201	42.1666	43.5499
63130	SKILLED LABORER	D	383	0.0000	0.0000	32.5068	33.5021	34.5557
65170	SOLID WASTE LOADER OPR	D	411	30.4593	32.7014	34.3390	36.0580	37.8516
65270	SOLID WASTE TRUCK DRIVR	D	415	0.0000	0.0000	37.1757	38.6906	39.7446
65130	SOLID WASTE WORKER	D	406	0.0000	0.0000	31.2701	32.6899	33.6413
72220	SUPERV PUBLIC SFTY DISP	J	529	0.0000	0.0000	49.2369	51.2786	53.4303
63010	TOOL LENDING SPECIALIST	D	375	0.0000	0.0000	33.0303	34.7688	36.5987
65140	TRACTOR TRAILER DRIVER	D	408	34.3390	36.0580	37.8515	39.7541	41.7348
51070	TRAFFIC MAINT SUPV	D	721	0.0000	0.0000	41.2065	42.4751	43.8406
63070	TRAFFIC MAINT WORKER I	D	377	0.0000	0.0000	30.5900	31.4620	32.4842
63080	TRAFFIC MAINT WORKER II	D	378	0.0000	32.4842	33.4710	34.5195	35.5150
52160	WAREHOUSE OPERATON SPEC	D	589	0.0000	36.1315	37.9290	39.7263	41.5059
65150	WEIGHMASTER	D	409	0.0000	32.0083	33.8497	35.4620	36.2726
65160	WEIGHMASTER TRAINEE	D	410	0.0000	0.0000	31.2419	32.6605	33.6118
52060	WELDER MECHANIC	D	361	0.0000	0.0000	42.1741	43.4548	44.7353
63250	YARDMASTER	D	388	0.0000	0.0000	34.5925	35.6974	36.7514

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**EXHIBIT D - VACATION LEAVE ACCRUAL HISTORY**

<b>YEARS DURING WHICH SERVICES RENDERED</b>	<b>YEARS OF SERVICE</b>	<b>AUTHORIZED ANNUAL VACATION LEAVE (in work weeks)</b>
All years prior to January 1, 1950		2
January 1, 1950 through December 1, 1956	1st 10 years of service	2
	Years of service in excess of 10	3
January 1, 1957 through December 31, 1961	1st 5 years of service	2
	6 - 25 years of service	3
	Years of service in excess of 25	4
January 1, 1962 through December 31, 1965	1st 5 years of service	2
	6 - 20 years of service	3
	Years of service in excess of 20	4
January 1, 1966 through June 30, 1970	1st 5 years of service	2
	6 - 20 years of service	3
	21 - 25 years of service	4
	Years of service in excess of 25	5
Subsequent to June 30, 1970	1st 5 years of service	2
	6 - 15 years of service	3
	16 - 25 years of service	4
	Years of service in excess of 25	5
January 1, 1978	1st 5 years of service	2
	6 - 15 years of service	3
	16 - 25 years of service	4
	Years of service in excess of 20	5
January 1, 1981	1st 4 years of service	2
	5 - 12 years of service	3
	13 - 20 years of service	4
	Years of service in excess of 20	5
July 1, 1983	1st 3 years of service	2
	4 - 11 years of service	3
	12 - 17 years of service	4
	Years of service in excess of 18	5

This Exhibit is included for historical reference only. Current vacation rates are shown in Section 19.



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## EXHIBIT E - HOURS AND DAYS OF WORK

1. **Units D and J Work Hours:** The hours and days of work applicable to employees in Representation Units D (Manual Occupations) and J (Para-professional Employees-Police Department), as set by the City Manager, are presently as follows:
  - a. **Hours Per Day**

Office Hours: 8:00 a.m. to 5:00 p.m., Monday through Friday.  
Closed on Saturday.

Field Operations: 8 hours per day - 5 days per week. (Working arrangements may vary as to shifts for field operations in the different departments.)
  - b. **Hours Per Week (Basic)**

Office: 40 hours  
Field Operations: 40 hours
  - c. **Work Week**

The work week will begin at 12:01 a.m. Sunday and end at Saturday midnight. Regular days off will be considered to be Saturday and Sunday.
  
2. **Units K-1 and K-2:** The hours and days of work applicable to employees in Representation Unit K-1 (career non-confidential office and clerical employees) and K-2 (supervisory clerical employees), as set by the City Manager, are presently as follows:
  - a. **Hours Per Day**

Office Hours: 8:00 a.m. to 5:00 p.m., Monday through Friday  
Police: 8 hours per day - 5 days per week.  
Shop and Field: 8 hours per day - 5 days per week (presently includes):  
Information Technology, and Mail assignments.

Shifts: Working arrangements may vary as to shifts for Police, Shop and Field operations in the different departments.

Flex Time: Working arrangements may vary as to hours of work in departments having a Flex-Time program.

Subject to the final approval of the Department Head and taking into consideration the recommendation of the Division Head, employees may request variable

working hours, such to include but not limited to, requests that the employee be scheduled four days per week, ten hours per day.

However, employees in work units that provide a six (6) or seven (7) day operation may be required to flex their work schedule based on the needs of the work unit. Flexing of work schedule will be assigned on the basis of inverse seniority unless more senior employees prefer to accept such work. The required flexing of work schedules will be on a day-for-day basis. When an employee is required to work on a regularly scheduled day off, the department will provide that employee with an alternative day off in the same work week when the required flexing occurs

b. **Hours Per Week (Basic):**

Office: 40 hours

Police: 40 hours

Shop and Field: 40 hours

c. **Work Week**

The work week will begin at 12:01 a.m. Sunday and end at Saturday midnight. Regular days off will be considered to be Saturday and Sunday except in those departments with work units that provide six (6) or seven (7) day operations.

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**EXHIBIT F - SHOES, TOOLS AND UNIFORMS**

<b>Rep Unit</b>	<b>Classification Title</b>	<b>Annual Shoe Allowance</b>	<b>Annual Tool Allowance</b>	<b>Annual Uniform Allowance</b>
D	Animal Control Officer			\$1,400
D	Building Maintenance Mechanic	\$200	\$500	
D	Building Maintenance Mechanic Trainee	\$200	\$500	
D	Building Maintenance Supervisor	\$200	\$500	
K1	City Services Aide	\$200		
J	Community Services Officer			\$1,400
J	Community Service Officer Supervisor			\$1,400
D	Concrete Finisher	\$200		
D	Construction Equipment Operator	\$200		
D	Container Maintenance Welder	\$200	\$220	
D	Equipment Parts Technician	\$200		
D	Forestry Climber	\$200		
D	Forestry Climber Supervisor	\$200		
D	Forestry Climber Trainee	\$200		
D	Forestry Technician	\$200		
D	Groundskeeper	\$200		
D	Janitor	\$200		
D	Janitor Supervisor	\$200		
D	Laborer	\$200		
D	Landscape Equipment Operator	\$200		
D	Landscape Gardener	\$200		
D	Landscape Gardener Supervisor	\$200		
D	Landscape Gardener Trainee	\$200		
D	Marina Assistant	\$200		
D	Mechanic	\$200	\$500	
D	Mechanic Supervisor	\$200	\$500	
D	Mechanical Sweeper Operator	\$200		
K1	Offset Equipment Operator	\$200		
J	Parking Enforcement Officer			\$1,400
D	Parking Meter Maintenance Collection Supervisor	\$200	\$250	\$1,400
D	Parking Meter Maintenance Worker	\$200		\$1,400
D	Parking Meter Mechanic	\$200	\$250	\$1,400
D	Parking Meter Mechanic Trainee	\$200		
K2	Printing Services Supervisor	\$200		
J	Public Safety Dispatcher I			\$1,400
J	Public Safety Dispatcher II			\$1,400
D	Public Works Supervisor	\$200		
D	Solid Waste Truck Driver	\$200		
D	Solid Waste Worker	\$200		

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Rep Unit	Classification Title	Annual Shoe Allowance	Annual Tool Allowance	Annual Uniform Allowance
D	Rosarian	\$200		
D	Security Attendant	\$200		
D	Senior Animal Control Officer	\$200		\$1,400
D	Senior Forestry Climber	\$200		
D	Senior Groundskeeper	\$200		
D	Senior Landscape Gardener	\$200		
J	Senior Police Service Assistant			\$1,400
D	Service Technician	\$200	\$220	
D	Sewer Maintenance Assistant Supervisor	\$200		
D	Skilled Laborer	\$200		
D	Parking Enforcement Officer Supervisor			\$1,400
D	Supervising Parking Meter Mechanic	\$200	\$250	\$1,400
J	Supervising Public Safety Dispatcher			\$1,400
D	Tool Lending Specialist	\$200		
D	Tractor Trailer Driver	\$200		
D	Traffic Maintenance Supervisor	\$200		
D	Traffic Maintenance Worker I	\$200		
D	Traffic Maintenance Worker II	\$200		
D	Warehouse Operations Specialist	\$200		
D	Weighmaster	\$200		
D	Weighmaster Trainee	\$200		
D	Welder Mechanic	\$200	\$500	
D	Wheeled Loader Operator	\$200		

## **APPENDIX A - STREETS AND SANITATION – OVERTIME POLICY**

### **Scheduled Overtime (does not include staff on standby or on-call)**

For Streets and Sanitation, scheduled overtime shall be defined as an overtime assignment which is known at least **twenty four (24)** hours in advance.

### **Work Groups**

There are three work groups in Streets and Sanitation:

Sewer Maintenance Operation

Street Cleaning/Clean City Program

Construction Operation which consists of Street Concrete/Paving, Patch/Structural Repair and Stormwater Maintenance

Overtime assignments will be offered first to employees in the work group which is currently assigned to perform the type of work involved. Work shall be offered to the employees in that work group on a rotating seniority basis, starting with the most senior employee and proceeding down the list. When all employees on the list have worked or been provided the opportunity to work and refused such work, offers of work shall start again with the most senior employee and proceed down the list. In the event that no employee in the work group volunteers to perform the work, the work may be offered to employees in other work groups.

### **Notification of Overtime Work Opportunities**

In the event that scheduled overtime becomes available, the Public Works Maintenance Superintendent, or his/her designee, shall do the following:

1. Post in a designated predetermined area a list of the available overtime assignment; and
2. Broadcast the overtime assignment over the radio to notify employees an overtime assignment is available.

### **Unscheduled Overtime**

Unscheduled overtime shall be defined as any overtime work which becomes available less than twenty-four (24) hours in advance of the work. For unscheduled overtime assignments, the Public Works Maintenance Superintendent, or his/her designee, shall use the radio to contact employees for their availability. Unscheduled overtime

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assignments will be offered first to employees in the work group which usually performs the type of work involved. As with scheduled overtime, work shall be offered on a rotating seniority basis, starting with the most senior employee and proceeding down the list. When all employees on the list have worked or been provided the opportunity to work and refused such work, offers of work shall start again with the most senior employee and proceed down the list. In the event that no employee in the work group volunteers to perform the work, the work may be offered to employees in other work groups who are qualified to perform the work.

## APPENDIX B - SOLID WASTE AND RECYCLING MANAGEMENT DIVISION - OVERTIME POLICY

### Scheduled Overtime for Planned Special Events

The following events are covered by this Section:

- July 4<sup>th</sup> Celebration
- Solano Stroll
- UC Football Home Game Days
- Kite Festival
- Cal Move Out

A schedule for these special events will be created at the beginning of the calendar year. No sooner than forty-five (45) days prior to the special event the overtime will be offered to employees in the classification who normally perform the work. Work shall be offered to employees on a rotating seniority basis, starting with the most senior employee and proceeding down the list. When all employees on the list have worked or been provided the opportunity to work and refused such work, offers of work shall start again with the most senior employee and proceed down the list. In the event that no employee volunteers to perform the work, the work may be offered to any other employees who are qualified to perform the work.

### Scheduled Overtime

Scheduled overtime shall be defined as an overtime assignment other than Planned Special Events which is known at least twenty four (24) hours in advance. Overtime will be offered to employees in the classification who normally perform the work. Work shall be offered to employees on a rotating seniority basis, starting with the most senior employee and proceeding down the list. When all employees on the list have worked or been provided the opportunity to work and refused such work, offers of work shall start again with the most senior employee and proceed down the list. In the event that no employee volunteers to perform the work the work, may be offered to any other employees who are qualified to perform the work.

### Unscheduled Overtime

Unscheduled overtime shall be defined as any overtime work which becomes available less than twenty-four (24) hours in advance of the work. Overtime will be offered to the employees in the classification who normally perform the work. Such work shall be offered first to employees who are on their day off and who are present at the work site and available to work. Work shall be offered to the employees who are present,



2018 – 2020 Memorandum Agreement

City of Berkeley

SEIU Local 1021 Maintenance and Clerical Chapters

commencing with the employee who would next be eligible for overtime on the seniority list and proceeding down the list. If overtime remains after all employees who are at the work site on their day off have been assigned, the remaining overtime will be offered next to employees who sign up on the unscheduled overtime list created for this purpose. Overtime will be then offered to all employees in the classification who normally perform the work based on a rotating seniority basis, commencing with the most senior employee and proceeding down the list until the last employee on the unscheduled overtime list has been offered an opportunity to work, overtime. When all the employees on the list have worked or been provided the opportunity to work and refused such work, offers of work shall start again with the most senior employee and proceed down the list.

**City of Berkeley and SEIU 1021  
Maintenance and Clerical Chapters  
&  
Community Services and Part Time Recreation Leaders Association  
TENTATIVE AGREEMENT  
JULY 1, 2020**

The Parties have reached a Tentative Agreement on the following terms:

**A. Provisional Employee**

Amend MC section 13.4 to include the following:

No employees shall hold a provisional appointment in the same position for more than 12 months. The City Manager may extend the provisional appointment beyond this 12- month limitation ~~after notification and consultation with the union~~ with the mutual agreement of the parties.

**B. Limited Reopener**

NEW LANGUAGE: If during the fiscal year 2020 -2021 the City reaches agreement with another bargaining unit or extends to unrepresented employees to confer an across the board Cost of Living Adjustment (COLA) increase and/or an additional City contribution towards medical premiums, the City agrees to a limited reopener to meet and confer with SEIU on these increases.

**C. Living Wage**

NEW LANGUAGE: The City agrees to pay each of its direct employees an hourly wage of no less than \$18.33 effective the first full pay period in January 2021. The City agrees to pay each of its direct employees an hourly wage of no less than \$19.33 effective the first full pay period in June 2021. If the Living Wage increases beyond \$19.33, as outlined in the Berkeley Municipal Code effective July 2021, the City shall implement the increases the first full pay period in September 2021 and July 1<sup>st</sup> of each year thereafter.

**D. Term Duration**

Parties agree to a one-year term ending on June 26, 2021.

**E. Additional Language on Layoffs for the Term of the MOU**

NEW LANGUAGE: The City recognizes the important role that the employee workforce plays in delivering public services; therefore, during the term of this Agreement the City agrees to not layoff any represented career employees. However should the City determine that its expenditures exceed its revenues during the term of this Agreement, the City may notice the Union in writing and the Union shall meet and confer over one-time cost savings and alternatives such as furloughs, union-directed VTO, etc. Nothing in this section requires the City to retain positions (filled or vacant) where state,

federal or grant funding has been reduced or eliminated and would require the City to backfill such positions. All other MOU provisions on Layoffs remain unchanged.

**F. COVID19 Related Proposals**

- 1. Additional City Emergency Paid Sick Leave Allocation.** NEW LANGUAGE: The City shall provide an additional 80 hours of emergency paid sick leave to be used for COVID-19 related reasons as listed in the Emergency Paid Sick Leave Act. Part-time employees receive a prorated number of hours. In order to use this additional City emergency paid sick leave, the employee must first exhaust all hours that they received under the Emergency Paid Sick Leave Act. The City will use a specific pay code for this additional emergency paid sick leave and these additional hours will be available until June 30, 2021. These additional 80 emergency paid sick leave hours shall have no cash value and may not be used towards any CalPERS retirement service credit as outline in section 43.7.5 of the Maintenance and Clerical MOU and 47.8.5 of the Community Services MOU.
- 2. Additional Floating Holidays.** NEW LANGUAGE: For employees who were required to remain in the workplace from March 17, 2020 – June 1, 2020, the City will provide 8 hours of floating holidays for every 40 hours of regularly scheduled hours worked in the workplace up to a maximum of 32 hours of floating holiday. The City will credit these floating holiday hours in the first full pay period after adoption of the MOU. The following classifications which, due to the nature of the assignment, require backfill, employees will be paid a stipend in the amount of the earned floating holiday hours up to a maximum of 32 hours the first full pay period in August 2020:

Solid Waste Drivers, Solid Waste Workers, Long Haul Drivers, Community Services Officer, Public Safety Dispatchers I/II, and Supervising Public Safety Dispatchers.

City will use a specific pay code for these additional floating holiday hours will be available until June 30, 2021. These additional 32 hours of floating holiday shall have no cash value and may not be used towards CalPERS retirement service credit as outlined in section 43.7.5 of the Maintenance and Clerical MOU and 47.8.5 of the Community Services MOU.

Date: 7/2/2020

For the Union  
[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: 7-1-2020

For the City  
[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





Office of the City Manager

CONSENT CALENDAR  
July 30, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: LaTanya Bellow, Director of Human Resources

Subject: Unrepresented Employees: Salary Adjustments and Update to Unrepresented Employee Manual

RECOMMENDATION

Adopt a Resolution approving as amended the Unrepresented Employee Manual to attach a one (1) year Agreement with terms and conditions (hereafter referred to as “Agreement”) with the Unrepresented Employees group (hereafter referred to as the “Unrep Group”) with a term of July 30, 2020 to June 30, 2021 that includes COVID-19 considerations, Additional Emergency Paid Sick Leave Allocation, Additional Floating Holidays, and Limited Reopener language effective July 1, 2020, and rescinding Resolution No. 68, 535-N.S.

FISCAL IMPACTS OF RECOMMENDATION

The terms of the new Agreement provide for no wage increase for the period of one year in response to the financial effects of the COVID-19 pandemic. There is a modest cost related to additional COVID-19 leave for employees in this bargaining unit who were required to report to City workplace for the period of March 17, 2020 – June 1, 2020. The changes to the Unrepresented Employees salary and benefits mirror the economic settlement with the Service Employees International Union (SEIU), Local 1021 Maintenance and Clerical Chapters (MC).

The cumulative total cost of the new Agreement is expected to have a moderate fiscal effect over the term of the Agreement (Fiscal Year 2020 - 2021), however, the cost of this labor contract is included in the Fiscal Year 2020 – 2021 budget. The funding for this Agreement comes from the general fund and other funding sources.

CURRENT SITUATION AND ITS EFFECTS

Council will consider adopting a resolution to approve a one (1) year Memorandum Agreement with the SEIU Local 1021 Maintenance and Clerical Chapters. The City and SEIU MC reached an agreement with no substantive change on all outstanding economic (aside from COVID-19 related issues), and non-economic issues on July 1, 2020.

Traditionally, the Unrep Group salary and benefits mirror the economic settlement with the Service Employees International Union (SEIU), Local 1021 Maintenance and Clerical Chapters (MC) in order to maintain internal equity and external competitiveness. The City and SEIU MC reached an agreement with no substantive change on all outstanding economics (aside from COVID-19 related issues), and non-economic issues on July 1, 2020.

Council is requested to adopt a resolution to approve an amended the Unrepresented Employee Manual attaching a one-year Agreement that implements COVID-19 considerations including Additional Emergency Paid Sick Leave Allocation, Additional Floating Holidays, and Limited Reopener language effective July 1, 2020, and rescinding Resolution No. 68, 535-N.S.

**BACKGROUND**

There are approximately 505 Unrepresented employees divided into seven (7) representational units: Z-1, Z-2, Z-3, Z-6, Z-9, X-1, and X-2.

The City’s philosophy during negotiations with the Union was to follow City Council policies to protect the City’s short and long-range economic health. City Council policies for labor negotiations include, but are not limited to, the following:

1. Assure that labor organizations and their members are treated fairly and with respect.
2. Negotiate in good faith and within the process established by the parties including honoring the traditional confidentiality of the negotiation process.
3. Negotiate contracts based on a “Total Compensation Package” model (changes in current and future salary, and health and welfare benefits) within the City’s overall financial conditions. The City’s current overall condition included the recent declaration of a fiscal emergency on June 16, 2020.

Major provisions of the Agreement are as follows:

Section	Change
Living Wage –	NEW LANGUAGE: The City agrees to pay each of its direct employees an hourly wage of no less than \$18.33 effective the first full pay period in January 2021. The City agrees to pay each of its direct employees an hourly wage of no less than \$19.33 effective the first full pay period in June 2021. If the Living Wage increases beyond \$19.33, as outlined in the Berkeley Municipal Code effective July 2021, the City shall implement the increases the first full pay period in September 2021 and July 1st of each year thereafter.

Section	Change
Additional City Emergency Paid Sick Leave Allocation	NEW LANGUAGE: The City shall provide an additional 80 hours of emergency paid sick leave to be used for COVID-19 related reasons as listed in the Emergency Paid Sick Leave Act. Part-time employees receive a prorated number of hours. In order to use this additional City emergency paid sick leave, the employee must first exhaust all hours that they received under the Emergency Paid Sick Leave Act. The City will use a specific pay code for this additional emergency paid sick leave and these additional hours will be available until June 30, 2021. These additional 80 emergency paid sick leave hours shall have no cash value and may not be used towards any CalPERS retirement service credit as outlined 4.13 of the Unrepresented Employees Manual.
Additional Floating Holidays	NEW LANGUAGE: For employees who were required to remain in the workplace from March 17, 2020 – June 1, 2020, the City will provide 8 hours of floating holidays for every 40 hours of regularly scheduled hours worked in the workplace up to a maximum of 32 hours of floating holiday. The City will credit these floating holiday hours in the first full pay period after adoption of the Agreement. For classifications, which due to the nature of the assignment, require backfill, employees will be paid a stipend in the amount of the earned floating holiday hours up to a maximum of 32 hours the first full pay period in August 2020. The City will use a specific pay code for these additional floating holiday hours that will be available until June 30, 2021. These additional 32 hours of floating holiday shall have no cash value and may not be used towards CalPERS retirement service credit as outlined 4.13 of the Unrepresented Employees Manual.
Additional language on Layoffs for the Term of the Agreement	NEW LANGUAGE: The City recognizes the important role that the employee workforce plays in delivering public services; therefore, during the period ending June 30, 2021 the City agrees to not layoff any Unrepresented career employees. However, should the City determine that its expenditures exceed its revenues during the period ending June 24, 2021, the City may notice the Unrepresented group in writing and the Unrepresented group shall be provided an opportunity to meet and discuss one-time cost savings and alternatives such as furloughs, VTO, etc. Nothing in this section requires the City to retain positions (filled or vacant) where state, federal or grant funding has

Section	Change
	been reduced or eliminated and would require the City to backfill such positions. All other provisions on Layoffs remain unchanged.
Provisional Employee	No employees shall hold a provisional appointment in the same position for more than 12 months. The City Manager may extend the provisional appointment beyond this 12-month limitation with the mutual agreement of the parties.
Limited Reopener	If during the fiscal year 2020 -2021 the City reaches agreement with SEIU or extends to other unrepresented employees an opportunity to confer on an across the board Cost of Living Adjustment (COLA) increase and/or an additional City contribution towards medical premiums, the City agrees to a limited reopener to meet and discuss with the Unrepresented group on these increases.
Term Duration	Parties agree to a one-year term Agreement ending on June 30, 2021

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

In a separate item on this July 30, 2020 Agenda, City Council will be considering salary and benefit adjustments for the SEIU Local 1021 Maintenance and Clerical Chapters. In general, it has been a longstanding policy of the City to approve cost of living adjustments and benefit changes for Unrepresented employees that are similar to those approved for represented employees in order to maintain internal equity and external competitiveness.

Representatives of the City worked within policies set by the City Council for guiding contract negotiations and staff met with the City Council in closed session to discuss and receive the policy direction and economic authority to settle this contract. The overall settlement must be within the City’s ability to pay based on projected revenue as well as demands for services across the spectrum of programs the City provides the community. The proposed changes to the MOU are consistent with City Council’s direction to staff and is fair and equitable to the members of the Union.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

LaTanya Bellow, Director of Human Resources, 981-6806



**Attachments:**

**1: Resolution: Unrepresented Employees Manual**

Exhibit A: One-Year Term Agreement between the City of Berkeley and the Unrepresented Employees

Exhibit B: Unrepresented Manual (Clean Version)

Exhibit C: Unrepresented Manual (Edited Version)

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

UNREPRESENTED EMPLOYEES MANUAL

WHEREAS, on July 24, 2018, the City Council adopted Resolution No. 68,535-N.S., the Unrepresented Employee Manual, that establishes rules governing working conditions, benefits and compensation for unrepresented career benefited and regular at-will employees; and

WHEREAS, in a separate agenda item on July 30, 2020, the City Council will consider a new Memoranda Agreement with the Service Employees International Union Local 1021 Maintenance and Clerical Chapters that provides for an additional one-year and provide for no wage increase for the period of the one-year extension; and

WHEREAS, the City Manager is recommending similar changes in terms and conditions for the unrepresented employees in Units X-1 (Unrepresented Hourly Non-Career); X-2 (Retired Annuitants); Z-1 (Confidential and Executive Management Employees); Z-2 (Confidential Professional Employees); Z-3 (Confidential Clerical Employees); Z-6 (Legislative Analysts); and Z-9 (Unrepresented at-will positions in the Rent Stabilization Program); and

WHEREAS, the Unrepresented Employee Manual is amended as a result of the attached Agreement June 27, 2020.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley rescind Resolution No. 68, 535-N.S. (Unrepresented Employee Manual) and all other resolutions amendatory thereto and that the Unrepresented Employee Manual that includes the executed Memoranda Agreement as shown in Exhibit A attached hereto and made a part hereof, is hereby adopted as the City of Berkeley Unrepresented Employee Manual.

Exhibit

- A: Unrepresented Employee Agreement
- B: Unrepresented Employee Manual Clean
- C: Amended Unrepresented Employee Manual Redline

**City of Berkeley Recommended Benefits for and Unrepresented Employees  
Effective Upon City Council Approval – July 30, 2020**

The City Manager is recommending similar changes in benefits for the unrepresented employees in units X-1; X-2; Z-1; Z-2; Z-3; Z-6; and Z-9 as reached through tentative agreement with Service Employees International Union, Local 1021 Maintenance and Clerical Chapter. The following terms are recommended:

**A. Provisional Employee**

NEW LANGUAGE: No employees shall hold a provisional appointment in the same position for more than 12 months. The City Manager may extend the provisional appointment beyond the 12- month limitation.

**B. Limited Reopener**

NEW LANGUAGE: If during the fiscal year 2020 -2021 the City reaches agreement with SEIU 1021 MC or extends to SEIU 1021 MC to confer an across the board Cost of Living Adjustment (COLA) increase and/or an additional City contribution towards medical premiums, the City agrees to a limited reopener with the Unrepresented Employees group on these increases.

**C. Living Wage**

NEW LANGUAGE: The City agrees to pay each of its direct employees an hourly wage of no less than \$18.33 effective the first full pay period in January 2021. The City agrees to pay each of its direct employees an hourly wage of no less than \$19.33 effective the first full pay period in June 2021. If the Living Wage increases beyond \$19.33, as outlined in the Berkeley Municipal Code effective July 2021, the City shall implement the increases the first full pay period in September 2021 and July 1st of each year thereafter.

**D. Term Duration**

Parties agree to a one-year term ending June 30, 2021.

**E. Additional Language on Layoffs for the Term of the MOU**

Amend Unrepresented Employee Manual section 10.2 to include the following new language:

NEW LANGUAGE: The City recognizes the important role that the employee workforce plays in delivering public services; therefore, during the adopted Unrepresented Employee Manual period ending June 24, 2021 the City agrees to not layoff any Unrepresented career employees. However, should the City determine that its expenditures exceed its revenues during the term of adopted Unrepresented Employee Manual ending June 24, 2021, the City may discuss with the Unrepresented group one-time cost savings and alternatives such as furloughs, VTO, etc. Nothing in this section requires the City to retain positions (filled or vacant) where state, federal or grant funding has been reduced or eliminated and would require the City to backfill such positions. All other provisions on Layoffs remain unchanged.

F. COVID19 Related Proposals

NEW LANGUAGE:

1. **Additional City Emergency Paid Sick Leave Allocation.** The City shall provide an additional 80 hours of emergency paid sick leave to be used for COVID-19 related reasons as listed in the Emergency Paid Sick Leave Act. Part-time employees receive a prorated number of hours. In order to use this additional City emergency paid sick leave, the employee must first exhaust all hours that they received under the Emergency Paid Sick Leave Act. The City will use a specific pay code for this additional emergency paid sick leave and these additional hours will be available until June 30, 2021. These additional 80 emergency paid sick leave hours shall have no cash value and may not be used towards any CalPERS retirement service credit.
  
2. **Additional Floating Holidays.** For employees who were required to remain in the workplace from March 17, 2020 – June 1, 2020, the City will provide 8 hours of floating holidays for every 40 hours of regularly scheduled hours worked in the workplace up to a maximum of 32 hours of floating holiday. The City will credit these floating holiday hours in the first full pay period after adoption of the Unrepresented Employee Manual. City will use a specific pay code for these additional floating holiday hours will be available until June 30, 2021. These additional 32 hours of floating holiday shall have no cash value and may not be used towards CalPERS retirement service credit as outlined 4.13 of the Unrepresented Employees Manual.

Date: \_\_\_\_\_

For the Unrepresented Group

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

For the City

\_\_\_\_\_

Dee Williams Ridley, City Manager



**City of Berkeley**

# **Unrepresented Employee Manual**

**July 27, 2020**



RESOLUTION

RESOLUTION NO. 68,535-N.S.

UNREPRESENTED EMPLOYEES MANUAL

WHEREAS, on October 3, 2017, the City Council adopted Resolution No. 68,166-N.S., the Unrepresented Employee Manual, that establishes rules governing working conditions, benefits and compensation for unrepresented career benefited and regular at-will employees; and

WHEREAS, in a separate agenda item on July 24, 2018, the City Council will consider a new Memoranda Agreement with Service Employees International Union Local 1021 Maintenance and Clerical Chapters that modifies its members' benefits; and

WHEREAS, the City Manager is recommending similar changes in benefits for the unrepresented employees in Units X-1 (Unrepresented Hourly Non-Career); X-2 (Retired Annuitants); Z-1 (Confidential and Executive Management Employees); Z-2 (Confidential Professional Employees); Z-3 (Confidential Clerical Employees); Z-6 (Legislative Analysts); and Z-9 (Unrepresented at-will positions in the Rent Stabilization Program).


NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley rescind Resolution No. 68,166-N.S. (Unrepresented Employee Manual) and all other resolutions amendatory thereto and that the Unrepresented Employee Manual that includes modifications in several articles that affect the benefits and terms and conditions of unrepresented employees as shown in Exhibit A attached hereto and made a part hereof, is hereby adopted as the City of Berkeley Unrepresented Employee Manual.

The foregoing Resolution was adopted by the Berkeley City Council on July 24, 2018 by the following vote:

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

Noes: None.

Absent: None.

  
Jesse Arreguin, Mayor

Attest:   
Mark Numainville, City Clerk

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## UNREPRESENTED EMPLOYEE MANUAL

This document establishes the rules governing benefits and working conditions, which are in effect for Unrepresented employees which have been approved by the City Council of the City of Berkeley.

This Unrepresented Employment Manual provides the personnel policies and procedures that affect the working conditions and benefits of unrepresented employees in the City of Berkeley. For purpose of categorization, all classifications are designated by a representation unit. Unrepresented employees are in classifications included in representation units Z-1; Z-2; Z-3; Z-9; X; and X-1, as noted in the City's Classification/Salary Resolution. The working conditions and benefits for represented employees are contained in their respective memoranda agreements. Rules, which describe general policies of the City's personnel system, are found in the City of Berkeley Personnel Rules and Regulations.

## **ARTICLE 1 - SALARY, OTHER PAY AND OVERTIME**

### **1.1 Intent**

This Section (Salary, Other Pay and Overtime) is intended only to define the normal hours of work and the time for which salary shall be paid, and to provide the basis for the calculation of overtime pay. Nothing in these rules shall be construed as a guarantee of hours of work per day or per week, or of days of work per week. The City's pay records, practices and procedures shall govern the payment of all wages.

### **1.2 Hours and Days of Work**

Hours and days of work shall be governed by rules established by the City.

### **1.3 Workweek**

The workweek shall consist of seven days beginning at 12:01 a.m. on Sunday to and including 12:00 midnight the following Saturday.

### **1.4 Regular Workweek**

The regular workweek shall consist of forty hours of work within the workweek.

### **1.5 Payment of Salaries**

Payment of salaries shall be bi-weekly and shall cover a pay period of two (2) consecutive workweeks. Each payment shall be made not later than Friday following the ending of each payroll period and shall include payment for all earnings reported during the previous payroll period.

### **1.6 Salary Ranges without Salary Steps**

In those classes of positions for which a salary range is established without a designation of salary steps, the City Manager is authorized to fix the salary rate at any point within the established salary range.

### **1.7 Automobile Allowances**

In addition to the salaries provided in the salary resolution, employees may be reimbursed for the use of automobiles owned by employees of the City of Berkeley and used on City business, as authorized by the City. Current automobile allowances are appended to this Manual, as shown in the Appendix, Section 13.27 (Automobile Allowance).

## 1.8 Mandatory Professional Fees and Licenses

The City will assume full payment of the mandatory professional fees and licenses required by employees in the following unrepresented classes in order to maintain their continued employment with the City of Berkeley:

Director of Public Works	City Attorney
Deputy Director of Public Works (Registered)	The Attorney Class Series
Rent Stabilization Board Staff Attorney Class Series	Audit Manager
Classes requiring a license to practice medicine	

## 1.9 Bilingual Pay

Employees appointed to positions requiring bilingual abilities, including Braille and sign language shall receive additional compensation as established by the City Council. Only those employees who possess second language competency, can demonstrate second language competency, and are serving in a position requiring competency in that particular language are entitled to receive the bilingual premium pay. The current level of approved compensation and procedures for qualifying and receiving bilingual pay are appended to these Rules, as shown in Appendix, Section 13.3 (Bilingual Premium Pay).

## 1.10 Overtime for FLSA Non-Exempt Employees

All employees who are covered by the overtime provisions of the Fair Labor Standards Act are designated as "FLSA non-exempt employees." Unless otherwise required by the Fair Labor Standards Act, all FLSA non-exempt employees, and employees in the classification of Battalion Chief, who are required to work in excess of their regular workweek shall be paid overtime compensation at the rate of one and one-half times the straight time rate based upon the regular monthly salaries or shall be given compensatory time off in lieu of payment at the rate of one and one-half hours off with pay for each overtime hour worked. The following provisions regarding overtime apply only to FLSA non-exempt employees and do not apply to FLSA exempt employees. FLSA non-exempt employees, temporarily promoted to FLSA exempt classifications, will be ineligible for overtime compensation for the duration of the appointment.

- 1.10.1 **Manner of Compensation:** An employee may be compensated for overtime by either compensatory time off or by payment; the method of overtime compensation shall be agreed upon by the employee and the supervisor at the time of obtaining approval to work overtime.
- 1.10.2 **Pre-Authorization:** No employee may work overtime without the express prior approval of his or her department head.
- 1.10.3 **Accrual Limit on Compensatory Time:** Compensatory time shall not accumulate in excess of sixty (60) overtime hours worked which is the equivalent of ninety (90) hours of compensatory time. Overtime accumulation in excess of sixty (60) hours shall be paid as compensation.



- 1.10.4 **Use of Compensatory Time:** All use of compensatory time off must be approved, in advance, by the employee's department head, on forms provided by the City.
- 1.10.5 **Effect of Termination on Compensatory Time:** An employee is entitled to compensation for any accumulated overtime upon resignation or termination.

### 1.11 Emergency Overtime

All FLSA non-exempt employees who are called to duty from their living quarters outside of their regular work hours and work days shall be paid emergency overtime compensation for the actual time worked provided, however, that each employee shall be paid a minimum of two (2) hours pay for emergency overtime unless such emergency overtime work is performed prior to the beginning of his or her work regularly scheduled work period without a break in service in which case, compensation shall be paid only for the actual time worked.

### 1.12 Shift Differential

All unrepresented FLSA non-exempt employees (except for Police Aides) who regularly work a shift of eight hours or more, which includes more than four hours between the hours of 5:00 p.m. and 12:00 a.m., or between 12:00 a.m. and 7:00 a.m., are paid a shift differential in addition to their regular base rate of pay in an amount established by the City Council. The current shift differential rate paid to unrepresented employees is in the Appendix to this Manual.

### 1.13 Fifty-Six (56) Hour per Week Work Schedule Leave Conversion Factor

The conversion factor for Fire Management employees accruing and using vacation leave, sick leave or sick leave bonus bank of hours is as shown below. The intent of the parties is to have the dollar value of the vacation leave, sick leave or sick leave bonus bank of hours accrued be the same whether an employee is assigned to a fifty-six (56) hour per week schedule or a forty (40) hour per week schedule.

- 1.13.1 **Leave Accrual for 56 Hour per Week Schedule:** Vacation leave, sick leave or sick leave bonus bank of hours accrued on a fifty-six (56) hour per week scheduled is converted to a forty (40) hour per week schedule by multiplying number of hours of vacation leave or sick leave accrued by the conversion factor of 0.7143.
- 1.13.2 **Leave Accrual for 40 Hour per Week Schedule:** Vacation leave, sick leave or sick leave bonus bank of hours accrued on a forty (40) hour per week scheduled is converted to a fifty-six (56) hour per week schedule by multiplying number of hours of vacation leave accrued by the conversion factor of 1.4.

#### 1.14 One-Time Allocation

Employees in Units Z-1, Z-2, Z-3, Z-6, and Z-9 who are in paid status as of July 29, 2018 will receive a one-time allocation of \$2,000.00 (prorated for part-time employees) on August 17, 2018, minus applicable local, state and/or federal taxes.

## **ARTICLE 2 - PROBATIONARY PERIOD**

### **2.1 Length of Probationary Period**

All original and promotional appointments to positions in the career service shall be tentative and subject to a probationary period. The length of the probationary period shall be determined for each class by the City Council. However, the length of the probationary period shall not be less than six months of actual service (1040 hours) or more than two years of actual service (4160 hours). A six (6) month probationary period must be completed in no more than one (1) year. A one (1) year probationary period (2080 hours) must be completed in no more than two (2) years. A two (2) year probationary period must be completed in no more than three (3) years. A current schedule of probationary periods for unrepresented classes is appended to this Manual, as shown in Appendix, Section 13.16 (Probationary Periods for Unrepresented Classifications).

### **2.2 Objectives of Probationary Period**

The probationary period shall be regarded as a part of the selection process and shall be used to closely observe and evaluate the employee's work, to secure the most effective adjustment of a new employee to his or her position, and to eliminate any probationary employee whose performance does not meet the required standards of work.

### **2.3 Rejection of Probationers**

During the probationary period, an employee may be rejected from employment at any time by the City Manager without cause and without the right of appeal.

### **2.4 Rejection during Probationary Promotion**

An employee rejected during the probationary period following a promotional appointment shall be reinstated to the classification from which he or she was promoted unless charges are filed and he or she is discharged in the manner provided in the Personnel Ordinance and these rules.

## ARTICLE 3 - VACATION

### 3.1 Vacation Leave

All benefitted employees shall be entitled to annual vacation leave subject to the provisions in this chapter.

### 3.2 Vacation Approval

All vacations must be approved, in advance, by the employee's department head, on forms provided by the City.

### 3.3 Vacation Accrual

3.3.1 **Full Time Benefitted Employees:** During the first two (2) calendar years of employment, all full time benefitted employees shall be entitled to take only such annual vacation leave as the employees earn based on their continuous length of service measured from the date of hire. After two (2) years of service, employees may request, and upon approval, take up to a maximum of two (2) weeks of their annual vacation, in advance of actual earning. Approval of requests for advance vacation shall be solely at the discretion of management.

Vacation accrues according to schedules established by the City Council and can vary for different groups of employees. The current vacation schedules for full time unrepresented employees are in the Appendix to this Manual.

3.3.2 **Part Time and Temporary Employees:** Benefitted part-time employees working a minimum of twenty (20) hours per week accrue vacation benefits on a pro rata basis. Employees who work less than twenty (20) hours per week and temporary employees, unless otherwise authorized, do not accrue leave benefits

3.3.3 **Accrual of Vacation Credits:** Vacation leave credits are only accrued for each straight time hour for which the employee is paid.

3.3.4 **Effect of Extended Leave on Vacation Accrual:** An employee who has returned from extended military leave or an extended authorized leave of absence without pay of six (6) months or more or who has been re-employed or reinstated shall be entitled, during the calendar year in which the employee returns to the City service, to earn vacation according to a schedule based upon the total years in the career service with the City and upon the total number of months of actual service with the City during the said calendar year. For succeeding calendar years, the employee's vacation leave shall accrue as provided in this Manual.

**3.3.5 New Hire Vacation Accrual:** For new hires, the City Manager may authorize vacation accrual at a higher rate, up to the maximum accrual rate, depending upon the paid leave accrual of the potential employee at his or her present employer. The new hire must be able to document his or her current paid leave accrual, which has been earned for general use, such as vacation. The waiting period to advance to the next accrual rate would be the actual number of years between the respective accrual levels.

### **3.4 Vacation Scheduling**

The times during the calendar year at which an employee shall take his or her vacation shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of the service. If the requirements of the service are such that a department head cannot permit the employee to take an annual vacation leave or any part of such leave within a particular calendar year, the employee may accrue vacation according to Section 3.3 (Vacation Accrual) of this Manual.

### **3.5 Maximum Vacation Accumulation**

Employees may defer vacation earned up to a maximum cumulative total of eight (8) weeks. An employee who has attained maximum accumulation may be required to take all excess earned vacation at the option of the City. Not later than October 1 of each year, the City will advise employees who have attained a maximum accumulation of vacation whether such excess earned vacation must be scheduled as time off prior to March 31. Such time off shall be scheduled in accordance with the provisions of Section 3.2 (Vacation Approval).

The City shall require all employees to reduce their accrued vacation balances to no more than 320 hours, as of the last pay period in February of each year. To effectuate the requirement that employees not accrue more than 320 hours vacation leave, no later than November 15 of each year the City will provide Department Heads with a report identifying all employees who have accrued two hundred and eighty (280) hours of vacation leave and appear in danger of exceeding the 320 hour limit.

Employees who have accrued 280 hours of vacation leave, as of that date, will be advised by their supervisor that they must take vacation leave to reduce their vacation leave accrual by February of the following year.

Supervisors should be flexible in granting employee vacation requests to those employees above, or approaching the 320 hours limit, and further, that with regard to employees who are in danger of exceeding the 320 hour limit, no vacation request by such an employee shall be unreasonably denied. If an employee who is in danger of exceeding the 320 hour limit fails by December 31 to schedule a vacation to be taken before the last pay period in February, the City has the

authority to direct the employee to go on vacation leave to reduce the employee's accrued vacation.

If, due to operational necessity, a department head denies an employee vacation leave and does not provide the employee with an alternate vacation date, and as a result causes the employee to exceed the 320 vacation leave limit, said employee shall nonetheless be entitled to use that vacation leave in the next calendar year to the extent necessary to reduce their accrued vacation to not more than 320 hours. Under no circumstances will the City liquidate any vacation leave balances for any employee during employment.

### **3.6 Vacation Leave before Retirement**

Accumulated vacation shall not be used immediately prior to retirement, which has the effect of extending the date of retirement, but shall be paid out in full upon retirement.

### **3.7 Vacation Leave in Lieu of Sick Leave**

Except for absences that qualify for benefits under Administrative Regulation 2.4 (Family Care Leave) Vacation leave shall not be used in lieu of accrued sick leave for absences due to illness. If accrued sick leave is exhausted, vacation leave may be used for absences due to illness, only if such leave is approved by the employee's department head.

### **3.8 Payout upon Termination or Extended Unpaid Leave**

Upon termination, including death, extended military leave or other extended leave without pay, an employee or his or her estate shall be paid for all accrued unused vacation leave at the employee's base rate at the time of his or her termination, and such employee or his or her estate shall reimburse the City for any vacation leave taken before it had accrued, in accordance with provisions established by the City Manager.

### **3.9 Holidays Occurring during Vacation**

If an observed City holiday occurs during an employee's scheduled vacation, no deduction from accrued vacation will be made for the holiday period.

## **ARTICLE 4 - SICK LEAVE**

### **4.1 Eligibility**

All full time benefitted employees are eligible for one (1) sick leave day (eight [8] hours) per month of service, except that the Police Chief hired before September 11, 2012 is eligible for two (2) sick leave days for each month of service during the twenty-first (21) year of employment and thereafter. Employees in the classifications of Fire Chief and Deputy Fire Chief shall be credited with two (2) sick leave days for each month of service during the seventeenth (17<sup>th</sup>) year of employment and thereafter. Part time benefitted employees are eligible to accrue sick leave on a pro rata basis.

### **4.2 Sick Leave Not a Privilege**

Sick leave shall not be considered a privilege, which an employee may use at his or her discretion, but shall be allowed only in the case of his or her sickness or disability or in the case of illness within the defined family of the employee.

### **4.3 Family Sick Leave**

As of January 1, 1999, employees may use up to fifteen (15) working days of accrued sick leave in a calendar year to care for a family member, limited to one of the following: a legal dependent, parent, spouse, son, daughter or domestic partner.

### **4.4 Notice to Department Head**

In order to qualify for sick leave benefits, the employee shall notify his or her department head or designee prior to or within two (2) hours after the time set for the beginning of the employee's daily duties, or as otherwise required by the department head. Leave for non-emergency medical appointments shall be requested in advance of the workday.

### **4.5 Medical Verification**

The City of Berkeley retains the right to request a verification from a licensed medical practitioner under appropriate circumstances which include (1) showing that an employee's illness or disability has started or ended, before the City will allow an employee to take a leave or to return from leave, (2) showing regular updates during a medical leave of absence regarding the employee's medical status and the date the employee expects to return to work, (3) where reasonable cause exists to believe that the employee is not medically fit to perform the essential functions of the job or that the employee cannot perform the job without endangering the health and safety of the employee or others, and (4) where reasonable cause exists to believe that the employee is abusing sick leave or family sick leave. Sick leave pay may be withheld if a satisfactory verification is not received.

#### 4.6 Injury Incurred in Outside Employment

No sick leave shall be allowed for time off for an injury incurred while working for another employer, provided that the injury is covered by California's workers' compensation law or by provisions of the other employer granting payment for time off because of the injury. In the event the injury is not covered either by the workers' compensation law or by the other employer's provisions, sick leave will be granted in accordance with this chapter only if the outside employment had been authorized by the City before the injury occurred

#### 4.7 Bonus for Unused Sick Leave

For every six (6) months of perfect attendance, the employee will receive eight (8) hours of bonus time. "Perfect attendance" means the employee has not received sick leave or salary continuation benefits and has not taken or been placed on leave without pay. Benefitted part time employees will receive sick leave bonus time on a pro rata basis. Sick leave bonus can be used for any leave purpose authorized by this Manual.

#### 4.8 Accumulation of Sick Leave

Employees may accumulate sick leave up to a maximum of two hundred (200) days (1600 hours) except for the classifications named below.

The Police Chief and Fire Chief may accumulate sick leave in excess of the 1600-hour limit by 100 hours per year.

#### 4.9 Payout for Excessive Sick Leave for Employees Hired on or Before June 30, 2013

All employees, except employees in the classification of Deputy Fire Chief hired on or before June 30, 2013 in the career service who regularly work one-half time or more who have attained the two hundred (200) day maximum sick leave accumulation shall be entitled to receive payment for one-third (1/3) of the first twelve (12) days of sick leave days (or if earning sick leave at the rate of two (2) working days each month of service, one-third (1/3) of the first twenty-four (24) days of sick leave days), for which sick leave days they become eligible, they do not use and they would otherwise forfeit because of the two hundred (200) day maximum limitation. Determination of eligibility for such payment shall be made on an annual calendar year basis, and payment for such sick leave for any calendar year shall be made not later than the first full pay period in January. Such payment shall be at the employee's salary rate in effect on the preceding December 31, and shall be made only in units of whole days and will not be made for any fraction of a day.

4.9.1 **Deputy Fire Chief:** For employees in the classification of Deputy Fire Chief, the following provisions shall apply. In each year following that 1200 hour base year, the employee may, on a form provided by the City, elect to receive pay for excess sick leave or may elect to increase his or her sick leave accumulated base by the 96 hours and take any additional



excess sick leave in pay at the following prescribed rate: employees who choose to increase their sick leave accumulated base by the 96 hours will receive 50% pay off rate in March; employees who choose to receive pay out for excess sick leave over the base, and do not exercise the option of increasing their accumulated sick leave base by 96 hours in any particular year, will be paid for excess sick leave at the 38% pay off rate in March.

Forms, provided by the City along with projected excess sick leave balances, shall be distributed to affected employees by February of each year and shall be returned to the City by February 15th. If an employee uses part of an established "sick leave maximum accumulation level", the employee may replenish the used portion at the applicable rate.

Determination of eligibility for such payment shall be made on an annual basis, and payment for such sick leave for any calendar year shall be made during the month of March each year. Such payment shall be made at the employee's regular monthly salary rate in effect on the last day of the first pay period to end in March. An employee shall be eligible for this provision whether or not the employee is on the payroll as of the last day of the first pay period to begin and end in March.

- 4.9.2 **Police Chief and Fire Chief Hired on or before June 30, 2013:** For the Police Chief and Fire Chief hired on or before June 30, 2013, the maximum sick leave accrual allowed shall be adjusted at the rate of 100 additional hours per year above the 1600-hour limit. The employee may elect to receive pay for the excess sick leave or may elect to increase the base by 100 hours, in each subsequent year. Payment for excess sick leave is prescribed at 1/3 of the excess leave balance.

#### 4.10 Effect of Leave without Pay on Sick Leave Accrual

Sick leave will not accrue during any period of absence without pay. Sick leave credits are accrued on the basis of actual straight time hours worked or paid, based on a forty hour workweek.

#### 4.11 Accrued Sick Leave Canceled Upon Termination

Except as otherwise provided under the CalPERS conversion of sick leave retirement credit benefit (California Government Code Section 20965) and the other exceptions set forth below, all accrued sick leave shall be canceled upon termination of an employee. Such leave shall be credited back to the employee if the employee returns to City employment within two (2) years of termination except as otherwise provided by the City Council, or within three (3) years of termination if re-employed under the City's Layoff Policy provided in this Manual.

- 4.11.1 **CalPERS Miscellaneous Members, Chief of Police Hired on or before June 30, 2013 Sick Leave Payout:** For CalPERS

Miscellaneous members and Chief of Police hired on or before June 30, 2013 who voluntarily separate from service with a vested pension and at least twenty (20) years of benefitted City of Berkeley service or to employees retiring on permanent disability arising out of and incurred in the course and scope of their employment with the City shall be entitled to liquidate a portion of their accrued but unused sick leave as follows: Upon termination, employees with between twenty (20) years and twenty-eight (28) years of benefitted City of Berkeley service shall be entitled to receive payment in an amount equal to 38% of their accrued sick leave days up to a maximum of two hundred (200) unused sick leave days.

All employees hired on or after July 1, 2013 shall not be eligible for payment of any unused sick leave days.

Employees hired on or before June 30, 2013 who voluntarily separate from service with a vested pension and at least twenty-eight (28) years of benefitted City of Berkeley service or employees retiring on permanent disability arising out of and incurred in the course and scope of their employment with the City, with at least twenty-eight years of benefitted City of Berkeley service, shall be entitled to receive payment in an amount equal to 50% of their accrued sick leave days up to a maximum of two hundred (200) unused sick leave days. Employees hired on or after July 1, 2013 shall not be eligible for payment of any unused sick leave days.

- 4.11.2 **Fire Chief and Deputy Fire Chief Hired on or before June 30, 2014 Sick Leave Payout:** For employees hired on or before June 30, 2014 in the classification of Fire Chief and Deputy Fire Chief who retire or voluntarily terminate with twenty (20) years of service or who retire on permanent disability arising out of and incurred in the course and scope of their employment with the City, shall be entitled to receive payment at retirement or termination of unused sick leave days, based on the following schedule:

Number of Days	% of Payment
0-75 Days	38%
75-99 Days	41%
100-124 Days	44%
125-149 Days	47%
150 Days and over	50%

Employees in classifications identified in this Section 4.11.2 (Fire Chief and Deputy Fire Chief Hired on or before June 30, 2014 Sick Leave Payout) hired on or after July 1, 2014 shall not be eligible for payment of any unused sick leave days.

#### **4.12 City of Berkeley Supplemental Retirement Plan [Termination 401(a)]**

Employees who retire on a vested pension shall be eligible to participate in the City of Berkeley Supplemental Retirement Plan. The Supplemental Retirement Plan provides for negotiated required roll-forwards of accrued but unused leave, and also permits the City to do a "tax pick-up" of employee contributions under Section 414(h)(2) of the Internal Revenue Code. A tax pick-up works through an irrevocable payroll deduction authorization, on an individual by individual elective basis, to contribute accrued but unused sick leave, vacation leave, compensatory time, floating holiday and bonus sick leave into an Internal Revenue Code 401(a) defined contribution plan. The Supplemental Retirement Plan Document shall govern administration of the Plan.

#### **4.13 Accrued Sick Leave Applied to CalPERS Retirement Credit**

The conversion of unused sick leave to retirement credit benefit under Government Code Section 20965 offered by CalPERS as an optional benefit to contracting agencies shall be made available to employees who retire with a vested pension.

#### **4.14 Sick Leave Benefits and State Disability Insurance**

Employees may use their accrued sick leave benefits during the normal seven day period before the eligible employees are paid benefits from State Disability Insurance. Following the seven day period, an employee will continue to receive accrued sick pay until exhausted and then, upon approval by the department head, accrued vacation or compensatory pay, less the disability benefits actually received.

#### **4.15 Workers' Compensation and Salary Continuation**

Workers' compensation payments shall commence in accordance with State law, on the fourth day following an industrial injury, unless the employee is hospitalized in which case payment commences on the first day of injury. For the purpose of this Section (Workers' Compensation and Salary Continuation), "hospitalized" means confinement.

For all career and regular at-will employees who are receiving or shall receive workers' compensation benefits for an industrial injury, the City will pay retroactive compensation benefits to the eligible employee for the normal three day waiting period before the employee is paid workers' compensation benefits for temporary disability pursuant to California law governing the industrial injury or illness.

Payments under the workers' compensation law for temporary disability or a recurrence thereof arising out of and in the course of employment shall be paid for a period not to exceed 365 days at a maximum payment of the employee's pre-disability pay, but shall not exclude any salary adjustments to which the employee is entitled. Thereafter, the employee will continue to receive only the temporary disability payments provided under State law and the City shall cease to pay the difference.

#### **4.16 Sick Leave Accrual for Department Heads and Deputy City Managers**

At the time of appointment of new hires in regular at-will department head classifications and Deputy City Managers, the City Manager may authorize credit for accrual of sick leave based on sick leave accrual with a prior employer in an amount that does not exceed four weeks of sick leave credit.

## ARTICLE 5 - HOLIDAYS

### 5.1 Holidays

The City observes the following holidays and provides all full time regular, at-will and career employees.

Holiday	Day Observed
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
Lincoln's Birthday	February 12
Washington's Birthday	Third Monday in February
Malcolm X's Birthday	Monday or Friday nearest May 19
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Indigenous People's Day	Second Monday in October
Veterans' Day	November 11
Thanksgiving Day	Fourth Thursday in November
The Day After Thanksgiving	Fourth Friday in November
Christmas	December 25

### 5.2 Floating Holidays

Full time, regular at-will, and career employees who have worked for the City six (6) months or more shall be granted three (3) floating holidays each calendar year. Employees may take floating holidays in one (1) hour increments. Employees who terminate employment within the first six (6) months of initial employment shall not be eligible for payout of any accrued but unused floating holiday.

In the first calendar year of employment, employees shall be granted prorated floating holidays as follows:

Date of Hire	Number of Floating Holidays
Hired January 1 - April 30	3 days
Hired May 1 - August 31	2 days
Hired September 1- December 31	1 day

All use of floating holidays must be approved, in advance, by the employee's department head, on forms approved by the City. The days on which the employee shall take his or her floating holiday(s) shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of the service. If the requirements of the service are such that a department head cannot permit the employee to take the floating holiday(s) within a particular calendar year, the employee shall add the unused floating holiday(s) to the employee's accrued vacation according to Section 3.5 (Maximum Vacation Accumulation).

**5.3 Eligibility**

In order to be eligible for holiday pay, an employee must be on paid leave status on his or her regularly scheduled workdays before the holiday.

**5.4 Part-Time Employee Eligibility**

Benefitted part time employees are eligible for holiday benefits on a pro rata basis.

**5.5 No Work on the Holiday**

Employees in the career service who are not scheduled to work on the day observed as a holiday will be granted an alternative scheduled holiday. The alternative holiday must be scheduled, by the department head, during the same workweek.

**5.6 Work on the Holiday**

FLSA non-exempt benefitted employees who work on a scheduled holiday shall be paid at one and one-half times their normal base rate for all hours worked or shall be granted the equivalent amount of compensatory time off. In either event, the holiday pay shall be in addition to the employees' regular salary.

## ARTICLE 6 - OTHER PAID LEAVES OF ABSENCE

### 6.1 Family Bereavement Leave

Any benefitted employee who experiences a death in the immediate family is granted death leave of up to three (3) working days for the purpose of attending the funeral or memorial service in the State of California, or up to five (5) working days for the purpose of attending the funeral or memorial service outside the State of California. Employees in the classification of Fire Chief and Deputy Fire Chief shall be granted one week (five (5) consecutive calendar days) for a death in the immediate family whether in state or out of state for the purpose of attending the funeral or memorial service.

For all employees except those employees in the classification of Fire Chief and Deputy Fire Chief, "immediate family" is limited to wife, husband, mother, father, sister, brother, child, grandmother, grandfather, aunt, uncle, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchildren, dependent or domestic partner. For employees in the classification of Fire Chief and Deputy Fire Chief, "immediate family" is limited to wife, husband, domestic partner mother, father, sister, brother, child, grandmother, grandfather, aunt, uncle mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchildren or dependent residing within the household.

Bereavement leave will be paid at the employee's normal base rate of pay for the actual time lost and is allowed solely for the purpose of attending funeral or memorial services. The department head may, within his or her discretion, grant the employee additional time off provided that all accrued vacation and/or sick leave shall be used prior to taking a leave of absence without pay for this purpose.

In special cases, with the approval of the department head, the City Manager may grant death leave within his or her discretion to allow an employee to attend a funeral or memorial services because of the death of persons not included within the definition of immediate family.

### 6.2 Jury Duty Leave

Any benefitted employee who is called or required to serve as a trial juror, upon notification and appropriate verification submitted to his or her department head, shall be entitled to be absent with pay from his or her duties with the City during the period of such service and while necessarily being present in court as a result of such call. An employee is required to be present at work when not serving as a trial juror or as a member of a jury selection panel. An employee will notify his or her supervisor of any requirements (on-call status) made by the court that may affect the employee's ability to simultaneously fulfill his or her jury duty service and employment obligations. The employee will keep any payment received for jury service including mileage reimbursement.

### 6.3 Continuing Education Leave

The City will grant a continuing education leave of absence with pay up to forty hours per year to benefitted employees who are required by their employment or continuing employment with the City of Berkeley to pursue course work in order to:

- (a) renew a license issued by the State of California; or
- (b) obtain a license issued by the State of California provided that employees verify to the City that the course work for the initial license was not offered as a part of their basic curriculum.

Upon prior approval of the department head, FLSA non-exempt employees who take required course work during non-scheduled work hours in order to obtain or renew a job-required license shall be allowed time off from work on an hour-for-hour basis without loss of compensation or other benefits.

### 6.4 Administrative Leave Program

The City Manager provides for paid administrative leave to eligible employees as set forth in the Appendix to this Manual. Administrative leave is not charged against other accrued leave balances.

### 6.5 Temporary Employees – Earned Leave

A temporary employee who works one thousand forty (1040) hours or more in a calendar year and is in active employment during December of such year, shall be credited with forty (40) hours of paid time off to be used by such employee in the subsequent calendar year for either paid vacation or paid sick leave. The following conditions shall apply to the use of this earned leave as paid time off:

- a. To qualify for earned leave as vacation, the employee must apply, in writing, to the employee's supervisor at least thirty calendar days in advance of the desired time off. The granting or denial of the requested time off shall be in writing and shall be controlled by program considerations as established by the City.
- b. To qualify for earned as sick leave, the employee must notify the employee's supervisor of an inability to report to work by reason of illness or injury in advance of the scheduled work.
- c. An employee who has any unused earned leave credit shall receive payment for such time upon termination of temporary employment. All credited earned leave not utilized by employees at the end of the calendar year in which the employees are eligible to take such leave will be paid at the end of such year as wages and this earned leave shall not be accumulated from year to year.



## 6.6 Abolishment of Temporary Employees – Earned Leave

Effective July 1, 2015, Section 6.5 (Temporary Employees – Earned Leave) is abolished in its entirety and replaced with the following Section 6.7 (Temporary Employees Sick Leave).

## 6.7 Temporary Employees Sick Leave

Effective January 1, 2015, Temporary Employees who have been employed for at least 90 days on July 1, 2015 are eligible to accrue and use sick leave based on hours worked after July 1, 2015 as provided in Section 6.8 (Sick Leave Accrual) below.

## 6.8 Sick Leave Accrual

Effective July 1, 2015, once a temporary employee works for 30 days within a calendar year, the employee shall be eligible to accrue one (1) hour of sick leave for every 30 hours worked thereafter, to a maximum accumulation of 48 hours. Once an employee accrues 48 hours sick leave, the employee shall not accrue any additional sick leave hours until his or her sick leave balance is below the maximum of 48 hours. Under no circumstances will an employee be allowed to accrue more than 48 hours sick leave.

## 6.9 Sick Leave Use

Temporary Employees shall be eligible to use sick leave beginning on the 90<sup>th</sup> day of work. Sick leave shall be used in a minimum of two (2) hours increments, and limited to a maximum of 24 hours use each calendar year. Unused accrued sick leave hours shall carry over to the following calendar year. The following conditions shall apply to the use of this sick leave as paid time off:

- a. Sick Leave may be used for the following purposes: Diagnosis, care, or treatment, of an existing health condition or, preventive care for, an employee or an employee's family member; for an employee who is a victim of domestic violence, sexual assault, or stalking. To qualify for earned as sick leave and if the need for sick leave is foreseeable, the employee must notify the employee's supervisor of an inability to report to work in advance of the scheduled work. If the need for sick leave is unforeseeable, the employee shall provide notice to the immediate supervisor of the need for the leave as soon as practicable.
- b. All accrued and unused sick leave shall be cancelled upon separation/termination of employment. Such previously accrued and unused sick leave shall be credited back to the employee if the employee returns to City employment within one (1) year from the date of separation.

## ARTICLE 7 - LEAVES OF ABSENCE WITHOUT PAY

### 7.1 Power to Grant Leave

The City Manager shall have the power within his or her sole discretion to grant leaves of absence, with and without pay.

### 7.2 Authorized Leave Without Pay

Upon request of the employee, a department head may grant or deny a leave of absence to an employee within his or her department without pay for a period not to exceed thirty working days. No leave without pay shall be granted for more than thirty working days except upon written request of the employee and written approval of the City Manager.

7.2.1 **Required Exhaustion of Accrued Leave:** In the event of an authorized absence due to illness, the employee must use all accrued sick, compensatory and vacation leave prior to receiving authorization for leave without pay. In the event of personal leaves not related to sickness, the employee must use all accrued compensatory and vacation leave prior to receiving authorization for leave without pay. However, employees in the classifications of Legislative Assistant and Assistant to the Mayor are not required to use all accrued compensatory and vacation leave prior to receiving authorization for leave without pay for the employee's respective appointing Councilmember or the Mayor. This subsection does not apply to parental leave or to the exhaustion of sick leave by employees in the classification of Deputy Fire Chief as referenced in Section 7.2.2 (Fire Chief and Deputy Fire Chief Use of Sick Leave), below.

7.2.2 **Fire Chief and Deputy Fire Chief Use of Sick Leave:** In the event of illness or injury of an employee in the classification of Fire Chief and Deputy Fire Chief requiring the use of sick leave, the employee has the option to notify the City in writing that he/she wishes to freeze the use of sick leave after thirty (30) days, prior to receiving authorization for leave without pay, in order to utilize the International Association of Fire Fighters sponsored Long Term Disability benefit.

7.2.3 **Grounds for Discharge:** Failure on the part of an employee to report to work promptly at the expiration of the authorized leave without pay will result in discipline up to and including termination.

### 7.3 Unauthorized Leave of Absence

All paid and unpaid leaves of absence must be approved in accordance with the applicable sections of this Manual. Any absence on the part of the employee who has failed to obtain such approval or failure of an employee to report for duty without appropriate authorization as required by each department will result in the employee being placed on unauthorized leave of absence without pay.

7.3.1 **Grounds for Discharge:** Unauthorized leave of absence without pay shall be cause for disciplinary action up to and including termination.

#### 7.4 Parental Leave

Any employee with one or more years of benefitted employment with the City of Berkeley shall be entitled to up to one year of parental leave upon the birth of a child or the adoption of a child who is five years or younger as provided in Administrative Regulation 2.4 (Family Care Leave).

#### 7.5 Family Care Leave

The City will fully comply with the requirements of the state and federal law regarding pregnancy disability leave and medical/family illness/child care leave where their provisions are more generous than those provided elsewhere in this Manual or Administrative Regulation 2.4 (Family Care Leave). Leaves under this Section 7.5 (Family Care Leave) and Section 7.4 (Parental Leave) and as provided in Administrative Regulation 2.4 may not be combined to yield a larger amount of leave than the state or federal maximums and may not be combined to exceed the maximum one year period of parental leave provided by the City of Berkeley.

#### 7.6 Military Leave

Employees will be granted a leave of absence without pay with appropriate seniority, pay, status and vacation as required by law for the purpose of fulfilling any required military obligation.

## ARTICLE 8 - EMPLOYEE FRINGE BENEFITS

### 8.1 Group Medical-Dental Insurance Benefits

Benefitted employees and their dependents may participate in the City's group medical and dental benefits, which are summarized in the Appendix.

8.1.1 **Part Time Employment:** All benefitted employees who work a minimum of twenty hours, but less than forty hours per week, qualify to receive prorated health and dental benefits and shall pay a pro rata portion of the health and dental insurance premiums. Full time career employees who accept part time employment in lieu of layoff shall continue to receive full health and dental benefits paid by the City.

8.1.2 **Medical Plan for Part-Time Employees:** Effective November 1, 2016, the City will pay 75% of the cost of the medical plan which is fully paid for full-time employees for those benefitted part-time employees who work twenty (20) to twenty-nine (29) hours per week. The City will pay 100% of the cost of the medical plan which is fully paid for benefitted full-time employees for those part-time employees who work thirty (30) or more hours per week.

8.1.3 **Medical Contribution Executive Managers:** Effective July 1, 2019, the City Manager, Deputy City Manager, and all department heads shall pay fifty dollars (\$50.00) per month via pre-tax payroll deduction toward their health premium, and the City will pay an amount equal to the balance of the Kaiser monthly premium rate for the employee's applicable single, two-party, or family employee category.

### 8.2 Life Insurance

The City provides basic group life insurance coverage by a carrier of the City's choice to all benefitted employees and pays the full amount of the life insurance coverage. The City also provides the option to benefitted employees to purchase additional coverage, at their own expense. A summary of the terms of the life insurance coverage is in the Appendix.

### 8.3 Hourly Rated Employees in Lieu of Benefits

Except for employees in the Aquatics Specialist II and Senior Aquatics Specialist classifications, the Salary Resolution shall provide that hourly-rated employees working in career benefitted classifications will receive an additional seven percent (7.0%) in lieu of benefits.

### 8.4 Public Employees Retirement System:

8.4.1 **Participation:** The City shall continue to participate in the Miscellaneous Employees Plan, the Safety Fire Plan and the Safety

Police Plan of the California Public Employees Retirement System ("CalPERS"). All benefitted employees shall participate in one of these plans.

8.4.2 **"Classic Employees" Definition:** Classic Employees are defined as current employees and future employees who do not qualify as "New Members" under the California Public Employees' Pension Reform Act of 2013 (PEPRA).

8.4.3 **CalPERS Retirement Formula for Miscellaneous Employees "New Members" as Defined under PEPRA:** Miscellaneous Employees "New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the 2% at age 62 retirement formula with the highest three (3) year average compensation as set forth in PEPRA.

8.4.4 **CalPERS Miscellaneous Employees Retirement Formula and Employer Paid Member Contribution for Classic Employees:** Effective January 1, 2003, the City amended its Miscellaneous Employees Plan contract with CalPERS to provide the 2.7% at age 55-retirement formula benefit improvement and the City's contribution to CalPERS on behalf of Miscellaneous employees increased from 7% to 8%. Effective July 3, 1994, contributions made pursuant to this Section shall be reported to CalPERS as "special compensation" as provided in Government Code Section 20636(c)(4) pursuant to Section 20691. Said contributions shall not apply in the case of temporary or provisional employees.

The contributions in Section 8.4.4 (CalPERS Miscellaneous Employees Retirement Formula and Employer Paid Member Contribution for Classic Employees) shall not be considered as a part of an employee's salary for the purpose of computing straight time earnings, compensation for overtime worked or for other differentials; nor shall such contributions be taken into account in determining the level of any other benefit which is a function of or percentage of salary.

The City will not treat these contributions as compensation subject to income tax withholding unless the Internal Revenue Service or Franchise Tax Board indicates that such contributions are taxable income subject to withholding. Each employee shall be solely and personally responsible for any federal, state or local tax liability of the employee that may arise out of the implementation of this Section or any penalty that may be imposed therefore.

8.4.5 **Miscellaneous Employees Classic Employee Pension Contribution through a 20516 Contract Amendment**

- 8.4.5.1 **June 4, 2017:** Effective June 4, 2017, Miscellaneous employees will contribute one percent (1%) toward the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allows such contributions via automatic payroll deduction on a pre-tax basis. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.
- 8.4.5.2 **December 31, 2017:** Effective December 31, 2017, Miscellaneous employees will contribute an additional seven percent (7%) towards the City's CalPERS employer share of pension through a 20516 CalPERS contract amendment that allows such contributions on a pre-tax basis, for a total of eight percent (8.0%), via automatic payroll deduction on a pre-tax basis. Such employee deductions by the City shall be used towards the City's CalPERS required contributions. The parties recognize that the Employer Paid Member Contributions (EPMC) shall remain in effect as long as the CalPERS amendment stays in effect.
- 8.4.5.3 If legislation is enacted requiring employers under the CalPERS retirement system to pay all of the employee's share of retirement, thus eliminating the Employer Paid Member Contribution, the City may convert the employee's contribution to the employer's share under this Section 20516 CalPERS contract amendment to the employee's share toward retirement and may continue to pay the 5.58% wage increase provided on December 31, 2017 associated with the CalPERS swap for Miscellaneous Classic Employees.

#### 8.4.6 **Miscellaneous New Members' Pension Contribution**

- 8.4.6.1 Miscellaneous New Members as defined in the California Public Employees' Pension Reform Act of 2013 (PEPRA), shall continue to pay 50% of the Normal Cost required under PEPRA.
- 8.4.6.2 **June 4, 2017:** Effective June 4, 2017, in addition to the contribution in Section 8.4.6.1, Miscellaneous New Members shall contribute one percent (1.0%) toward the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allow such contributions as pre-tax via automatic payroll deduction. Such employee deductions by the City shall be used toward the City's CalPERS required contributions.
- 8.4.6.3 **December 31, 2017:** Effective December 31, 2017, in addition to the contributions in Sections 8.4.6.1 and 8.4.6.2 above,

Miscellaneous New Members shall contribute an additional seven percent (7.0%) towards the City's CalPERS employer share of pension through a 20516 CalPERS contract amendment that allows such contributions as pre-tax, for a total of eight percent (8.0%) via automatic payroll deduction. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.

8.4.6.4 Miscellaneous New Member contributions in Sections 8.4.6.2 and 8.4.6.3 to the CalPERS 20516 employee contributions towards the employer rate are in addition to the required 50% of the normal share of cost of "New Members" required pursuant to PEPRA. Benefits and made in consideration of additional salary increases effective June 4, 2017 and December 31, 2017 and set forth in the Salary Resolution (a total of 5.58% in exchange for employees paying an additional eight percent (8.0%) towards CalPERS pension costs).

8.4.7 **Public Safety CalPERS Retirement Formula for "New Members" as Defined Under PEPRA:** Public Safety "New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the 2.7% at age 57 retirement formula with the highest three (3) year average compensation as set forth in PEPRA.

8.4.8 **Public Safety Classic Employees CalPERS Retirement Formula:** The City agrees to provide the 3% at age 50-retirement formula benefit improvement (December 22, 2000 for Classic Fire Safety; and July 7, 2002 for Classic Police Safety hired prior to December 28, 2011).

For Classic Police Safety Employees hired on or after December 28, 2011, the City provides the 3% at age 55-retirement formula benefit.

8.4.9 **Public Safety Fire Classic Employees' CalPERS Pension Contribution:** On July 1, 1994, the City increased the base salary of Classic Employees participating in the Safety Fire Plan, in the amount of nine percent (9%). Employees then assumed, and shall continue to assume responsibility for payment of the normal employee retirement contribution to CalPERS. The City shall designate such payments as an Employer Pickup as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code. The employee contributions shall be made through automatic payroll deduction.

**Cost Share:** Effective November 8, 2015 (the first full pay period after Council approval of this Unrepresented Employee Manual), Public Safety Fire Classic Employees shall contribute two percent (2%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis.

- 8.4.10 **Public Safety Police Classic Employees' CalPERS Pension Contribution:** On July 1, 1994, the City increased the base salary of Classic Employees participating in the Safety Police Plan, in the amount of nine percent (9%). Employees then assumed, and shall continue to assume responsibility for payment of the normal employee retirement contribution to CalPERS. The City shall designate such payments as an Employer Pickup as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code. The employee contributions shall be made through automatic payroll deduction.

Effective January 3, 2016, Police Public Safety Classic Employees shall contribute one percent (1%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis. And, effective July 3, 2016, Police Public Safety Classic employees shall contribute an additional one percent (1%), for a total of two percent (2%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis.

- 8.4.11 **Public Safety Fire New Members CalPERS Pension Contribution:** Public Safety Fire New Members hired on or after January 1, 2013 shall pay fifty percent (50%) of the normal share of cost as required pursuant to PEPRA.

**Cost Share:** Effective November 8, 2015 (the first full pay period after Council approval of this Unrepresented Employee Manual), Fire New Members shall also contribute an additional two percent (2%) of pensionable compensation, in addition to the PEPRA mandated 50% of the normal share of cost, toward the City's CalPERS employer contribution rate through automatic payroll deduction on a pre-tax basis

- 8.4.12 **Public Safety Police New Members CalPERS Pension Contribution:** Public Safety Police New Members New Members hired on or after January 1, 2013 shall pay fifty percent (50%) of the normal share of cost required by PEPRA.

**Cost Share:** Effective January 3, 2016, Public Safety Police New Members shall also contribute one percent (1%) of pensionable compensation (in addition to contributing 50% of the normal share of cost) towards the City's CalPERS employer contribution rate through automatic payroll deduction on a pre-tax basis. And, effective July 3, 2016, Police Public Safety New Members shall contribute an additional one percent (1%), for a total of two percent (2%), in addition to the PEPRA mandated 50% of the normal share of cost, toward the City's CalPERS employer contribution rate through automatic payroll deduction on a pre-tax basis.



- 8.4.13 **CalPERS Options Available to Berkeley Employees:** The City's contract with CalPERS includes the following optional benefits:
- a) Classic Employees Only - One-Year Final Compensation as provided in Section 20042 (July 9, 1978 for Miscellaneous; July 22, 1976 for Fire and Police).
  - b) Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (December 16, 1973 for Miscellaneous; March 1, 1973 for Fire and Police).
  - c) Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).
  - d) Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988).
  - e) 1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (December 16, 1973 for Miscellaneous; March 1, 1973 for Fire and Police).
  - f) Third Level of 1959 Survivor Benefits as provided in Section 21573 (November 28, 1996).
  - g) Fourth Level of 1959 Survivor Benefits as provided in Section 21574 for Police Safety only (October 15, 1998).
  - h) Military Service Credit as Public Service as provided in Section 21024 (April 9, 1999 for Miscellaneous; July 14, 2000 for Fire; November 6, 1998 for Police).
  - i) Public Service Credit for Peace Corps or America Corps: Vista Service as provided in Section 21023.5. (April 14, 2000).
  - j) Classic Fire - 3% @ 50 for Local Safety Members as provided in Section 21362.2 for Fire members only, (December 22, 2000); and for Police members only (July 7, 2002.).
  - k) Classic Police Hired Prior to December 28, 2012: 3% @ 50 for Local Safety Classic Members as provided in Section 21362.2 for Police members only (July 7, 2002).

- l) Classic Police: 3% @ 55 for Local Safety Classic Members as provided in Section 21363.1 for Police members only (December 28, 2012).
- m) Classic Miscellaneous: 2.7% at age 55 for miscellaneous members as provided in Section 21354.2 on January 5, 2003.
- n) New Members Miscellaneous: 2% at age 62 for Miscellaneous New Members as defined by PEPRA on January 1, 2013.
- o) New Members Police and Fire: 2.7% @ 57 for Local Safety New Members as defined by PEPRA (January 1, 2013).
- p) Indexed Level of 1959 Survivor Benefits as provided in Section 21574.5 for Fire Safety only (June 13, 2003).

8.4.14 **Unused Sick Leave Conversion:** The conversion of unused sick leave to CalPERS Retirement Credit for Unused Sick Leave under Government Section 20965 shall be made available to qualified retiring employees. This allows employees to convert unused accumulated sick leave at time of retirement, for which the employee receives no compensation, to additional service credit at the rate of 0.004 year of service credit for each day. This credit applies to qualified employees whose effective date of retirement is within four months of separation from employment. The CalPERS sick leave conversion applies to accumulated sick leave, exclusive of the amount of accumulated sick leave paid out to the employee pursuant to Section 4.11 (Accrued Sick Leave Cancellation Upon Termination), of this Manual.

8.4.15 **Retirement Benefit Allowance:** CalPERS retirement benefits are calculated on a formula based on the participating employee's years of service, age at retirement, and percentage of highest year compensation. For employees participating in the Local Miscellaneous Employees Plan, the percentage is 2.7% at age 55 effective January 5, 2003. For Classic Employees participating in the Fire Safety Employees Plan, the percentage is three percent (3%) at age 50 effective December 22, 2000. For Classic Employees participating in the Police Safety Employees Plan, the percentage is three percent (3%) at age 50 effective July 7, 2002. For Classic Employees participating in the Police Safety Employee Plan effective December 28, 2012, the percentage is three percent (3%) at age 55.

## 8.5 Supplementary Retirement and Income Plans

In lieu of participating in the Federal Social Security Program, the City provides a supplemental retirement and income plan to most benefitted employees. There are three supplementary retirement and income plans: Supplementary Retirement and Income Plans I, II and III ("SRIP I, II and III"). The City's contributions to these plans on behalf of participating employees is not subject to income tax until it is paid out to the employees upon retirement or termination, or to the employee's beneficiary in the event of the employee's death.

8.5.1 **SRIP I:** In SRIP I, the City contributes 5.7% of the participating employee's salary (up to a maximum annual salary of \$32,400) into an investment account and 1% into a long term permanent disability plan. SRIP I was closed to new participants on July 22, 1988.

8.5.2 **SRIP II:** In SRIP II, the City contributes 6.7% of the participating employee's salary (up to a maximum annual salary of \$32,400) into an investment account and pays into a disability insurance benefit plan on the employee's behalf; and employees may also borrow up to 50% of the balance in their SRIP II investment accounts, subject to certain limitations. All employees, including the Fire Chief, hired (or who are subsequently enrolled by resolution of the City Council) after July 22, 1988 are automatically enrolled in SRIP II.

The Deputy Fire Chief is enrolled, effective July 1, 1993.

8.5.3 **SRIP III:** For eligible Police Safety employees, the City contributes 2% of the employee's salary (up to a maximum annual salary of \$32,400) into the investment account, SRIP III.

## 8.6 Deferred Compensation

Benefitted City employees are eligible to participate in the City's Deferred Compensation Plan through voluntary payroll deductions from the employee's salary. The Deferred Compensation Plan allows employees to defer part of their salaries, in accordance with Internal Revenue Service limits, to a separate fund, which is not subject to income tax until it is paid out to the employee upon retirement or termination, or to the employee's beneficiary in the event of the employee's death.

## 8.7 PARS

At-will employees who are not eligible to receive fringe benefits under this chapter are automatically enrolled in the Public Agency Retirement System ("PARS"). Each pay period, such employee shall contribute 3.75% of his or her salary into the employee's PARS account on a tax deferred basis and the City shall contribute a matching amount equaling 3.75 % of the employee's salary. The employee's PARS account balance will be distributed to the employee upon retirement or termination, or to the employee's beneficiary in the event of the employee's death.

### **8.8 Public Safety Uniform Allowance**

Due to the requirement for sworn fire and police department management personnel to wear standard and dress uniforms in the performance of their duties, the City Manager may provide for the payment of uniform allowance, in keeping with the allowance provided to other fire and police personnel, as shown in the Appendix. The uniform allowance is intended to cover uniform expenses incurred during active service prior to the payment and shall be paid semi-annually, in installments of equal amounts.

### **8.9 Supplemental Retirement Plan and Trust Agreement**

Effective July 1, 2001, the City adopted a Supplemental Retirement Plan and Trust Agreement to provide supplemental retirement income and other benefits for eligible unrepresented career benefited and regular at-will employees through the liquidation of termination pay. Termination pay means pay due to an eligible unrepresented career benefited and regular at-will employee from the City on account of termination of his or her employment, but only including the commuted value of the following such accumulated pay: vacation, sick leave, sick leave bonus, compensatory time and floating holidays. The Supplemental Retirement Plan includes both mandatory contributions of termination pay and voluntary contributions for employees who provide the City with an irrevocable payroll deduction authorization at least 90 days in advance of the date of termination.

## **ARTICLE 9 - EMPLOYMENT AT-WILL**

### **9.1 Employment At-Will**

An employee who is employed in a position that is excluded from the career service by Berkeley Municipal Code Section 4.04.120 of the Personnel Ordinance is employed by the City in an "at-will" status. This means that both the at-will employee and the City have the right to terminate employment at any time, with or without advance notice, and with or without cause. No employee or officer of the City of Berkeley has the authority to alter the employee's at-will status or to enter into an oral or written agreement for employment for a specified period of time, or to make any promises, assurances or agreements contrary to this the provisions of this Section.

### **9.2 No Right to Appeal Discharge**

An at-will employee who is discharged has no right of appeal or hearing in any manner provided by this Manual.

### **9.3 Benefits**

Those offices, positions and employments named in the Berkeley Municipal Code, Sections 4.04.120 (A), (B) and (C) who regularly work twenty or more hours per week are classified as regular at-will employees and shall be entitled to those benefits as specified for benefitted employees by this. A list of regular at-will positions entitled to receive such benefits is in the Appendix.

All other offices, positions and employments named in the Berkeley Municipal Code, Section 4.04.120, are not eligible for any benefits provided under these Rules, except those expressly specified for temporary employees, such as the Earned Leave benefit or those required by State or Federal law such as Family Care Leave and enrollment in the City's PARS retirement plan, as provided in this Manual.

### **9.4 Standards of Conduct**

At-will employees are subject to the same standards of conduct that prevail over employees in the career service. Any evaluations, warnings or disciplinary action provided to at-will employees regarding their conduct or job performance does not create any obligation or duty on the City's part to provide a warning or evaluation or corrective progressive discipline prior to discharge and in no way negates or otherwise abrogates the City's right to discharge at-will employees for any reason without notice at any time during their employment and without right of appeal.

### **9.5 Transfer or Appointment of Career Employee to an At-Will Position**

Any employee in the career service who accepts a transfer or appointment to an at-will position shall be reinstated to the career position from which he or she was transferred or appointed if within six months after such transfer or appointment, action is taken to dismiss the employee, unless charges are filed and the employee

is discharged in accordance with these Rules. After expiration of the six month period, the employee is excluded from the career service and from any retreat rights to former career positions and is subject to termination at any time, with or without advance notice, with or without cause, and without the right of appeal.

## **ARTICLE 10 - LAYOFF POLICY AND PROCEDURE**

### **10.1 Statement of Intent**

This layoff policy is intended to provide the maximum employment protection to employees in the career service and to minimize the impact on the City's affirmative action accomplishments should a layoff become necessary.

### **10.2 Announcement of Layoff**

The City Council, City Manager and department heads shall make every reasonable effort to manage and budget the City's resources effectively, and to plan for the delivery of City services in a manner which will avoid the necessity to lay off career City employees. A reduction in the workforce for more than thirty calendar days is necessitated by, but not limited to, the following a material change in duties and organization, adverse working conditions, return of employee from leave of absence, or shortage of work or fund. In the event of a layoff, the City Manager shall notify the Director of Human Resources of the intended action and the reason for the layoff.

### **10.3 Vacancy Freeze**

Immediately following a decision which may involve the potential layoff of career City employees, the City Manager shall freeze all current City vacancies in the career service in similar and related classes to those likely to be targeted for layoff. The City Manager shall notify the department heads of a freeze of vacancies in their departments and shall require that requisitions continue to be submitted for any budgeted positions which the department head intends to fill and for which funding is available.

### **10.4 Seniority Service Date**

All service in the employ of the City shall be counted toward the establishment of an employee's Seniority Service Date, including permanent, probationary, provisional, temporary, part time (on a prorated basis), seasonal, regular at-will employment, and approved military and parental leaves of absence. All other leaves without pay, including time off as a result of formal disciplinary action will be subtracted from the Seniority Service Date.

### **10.5 Establishment of Seniority Lists**

Layoffs shall be made according to City-wide class Seniority Lists which the Human Resources Department will immediately establish for probationary and permanent employees in each class targeted for layoff. The names of all City employees holding permanent and probationary appointments in a given class will be listed on the appropriate list in descending order by Seniority Service Date.

Probationary or permanent employees temporarily acting out of class and holding a provisional appointment in another class will be listed on the Seniority List of the class in which they hold permanent or probationary status.

## 10.6 Order of Layoff

Employees within a specific class shall be laid off on the basis of their Seniority Service Date; i.e., employees with the least amount of total service shall be laid off first. All emergency, temporary and provisional employees working in classes similar to those identified for layoff must be terminated prior to the layoff of probationary and permanent employees. Probationary employees will be laid off prior to permanent employees for a specific class.

10.6.1 **Tie:** If two or more employees on a Seniority List have an identical Seniority Service Date, the tie shall be broken in the following order: (1) time in class--the employee having least time in the class shall be laid off first, and (2) by lot.

10.6.2 **Administrative & Fiscal Services Manager Position in the Berkeley Public Library:** This is a specialty designated position within the Administrative & Fiscal Services Manager classification, and will be treated as a separate classification for the purpose of administering the Layoff Policy and Procedure.

## 10.7 Notification

Permanent and probationary employees should be notified individually, in writing, of pending layoffs as soon as possible, with no less than thirty calendar days notification if targeted for termination or retreat to a lower class.

All other employees to be laid off shall be given, whenever possible, at least a fourteen (14) calendar day prior notice.

## 10.8 Employee Retreat Rights

A probationary or permanent employee affected by layoff shall have the right to displace an employee in a lower level class in which the affected employee once had permanent status or in a subsequently created intermediate level career class which provides normal progression through the class series. Retreat rights shall also extend to employees who have not previously been promoted through a class but for whom the class is a natural progression or beginning in the class series. Retreat rights into a lower class will be granted in order of the highest seniority date on the Seniority List for employees in that class.

10.8.1 **Qualified to Retreat into More than One Classification:** When an employee is qualified to retreat into more than one class, the options shall be discussed with the employee and due consideration given to the employee's preferences. However, it is the prerogative of the City Manager to determine the final placement offer to the employee

10.8.2 **Salary Step:** Employees retreating to a lower class or being flexibly placed in a similar class shall be placed at the salary step representing



the least loss of pay. In no case shall the salary be increased above that received in the class from which the employee was laid off.

- 10.8.3 **Reinstatement after Transfer:** An employee whose position is abolished and is transferred in lieu of layoff shall have the right to return to the position if it is restored within one year of the date of the transfer.

## 10.9 Flexible Placement Program

After all frozen vacant positions have been filled by employees entitled to retreat rights under Section 10.8 (Employee Retreat Rights) of this chapter, the Human Resources Department will review and identify the remaining frozen vacant classes into which career employees targeted for layoff who have not retreated into a lower class may be placed on the basis of total experience and education.

- 10.9.1 **Failure to Meet Minimum Requirements:** Where the targeted employee does not meet the minimum qualifications of a frozen vacant position, the City Manager has the discretion to either waive the minimum qualifications and/or substitute the targeted employee's job-related experience and education for the minimum qualifications, but under no circumstances is the City Manager required to do so. Where the employee does not meet the minimum qualifications, flexible placement can occur only if the City Manager determines that management and supervisory personnel are able to provide adequate supervised on-the-job training to the employee to meet the requirements of the job. The employee must successfully complete the training within six months as determined by the Director of Human Resources or the employee shall be again subject to the layoff procedures.
- 10.9.2 **Salary Range:** Assignments under the Flexible Placement Program shall be limited to positions in the same or lesser salary range as the classification from which the employee is to be laid off.
- 10.9.3 **Order of Assignment:** Offers to positions under the Flexible Placement Program shall be made according to the employee's standing on the Seniority List.

## 10.10 Failure to Accept Offer under Layoff

Failure on the part of an employee to accept a written bona fide offer to retreat to a lower class or be flexibly placed in an alternative job within ten calendar days after the offer is made shall result in forfeiture of any further right to employment retention. Acceptance of a reassignment to a lower class does not remove the employee's right of appeal under Section 10.12 (Appeal Procedures) nor does acceptance of an alternative job under the Flexible Placement Program jeopardize an employee's standing on the re-employment lists as further provided in this Section 10.10 (Failure to Accept Offer under Layoff).

### 10.11 Re-Employment List

The names of probationary and permanent employees laid off in accordance with this chapter shall be entered on a re-employment list for both those classes from which they were separated as well as other classes to which they have retreat rights.

- 10.11.1 **Duration of List:** Re-employment lists for laid off employees who are separated from City service shall remain in effect for three years. Re-employment lists for laid off employees who are demoted shall remain in effect indefinitely.
- 10.11.2 **Use of List:** Re-employment lists shall be used by each department when a vacancy arises in the same or lower class of position before certification is made from an eligible list.
- 10.11.3 **Order of Appointment:** Employees on the re-employment list shall be certified and appointed to a vacancy in the appropriate class according to their standing on the Seniority List.
- 10.11.4 **Failure to Appoint from Re-Employment List:** If a vacancy is filled from an eligible list in a class for which a re-employment list exists which is a violation of this Section, the employee on the re-employment list who should have been appointed shall be appointed to the vacancy and paid retroactively from the date the vacancy occurred.
- 10.11.5 **Failure to Accept Bona Fide Offer:** Failure on the part of the employee on the re-employment list to accept a bona fide written offer of re-employment within fifteen calendar days will result in removal of the employee's name from the re-employment list from which the offer was made. Failure to accept an offer of re-employment to the class with the highest salary range for which the employee is eligible for re-employment will result in automatic removal of the employee's name from all re-employment lists. The employee may, however, accept or decline temporary re-employment without jeopardizing his or her standing the re-employment list for the class from which he or she was originally terminated.
- 10.11.6 **Salary Step:** Upon reappointment to the class from which the employee was originally separated or demoted, the employee shall be placed at the salary step that the employee held at the time of the separation or demotion.
- 10.11.7 **Reinstatement List:** Any former employee on a re-employment list shall be included as an eligible on the reinstatement list for a specific class at or below the class from which layoff occurred, upon written request by the employee for reinstatement which is submitted with a current, completed City of Berkeley application and upon meeting the

minimum qualifications of the specific class unless waived by the City Manager as provided under flexible placement.

### **10.12 Appeal Procedures**

The decision of the City Manager to implement a layoff is not appealable. Any unrepresented career employee who believes that the layoff procedure, as defined herein, has been improperly administered as to the employee may appeal the action under the Complaints, Appeals and Hearing Procedure of this Manual. Employees are entitled to review all records pertaining to their class and their rights under the provisions of the layoff policy.

### **10.13 Audit**

In the event of a dispute between an employee and the City over the application of the re-employment list and if either party so requests, the City Manager's Office shall order an audit by an outside auditor of all vacant positions filled in each department to determine whether vacancies were filled in compliance with the procedures for appointments from re-employment lists set forth in Section 10.11 (Re-Employment List) of this Manual. In the event vacancies for which re-employment lists were in existence remain unfilled, the auditor shall offer an opinion as to whether or not the reasons for leaving the positions vacant appear to be legitimate. A report of the audit shall be transmitted to the City Manager and the City Council.

## **ARTICLE 11 - DISCIPLINARY ACTION**

### **11.1 Policy**

Prior to the suspension, disciplinary demotion or discharge of an employee in the career service for disciplinary purposes, the procedure set forth in this Article 11 (Disciplinary Action) shall be complied with provided, however, that only those employees in the career service who are not represented by a labor organization shall be entitled to the notice, rights and procedures provided under Section 11.3 (Disciplinary Actions).

### **11.2 Final Decision Maker for Disciplinary Action**

For purposes of this chapter, the City Manager is the final decision maker for City of Berkeley employees. The Rent Stabilization Board is the final decision maker for Rent Stabilization Program employees. The Library Board of Trustees is the final decision maker for Library employees.

### **11.3 Disciplinary Actions**

The department head shall initiate disciplinary procedures, as set forth here. The department head may suspend a subordinate employee for not more than three working days at any one time. For suspensions of more than three days, disciplinary demotions and discharge, the department head shall make a recommendation to the final decision-maker. The final decision-maker may suspend an employee from a position at any time for cause. Suspension without pay shall not exceed thirty working days, nor shall any employee be penalized by suspension for more than thirty working days in any continuous twelve month period. However, FLSA exempt employees shall not be suspended in less than regular workweek increments except for safety or security violations. A "regular workweek" is defined elsewhere by this Manual.

### **11.4 Written Reprimands for Fire Safety Employees**

Consistent with the Firefighter Bill of Rights Act, the Deputy Fire Chief receiving a written reprimand shall have the right to a non-evidentiary administrative appeal to the Fire Chief or Fire Chief's designee. The employee must request an administrative appeal in writing to the Fire Chief within ten (10) working days of receipt of the written reprimand. Failure to do so shall be deemed a waiver of the employee's right to appeal. The Fire Chief or Fire Chief's designee shall have discretion regarding how the appeal meeting is conducted, including whether and the extent to which witnesses other than the employee and employee's representative are required and may participate. The Fire Chief or Fire Chief's designee shall notify the employee of his or her decision within ten (10) working days of the appeal meeting. An employee and the Association have no further right to appeal or grieve a written reprimand beyond the administrative appeal described in this paragraph.

### **11.5 Written Reprimands for Non- Safety Employees**

In the event that an employee receives a written reprimand, the employee may write a rebuttal within thirty (30) calendar days of receiving the written reprimand and such rebuttal will be placed in the Personnel File along with the written reprimand. Employees have not right to appeal or grieve a written reprimand.

## ARTICLE 12 - COMPLAINTS, APPEALS AND HEARINGS

### 12.1 Policy

The procedure for filing complaints and appeals by employees set forth under this Article 12 shall be complied with provided, however, that only those employees in the career service who are not represented by a labor organization shall be entitled to file complaints with the City and appeals to the Personnel Board pursuant to the provisions of this Manual.

### 12.2 Final Decision Maker for Purposes of this Article

For purposes of this chapter, the City Manager is the final decision maker for City of Berkeley employees. The Rent Stabilization Board is the final decision maker for Rent Stabilization Program employees. The Library Board of Trustees is the final decision maker for Library employees.

### 12.3 Complaints

Disciplinary action shall be taken in accordance with Article 11 (Disciplinary Action) of this Manual. All other complaints by employees, except complaints about compensation, which allege a violation of the Personnel Ordinance or this Manual shall be filed through proper channels, commencing with the department head, and then to the final decision maker.

**12.3.1 Compensation Complaints:** All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Director of Human Resources. The Director of Human Resources shall respond in writing within thirty (30) working days. If the complaint has not been resolved within thirty (30) working days of filing with the Director of Human Resources, the complaint may be moved to the final decision maker. Only complaints, which allege that employees are not being compensated in accordance with the policies, rules and resolutions of the City Council, shall be considered as complaints under this Section. No compensation adjustment shall be retroactive for more than thirty calendar days from the date upon which the complaint was filed or thirty calendar days from the date when an employee may reasonably be expected to have learned of the claimed violation.

**Appeal:** If the grievant is not satisfied with the decision of the Director of Human Resources or his or her designee, the grievant may move the complaint to the final decision maker within ten (10) days of receipt of the decision rendered under Section 12.3.1 above. Failure by the employee to file an appeal within the specified time limits specified constitutes a dropping of the complaint. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.

12.3.2 **Discrimination Complaints:** An employee may file a complaint concerning a violation of the "FAIR EMPLOYMENT" provision specified by the rules of this Manual, and the complaint shall be processed in accordance with the EEO Complaint Investigation and Resolution Procedure of the City of Berkeley EEO/Affirmative Action Program, as established in Resolution No. 54,926-N.S., as amended from time to time.

## 12.4 Right of Appeal

An aggrieved employee shall have the right to appeal the decision of the final decision-maker regarding the aggrieved employee's disciplinary dismissal, demotion, suspension or complaint to the Personnel Board except in instances where the right to appeal is prohibited by the Personnel Ordinance or the provisions of this Manual.

## 12.5 Method of Appeal

Appeals to the Personnel Board shall be in writing, signed by the aggrieved employee and filed with the Director of Human Resources within ten calendar days after the action is imposed. The appeal shall be a written statement, addressed to the Chair of the Personnel Board, explaining the matter appealed from and setting forth a statement of the action desired by the aggrieved employee, supported by his or her reasons. The Director of Human Resources shall, within ten calendar days after receipt of the appeal, inform the Chair of the Personnel Board, the City Manager and the affected department head of the filing and contents of the appeal with the Board.

## 12.6 Investigations and Hearings

Upon receipt of any appeal, the Personnel Board shall make such investigation, as it may deem necessary.

An aggrieved employee who has been demoted for a disciplinary purpose, suspended or discharged is entitled to a hearing upon appeal before the Personnel Board. As to all other appeals, the Personnel Board may grant a hearing or decide the appeal without a hearing as it may deem warranted.

## 12.7 Hearing Procedures

In cases where the employee is entitled to a hearing as a matter of right and in other cases whenever the Board may deem it advisable to hold a hearing, these procedures shall apply.

12.7.1 **Notice:** The Personnel Board shall schedule a hearing on the appeal within forty-five calendar days from the date of the filing of an appeal. The Director of Human Resources shall notify all interested parties of the date, time and place of the hearing at such places as the Personnel Board shall prescribe.

12.7.2 **Hearing Procedure:** The aggrieved employee shall appear personally unless physically unable to do so before the Personnel Board at the time and place of the hearing. The aggrieved employee may be represented by any person or attorney as may be selected and may at the hearing produce relevant oral or documentary evidence. The party who has the burden of proof shall state the case first after which opposition matter may be presented. Rebuttal matter that is not repetitive may be allowed at the discretion of the Personnel Board. Cross-examination of witnesses shall be permitted. Hearings need not be conducted according to technical rules relating to evidence and witnesses, but shall be conducted according to any rules of applicable procedures. Hearings shall be closed unless otherwise required by the Ralph M. Brown Act, Government Code Section 54950, as amended from time to time, or any other applicable law.

## 12.8 Findings and Recommendations

The Personnel Board shall, within thirty calendar days after the conclusion of the hearing, or if no hearing was conducted, within thirty calendar days of its decision, certify its findings and recommendation(s) in writing to the aggrieved employee and to the final decision-maker. The final decision maker shall review the findings and recommendation(s) of the Personnel Board and may then affirm, reject or modify the Personnel Board's findings and recommendation(s) as, in his or her judgment, seems warranted, and the final decision maker's decision shall be final. Any member of the Personnel Board may submit a minority or supplemental report which shall be attached to the findings and recommendation(s) of the Board.



## APPENDIX

This Appendix contains detailed information regarding benefits and compensation which covers unrepresented benefitted employees. It is appended to the Unrepresented Employee Manual but the contents are not part of the resolution establishing the Unrepresented Employee Manual and may be changed to reflect changes in benefit details, as approved by the City Council by resolution.

### 13.1 Administrative Leave

Employees who are in career, benefitted, or at-will benefitted classifications which are FLSA Exempt may be approved by the City Manager to receive up to an additional 50 hours of compensated administrative leave beginning on January 1, 2016, and at the beginning of each calendar year thereafter, or prorated during the course of the year when employed less than a full year. This administrative leave is granted to employees whose job responsibilities cause them to work numerous hours in excess of the normal City workweek. The City Manager has the authority to rescind administrative leave in those instances of abuse or misuse of the intent of this provision.

Administrative leave taken must be approved in advance by the department head and posted to the employee's timecard. Unused administrative leave may be carried over to the next calendar year, providing the total of excess vacation and unused administrative leave do not exceed 320 hours. Otherwise, the excess administrative leave must be taken within the calendar year in which it was earned or it may be forfeited. Upon termination or retirement, no monetary award will be authorized for unused accumulated administrative leave.

**13.1.1 Prorated Administrative Leave:** A benefitted employee who is otherwise eligible for overtime and who is on a temporary or provisional benefitted appointment in an FLSA Exempt classification for a period of one month or longer, and is ineligible to earn overtime, shall be entitled to prorated Administrative leave for the duration of the temporary or provisional appointment. Any unused administrative leave at the end of the temporary or provisional appointment will roll into vacation, provided the total of accrued and unused vacation and accrued administrative leave do not exceed 320 hours.

### 13.2 Automobile Allowance

The City reimbursement rate for the use of a private automobile on authorized City business will be equal to the amount established by the Internal Revenue Service.

### 13.3 Bilingual Premium Pay

**13.3.1 As Part of Regular Job Assignment:** An employee who is required as an essential part of his or her job to provide non-English language services, including Braille and sign language, routinely and consistently as part of his or her regular job assignment as determined by the City

will receive a Bilingual Premium Pay Differential of 5%. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of 5% will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

- 13.3.2 **Occasional Assignments:** An employee assigned occasionally to provide non-English language services, including Braille and sign language, when either a) assigned by management, or b) at the request of the employee with the supervisor's agreement, or, c) after a job audit will receive a Bilingual Premium Pay Differential of 2%. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of 2% will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.
- 13.3.3 **Competency and Management Rights:** The bilingual premium will not be applicable under any circumstances except to an employee who possesses second language competency. Management reserves the right to test for second language appropriate competency prior to a Bilingual Premium Pay Differential.
- 13.3.4 **Temporary Designation:** The City may designate an employee to receive either the 5% or 2% Bilingual Premium Pay Differential on a temporary basis for a specified period provided the employee met the requirements contained in the first or second paragraph of this Section.

#### 13.4 Cash-In-Lieu Payments

For those employees who are able to show proof of ongoing alternate medical coverage, the City will compensate employees \$560.00 per month, prorated for less than full-time employees. This benefit shall be frozen at this amount.

#### 13.5 Dependent Care

Employees shall be allowed to designate a specific amount of salary, consistent with State and Federal tax laws, to be redirected to pay for dependent care costs through pre-tax salary deductions. The amount of funds designated should be considered carefully, because under the current tax code, any unexpended funds which have not been spent for the specific purpose of paid dependent care and remain in the employee's account at the end of the year, will be forfeited.

### 13.6 Life Insurance

The City shall provide paid group life insurance, by a carrier of the City's choice, in the amount of \$25,000 which shall include a standard accidental death and dismemberment provision of a like amount. Employees in the classification of Police Chief and Fire Chief shall be provided with life insurance in the amount of \$100,000, which shall include a standard accidental death and dismemberment provision of a like amount. Life insurance shall become effective the first day of the calendar month following appointment, and shall continue until the last day of the calendar month in a pay status.

In addition, all unrepresented benefitted employees may purchase additional coverage, in increments of \$10,000, up to a maximum of \$300,000, at the rate offered by the City's insurance carrier, subject to any rules and restrictions of the carrier, including but not limited to any medical exam that might be required by the insurance carrier.

### 13.7 Medical/Dental Insurance for Employees/Dependents

Except as provided in Section 8.1 (Group Medical-Dental Insurance Benefits), the City offers fully paid and/ or partially paid health insurance plans and a fully paid dental plan for the employee and eligible dependents, including a domestic partner. The dental plan currently provides orthodontic coverage for the employee's dependent children through age 26 and 90% of the Bay Area Usual, Customary and Reasonable charges. Effective January 1, 2007, the maximum annual coverage will be \$2,000 annual coverage, and \$2,000 lifetime orthodontia limit. Any employee, who is required to partially pay premiums, shall be allowed to make these payments with pre-tax deductions. The medical and dental benefit coverage for dependent children extends to the date of their 26<sup>th</sup> birthday, providing they meet the Internal Revenue Service definition of "dependent". If an employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for medical benefits and/or dental benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

Medical and dental benefits shall begin the first day of the calendar month following the date of hire, and end the last day of the month an employee is in pay status, except in the case of parental and Family and Medical Leave Act, as described in the Administrative Regulation No. 2.4. Maximum annual coverage amounts are found in the Employee Benefits Handbook.

- 13.7.1 **Dental Coverage for Fire Management:** Effective January 15, 2015, employees in the classification of Fire Chief and Deputy Fire Chief, shall be provided with dental insurance with an annual maximum coverage of \$3,000 and lifetime orthodontia limit of \$3,000.

**13.8 Retiree Medical Plan**

The terms and conditions of this benefit shall be set forth in a separate document which shall contain a full plan description and shall control the administration of the retiree medical plan.

**13.9 Amendment of Retiree Health Premium Assistance Plans I and II, effective June 28, 1998, Restated and Amended effective March 22, 2011**

Employees who retire on or after June 21, 2015, shall be permitted, at their discretion, to enroll in non-City sponsored health plans. After Council approval of this Unrepresented Employee Manual, the City shall amend the Retiree Health Premium Assistance Plans I and II as soon as practicable to allow enrollment in non-City sponsored health plans. In the event a retiree elects to enroll in a non-City sponsored health plan, the City shall make medical insurance premium payments directly to the health insurance provider in an amount equal to what the City would contribute to the City sponsored health plan. Retiree shall be solely responsible for all aspects of the requirements to enroll in a non-City sponsored health plan and maintain eligibility for such a plan; the City's sole obligation is to pay the medical insurance premium contribution required under this section, as directed by the retiree to a non-City sponsored health plan. The City shall not be responsible for any excess cost differentials associated with the direct payment of premiums to non-City sponsored plans. The City will only make payments through its third party administrator to provide medical insurance premium payments for an individual plan and will not make payments for a group plan. The retiree and/or surviving spouse or domestic partner that enroll in non-City sponsored health plans shall be solely responsible for paying the administrative set up fee, the monthly administrative fee, and/or any other fees established by the third party administrator, and said fees will be deducted directly from the retiree's monthly contribution. No cash payments will be paid directly to the retiree or the retiree's spouse/domestic partner. There shall be no cash in lieu payments made under this benefit.

The City will also amend the Retiree Premium Assistance Plans I and II to allow eligible retirees who retired prior to June 21, 2015 to enroll in a non-City sponsored health plan.

**13.10 Retiree Medical for Unrepresented Benefitted Employees**

Effective June 28, 1998, the City will provide the retiree medical coverage set forth below for all unrepresented benefitted employees, except employees in the classifications of Police Chief, Fire Chief, and Deputy Fire Chief (see separate plans below). An employee's entitlement to any and all benefits provided by the City under this retiree medical plan is subject to the funding limitations set forth in the plan document.

- 13.10.1 Eligibility and Percentage of City Contribution:** An employee is eligible for the retiree health insurance coverage as set forth in Sections 13.10.3 (Pre Age 65 Retiree Health Insurance) and 13.10.4 (Retiree

Benefits for Employees Age 65 or Over) below if he or she meets all the following criteria:

- a. retires from career service on or after June 28, 1998;
- b. is vested with CalPERS;
- c. has at least eight (8) years of CalPERS qualifying service with the City; and
- d. is at least age 55.

An “Eligible Retiree” also includes individuals who meet the definition as set forth in Section 2.11.1 of the Retiree Health Premium Assistance Plan I for Confidential and Executive Management Employees (Representation Unit Z-1; Z-5; Z-7; Z-9 and Elected Officials) Restated and Amended effective as of March 22, 2011 (Resolution No. 65,196-N.S.) for “Eligible Retiree.”

**Percentage of City Contribution:** The actual monthly amount of money the City will contribute on the employee’s behalf will be based on the employee’s total years of CalPERS service as provided in the following chart:

Years of CalPERS Qualifying Service	Percentage of City Contribution
8	30%
9	40%
10	50%
11	58%
12	66%
13	74%
14	82%
15	90%
16	92%
17	94%
18	96%
19	98%
20	100%

- 13.10.2 **Annual Increase:** Retirees will pay the difference between the City’s monthly contribution and the actual monthly medical insurance premium charged by the health plan he or she has elected for retiree medical coverage. If the premiums for such health insurance are increased, the amount the City contributes shall increase no more than 4.5% above the previous year’s contribution. No increases in the amount the City contributes shall occur before July 1, 1999. Thereafter, any increase in the amount contributed by the City will occur on July 1 each year thereafter.

- 13.10.3 **Pre Age 65 Retiree Health Insurance:** Beginning June 28, 1998, the City shall make available health insurance coverage to the employee and his or her spouse or domestic partner. The City will pay on the employee's behalf no more than \$166.26 per month for an employee electing single party health coverage and no more than \$332.52 per month for an employee electing two party coverage.
- 13.10.4 **Retiree Benefits for Employees Age 65 and over:** Once an employee or retiree reaches age 65, he or she is eligible for Medicare. As a result his or her eligibility for the retiree medical benefits set forth in Section 13.10.1 (Eligibility) ceases. On reaching age 65, the City will make available health insurance coverage in addition to Medicare. When an employee or retiree reaches age 65, the City will contribute no more than \$16.17 per month on the employee's behalf for single party health insurance coverage and no more than \$32.34 per month for two-party health coverage.
- 13.10.5 **Termination by City of Retiree Medical Benefit:** Failure of the retiree or surviving spouse to pay their monthly share of the health insurance premium will result in termination of the retiree medical benefit and relieve the City of any further obligation to provide any further benefits under Section 13.10 (Retiree Medical for Unrepresented Benefitted Employees).
- 13.10.6 **Retiree Medical Benefit for Employees Retiring between the Ages of 50 and 55:** An employee who is at least 50 years of age, but less than 55, has at least eight (8) years of CalPERS qualifying employment with the City will retain eligibility for the retiree medical benefits provided in Section 13.10.1 (Eligibility) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his or her termination from City employment until the employee's 55th birthday. If for any reason the employee has a lapse in group health care coverage the employee forfeits his or her eligibility for the retiree health plan benefits upon reaching age 55 and the City has no further obligation to provide any benefits under this Section to the employee and/or his spouse or domestic partner.
- 13.10.7 **Employees Retiring with a CalPERS Approved Disability Retirement:** If an employee retires from the City before age 55 with a CalPERS approved disability retirement, the employee will retain eligibility for the retiree medical benefits provided in Section 13.10.1 (Eligibility) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his or her termination from City employment until the employee's 55th birthday. If for any reason the employee has a lapse in health care coverage the employee forfeits his or her eligibility for the retiree health plan benefits upon reaching age 55 and the City has no further obligation to provide

any benefits under this Section to the employee and/or his spouse or domestic partner.

- 13.10.8 **City Funding of Retiree Health Benefit:** City contributions to the retiree medical benefit began on July 1, 1998. Funding of this benefit has been set aside in a trust to be established by the City.

The retiree medical benefit will be funded by a charge of 0.25% of payroll in each year, so that contributions are at 1% of the payroll after four years. The City will fund the benefit at approximately 1% of the payroll for every year thereafter with the intent of achieving a funding level of 70% after 30 years. The funding will be ongoing to maintain a 70% funding level thereafter.

Effective July 4, 2004, an additional charge of 0.25% of payroll was charged each year in the subsequent four years so that contributions are at 2% by July 1, 2007. The purpose of this 1% increase in payroll contribution is to fund post age 65 Medicare supplement plans. As a result of this change, the amount the City contributes toward the post-65 Medicare Supplement coverage under the Retiree Health Premium Assistance Plan was \$102 effective July 7, 2002 for all post 65 retirees as well as future retirees.

- 13.10.9 **Retiree Medical Plan for Unrepresented Employees (Rep Units Z-2, Z-3, Z-6):** Eligible retirees who retired from positions in Representation Units Z-2, Z-3 and Z-6 on or after July 1, 2008.

**Not Medicare Eligible:** Effective July 1, 2008, between the ages of 55 and 65 who retire on or after June 29, 2008 the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by \$50 per month in addition to the 4.5% that occurs on July 1 as provided in Section 13.10.2 (Annual Increase). Effective July 1, 2009, the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by an additional \$25 per month (i.e., an aggregate \$75 per month increase) in addition to the 4.5% that occurs on July 1 as provided in Section 13.10.2 (Annual Increase). Effective July 1, 2011, the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by an additional \$25 per month (i.e., an aggregate \$100 per month increase) in addition to the 4.5% that occurs on July 1 as provided in Section 13.10.2 (Annual Increase).

- 13.10.10 **Retiree Medical Plan for Confidential and Executive Management Employees (Rep Unit Z-1; Z-5; Z-7; Z-9; and Elected Officials):** Eligible retirees who retired from positions in Representation Unit Z-1 on or after July 1, 2008.



**Medicare and Not Medicare Eligible:** Effective June 29, 2008, an additional charge of 0.50% of payroll will be charged so that contributions are at 2.5%. The purpose of this 0.50% increase in payroll contribution is to fund both pre-65 retiree health care premium costs and post age 65 Medicare Supplement plans for eligible retiree who retired from positions in Representation Unit Z-1; Z-5; Z-7; Z-9 and Elected Officials on or after July 1, 2008. As a result of this change, the amount the City contributes toward pre age 65 health insurance premium costs shall increase from \$258.19 per month to \$309.39 per month for single coverage and from \$516.38 per month to \$618.78 per month for 2-party coverage. The City's contribution toward the post-65 Medicare Supplement coverage shall increase from \$132.83 per month to \$184.03 per month for single coverage and from \$265.67 per month to \$368.06 per month for 2-party coverage.

### 13.11 Reimbursement Plan

After Council approval of this Unrepresented Employee Manual, the City shall amend the Retiree Health Premium Assistance Plans I and II as soon as practicable to allow for the reimbursement of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner until the death of both. If there is no spouse or domestic partner at the time of retirement, the City shall only reimburse the single party rate. The reimbursement shall be paid directly to the retiree or surviving spouse or domestic partner. The maximum amount the City will reimburse for the cost of Medical Insurance Premiums is based on the schedule described in Section 13.10.1 (Eligibility and Percentage of City Contribution) above.

#### 13.11.1 Retiree Medical Reimbursement Plan for Unrepresented Confidential and Executive Management Employees (Rep Units Z-1; Z-5; Z-7; Z-9; and Elected Officials) Who Retire on or After June 28, 1998 through June 30, 2008

13.11.1.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner until the death of both as follows:

- a. **Reimbursement as of June 28, 1998:** Effective June 28, 1998, as provided in Section 13.10.2 (Annual Increase), each month after the employee retires, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$166.26 for single party coverage for the retiree or \$332.52 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.



- b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Annual Increase), total \$338.60 for single party coverage for the retiree or \$677.19 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

13.11.1.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of June 28, 1998:** Effective June 28, 1998, as provided in Section 13.10.4 (Retiree Benefits for Employees Age 65 and Over) each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$16.17 for single party coverage for the retiree or \$32.34 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of July 7, 2002:** Effective July 7, 2002, as provided in Section 13.10.8 (City Funding of Health Benefits) each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$102.00 for single party coverage for the retiree or \$204.00 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- c. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$172.98 for single party coverage for the retiree or \$345.96 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

13.11.2 **Retiree Medical Reimbursement Plan for Unrepresented Confidential and Executive Management Employees (Rep Units Z-1; Z-5; Z-7; Z9 and Elected Officials) Who Retire on or After July 1, 2008**

- 13.11.2.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:
- a. **Reimbursement as of July 1, 2008:** On July 1, 2008, as provided in Section 13.10.10 (Retiree Medical Plan for Unrepresented Confidential and Executive Management Employees), the City will reimburse the cost of Medical Insurance Premiums in an amount totaling \$309.39 for single party coverage for the retiree or \$618.78 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
  - b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$405.73 for single party coverage for the retiree or \$811.46 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- 13.11.2.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:
- a. **Reimbursement as of July 1, 2008:** Effective July 1, 2008, as provided in Section 13.10.10 (Retiree Medical Plan for Unrepresented Confidential and Executive Management Employees), each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$184.03 for single party coverage for the retiree or \$368.06 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
  - b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$239.65 for single party coverage for the retiree or \$479.31 for two party

coverage for the retiree and/or surviving spouse/domestic partner coverage.

**13.11.3 Retiree Medical Reimbursement Plan for Unrepresented Employees (Rep Units Z-2; Z-3; Z-6) Who Retire on or After June 28, 1998 through June 30, 2008**

**13.11.3.1 Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of June 28, 1998:** Effective June 28, 1998, as provided in Section 13.10.2 (Annual Increase), each month after the employee retires, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$166.26 for single party coverage for the retiree or \$332.52 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Annual Increase), total \$338.60 for single party coverage for the retiree or \$677.19 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

**13.11.3.2 Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of June 28, 1998:** Effective June 28, 1998, as provided in Section 13.10.4 (Retiree Benefits for Employees Age 65 and Over) each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$16.17 for single party coverage for the retiree or \$32.34 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of July 7, 2002:** Effective July 7, 2002, as provided in Section 13.10.8 (City Funding of

Health Benefits) each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$102.00 for single party coverage for the retiree or \$204.00 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

- c. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$180.76 for single party coverage for the retiree or \$361.53 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

#### 13.11.4 **Retiree Medical Reimbursement Plan for Unrepresented Employees (Rep Units Z-2; Z-3; and Z-6) Who Retire on or After June 29, 2008**

13.11.4.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of July 1, 2008:** On July 1, 2008, as provided in Section 13.10.9 (Retiree Medical Plan for Unrepresented Employees), the City will reimburse the cost of Medical Insurance Premiums in an amount totaling \$297.08 for single party coverage for the retiree or \$544.16 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of July 1, 2009:** As of July 1, 2009, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.9 (Retiree Medical Plan for Unrepresented Employees), total \$335.45 for single party coverage for the retiree or \$593.64 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- c. **Reimbursement as of July 1, 2011:** As of July 1, 2011, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.9 (Retiree Medical

Plan for Unrepresented Employees), total \$391.32 for single party coverage for the retiree or \$673.27 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

- d. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$469.92 for single party coverage for the retiree or \$808.52 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

3.11.4.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of July 1, 2008:** As of July 1, 2008, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$138.81 for single party coverage for the retiree or \$277.62 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$172.98 for single party coverage for the retiree or \$345.96 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

#### 13.11.5 **Enrollment in City Group Plans**

Retiring employees may receive continuing health coverage in City sponsored group health plans subject to the limitations and co-pay amounts permitted by the health care providers.

### 13.12 **Fire Chief and Deputy Fire Chief Retiree Medical Plan**

Internal City of Berkeley candidates who promote and are appointed to the Fire Chief or Deputy Fire Chief classification, without a break in service, shall be eligible for the same Retiree Medical Plan as provided to sworn fire employees in Representation Unit B.

- 13.12.1 **Retiree Medical Benefits for External Appointments:** External City of Berkeley candidates appointed to the Fire Chief or Deputy Fire Chief classifications shall be covered by the Retiree Health Premium Assistance Plan described herein at Section 13.10 (Retiree medical Plan) et seq., except that the employee shall not be required to meet the eligibility requirements of sub-Sections 13.10.1(b) and 13.10.1(c) and instead credited with 15 years of qualifying years of service for eligibility in the Plan and shall receive benefits as a Representation Unit Z-1 employee.

### 13.13 Retiree Medical for Police Chief Classification

Internal City of Berkeley candidates who promote and are appointed to the Police Chief classification, without a break in service, shall be eligible for the same Retiree Medical Plan as provided to sworn police employees in Representation Units E and F.

- 13.13.1 **Retiree Medical Benefits for External Appointments:** External City of Berkeley candidates appointed to the Police Chief classification shall be covered by the Retiree Health Premium Assistance Plan described herein at Section 13.10 (Retiree medical Plan) et seq., except that the employee shall not be required to meet the eligibility requirements of sub-Sections 13.10.1(b) and 13.10.1(c) and instead credited with 15 years of qualifying years of service for eligibility in the Plan and shall receive benefits as a Representation Unit Z-1 employee.

### 13.14 Partially Subsidized YMCA Membership

The City currently provides a partially subsidized membership in the Berkeley YMCA for those employees who agree to pay the required monthly fee. Use of a YMCA membership by a City of Berkeley employee, as provided by this provision, is not part of the employee's work related duties, is not required for continued employment and is not considered part of a City sponsored physical fitness program. The City of Berkeley nor its Claims Administrator shall not be liable for any injury that may arise out of a City of Berkeley employee's participation in and use of a YMCA membership. The amount the City contributes toward the employee's monthly membership fee is subject to federal and state income tax withholding.

### 13.15 Part-Time Employees Eligible for Full Benefits

Those part time employees who have been continuously employed by the City in benefitted part time career positions since prior to July 1, 1977 and who have not accepted a full time career position are eligible to participate in the City's health and dental insurance programs with the City's payment of premiums at the same level as for full time benefitted employees.

### 13.16 Probationary Periods for Unrepresented Classifications

The competitive appointment to a career classification will include a probationary period during which time the incumbent may be dismissed without right of appeal. The probationary period for unrepresented classifications varies from six (6) months of actual work hours (1040 hours for full time employees and 520 hours for half time) to one year of actual work hours (2080 hours for full time and 1040 hours for half time).

Presently, unrepresented classifications require a six (6) month probationary period except for the following unrepresented classifications which require a one year probationary period:

- (a) All classifications in Unit Z-1 in the career service; and
- (b) All classifications in Unit Z-2 in the career service.

### 13.17 Public Safety Uniform Allowance

- (a) Fire Uniform Allowance: Effective November 9, 2004, \$1,000 annual allowance. Effective December 1, 2015, \$1,100 annual allowance.
- (b) Police Uniform Allowance: Effective July 7, 2002, \$1,000 annual allowance.

### 13.18 Regular “At-Will” Classifications

The following classifications are exempt from the career service and in accordance with the Personnel Ordinance (Berkeley Municipal Code Section 4.04.120), At-Will appointments are eligible to receive benefits:

- All department heads
- Assistant City Manager
- Assistant to the City Manager
- Assistant to the Mayor
- Assistant, Associate and Senior Management Analyst in the City Manager's Department and in the Office of Budget and Fiscal Management
- Budget Manager
- Capital Improvement Programs Manager
- Deputy City Manager
- Economic Development Manager
- Health Officer
- Legislative Assistant
- Police Review Commission Investigator
- Police Review Commission Officer
- Secretary to the Mayor, Administrative Secretary and Secretary in the Mayor's Office
- Supervising Psychiatrist

**13.19 City Manager Department Differential**

Assistant, Associate and Senior Management Analysts in the City Manager's Department and in the Office of Budget and Fiscal Management shall receive a 5% salary differential.

**13.20 Shift Differential**

Employees whose regular schedules meet the definition, as specified by Unrepresented Employee Manual Section 1.12 (Shift Differential), for shift differential, for the hours of 5:00 p.m. to 12:00 a.m., shall be paid their regular salary plus seven and one-half percent (7.5%) of their monthly salary per month. Those whose regular schedule meets the definition for shift differential, for the hours of 12:00 a.m. to 7:00 a.m., shall be paid their regular monthly salary plus ten percent (10%) of their monthly salary per month.

**13.21 SRIP II Disability Insurance**

The City shall pay the premium for the current cost of long term disability insurance for SRIP covered employees who are enrolled in the SRIP II (Supplementary Retirement and Income Plan).

**13.22 Vacation Schedules**

Unrepresented employees, except those confidential executive, management and professional employees in Section 13.20.1 (Confidential Executive Management and Professional Employees) below, shall be entitled to earn annual vacation leave as follows:

Authorized Annual Vacation (in work weeks)	Years of Actual Benefitted Service
2-workweeks (FTE 80 hours)	During the first 3-years
3-workweeks (FTE 120 hours)	During the 4 <sup>th</sup> through 11 <sup>th</sup> year
4-workweeks (FTE 160 hours)	During the 12 <sup>th</sup> through 17 <sup>th</sup> year
5-workweeks (FTE 200 hours)	During the 18 <sup>th</sup> through 24 <sup>th</sup> year
6 workweeks (FTE 240 hours)	During the 25 <sup>th</sup> and subsequent years

- 13.22.1 **Confidential Executive, Management and Professional Employees:** Confidential executive, management and professional employees who were eligible under the City's Administrative Leave Policy are entitled to earn annual vacation leave as follows:

Authorized Annual Vacation (in work weeks)	Years of Actual Benefitted Service
2-workweeks (FTE 80 hours)	During the first 2-years
3-workweeks (FTE 120 hours)	During the 3 <sup>rd</sup> through 5 <sup>th</sup> year
4-workweeks (FTE 160 hours)	During the 6 <sup>th</sup> through 17 <sup>th</sup> year
5-workweeks (FTE 200 hours)	During the 18 <sup>th</sup> through 24 <sup>th</sup> year



6 workweeks (FTE 240 hours)	During the 25 <sup>th</sup> and subsequent years
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- 13.22.2 **Director of Library Services and Deputy Director of Library Services:** Employees in the classifications of Director of Library Services and Deputy Director of Library Services are entitled to earn annual vacation Leave as follows:

Years of Actual Benefited Service	Authorized Annual Vacation Accrual
Through the first 5 Years of Service	3 weeks (120 Hours)
Beginning the 6th through 17th Years of Service	4 weeks (160 Hours)
Beginning the 18th through 24th Years of Service	5 weeks (200 Hours)
Beginning the 25th and subsequent Years of Service	6 weeks (240 Hours)

### 13.23 Special Pay for Camps Personnel

When an employee, who has a valid Red Cross Senior Lifesaving Certificate and occupies a camps classification, is specifically assigned in writing by the Camps Manager or an authorized representative, with approval by the City Manager, to temporarily serve as a lifeguard for one day or more, said employee shall be paid a five percent (5%) differential, more than the employee's current salary.

### 13.24 Hazard Premium Pay for Clerical Mental Health Personnel

Clerical employees who are regularly assigned to work in Mental Health Programs, in direct contact with clinic patients, shall receive a five percent (5%) differential. This Hazard Premium Pay shall be reported to CalPERS as "Hazard Premium" under PERL Section 571 (Definition of Special Compensation), (4) Special Assignment Pay.

### 13.25 Longevity Pay

Effective June 28, 2009, employees in Representation Units Z-2, Z-3 and Z-6 who complete twenty-four (24) years of service shall receive a three percent (3%) differential beginning with the anniversary date of beginning the twenty-fifth (25th) year of service and shall apply to all hours in a paid status. Longevity pay shall be paid at the beginning of the pay period following completion of the 24 years of service. This Longevity Pay shall be reported to CalPERS as "Longevity Pay" under PERL Section 571.a.(1) Incentive Pay.

### 13.26 Longevity Pay for Confidential and Executive Management Employees

Effective June 29, 2008, and except as noted below in Section 13.24.1 (Longevity Pay for Unit Z1 Fire Chief and Deputy Fire Chief), employees in Representation Unit Z-1 who have completed twenty-four (24) years of service shall receive a three percent (3%) differential beginning with the anniversary date of beginning the

twenty-fifth (25th) year of service and shall apply to all hours in a paid status. This Longevity Pay shall be reported to CalPERS as Longevity Pay Incentive Pay.

- 13.26.1 **Longevity Pay for Unit Z1 Fire Chief and Deputy Fire Chief:** The longevity pay for the Fire Chief and Deputy Fire Chief classifications is intended to provide the same benefits as the Longevity Pay for represented sworn fire employees under the Berkeley Fire Fighters Association (Unit B) Memorandum of Understanding.

### 13.27 Automobile Allowance for Police Chief

The City Manager may authorize an automobile allowance of \$400 per month in lieu of a City provided vehicle for an employee appointed after November 1, 2009 to the classification of Police Chief.

### 13.28 Video Display Terminal Screening/Glasses

The City offers VDT screening and glasses as medically required, every two years, to employees who in the course of their employment operate VDT equipment more than four hours in a work day.

### 13.29 Emergency Medical Technician

Effective September 13, 2015, Unit Z-1 Fire Chief and Deputy Fire Chief who maintain current Emergency Medical Technician (EMT) certification shall receive an EMT pay differential of four percent (4.0%).

### 13.30 Shoe Allowance

An annual allowance of two hundred dollars (\$200) shall be paid to benefitted employees in the classification of Janitor, Groundskeeper, Laborer, and Solid Waste Worker.

### 13.31 Training Differential

- 13.31.1 **Trainer Differential:** Effective July 1, 2016, any employee, excluding those classifications that require training as part of the assignment (e.g. supervisors), designated by the department and approved by the Director of Human Resources as qualified trainers or instructors for specific specialized skills (identified by the departments in consultation with Human Resources) who is required to provide formalized training to a new employee or an employee who management has identified as needing formalized training, shall receive a five percent (5%) differential in salary for that time served in such capacity. Such assignment shall be in writing by the department and approved by the Director of Human Resources. This Training Differential will be reported to CalPERS as Training Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

- 13.31.2 **Higher Class Training Differential:** For training purposes, employees not meeting all of the minimum qualifications of a higher classification may be temporarily assigned for a minimum of one (1) week, to perform the duties of the higher classification and will receive a five percent (5%) increase in their current base salary for the duration of the temporary assignment. Such assignments shall be in writing and shall indicate the reasons, length and duties of the assignment. Assignments shall be approved in advance by the City Manager, or his or her designee by an Employee Transaction Form, and forwarded to the Human Resources Department for inclusion in the employee's official Personnel file.
- 13.31.3 **Trainee Differential:** For training purposes and to enhance an employee skills and abilities, any employee designated in advance by the department director and approved by the Director of Human Resources to perform duties that are outside of the employee's classification, shall receive a three percent (3%) differential in salary for that time served in such capacity. Such assignments shall be in writing and shall indicate the reasons, length and duties of the assignment. Assignments shall be approved in advance by the City Manager, or his or her designee by an Employee Transaction Form, and forwarded to the Human Resources Department for inclusion in the employee's official Personnel file.

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### 13.32 Summary of May 2017 Changes to the Unrepresented Employee Manual

- Included reference to Unrepresented Unit Z-9 (Deputy Director Rent Stabilization Program).
  - Former Section 1.14 (One-Time Allocation) - deleted obsolete provision.
  - Section 5.2 (Floating Holidays) - corrected omission of one (1) day.
  - Section 8.3 (Hourly Rated Employees in Lieu of Benefits) – codified existing benefit.
  - Section 13.11 (Reimbursement Plan) – revise plan as reimbursement.
  - Section 13.12 (Fire Chief and Deputy Fire Chief Retiree Medical Plan) – clarified benefit for internal and external appointments.
  - Section 13.13 (Retiree medical for Police Chief Classification) – clarified benefit for internal and external appointments.
  - Section 13.18 (Regular “At-Will” Classifications) – deleted duplicate classification.
  - Section 13.31.3 (Trainee Differential) – included provision authorizing differential for employees assigned duties outside of classification.
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**13.33 Summary of October 2017 Changes to the Unrepresented Employee Manual**

- Section 8.4.5 Miscellaneous Employees Classic Employee Pension Contribution through a 20516 Contract Amendment – added subsection 8.4.5.3

**13.34 Summary of July 2018 Changes to the Unrepresented Employee Manual**

- Section 1.14 (One-Time Allocation) - \$2,000 paid August 17, 2018.
- Section 8.1.3 (Medical Contribution Executive Managers) – Cost-share of \$50.00 for medical contributions by all department heads, City Manager and Deputy City Manager effective July 1, 2019.
- Section 8.4.6.4 – Correct typographical error.
- Section 11.5 (Written Reprimand for Non-Safety Employees) – Include provision allowing written rebuttal.
- Section 12.3.1 (Compensation Complaints) – Include provision that specifies appeal time lines.
- 13.1 (Administrative Leave) – Clarify leave extended to career and benefitted at-will employees; benefit is prorated based on assignment; and codifies practice that unused administrative leave rolls into vacation.
- 13.24 (Hazard Premium Pay for Clerical Mental Health Personnel) – Clarify pay is reportable to CalPERS.
- 13.25 (Longevity Pay) – Include CalPERS reportable section.
- 13.30 (Shoe Allowance) – Clarify benefit extended to benefitted employees.
- Shoe Allowance
- 13.31 Training Differential
- 13.32 Summary of July 2018 Changes to the Unrepresented Employee Manual
- 13.33 Summary of October 2017 Changes to the Unrepresented Employee Manual

**13.35 Summary of July 2020 Changes to the Unrepresented Employee Manual**

<b>Section</b>	<b>Change</b>
Term Duration	Parties agree to a one-year term Agreement ending on June 30, 2021
Living Wage –	NEW LANGUAGE: The City agrees to pay each of its direct employees an hourly wage of no less than \$18.33 effective the first full pay period in January 2021. The City agrees to pay each of its direct employees an hourly wage of no less than \$19.33 effective the first full pay period in June 2021. If the Living Wage increases beyond \$19.33, as outlined in the Berkeley

Section	Change
	Municipal Code effective July 2021, the City shall implement the increases the first full pay period in September 2021 and July 1st of each year thereafter.
Additional City Emergency Paid Sick Leave Allocation	NEW LANGUAGE: The City shall provide an additional 80 hours of emergency paid sick leave to be used for COVID-19 related reasons as listed in the Emergency Paid Sick Leave Act. Part-time employees receive a prorated number of hours. In order to use this additional City emergency paid sick leave, the employee must first exhaust all hours that they received under the Emergency Paid Sick Leave Act. The City will use a specific pay code for this additional emergency paid sick leave and these additional hours will be available until June 30, 2021. These additional 80 emergency paid sick leave hours shall have no cash value and may not be used towards any CalPERS retirement service credit as outlined 4.13 of the Unrepresented Employees Manual.
Additional Floating Holidays	NEW LANGUAGE: For employees who were required to remain in the workplace from March 17, 2020 – June 1, 2020, the City will provide 8 hours of floating holidays for every 40 hours of regularly scheduled hours worked in the workplace up to a maximum of 32 hours of floating holiday. The City will credit these floating holiday hours in the first full pay period after adoption of the Agreement for classifications which, due to the nature of the assignment, require backfill, employees will be paid a stipend in the amount of the earned floating holiday hours up to a maximum of 32 hours the first full pay period in August 2020. The City will use a specific pay code for these additional floating holiday hours will be available until June 30, 2021. These additional 32 hours of floating holiday shall have no cash value and may not be used towards CalPERS retirement service credit as outlined 4.13 of the Unrepresented Employees Manual.
Additional language on Layoffs for the Term of the Agreement	NEW LANGUAGE: The City recognizes the important role that the employee workforce plays in delivering public services; therefore, during the period ending June 30, 2021 the City agrees to not layoff any Unrepresented career employees. However, should the City determine that its expenditures exceed its revenues during the period ending June 24, 2021, the City may notice the Unrepresented group in writing and the Unrepresented group shall be provided an

Section	Change
	<p>opportunity to meet and discuss one-time cost savings and alternatives such as furloughs, VTO, etc. Nothing in this section requires the City to retain positions (filled or vacant) where state, federal or grant funding has been reduced or eliminated and would require the City to backfill such positions. All other provisions on Layoffs remain unchanged.</p>
Provisional Employee	<p>No employees shall hold a provisional appointment in the same position for more than 12 months. The City Manager may extend the provisional appointment beyond this 12- month limitation with the mutual agreement of the parties.</p>
Limited Reopener	<p>If during the fiscal year 2020 -2021 the City reaches agreement with SEIU or extends to other unrepresented employees an opportunity to confer on an across the board Cost of Living Adjustment (COLA) increase and/or an additional City contribution towards medical premiums, the City agrees to a limited reopener to meet and discuss with the Unrepresented group on these increases.</p>

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**City of Berkeley**

# **Unrepresented Employee Manual**

**July 24, 2018 July 27, 2020**





RESOLUTION

RESOLUTION NO. 68,535-N.S.

UNREPRESENTED EMPLOYEES MANUAL

WHEREAS, on October 3, 2017, the City Council adopted Resolution No. 68,166-N.S., the Unrepresented Employee Manual, that establishes rules governing working conditions, benefits and compensation for unrepresented career benefited and regular at-will employees; and

WHEREAS, in a separate agenda item on July 24, 2018, the City Council will consider a new Memoranda Agreement with Service Employees International Union Local 1021 Maintenance and Clerical Chapters that modifies its members' benefits; and

WHEREAS, the City Manager is recommending similar changes in benefits for the unrepresented employees in Units X-1 (Unrepresented Hourly Non-Career); X-2 (Retired Annuitants); Z-1 (Confidential and Executive Management Employees); Z-2 (Confidential Professional Employees); Z-3 (Confidential Clerical Employees); Z-6 (Legislative Analysts); and Z-9 (Unrepresented at-will positions in the Rent Stabilization Program).

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley rescind Resolution No. 68,166-N.S. (Unrepresented Employee Manual) and all other resolutions amendatory thereto and that the Unrepresented Employee Manual that includes modifications in several articles that affect the benefits and terms and conditions of unrepresented employees as shown in Exhibit A attached hereto and made a part hereof, is hereby adopted as the City of Berkeley Unrepresented Employee Manual.

The foregoing Resolution was adopted by the Berkeley City Council on July 24, 2018 by the following vote:

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

Noes: None.

Absent: None.

  
Jesse Arreguin, Mayor

Attest:   
Mark Numainville, City Clerk

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## UNREPRESENTED EMPLOYEE MANUAL

This document establishes the rules governing benefits and working conditions, which are in effect for Unrepresented employees which have been approved by the City Council of the City of Berkeley.

This Unrepresented Employment Manual provides the personnel policies and procedures that affect the working conditions and benefits of unrepresented employees in the City of Berkeley. For purpose of categorization, all classifications are designated by a representation unit. Unrepresented employees are in classifications included in representation units Z-1; Z-2; Z-3; Z-9; X; and X-1, as noted in the City's Classification/Salary Resolution. The working conditions and benefits for represented employees are contained in their respective memoranda agreements. Rules, which describe general policies of the City's personnel system, are found in the City of Berkeley Personnel Rules and Regulations.

## **ARTICLE 1 - SALARY, OTHER PAY AND OVERTIME**

### **1.1 Intent**

This Section (Salary, Other Pay and Overtime) is intended only to define the normal hours of work and the time for which salary shall be paid, and to provide the basis for the calculation of overtime pay. Nothing in these rules shall be construed as a guarantee of hours of work per day or per week, or of days of work per week. The City's pay records, practices and procedures shall govern the payment of all wages.

### **1.2 Hours and Days of Work**

Hours and days of work shall be governed by rules established by the City.

### **1.3 Workweek**

The workweek shall consist of seven days beginning at 12:01 a.m. on Sunday to and including 12:00 midnight the following Saturday.

### **1.4 Regular Workweek**

The regular workweek shall consist of forty hours of work within the workweek.

### **1.5 Payment of Salaries**

Payment of salaries shall be bi-weekly and shall cover a pay period of two (2) consecutive workweeks. Each payment shall be made not later than Friday following the ending of each payroll period and shall include payment for all earnings reported during the previous payroll period.

### **1.6 Salary Ranges without Salary Steps**

In those classes of positions for which a salary range is established without a designation of salary steps, the City Manager is authorized to fix the salary rate at any point within the established salary range.

### **1.7 Automobile Allowances**

In addition to the salaries provided in the salary resolution, employees may be reimbursed for the use of automobiles owned by employees of the City of Berkeley and used on City business, as authorized by the City. Current automobile allowances are appended to this Manual, as shown in the Appendix, Section 13.27 (Automobile Allowance).



## 1.8 Mandatory Professional Fees and Licenses

The City will assume full payment of the mandatory professional fees and licenses required by employees in the following unrepresented classes in order to maintain their continued employment with the City of Berkeley:

Director of Public Works	City Attorney
Deputy Director of Public Works (Registered)	The Attorney Class Series
Rent Stabilization Board Staff Attorney Class Series	Audit Manager
Classes requiring a license to practice medicine	

## 1.9 Bilingual Pay

Employees appointed to positions requiring bilingual abilities, including Braille and sign language shall receive additional compensation as established by the City Council. Only those employees who possess second language competency, can demonstrate second language competency, and are serving in a position requiring competency in that particular language are entitled to receive the bilingual premium pay. The current level of approved compensation and procedures for qualifying and receiving bilingual pay are appended to these Rules, as shown in Appendix, Section 13.3 (Bilingual Premium Pay).

## 1.10 Overtime for FLSA Non-Exempt Employees

All employees who are covered by the overtime provisions of the Fair Labor Standards Act are designated as "FLSA non-exempt employees." Unless otherwise required by the Fair Labor Standards Act, all FLSA non-exempt employees, and employees in the classification of Battalion Chief, who are required to work in excess of their regular workweek shall be paid overtime compensation at the rate of one and one-half times the straight time rate based upon the regular monthly salaries or shall be given compensatory time off in lieu of payment at the rate of one and one-half hours off with pay for each overtime hour worked. The following provisions regarding overtime apply only to FLSA non-exempt employees and do not apply to FLSA exempt employees. FLSA non-exempt employees, temporarily promoted to FLSA exempt classifications, will be ineligible for overtime compensation for the duration of the appointment.

- 1.10.1 **Manner of Compensation:** An employee may be compensated for overtime by either compensatory time off or by payment; the method of overtime compensation shall be agreed upon by the employee and the supervisor at the time of obtaining approval to work overtime.
- 1.10.2 **Pre-Authorization:** No employee may work overtime without the express prior approval of his or her department head.
- 1.10.3 **Accrual Limit on Compensatory Time:** Compensatory time shall not accumulate in excess of sixty (60) overtime hours worked which is the equivalent of ninety (90) hours of compensatory time. Overtime accumulation in excess of sixty (60) hours shall be paid as compensation.

- 1.10.4 **Use of Compensatory Time:** All use of compensatory time off must be approved, in advance, by the employee's department head, on forms provided by the City.
- 1.10.5 **Effect of Termination on Compensatory Time:** An employee is entitled to compensation for any accumulated overtime upon resignation or termination.

### 1.11 Emergency Overtime

All FLSA non-exempt employees who are called to duty from their living quarters outside of their regular work hours and work days shall be paid emergency overtime compensation for the actual time worked provided, however, that each employee shall be paid a minimum of two (2) hours pay for emergency overtime unless such emergency overtime work is performed prior to the beginning of his or her work regularly scheduled work period without a break in service in which case, compensation shall be paid only for the actual time worked.

### 1.12 Shift Differential

All unrepresented FLSA non-exempt employees (except for Police Aides) who regularly work a shift of eight hours or more, which includes more than four hours between the hours of 5:00 p.m. and 12:00 a.m., or between 12:00 a.m. and 7:00 a.m., are paid a shift differential in addition to their regular base rate of pay in an amount established by the City Council. The current shift differential rate paid to unrepresented employees is in the Appendix to this Manual.

### 1.13 Fifty-Six (56) Hour per Week Work Schedule Leave Conversion Factor

The conversion factor for Fire Management employees accruing and using vacation leave, sick leave or sick leave bonus bank of hours is as shown below. The intent of the parties is to have the dollar value of the vacation leave, sick leave or sick leave bonus bank of hours accrued be the same whether an employee is assigned to a fifty-six (56) hour per week schedule or a forty (40) hour per week schedule.

- 1.13.1 **Leave Accrual for 56 Hour per Week Schedule:** Vacation leave, sick leave or sick leave bonus bank of hours accrued on a fifty-six (56) hour per week scheduled is converted to a forty (40) hour per week schedule by multiplying number of hours of vacation leave or sick leave accrued by the conversion factor of 0.7143.
- 1.13.2 **Leave Accrual for 40 Hour per Week Schedule:** Vacation leave, sick leave or sick leave bonus bank of hours accrued on a forty (40) hour per week scheduled is converted to a fifty-six (56) hour per week schedule by multiplying number of hours of vacation leave accrued by the conversion factor of 1.4.

#### 1.14 One-Time Allocation

Employees in Units Z-1, Z-2, Z-3, Z-6, and Z-9 who are in paid status as of July 29, 2018 will receive a one-time allocation of \$2,000.00 (prorated for part-time employees) on August 17, 2018, minus applicable local, state and/or federal taxes.

## **ARTICLE 2 - PROBATIONARY PERIOD**

### **2.1 Length of Probationary Period**

All original and promotional appointments to positions in the career service shall be tentative and subject to a probationary period. The length of the probationary period shall be determined for each class by the City Council. However, the length of the probationary period shall not be less than six months of actual service (1040 hours) or more than two years of actual service (4160 hours). A six (6) month probationary period must be completed in no more than one (1) year. A one (1) year probationary period (2080 hours) must be completed in no more than two (2) years. A two (2) year probationary period must be completed in no more than three (3) years. A current schedule of probationary periods for unrepresented classes is appended to this Manual, as shown in Appendix, Section 13.16 (Probationary Periods for Unrepresented Classifications).

### **2.2 Objectives of Probationary Period**

The probationary period shall be regarded as a part of the selection process and shall be used to closely observe and evaluate the employee's work, to secure the most effective adjustment of a new employee to his or her position, and to eliminate any probationary employee whose performance does not meet the required standards of work.

### **2.3 Rejection of Probationers**

During the probationary period, an employee may be rejected from employment at any time by the City Manager without cause and without the right of appeal.

### **2.4 Rejection during Probationary Promotion**

An employee rejected during the probationary period following a promotional appointment shall be reinstated to the classification from which he or she was promoted unless charges are filed and he or she is discharged in the manner provided in the Personnel Ordinance and these rules.

## ARTICLE 3 - VACATION

### 3.1 Vacation Leave

All benefitted employees shall be entitled to annual vacation leave subject to the provisions in this chapter.

### 3.2 Vacation Approval

All vacations must be approved, in advance, by the employee's department head, on forms provided by the City.

### 3.3 Vacation Accrual

3.3.1 **Full Time Benefitted Employees:** During the first two (2) calendar years of employment, all full time benefitted employees shall be entitled to take only such annual vacation leave as the employees earn based on their continuous length of service measured from the date of hire. After two (2) years of service, employees may request, and upon approval, take up to a maximum of two (2) weeks of their annual vacation, in advance of actual earning. Approval of requests for advance vacation shall be solely at the discretion of management.

Vacation accrues according to schedules established by the City Council and can vary for different groups of employees. The current vacation schedules for full time unrepresented employees are in the Appendix to this Manual.

3.3.2 **Part Time and Temporary Employees:** Benefitted part-time employees working a minimum of twenty (20) hours per week accrue vacation benefits on a pro rata basis. Employees who work less than twenty (20) hours per week and temporary employees, unless otherwise authorized, do not accrue leave benefits

3.3.3 **Accrual of Vacation Credits:** Vacation leave credits are only accrued for each straight time hour for which the employee is paid.

3.3.4 **Effect of Extended Leave on Vacation Accrual:** An employee who has returned from extended military leave or an extended authorized leave of absence without pay of six (6) months or more or who has been re-employed or reinstated shall be entitled, during the calendar year in which the employee returns to the City service, to earn vacation according to a schedule based upon the total years in the career service with the City and upon the total number of months of actual service with the City during the said calendar year. For succeeding calendar years, the employee's vacation leave shall accrue as provided in this Manual.

**3.3.5 New Hire Vacation Accrual:** For new hires, the City Manager may authorize vacation accrual at a higher rate, up to the maximum accrual rate, depending upon the paid leave accrual of the potential employee at his or her present employer. The new hire must be able to document his or her current paid leave accrual, which has been earned for general use, such as vacation. The waiting period to advance to the next accrual rate would be the actual number of years between the respective accrual levels.

### **3.4 Vacation Scheduling**

The times during the calendar year at which an employee shall take his or her vacation shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of the service. If the requirements of the service are such that a department head cannot permit the employee to take an annual vacation leave or any part of such leave within a particular calendar year, the employee may accrue vacation according to Section 3.3 (Vacation Accrual) of this Manual.

### **3.5 Maximum Vacation Accumulation**

Employees may defer vacation earned up to a maximum cumulative total of eight (8) weeks. An employee who has attained maximum accumulation may be required to take all excess earned vacation at the option of the City. Not later than October 1 of each year, the City will advise employees who have attained a maximum accumulation of vacation whether such excess earned vacation must be scheduled as time off prior to March 31. Such time off shall be scheduled in accordance with the provisions of Section 3.2 (Vacation Approval).

The City shall require all employees to reduce their accrued vacation balances to no more than 320 hours, as of the last pay period in February of each year. To effectuate the requirement that employees not accrue more than 320 hours vacation leave, no later than November 15 of each year the City will provide Department Heads with a report identifying all employees who have accrued two hundred and eighty (280) hours of vacation leave and appear in danger of exceeding the 320 hour limit.

Employees who have accrued 280 hours of vacation leave, as of that date, will be advised by their supervisor that they must take vacation leave to reduce their vacation leave accrual by February of the following year.

Supervisors should be flexible in granting employee vacation requests to those employees above, or approaching the 320 hours limit, and further, that with regard to employees who are in danger of exceeding the 320 hour limit, no vacation request by such an employee shall be unreasonably denied. If an employee who is in danger of exceeding the 320 hour limit fails by December 31 to schedule a vacation to be taken before the last pay period in February, the City has the

authority to direct the employee to go on vacation leave to reduce the employee's accrued vacation.

If, due to operational necessity, a department head denies an employee vacation leave and does not provide the employee with an alternate vacation date, and as a result causes the employee to exceed the 320 vacation leave limit, said employee shall nonetheless be entitled to use that vacation leave in the next calendar year to the extent necessary to reduce their accrued vacation to not more than 320 hours. Under no circumstances will the City liquidate any vacation leave balances for any employee during employment.

### **3.6 Vacation Leave before Retirement**

Accumulated vacation shall not be used immediately prior to retirement, which has the effect of extending the date of retirement, but shall be paid out in full upon retirement.

### **3.7 Vacation Leave in Lieu of Sick Leave**

Except for absences that qualify for benefits under Administrative Regulation 2.4 (Family Care Leave) Vacation leave shall not be used in lieu of accrued sick leave for absences due to illness. If accrued sick leave is exhausted, vacation leave may be used for absences due to illness, only if such leave is approved by the employee's department head.

### **3.8 Payout upon Termination or Extended Unpaid Leave**

Upon termination, including death, extended military leave or other extended leave without pay, an employee or his or her estate shall be paid for all accrued unused vacation leave at the employee's base rate at the time of his or her termination, and such employee or his or her estate shall reimburse the City for any vacation leave taken before it had accrued, in accordance with provisions established by the City Manager.

### **3.9 Holidays Occurring during Vacation**

If an observed City holiday occurs during an employee's scheduled vacation, no deduction from accrued vacation will be made for the holiday period.

## **ARTICLE 4 - SICK LEAVE**

### **4.1 Eligibility**

All full time benefitted employees are eligible for one (1) sick leave day (eight [8] hours) per month of service, except that the Police Chief hired before September 11, 2012 is eligible for two (2) sick leave days for each month of service during the twenty-first (21) year of employment and thereafter. Employees in the classifications of Fire Chief and Deputy Fire Chief shall be credited with two (2) sick leave days for each month of service during the seventeenth (17<sup>th</sup>) year of employment and thereafter. Part time benefitted employees are eligible to accrue sick leave on a pro rata basis.

### **4.2 Sick Leave Not a Privilege**

Sick leave shall not be considered a privilege, which an employee may use at his or her discretion, but shall be allowed only in the case of his or her sickness or disability or in the case of illness within the defined family of the employee.

### **4.3 Family Sick Leave**

As of January 1, 1999, employees may use up to fifteen (15) working days of accrued sick leave in a calendar year to care for a family member, limited to one of the following: a legal dependent, parent, spouse, son, daughter or domestic partner.

### **4.4 Notice to Department Head**

In order to qualify for sick leave benefits, the employee shall notify his or her department head or designee prior to or within two (2) hours after the time set for the beginning of the employee's daily duties, or as otherwise required by the department head. Leave for non-emergency medical appointments shall be requested in advance of the workday.

### **4.5 Medical Verification**

The City of Berkeley retains the right to request a verification from a licensed medical practitioner under appropriate circumstances which include (1) showing that an employee's illness or disability has started or ended, before the City will allow an employee to take a leave or to return from leave, (2) showing regular updates during a medical leave of absence regarding the employee's medical status and the date the employee expects to return to work, (3) where reasonable cause exists to believe that the employee is not medically fit to perform the essential functions of the job or that the employee cannot perform the job without endangering the health and safety of the employee or others, and (4) where reasonable cause exists to believe that the employee is abusing sick leave or family sick leave. Sick leave pay may be withheld if a satisfactory verification is not received.



#### 4.6 Injury Incurred in Outside Employment

No sick leave shall be allowed for time off for an injury incurred while working for another employer, provided that the injury is covered by California's workers' compensation law or by provisions of the other employer granting payment for time off because of the injury. In the event the injury is not covered either by the workers' compensation law or by the other employer's provisions, sick leave will be granted in accordance with this chapter only if the outside employment had been authorized by the City before the injury occurred

#### 4.7 Bonus for Unused Sick Leave

For every six (6) months of perfect attendance, the employee will receive eight (8) hours of bonus time. "Perfect attendance" means the employee has not received sick leave or salary continuation benefits and has not taken or been placed on leave without pay. Benefitted part time employees will receive sick leave bonus time on a pro rata basis. Sick leave bonus can be used for any leave purpose authorized by this Manual.

#### 4.8 Accumulation of Sick Leave

Employees may accumulate sick leave up to a maximum of two hundred (200) days (1600 hours) except for the classifications named below.

The Police Chief and Fire Chief may accumulate sick leave in excess of the 1600-hour limit by 100 hours per year.

#### 4.9 Payout for Excessive Sick Leave for Employees Hired on or Before June 30, 2013

All employees, except employees in the classification of Deputy Fire Chief hired on or before June 30, 2013 in the career service who regularly work one-half time or more who have attained the two hundred (200) day maximum sick leave accumulation shall be entitled to receive payment for one-third (1/3) of the first twelve (12) days of sick leave days (or if earning sick leave at the rate of two (2) working days each month of service, one-third (1/3) of the first twenty-four (24) days of sick leave days), for which sick leave days they become eligible, they do not use and they would otherwise forfeit because of the two hundred (200) day maximum limitation. Determination of eligibility for such payment shall be made on an annual calendar year basis, and payment for such sick leave for any calendar year shall be made not later than the first full pay period in January. Such payment shall be at the employee's salary rate in effect on the preceding December 31, and shall be made only in units of whole days and will not be made for any fraction of a day.

4.9.1 **Deputy Fire Chief:** For employees in the classification of Deputy Fire Chief, the following provisions shall apply. In each year following that 1200 hour base year, the employee may, on a form provided by the City, elect to receive pay for excess sick leave or may elect to increase his or her sick leave accumulated base by the 96 hours and take any additional

excess sick leave in pay at the following prescribed rate: employees who choose to increase their sick leave accumulated base by the 96 hours will receive 50% pay off rate in March; employees who choose to receive pay out for excess sick leave over the base, and do not exercise the option of increasing their accumulated sick leave base by 96 hours in any particular year, will be paid for excess sick leave at the 38% pay off rate in March.

Forms, provided by the City along with projected excess sick leave balances, shall be distributed to affected employees by February of each year and shall be returned to the City by February 15th. If an employee uses part of an established "sick leave maximum accumulation level", the employee may replenish the used portion at the applicable rate.

Determination of eligibility for such payment shall be made on an annual basis, and payment for such sick leave for any calendar year shall be made during the month of March each year. Such payment shall be made at the employee's regular monthly salary rate in effect on the last day of the first pay period to end in March. An employee shall be eligible for this provision whether or not the employee is on the payroll as of the last day of the first pay period to begin and end in March.

- 4.9.2 **Police Chief and Fire Chief Hired on or before June 30, 2013:** For the Police Chief and Fire Chief hired on or before June 30, 2013, the maximum sick leave accrual allowed shall be adjusted at the rate of 100 additional hours per year above the 1600-hour limit. The employee may elect to receive pay for the excess sick leave or may elect to increase the base by 100 hours, in each subsequent year. Payment for excess sick leave is prescribed at 1/3 of the excess leave balance.

#### 4.10 Effect of Leave without Pay on Sick Leave Accrual

Sick leave will not accrue during any period of absence without pay. Sick leave credits are accrued on the basis of actual straight time hours worked or paid, based on a forty hour workweek.

#### 4.11 Accrued Sick Leave Canceled Upon Termination

Except as otherwise provided under the CalPERS conversion of sick leave retirement credit benefit (California Government Code Section 20965) and the other exceptions set forth below, all accrued sick leave shall be canceled upon termination of an employee. Such leave shall be credited back to the employee if the employee returns to City employment within two (2) years of termination except as otherwise provided by the City Council, or within three (3) years of termination if re-employed under the City's Layoff Policy provided in this Manual.

- 4.11.1 **CalPERS Miscellaneous Members, Chief of Police Hired on or before June 30, 2013 Sick Leave Payout:** For CalPERS

Miscellaneous members and Chief of Police hired on or before June 30, 2013 who voluntarily separate from service with a vested pension and at least twenty (20) years of benefitted City of Berkeley service or to employees retiring on permanent disability arising out of and incurred in the course and scope of their employment with the City shall be entitled to liquidate a portion of their accrued but unused sick leave as follows: Upon termination, employees with between twenty (20) years and twenty-eight (28) years of benefitted City of Berkeley service shall be entitled to receive payment in an amount equal to 38% of their accrued sick leave days up to a maximum of two hundred (200) unused sick leave days.

All employees hired on or after July 1, 2013 shall not be eligible for payment of any unused sick leave days.

Employees hired on or before June 30, 2013 who voluntarily separate from service with a vested pension and at least twenty-eight (28) years of benefitted City of Berkeley service or employees retiring on permanent disability arising out of and incurred in the course and scope of their employment with the City, with at least twenty-eight years of benefitted City of Berkeley service, shall be entitled to receive payment in an amount equal to 50% of their accrued sick leave days up to a maximum of two hundred (200) unused sick leave days. Employees hired on or after July 1, 2013 shall not be eligible for payment of any unused sick leave days.

- 4.11.2 **Fire Chief and Deputy Fire Chief Hired on or before June 30, 2014 Sick Leave Payout:** For employees hired on or before June 30, 2014 in the classification of Fire Chief and Deputy Fire Chief who retire or voluntarily terminate with twenty (20) years of service or who retire on permanent disability arising out of and incurred in the course and scope of their employment with the City, shall be entitled to receive payment at retirement or termination of unused sick leave days, based on the following schedule:

Number of Days	% of Payment
0-75 Days	38%
75-99 Days	41%
100-124 Days	44%
125-149 Days	47%
150 Days and over	50%

Employees in classifications identified in this Section 4.11.2 (Fire Chief and Deputy Fire Chief Hired on or before June 30, 2014 Sick Leave Payout) hired on or after July 1, 2014 shall not be eligible for payment of any unused sick leave days.

#### **4.12 City of Berkeley Supplemental Retirement Plan [Termination 401(a)]**

Employees who retire on a vested pension shall be eligible to participate in the City of Berkeley Supplemental Retirement Plan. The Supplemental Retirement Plan provides for negotiated required roll-forwards of accrued but unused leave, and also permits the City to do a "tax pick-up" of employee contributions under Section 414(h)(2) of the Internal Revenue Code. A tax pick-up works through an irrevocable payroll deduction authorization, on an individual by individual elective basis, to contribute accrued but unused sick leave, vacation leave, compensatory time, floating holiday and bonus sick leave into an Internal Revenue Code 401(a) defined contribution plan. The Supplemental Retirement Plan Document shall govern administration of the Plan.

#### **4.13 Accrued Sick Leave Applied to CalPERS Retirement Credit**

The conversion of unused sick leave to retirement credit benefit under Government Code Section 20965 offered by CalPERS as an optional benefit to contracting agencies shall be made available to employees who retire with a vested pension.

#### **4.14 Sick Leave Benefits and State Disability Insurance**

Employees may use their accrued sick leave benefits during the normal seven day period before the eligible employees are paid benefits from State Disability Insurance. Following the seven day period, an employee will continue to receive accrued sick pay until exhausted and then, upon approval by the department head, accrued vacation or compensatory pay, less the disability benefits actually received.

#### **4.15 Workers' Compensation and Salary Continuation**

Workers' compensation payments shall commence in accordance with State law, on the fourth day following an industrial injury, unless the employee is hospitalized in which case payment commences on the first day of injury. For the purpose of this Section (Workers' Compensation and Salary Continuation), "hospitalized" means confinement.

For all career and regular at-will employees who are receiving or shall receive workers' compensation benefits for an industrial injury, the City will pay retroactive compensation benefits to the eligible employee for the normal three day waiting period before the employee is paid workers' compensation benefits for temporary disability pursuant to California law governing the industrial injury or illness.

Payments under the workers' compensation law for temporary disability or a recurrence thereof arising out of and in the course of employment shall be paid for a period not to exceed 365 days at a maximum payment of the employee's pre-disability pay, but shall not exclude any salary adjustments to which the employee is entitled. Thereafter, the employee will continue to receive only the temporary disability payments provided under State law and the City shall cease to pay the difference.

#### **4.16 Sick Leave Accrual for Department Heads and Deputy City Managers**

At the time of appointment of new hires in regular at-will department head classifications and Deputy City Managers, the City Manager may authorize credit for accrual of sick leave based on sick leave accrual with a prior employer in an amount that does not exceed four weeks of sick leave credit.

## ARTICLE 5 - HOLIDAYS

### 5.1 Holidays

The City observes the following holidays and provides all full time regular, at-will and career employees.

Holiday	Day Observed
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
Lincoln's Birthday	February 12
Washington's Birthday	Third Monday in February
Malcolm X's Birthday	Monday or Friday nearest May 19
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Indigenous People's Day	Second Monday in October
Veterans' Day	November 11
Thanksgiving Day	Fourth Thursday in November
The Day After Thanksgiving	Fourth Friday in November
Christmas	December 25

### 5.2 Floating Holidays

Full time, regular at-will, and career employees who have worked for the City six (6) months or more shall be granted three (3) floating holidays each calendar year. Employees may take floating holidays in one (1) hour increments. Employees who terminate employment within the first six (6) months of initial employment shall not be eligible for payout of any accrued but unused floating holiday.

In the first calendar year of employment, employees shall be granted prorated floating holidays as follows:

Date of Hire	Number of Floating Holidays
Hired January 1 - April 30	3 days
Hired May 1 - August 31	2 days
Hired September 1- December 31	1 day

All use of floating holidays must be approved, in advance, by the employee's department head, on forms approved by the City. The days on which the employee shall take his or her floating holiday(s) shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of the service. If the requirements of the service are such that a department head cannot permit the employee to take the floating holiday(s) within a particular calendar year, the employee shall add the unused floating holiday(s) to the employee's accrued vacation according to Section 3.5 (Maximum Vacation Accumulation).

**5.3 Eligibility**

In order to be eligible for holiday pay, an employee must be on paid leave status on his or her regularly scheduled workdays before the holiday.

**5.4 Part-Time Employee Eligibility**

Benefitted part time employees are eligible for holiday benefits on a pro rata basis.

**5.5 No Work on the Holiday**

Employees in the career service who are not scheduled to work on the day observed as a holiday will be granted an alternative scheduled holiday. The alternative holiday must be scheduled, by the department head, during the same workweek.

**5.6 Work on the Holiday**

FLSA non-exempt benefitted employees who work on a scheduled holiday shall be paid at one and one-half times their normal base rate for all hours worked or shall be granted the equivalent amount of compensatory time off. In either event, the holiday pay shall be in addition to the employees' regular salary.

## **ARTICLE 6 - OTHER PAID LEAVES OF ABSENCE**

### **6.1 Family Bereavement Leave**

Any benefitted employee who experiences a death in the immediate family is granted death leave of up to three (3) working days for the purpose of attending the funeral or memorial service in the State of California, or up to five (5) working days for the purpose of attending the funeral or memorial service outside the State of California. Employees in the classification of Fire Chief and Deputy Fire Chief shall be granted one week (five (5) consecutive calendar days) for a death in the immediate family whether in state or out of state for the purpose of attending the funeral or memorial service.

For all employees except those employees in the classification of Fire Chief and Deputy Fire Chief, "immediate family" is limited to wife, husband, mother, father, sister, brother, child, grandmother, grandfather, aunt, uncle, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchildren, dependent or domestic partner. For employees in the classification of Fire Chief and Deputy Fire Chief, "immediate family" is limited to wife, husband, domestic partner mother, father, sister, brother, child, grandmother, grandfather, aunt, uncle mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchildren or dependent residing within the household.

Bereavement leave will be paid at the employee's normal base rate of pay for the actual time lost and is allowed solely for the purpose of attending funeral or memorial services. The department head may, within his or her discretion, grant the employee additional time off provided that all accrued vacation and/or sick leave shall be used prior to taking a leave of absence without pay for this purpose.

In special cases, with the approval of the department head, the City Manager may grant death leave within his or her discretion to allow an employee to attend a funeral or memorial services because of the death of persons not included within the definition of immediate family.

### **6.2 Jury Duty Leave**

Any benefitted employee who is called or required to serve as a trial juror, upon notification and appropriate verification submitted to his or her department head, shall be entitled to be absent with pay from his or her duties with the City during the period of such service and while necessarily being present in court as a result of such call. An employee is required to be present at work when not serving as a trial juror or as a member of a jury selection panel. An employee will notify his or her supervisor of any requirements (on-call status) made by the court that may affect the employee's ability to simultaneously fulfill his or her jury duty service and employment obligations. The employee will keep any payment received for jury service including mileage reimbursement.



### 6.3 Continuing Education Leave

The City will grant a continuing education leave of absence with pay up to forty hours per year to benefitted employees who are required by their employment or continuing employment with the City of Berkeley to pursue course work in order to:

- (a) renew a license issued by the State of California; or
- (b) obtain a license issued by the State of California provided that employees verify to the City that the course work for the initial license was not offered as a part of their basic curriculum.

Upon prior approval of the department head, FLSA non-exempt employees who take required course work during non-scheduled work hours in order to obtain or renew a job-required license shall be allowed time off from work on an hour-for-hour basis without loss of compensation or other benefits.

### 6.4 Administrative Leave Program

The City Manager provides for paid administrative leave to eligible employees as set forth in the Appendix to this Manual. Administrative leave is not charged against other accrued leave balances.

### 6.5 Temporary Employees – Earned Leave

A temporary employee who works one thousand forty (1040) hours or more in a calendar year and is in active employment during December of such year, shall be credited with forty (40) hours of paid time off to be used by such employee in the subsequent calendar year for either paid vacation or paid sick leave. The following conditions shall apply to the use of this earned leave as paid time off:

- a. To qualify for earned leave as vacation, the employee must apply, in writing, to the employee's supervisor at least thirty calendar days in advance of the desired time off. The granting or denial of the requested time off shall be in writing and shall be controlled by program considerations as established by the City.
- b. To qualify for earned as sick leave, the employee must notify the employee's supervisor of an inability to report to work by reason of illness or injury in advance of the scheduled work.
- c. An employee who has any unused earned leave credit shall receive payment for such time upon termination of temporary employment. All credited earned leave not utilized by employees at the end of the calendar year in which the employees are eligible to take such leave will be paid at the end of such year as wages and this earned leave shall not be accumulated from year to year.

## 6.6 Abolishment of Temporary Employees – Earned Leave

Effective July 1, 2015, Section 6.5 (Temporary Employees – Earned Leave) is abolished in its entirety and replaced with the following Section 6.7 (Temporary Employees Sick Leave).

## 6.7 Temporary Employees Sick Leave

Effective January 1, 2015, Temporary Employees who have been employed for at least 90 days on July 1, 2015 are eligible to accrue and use sick leave based on hours worked after July 1, 2015 as provided in Section 6.8 (Sick Leave Accrual) below.

## 6.8 Sick Leave Accrual

Effective July 1, 2015, once a temporary employee works for 30 days within a calendar year, the employee shall be eligible to accrue one (1) hour of sick leave for every 30 hours worked thereafter, to a maximum accumulation of 48 hours. Once an employee accrues 48 hours sick leave, the employee shall not accrue any additional sick leave hours until his or her sick leave balance is below the maximum of 48 hours. Under no circumstances will an employee be allowed to accrue more than 48 hours sick leave.

## 6.9 Sick Leave Use

Temporary Employees shall be eligible to use sick leave beginning on the 90<sup>th</sup> day of work. Sick leave shall be used in a minimum of two (2) hours increments, and limited to a maximum of 24 hours use each calendar year. Unused accrued sick leave hours shall carry over to the following calendar year. The following conditions shall apply to the use of this sick leave as paid time off:

- a. Sick Leave may be used for the following purposes: Diagnosis, care, or treatment, of an existing health condition or, preventive care for, an employee or an employee's family member; for an employee who is a victim of domestic violence, sexual assault, or stalking. To qualify for earned as sick leave and if the need for sick leave is foreseeable, the employee must notify the employee's supervisor of an inability to report to work in advance of the scheduled work. If the need for sick leave is unforeseeable, the employee shall provide notice to the immediate supervisor of the need for the leave as soon as practicable.
- b. All accrued and unused sick leave shall be cancelled upon separation/termination of employment. Such previously accrued and unused sick leave shall be credited back to the employee if the employee returns to City employment within one (1) year from the date of separation.

## ARTICLE 7 - LEAVES OF ABSENCE WITHOUT PAY

### 7.1 Power to Grant Leave

The City Manager shall have the power within his or her sole discretion to grant leaves of absence, with and without pay.

### 7.2 Authorized Leave Without Pay

Upon request of the employee, a department head may grant or deny a leave of absence to an employee within his or her department without pay for a period not to exceed thirty working days. No leave without pay shall be granted for more than thirty working days except upon written request of the employee and written approval of the City Manager.

7.2.1 **Required Exhaustion of Accrued Leave:** In the event of an authorized absence due to illness, the employee must use all accrued sick, compensatory and vacation leave prior to receiving authorization for leave without pay. In the event of personal leaves not related to sickness, the employee must use all accrued compensatory and vacation leave prior to receiving authorization for leave without pay. However, employees in the classifications of Legislative Assistant and Assistant to the Mayor are not required to use all accrued compensatory and vacation leave prior to receiving authorization for leave without pay for the employee's respective appointing Councilmember or the Mayor. This subsection does not apply to parental leave or to the exhaustion of sick leave by employees in the classification of Deputy Fire Chief as referenced in Section 7.2.2 (Fire Chief and Deputy Fire Chief Use of Sick Leave), below.

7.2.2 **Fire Chief and Deputy Fire Chief Use of Sick Leave:** In the event of illness or injury of an employee in the classification of Fire Chief and Deputy Fire Chief requiring the use of sick leave, the employee has the option to notify the City in writing that he/she wishes to freeze the use of sick leave after thirty (30) days, prior to receiving authorization for leave without pay, in order to utilize the International Association of Fire Fighters sponsored Long Term Disability benefit.

7.2.3 **Grounds for Discharge:** Failure on the part of an employee to report to work promptly at the expiration of the authorized leave without pay will result in discipline up to and including termination.

### 7.3 Unauthorized Leave of Absence

All paid and unpaid leaves of absence must be approved in accordance with the applicable sections of this Manual. Any absence on the part of the employee who has failed to obtain such approval or failure of an employee to report for duty without appropriate authorization as required by each department will result in the employee being placed on unauthorized leave of absence without pay.

7.3.1 **Grounds for Discharge:** Unauthorized leave of absence without pay shall be cause for disciplinary action up to and including termination.

#### 7.4 Parental Leave

Any employee with one or more years of benefitted employment with the City of Berkeley shall be entitled to up to one year of parental leave upon the birth of a child or the adoption of a child who is five years or younger as provided in Administrative Regulation 2.4 (Family Care Leave).

#### 7.5 Family Care Leave

The City will fully comply with the requirements of the state and federal law regarding pregnancy disability leave and medical/family illness/child care leave where their provisions are more generous than those provided elsewhere in this Manual or Administrative Regulation 2.4 (Family Care Leave). Leaves under this Section 7.5 (Family Care Leave) and Section 7.4 (Parental Leave) and as provided in Administrative Regulation 2.4 may not be combined to yield a larger amount of leave than the state or federal maximums and may not be combined to exceed the maximum one year period of parental leave provided by the City of Berkeley.

#### 7.6 Military Leave

Employees will be granted a leave of absence without pay with appropriate seniority, pay, status and vacation as required by law for the purpose of fulfilling any required military obligation.

## ARTICLE 8 - EMPLOYEE FRINGE BENEFITS

### 8.1 Group Medical-Dental Insurance Benefits

Benefitted employees and their dependents may participate in the City's group medical and dental benefits, which are summarized in the Appendix.

8.1.1 **Part Time Employment:** All benefitted employees who work a minimum of twenty hours, but less than forty hours per week, qualify to receive prorated health and dental benefits and shall pay a pro rata portion of the health and dental insurance premiums. Full time career employees who accept part time employment in lieu of layoff shall continue to receive full health and dental benefits paid by the City.

8.1.2 **Medical Plan for Part-Time Employees:** Effective November 1, 2016, the City will pay 75% of the cost of the medical plan which is fully paid for full-time employees for those benefitted part-time employees who work twenty (20) to twenty-nine (29) hours per week. The City will pay 100% of the cost of the medical plan which is fully paid for benefitted full-time employees for those part-time employees who work thirty (30) or more hours per week.

8.1.3 **Medical Contribution Executive Managers:** Effective July 1, 2019, the City Manager, Deputy City Manager, and all department heads shall pay fifty dollars (\$50.00) per month via pre-tax payroll deduction toward their health premium, and the City will pay an amount equal to the balance of the Kaiser monthly premium rate for the employee's applicable single, two-party, or family employee category.

### 8.2 Life Insurance

The City provides basic group life insurance coverage by a carrier of the City's choice to all benefitted employees and pays the full amount of the life insurance coverage. The City also provides the option to benefitted employees to purchase additional coverage, at their own expense. A summary of the terms of the life insurance coverage is in the Appendix.

### 8.3 Hourly Rated Employees in Lieu of Benefits

Except for employees in the Aquatics Specialist II and Senior Aquatics Specialist classifications, the Salary Resolution shall provide that hourly-rated employees working in career benefitted classifications will receive an additional seven percent (7.0%) in lieu of benefits.

### 8.4 Public Employees Retirement System:

8.4.1 **Participation:** The City shall continue to participate in the Miscellaneous Employees Plan, the Safety Fire Plan and the Safety

Police Plan of the California Public Employees Retirement System ("CalPERS"). All benefitted employees shall participate in one of these plans.

8.4.2 **"Classic Employees" Definition:** Classic Employees are defined as current employees and future employees who do not qualify as "New Members" under the California Public Employees' Pension Reform Act of 2013 (PEPRA).

8.4.3 **CalPERS Retirement Formula for Miscellaneous Employees "New Members" as Defined under PEPRA:** Miscellaneous Employees "New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the 2% at age 62 retirement formula with the highest three (3) year average compensation as set forth in PEPRA.

8.4.4 **CalPERS Miscellaneous Employees Retirement Formula and Employer Paid Member Contribution for Classic Employees:** Effective January 1, 2003, the City amended its Miscellaneous Employees Plan contract with CalPERS to provide the 2.7% at age 55-retirement formula benefit improvement and the City's contribution to CalPERS on behalf of Miscellaneous employees increased from 7% to 8%. Effective July 3, 1994, contributions made pursuant to this Section shall be reported to CalPERS as "special compensation" as provided in Government Code Section 20636(c)(4) pursuant to Section 20691. Said contributions shall not apply in the case of temporary or provisional employees.

The contributions in Section 8.4.4 (CalPERS Miscellaneous Employees Retirement Formula and Employer Paid Member Contribution for Classic Employees) shall not be considered as a part of an employee's salary for the purpose of computing straight time earnings, compensation for overtime worked or for other differentials; nor shall such contributions be taken into account in determining the level of any other benefit which is a function of or percentage of salary.

The City will not treat these contributions as compensation subject to income tax withholding unless the Internal Revenue Service or Franchise Tax Board indicates that such contributions are taxable income subject to withholding. Each employee shall be solely and personally responsible for any federal, state or local tax liability of the employee that may arise out of the implementation of this Section or any penalty that may be imposed therefore.

8.4.5 **Miscellaneous Employees Classic Employee Pension Contribution through a 20516 Contract Amendment**

- 8.4.5.1 **June 4, 2017:** Effective June 4, 2017, Miscellaneous employees will contribute one percent (1%) toward the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allows such contributions via automatic payroll deduction on a pre-tax basis. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.
- 8.4.5.2 **December 31, 2017:** Effective December 31, 2017, Miscellaneous employees will contribute an additional seven percent (7%) towards the City's CalPERS employer share of pension through a 20516 CalPERS contract amendment that allows such contributions on a pre-tax basis, for a total of eight percent (8.0%), via automatic payroll deduction on a pre-tax basis. Such employee deductions by the City shall be used towards the City's CalPERS required contributions. The parties recognize that the Employer Paid Member Contributions (EPMC) shall remain in effect as long as the CalPERS amendment stays in effect.
- 8.4.5.3 If legislation is enacted requiring employers under the CalPERS retirement system to pay all of the employee's share of retirement, thus eliminating the Employer Paid Member Contribution, the City may convert the employee's contribution to the employer's share under this Section 20516 CalPERS contract amendment to the employee's share toward retirement and may continue to pay the 5.58% wage increase provided on December 31, 2017 associated with the CalPERS swap for Miscellaneous Classic Employees.

#### 8.4.6 **Miscellaneous New Members' Pension Contribution**

- 8.4.6.1 Miscellaneous New Members as defined in the California Public Employees' Pension Reform Act of 2013 (PEPRA), shall continue to pay 50% of the Normal Cost required under PEPRA.
- 8.4.6.2 **June 4, 2017:** Effective June 4, 2017, in addition to the contribution in Section 8.4.6.1, Miscellaneous New Members shall contribute one percent (1.0%) toward the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allow such contributions as pre-tax via automatic payroll deduction. Such employee deductions by the City shall be used toward the City's CalPERS required contributions.
- 8.4.6.3 **December 31, 2017:** Effective December 31, 2017, in addition to the contributions in Sections 8.4.6.1 and 8.4.6.2 above,

Miscellaneous New Members shall contribute an additional seven percent (7.0%) towards the City's CalPERS employer share of pension through a 20516 CalPERS contract amendment that allows such contributions as pre-tax, for a total of eight percent (8.0%) via automatic payroll deduction. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.

8.4.6.4 Miscellaneous New Member contributions in Sections 8.4.6.2 and 8.4.6.3 to the CalPERS 20516 employee contributions towards the employer rate are in addition to the required 50% of the normal share of cost of "New Members" required pursuant to PEPRA. Benefits and made in consideration of additional salary increases effective June 4, 2017 and December 31, 2017 and set forth in the Salary Resolution (a total of 5.58% in exchange for employees paying an additional eight percent (8.0%) towards CalPERS pension costs).

8.4.7 **Public Safety CalPERS Retirement Formula for "New Members" as Defined Under PEPRA:** Public Safety "New Members" as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the 2.7% at age 57 retirement formula with the highest three (3) year average compensation as set forth in PEPRA.

8.4.8 **Public Safety Classic Employees CalPERS Retirement Formula:** The City agrees to provide the 3% at age 50-retirement formula benefit improvement (December 22, 2000 for Classic Fire Safety; and July 7, 2002 for Classic Police Safety hired prior to December 28, 2011).

For Classic Police Safety Employees hired on or after December 28, 2011, the City provides the 3% at age 55-retirement formula benefit.

8.4.9 **Public Safety Fire Classic Employees' CalPERS Pension Contribution:** On July 1, 1994, the City increased the base salary of Classic Employees participating in the Safety Fire Plan, in the amount of nine percent (9%). Employees then assumed, and shall continue to assume responsibility for payment of the normal employee retirement contribution to CalPERS. The City shall designate such payments as an Employer Pickup as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code. The employee contributions shall be made through automatic payroll deduction.

**Cost Share:** Effective November 8, 2015 (the first full pay period after Council approval of this Unrepresented Employee Manual), Public Safety Fire Classic Employees shall contribute two percent (2%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis.



- 8.4.10 **Public Safety Police Classic Employees' CalPERS Pension Contribution:** On July 1, 1994, the City increased the base salary of Classic Employees participating in the Safety Police Plan, in the amount of nine percent (9%). Employees then assumed, and shall continue to assume responsibility for payment of the normal employee retirement contribution to CalPERS. The City shall designate such payments as an Employer Pickup as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code. The employee contributions shall be made through automatic payroll deduction.

Effective January 3, 2016, Police Public Safety Classic Employees shall contribute one percent (1%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis. And, effective July 3, 2016, Police Public Safety Classic employees shall contribute an additional one percent (1%), for a total of two percent (2%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis.

- 8.4.11 **Public Safety Fire New Members CalPERS Pension Contribution:** Public Safety Fire New Members hired on or after January 1, 2013 shall pay fifty percent (50%) of the normal share of cost as required pursuant to PEPRA.

**Cost Share:** Effective November 8, 2015 (the first full pay period after Council approval of this Unrepresented Employee Manual), Fire New Members shall also contribute an additional two percent (2%) of pensionable compensation, in addition to the PEPRA mandated 50% of the normal share of cost, toward the City's CalPERS employer contribution rate through automatic payroll deduction on a pre-tax basis

- 8.4.12 **Public Safety Police New Members CalPERS Pension Contribution:** Public Safety Police New Members New Members hired on or after January 1, 2013 shall pay fifty percent (50%) of the normal share of cost required by PEPRA.

**Cost Share:** Effective January 3, 2016, Public Safety Police New Members shall also contribute one percent (1%) of pensionable compensation (in addition to contributing 50% of the normal share of cost) towards the City's CalPERS employer contribution rate through automatic payroll deduction on a pre-tax basis. And, effective July 3, 2016, Police Public Safety New Members shall contribute an additional one percent (1%), for a total of two percent (2%), in addition to the PEPRA mandated 50% of the normal share of cost, toward the City's CalPERS employer contribution rate through automatic payroll deduction on a pre-tax basis.

- 8.4.13 **CalPERS Options Available to Berkeley Employees:** The City's contract with CalPERS includes the following optional benefits:
- a) Classic Employees Only - One-Year Final Compensation as provided in Section 20042 (July 9, 1978 for Miscellaneous; July 22, 1976 for Fire and Police).
  - b) Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (December 16, 1973 for Miscellaneous; March 1, 1973 for Fire and Police).
  - c) Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).
  - d) Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988).
  - e) 1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (December 16, 1973 for Miscellaneous; March 1, 1973 for Fire and Police).
  - f) Third Level of 1959 Survivor Benefits as provided in Section 21573 (November 28, 1996).
  - g) Fourth Level of 1959 Survivor Benefits as provided in Section 21574 for Police Safety only (October 15, 1998).
  - h) Military Service Credit as Public Service as provided in Section 21024 (April 9, 1999 for Miscellaneous; July 14, 2000 for Fire; November 6, 1998 for Police).
  - i) Public Service Credit for Peace Corps or America Corps: Vista Service as provided in Section 21023.5. (April 14, 2000).
  - j) Classic Fire - 3% @ 50 for Local Safety Members as provided in Section 21362.2 for Fire members only, (December 22, 2000); and for Police members only (July 7, 2002.).
  - k) Classic Police Hired Prior to December 28, 2012: 3% @ 50 for Local Safety Classic Members as provided in Section 21362.2 for Police members only (July 7, 2002).

- l) Classic Police: 3% @ 55 for Local Safety Classic Members as provided in Section 21363.1 for Police members only (December 28, 2012).
- m) Classic Miscellaneous: 2.7% at age 55 for miscellaneous members as provided in Section 21354.2 on January 5, 2003.
- n) New Members Miscellaneous: 2% at age 62 for Miscellaneous New Members as defined by PEPRA on January 1, 2013.
- o) New Members Police and Fire: 2.7% @ 57 for Local Safety New Members as defined by PEPRA (January 1, 2013).
- p) Indexed Level of 1959 Survivor Benefits as provided in Section 21574.5 for Fire Safety only (June 13, 2003).

8.4.14 **Unused Sick Leave Conversion:** The conversion of unused sick leave to CalPERS Retirement Credit for Unused Sick Leave under Government Section 20965 shall be made available to qualified retiring employees. This allows employees to convert unused accumulated sick leave at time of retirement, for which the employee receives no compensation, to additional service credit at the rate of 0.004 year of service credit for each day. This credit applies to qualified employees whose effective date of retirement is within four months of separation from employment. The CalPERS sick leave conversion applies to accumulated sick leave, exclusive of the amount of accumulated sick leave paid out to the employee pursuant to Section 4.11 (Accrued Sick Leave Cancellation Upon Termination), of this Manual.

8.4.15 **Retirement Benefit Allowance:** CalPERS retirement benefits are calculated on a formula based on the participating employee's years of service, age at retirement, and percentage of highest year compensation. For employees participating in the Local Miscellaneous Employees Plan, the percentage is 2.7% at age 55 effective January 5, 2003. For Classic Employees participating in the Fire Safety Employees Plan, the percentage is three percent (3%) at age 50 effective December 22, 2000. For Classic Employees participating in the Police Safety Employees Plan, the percentage is three percent (3%) at age 50 effective July 7, 2002. For Classic Employees participating in the Police Safety Employee Plan effective December 28, 2012, the percentage is three percent (3%) at age 55.

## 8.5 Supplementary Retirement and Income Plans

In lieu of participating in the Federal Social Security Program, the City provides a supplemental retirement and income plan to most benefitted employees. There are three supplementary retirement and income plans: Supplementary Retirement and Income Plans I, II and III ("SRIP I, II and III"). The City's contributions to these plans on behalf of participating employees is not subject to income tax until it is paid out to the employees upon retirement or termination, or to the employee's beneficiary in the event of the employee's death.

8.5.1 **SRIP I:** In SRIP I, the City contributes 5.7% of the participating employee's salary (up to a maximum annual salary of \$32,400) into an investment account and 1% into a long term permanent disability plan. SRIP I was closed to new participants on July 22, 1988.

8.5.2 **SRIP II:** In SRIP II, the City contributes 6.7% of the participating employee's salary (up to a maximum annual salary of \$32,400) into an investment account and pays into a disability insurance benefit plan on the employee's behalf; and employees may also borrow up to 50% of the balance in their SRIP II investment accounts, subject to certain limitations. All employees, including the Fire Chief, hired (or who are subsequently enrolled by resolution of the City Council) after July 22, 1988 are automatically enrolled in SRIP II.

The Deputy Fire Chief is enrolled, effective July 1, 1993.

8.5.3 **SRIP III:** For eligible Police Safety employees, the City contributes 2% of the employee's salary (up to a maximum annual salary of \$32,400) into the investment account, SRIP III.

## 8.6 Deferred Compensation

Benefitted City employees are eligible to participate in the City's Deferred Compensation Plan through voluntary payroll deductions from the employee's salary. The Deferred Compensation Plan allows employees to defer part of their salaries, in accordance with Internal Revenue Service limits, to a separate fund, which is not subject to income tax until it is paid out to the employee upon retirement or termination, or to the employee's beneficiary in the event of the employee's death.

## 8.7 PARS

At-will employees who are not eligible to receive fringe benefits under this chapter are automatically enrolled in the Public Agency Retirement System ("PARS"). Each pay period, such employee shall contribute 3.75% of his or her salary into the employee's PARS account on a tax deferred basis and the City shall contribute a matching amount equaling 3.75 % of the employee's salary. The employee's PARS account balance will be distributed to the employee upon retirement or termination, or to the employee's beneficiary in the event of the employee's death.

## 8.8 Public Safety Uniform Allowance

Due to the requirement for sworn fire and police department management personnel to wear standard and dress uniforms in the performance of their duties, the City Manager may provide for the payment of uniform allowance, in keeping with the allowance provided to other fire and police personnel, as shown in the Appendix. The uniform allowance is intended to cover uniform expenses incurred during active service prior to the payment and shall be paid semi-annually, in installments of equal amounts.

## 8.9 Supplemental Retirement Plan and Trust Agreement

Effective July 1, 2001, the City adopted a Supplemental Retirement Plan and Trust Agreement to provide supplemental retirement income and other benefits for eligible unrepresented career benefited and regular at-will employees through the liquidation of termination pay. Termination pay means pay due to an eligible unrepresented career benefited and regular at-will employee from the City on account of termination of his or her employment, but only including the commuted value of the following such accumulated pay: vacation, sick leave, sick leave bonus, compensatory time and floating holidays. The Supplemental Retirement Plan includes both mandatory contributions of termination pay and voluntary contributions for employees who provide the City with an irrevocable payroll deduction authorization at least 90 days in advance of the date of termination.

## **ARTICLE 9 - EMPLOYMENT AT-WILL**

### **9.1 Employment At-Will**

An employee who is employed in a position that is excluded from the career service by Berkeley Municipal Code Section 4.04.120 of the Personnel Ordinance is employed by the City in an "at-will" status. This means that both the at-will employee and the City have the right to terminate employment at any time, with or without advance notice, and with or without cause. No employee or officer of the City of Berkeley has the authority to alter the employee's at-will status or to enter into an oral or written agreement for employment for a specified period of time, or to make any promises, assurances or agreements contrary to this the provisions of this Section.

### **9.2 No Right to Appeal Discharge**

An at-will employee who is discharged has no right of appeal or hearing in any manner provided by this Manual.

### **9.3 Benefits**

Those offices, positions and employments named in the Berkeley Municipal Code, Sections 4.04.120 (A), (B) and (C) who regularly work twenty or more hours per week are classified as regular at-will employees and shall be entitled to those benefits as specified for benefitted employees by this. A list of regular at-will positions entitled to receive such benefits is in the Appendix.

All other offices, positions and employments named in the Berkeley Municipal Code, Section 4.04.120, are not eligible for any benefits provided under these Rules, except those expressly specified for temporary employees, such as the Earned Leave benefit or those required by State or Federal law such as Family Care Leave and enrollment in the City's PARS retirement plan, as provided in this Manual.

### **9.4 Standards of Conduct**

At-will employees are subject to the same standards of conduct that prevail over employees in the career service. Any evaluations, warnings or disciplinary action provided to at-will employees regarding their conduct or job performance does not create any obligation or duty on the City's part to provide a warning or evaluation or corrective progressive discipline prior to discharge and in no way negates or otherwise abrogates the City's right to discharge at-will employees for any reason without notice at any time during their employment and without right of appeal.

### **9.5 Transfer or Appointment of Career Employee to an At-Will Position**

Any employee in the career service who accepts a transfer or appointment to an at-will position shall be reinstated to the career position from which he or she was transferred or appointed if within six months after such transfer or appointment, action is taken to dismiss the employee, unless charges are filed and the employee

is discharged in accordance with these Rules. After expiration of the six month period, the employee is excluded from the career service and from any retreat rights to former career positions and is subject to termination at any time, with or without advance notice, with or without cause, and without the right of appeal.

## **ARTICLE 10 - LAYOFF POLICY AND PROCEDURE**

### **10.1 Statement of Intent**

This layoff policy is intended to provide the maximum employment protection to employees in the career service and to minimize the impact on the City's affirmative action accomplishments should a layoff become necessary.

### **10.2 Announcement of Layoff**

The City Council, City Manager and department heads shall make every reasonable effort to manage and budget the City's resources effectively, and to plan for the delivery of City services in a manner which will avoid the necessity to lay off career City employees. A reduction in the workforce for more than thirty calendar days is necessitated by, but not limited to, the following a material change in duties and organization, adverse working conditions, return of employee from leave of absence, or shortage of work or fund. In the event of a layoff, the City Manager shall notify the Director of Human Resources of the intended action and the reason for the layoff.

### **10.3 Vacancy Freeze**

Immediately following a decision which may involve the potential layoff of career City employees, the City Manager shall freeze all current City vacancies in the career service in similar and related classes to those likely to be targeted for layoff. The City Manager shall notify the department heads of a freeze of vacancies in their departments and shall require that requisitions continue to be submitted for any budgeted positions which the department head intends to fill and for which funding is available.

### **10.4 Seniority Service Date**

All service in the employ of the City shall be counted toward the establishment of an employee's Seniority Service Date, including permanent, probationary, provisional, temporary, part time (on a prorated basis), seasonal, regular at-will employment, and approved military and parental leaves of absence. All other leaves without pay, including time off as a result of formal disciplinary action will be subtracted from the Seniority Service Date.

### **10.5 Establishment of Seniority Lists**

Layoffs shall be made according to City-wide class Seniority Lists which the Human Resources Department will immediately establish for probationary and permanent employees in each class targeted for layoff. The names of all City employees holding permanent and probationary appointments in a given class will be listed on the appropriate list in descending order by Seniority Service Date.

Probationary or permanent employees temporarily acting out of class and holding a provisional appointment in another class will be listed on the Seniority List of the class in which they hold permanent or probationary status.



## 10.6 Order of Layoff

Employees within a specific class shall be laid off on the basis of their Seniority Service Date; i.e., employees with the least amount of total service shall be laid off first. All emergency, temporary and provisional employees working in classes similar to those identified for layoff must be terminated prior to the layoff of probationary and permanent employees. Probationary employees will be laid off prior to permanent employees for a specific class.

10.6.1 **Tie:** If two or more employees on a Seniority List have an identical Seniority Service Date, the tie shall be broken in the following order: (1) time in class--the employee having least time in the class shall be laid off first, and (2) by lot.

10.6.2 **Administrative & Fiscal Services Manager Position in the Berkeley Public Library:** This is a specialty designated position within the Administrative & Fiscal Services Manager classification, and will be treated as a separate classification for the purpose of administering the Layoff Policy and Procedure.

## 10.7 Notification

Permanent and probationary employees should be notified individually, in writing, of pending layoffs as soon as possible, with no less than thirty calendar days notification if targeted for termination or retreat to a lower class.

All other employees to be laid off shall be given, whenever possible, at least a fourteen (14) calendar day prior notice.

## 10.8 Employee Retreat Rights

A probationary or permanent employee affected by layoff shall have the right to displace an employee in a lower level class in which the affected employee once had permanent status or in a subsequently created intermediate level career class which provides normal progression through the class series. Retreat rights shall also extend to employees who have not previously been promoted through a class but for whom the class is a natural progression or beginning in the class series. Retreat rights into a lower class will be granted in order of the highest seniority date on the Seniority List for employees in that class.

10.8.1 **Qualified to Retreat into More than One Classification:** When an employee is qualified to retreat into more than one class, the options shall be discussed with the employee and due consideration given to the employee's preferences. However, it is the prerogative of the City Manager to determine the final placement offer to the employee

10.8.2 **Salary Step:** Employees retreating to a lower class or being flexibly placed in a similar class shall be placed at the salary step representing

the least loss of pay. In no case shall the salary be increased above that received in the class from which the employee was laid off.

- 10.8.3 **Reinstatement after Transfer:** An employee whose position is abolished and is transferred in lieu of layoff shall have the right to return to the position if it is restored within one year of the date of the transfer.

## 10.9 Flexible Placement Program

After all frozen vacant positions have been filled by employees entitled to retreat rights under Section 10.8 (Employee Retreat Rights) of this chapter, the Human Resources Department will review and identify the remaining frozen vacant classes into which career employees targeted for layoff who have not retreated into a lower class may be placed on the basis of total experience and education.

- 10.9.1 **Failure to Meet Minimum Requirements:** Where the targeted employee does not meet the minimum qualifications of a frozen vacant position, the City Manager has the discretion to either waive the minimum qualifications and/or substitute the targeted employee's job-related experience and education for the minimum qualifications, but under no circumstances is the City Manager required to do so. Where the employee does not meet the minimum qualifications, flexible placement can occur only if the City Manager determines that management and supervisory personnel are able to provide adequate supervised on-the-job training to the employee to meet the requirements of the job. The employee must successfully complete the training within six months as determined by the Director of Human Resources or the employee shall be again subject to the layoff procedures.
- 10.9.2 **Salary Range:** Assignments under the Flexible Placement Program shall be limited to positions in the same or lesser salary range as the classification from which the employee is to be laid off.
- 10.9.3 **Order of Assignment:** Offers to positions under the Flexible Placement Program shall be made according to the employee's standing on the Seniority List.

## 10.10 Failure to Accept Offer under Layoff

Failure on the part of an employee to accept a written bona fide offer to retreat to a lower class or be flexibly placed in an alternative job within ten calendar days after the offer is made shall result in forfeiture of any further right to employment retention. Acceptance of a reassignment to a lower class does not remove the employee's right of appeal under Section 10.12 (Appeal Procedures) nor does acceptance of an alternative job under the Flexible Placement Program jeopardize an employee's standing on the re-employment lists as further provided in this Section 10.10 (Failure to Accept Offer under Layoff).

## 10.11 Re-Employment List

The names of probationary and permanent employees laid off in accordance with this chapter shall be entered on a re-employment list for both those classes from which they were separated as well as other classes to which they have retreat rights.

- 10.11.1 **Duration of List:** Re-employment lists for laid off employees who are separated from City service shall remain in effect for three years. Re-employment lists for laid off employees who are demoted shall remain in effect indefinitely.
- 10.11.2 **Use of List:** Re-employment lists shall be used by each department when a vacancy arises in the same or lower class of position before certification is made from an eligible list.
- 10.11.3 **Order of Appointment:** Employees on the re-employment list shall be certified and appointed to a vacancy in the appropriate class according to their standing on the Seniority List.
- 10.11.4 **Failure to Appoint from Re-Employment List:** If a vacancy is filled from an eligible list in a class for which a re-employment list exists which is a violation of this Section, the employee on the re-employment list who should have been appointed shall be appointed to the vacancy and paid retroactively from the date the vacancy occurred.
- 10.11.5 **Failure to Accept Bona Fide Offer:** Failure on the part of the employee on the re-employment list to accept a bona fide written offer of re-employment within fifteen calendar days will result in removal of the employee's name from the re-employment list from which the offer was made. Failure to accept an offer of re-employment to the class with the highest salary range for which the employee is eligible for re-employment will result in automatic removal of the employee's name from all re-employment lists. The employee may, however, accept or decline temporary re-employment without jeopardizing his or her standing the re-employment list for the class from which he or she was originally terminated.
- 10.11.6 **Salary Step:** Upon reappointment to the class from which the employee was originally separated or demoted, the employee shall be placed at the salary step that the employee held at the time of the separation or demotion.
- 10.11.7 **Reinstatement List:** Any former employee on a re-employment list shall be included as an eligible on the reinstatement list for a specific class at or below the class from which layoff occurred, upon written request by the employee for reinstatement which is submitted with a current, completed City of Berkeley application and upon meeting the

minimum qualifications of the specific class unless waived by the City Manager as provided under flexible placement.

### **10.12 Appeal Procedures**

The decision of the City Manager to implement a layoff is not appealable. Any unrepresented career employee who believes that the layoff procedure, as defined herein, has been improperly administered as to the employee may appeal the action under the Complaints, Appeals and Hearing Procedure of this Manual. Employees are entitled to review all records pertaining to their class and their rights under the provisions of the layoff policy.

### **10.13 Audit**

In the event of a dispute between an employee and the City over the application of the re-employment list and if either party so requests, the City Manager's Office shall order an audit by an outside auditor of all vacant positions filled in each department to determine whether vacancies were filled in compliance with the procedures for appointments from re-employment lists set forth in Section 10.11 (Re-Employment List) of this Manual. In the event vacancies for which re-employment lists were in existence remain unfilled, the auditor shall offer an opinion as to whether or not the reasons for leaving the positions vacant appear to be legitimate. A report of the audit shall be transmitted to the City Manager and the City Council.

## **ARTICLE 11 - DISCIPLINARY ACTION**

### **11.1 Policy**

Prior to the suspension, disciplinary demotion or discharge of an employee in the career service for disciplinary purposes, the procedure set forth in this Article 11 (Disciplinary Action) shall be complied with provided, however, that only those employees in the career service who are not represented by a labor organization shall be entitled to the notice, rights and procedures provided under Section 11.3 (Disciplinary Actions).

### **11.2 Final Decision Maker for Disciplinary Action**

For purposes of this chapter, the City Manager is the final decision maker for City of Berkeley employees. The Rent Stabilization Board is the final decision maker for Rent Stabilization Program employees. The Library Board of Trustees is the final decision maker for Library employees.

### **11.3 Disciplinary Actions**

The department head shall initiate disciplinary procedures, as set forth here. The department head may suspend a subordinate employee for not more than three working days at any one time. For suspensions of more than three days, disciplinary demotions and discharge, the department head shall make a recommendation to the final decision-maker. The final decision-maker may suspend an employee from a position at any time for cause. Suspension without pay shall not exceed thirty working days, nor shall any employee be penalized by suspension for more than thirty working days in any continuous twelve month period. However, FLSA exempt employees shall not be suspended in less than regular workweek increments except for safety or security violations. A "regular workweek" is defined elsewhere by this Manual.

### **11.4 Written Reprimands for Fire Safety Employees**

Consistent with the Firefighter Bill of Rights Act, the Deputy Fire Chief receiving a written reprimand shall have the right to a non-evidentiary administrative appeal to the Fire Chief or Fire Chief's designee. The employee must request an administrative appeal in writing to the Fire Chief within ten (10) working days of receipt of the written reprimand. Failure to do so shall be deemed a waiver of the employee's right to appeal. The Fire Chief or Fire Chief's designee shall have discretion regarding how the appeal meeting is conducted, including whether and the extent to which witnesses other than the employee and employee's representative are required and may participate. The Fire Chief or Fire Chief's designee shall notify the employee of his or her decision within ten (10) working days of the appeal meeting. An employee and the Association have no further right to appeal or grieve a written reprimand beyond the administrative appeal described in this paragraph.

### **11.5 Written Reprimands for Non- Safety Employees**

In the event that an employee receives a written reprimand, the employee may write a rebuttal within thirty (30) calendar days of receiving the written reprimand and such rebuttal will be placed in the Personnel File along with the written reprimand. Employees have not right to appeal or grieve a written reprimand.

## ARTICLE 12 - COMPLAINTS, APPEALS AND HEARINGS

### 12.1 Policy

The procedure for filing complaints and appeals by employees set forth under this Article 12 shall be complied with provided, however, that only those employees in the career service who are not represented by a labor organization shall be entitled to file complaints with the City and appeals to the Personnel Board pursuant to the provisions of this Manual.

### 12.2 Final Decision Maker for Purposes of this Article

For purposes of this chapter, the City Manager is the final decision maker for City of Berkeley employees. The Rent Stabilization Board is the final decision maker for Rent Stabilization Program employees. The Library Board of Trustees is the final decision maker for Library employees.

### 12.3 Complaints

Disciplinary action shall be taken in accordance with Article 11 (Disciplinary Action) of this Manual. All other complaints by employees, except complaints about compensation, which allege a violation of the Personnel Ordinance or this Manual shall be filed through proper channels, commencing with the department head, and then to the final decision maker.

**12.3.1 Compensation Complaints:** All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Director of Human Resources. The Director of Human Resources shall respond in writing within thirty (30) working days. If the complaint has not been resolved within thirty (30) working days of filing with the Director of Human Resources, the complaint may be moved to the final decision maker. Only complaints, which allege that employees are not being compensated in accordance with the policies, rules and resolutions of the City Council, shall be considered as complaints under this Section. No compensation adjustment shall be retroactive for more than thirty calendar days from the date upon which the complaint was filed or thirty calendar days from the date when an employee may reasonably be expected to have learned of the claimed violation.

**Appeal:** If the grievant is not satisfied with the decision of the Director of Human Resources or his or her designee, the grievant may move the complaint to the final decision maker within ten (10) days of receipt of the decision rendered under Section 12.3.1 above. Failure by the employee to file an appeal within the specified time limits specified constitutes a dropping of the complaint. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.

12.3.2 **Discrimination Complaints:** An employee may file a complaint concerning a violation of the "FAIR EMPLOYMENT" provision specified by the rules of this Manual, and the complaint shall be processed in accordance with the EEO Complaint Investigation and Resolution Procedure of the City of Berkeley EEO/Affirmative Action Program, as established in Resolution No. 54,926-N.S., as amended from time to time.

#### 12.4 Right of Appeal

An aggrieved employee shall have the right to appeal the decision of the final decision-maker regarding the aggrieved employee's disciplinary dismissal, demotion, suspension or complaint to the Personnel Board except in instances where the right to appeal is prohibited by the Personnel Ordinance or the provisions of this Manual.

#### 12.5 Method of Appeal

Appeals to the Personnel Board shall be in writing, signed by the aggrieved employee and filed with the Director of Human Resources within ten calendar days after the action is imposed. The appeal shall be a written statement, addressed to the Chair of the Personnel Board, explaining the matter appealed from and setting forth a statement of the action desired by the aggrieved employee, supported by his or her reasons. The Director of Human Resources shall, within ten calendar days after receipt of the appeal, inform the Chair of the Personnel Board, the City Manager and the affected department head of the filing and contents of the appeal with the Board.

#### 12.6 Investigations and Hearings

Upon receipt of any appeal, the Personnel Board shall make such investigation, as it may deem necessary.

An aggrieved employee who has been demoted for a disciplinary purpose, suspended or discharged is entitled to a hearing upon appeal before the Personnel Board. As to all other appeals, the Personnel Board may grant a hearing or decide the appeal without a hearing as it may deem warranted.

#### 12.7 Hearing Procedures

In cases where the employee is entitled to a hearing as a matter of right and in other cases whenever the Board may deem it advisable to hold a hearing, these procedures shall apply.

12.7.1 **Notice:** The Personnel Board shall schedule a hearing on the appeal within forty-five calendar days from the date of the filing of an appeal. The Director of Human Resources shall notify all interested parties of the date, time and place of the hearing at such places as the Personnel Board shall prescribe.



12.7.2 **Hearing Procedure:** The aggrieved employee shall appear personally unless physically unable to do so before the Personnel Board at the time and place of the hearing. The aggrieved employee may be represented by any person or attorney as may be selected and may at the hearing produce relevant oral or documentary evidence. The party who has the burden of proof shall state the case first after which opposition matter may be presented. Rebuttal matter that is not repetitive may be allowed at the discretion of the Personnel Board. Cross-examination of witnesses shall be permitted. Hearings need not be conducted according to technical rules relating to evidence and witnesses, but shall be conducted according to any rules of applicable procedures. Hearings shall be closed unless otherwise required by the Ralph M. Brown Act, Government Code Section 54950, as amended from time to time, or any other applicable law.

## 12.8 Findings and Recommendations

The Personnel Board shall, within thirty calendar days after the conclusion of the hearing, or if no hearing was conducted, within thirty calendar days of its decision, certify its findings and recommendation(s) in writing to the aggrieved employee and to the final decision-maker. The final decision maker shall review the findings and recommendation(s) of the Personnel Board and may then affirm, reject or modify the Personnel Board's findings and recommendation(s) as, in his or her judgment, seems warranted, and the final decision maker's decision shall be final. Any member of the Personnel Board may submit a minority or supplemental report which shall be attached to the findings and recommendation(s) of the Board.

## APPENDIX

This Appendix contains detailed information regarding benefits and compensation which covers unrepresented benefitted employees. It is appended to the Unrepresented Employee Manual but the contents are not part of the resolution establishing the Unrepresented Employee Manual and may be changed to reflect changes in benefit details, as approved by the City Council by resolution.

### 13.1 Administrative Leave

Employees who are in career, benefitted, or at-will benefitted classifications which are FLSA Exempt may be approved by the City Manager to receive up to an additional 50 hours of compensated administrative leave beginning on January 1, 2016, and at the beginning of each calendar year thereafter, or prorated during the course of the year when employed less than a full year. This administrative leave is granted to employees whose job responsibilities cause them to work numerous hours in excess of the normal City workweek. The City Manager has the authority to rescind administrative leave in those instances of abuse or misuse of the intent of this provision.

Administrative leave taken must be approved in advance by the department head and posted to the employee's timecard. Unused administrative leave may be carried over to the next calendar year, providing the total of excess vacation and unused administrative leave do not exceed 320 hours. Otherwise, the excess administrative leave must be taken within the calendar year in which it was earned or it may be forfeited. Upon termination or retirement, no monetary award will be authorized for unused accumulated administrative leave.

**13.1.1 Prorated Administrative Leave:** A benefitted employee who is otherwise eligible for overtime and who is on a temporary or provisional benefitted appointment in an FLSA Exempt classification for a period of one month or longer, and is ineligible to earn overtime, shall be entitled to prorated Administrative leave for the duration of the temporary or provisional appointment. Any unused administrative leave at the end of the temporary or provisional appointment will roll into vacation, provided the total of accrued and unused vacation and accrued administrative leave do not exceed 320 hours.

### 13.2 Automobile Allowance

The City reimbursement rate for the use of a private automobile on authorized City business will be equal to the amount established by the Internal Revenue Service.

### 13.3 Bilingual Premium Pay

**13.3.1 As Part of Regular Job Assignment:** An employee who is required as an essential part of his or her job to provide non-English language services, including Braille and sign language, routinely and consistently as part of his or her regular job assignment as determined by the City

will receive a Bilingual Premium Pay Differential of 5%. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of 5% will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

- 13.3.2 **Occasional Assignments:** An employee assigned occasionally to provide non-English language services, including Braille and sign language, when either a) assigned by management, or b) at the request of the employee with the supervisor's agreement, or, c) after a job audit will receive a Bilingual Premium Pay Differential of 2%. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of 2% will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.
- 13.3.3 **Competency and Management Rights:** The bilingual premium will not be applicable under any circumstances except to an employee who possesses second language competency. Management reserves the right to test for second language appropriate competency prior to a Bilingual Premium Pay Differential.
- 13.3.4 **Temporary Designation:** The City may designate an employee to receive either the 5% or 2% Bilingual Premium Pay Differential on a temporary basis for a specified period provided the employee met the requirements contained in the first or second paragraph of this Section.

#### 13.4 Cash-In-Lieu Payments

For those employees who are able to show proof of ongoing alternate medical coverage, the City will compensate employees \$560.00 per month, prorated for less than full-time employees. This benefit shall be frozen at this amount.

#### 13.5 Dependent Care

Employees shall be allowed to designate a specific amount of salary, consistent with State and Federal tax laws, to be redirected to pay for dependent care costs through pre-tax salary deductions. The amount of funds designated should be considered carefully, because under the current tax code, any unexpended funds which have not been spent for the specific purpose of paid dependent care and remain in the employee's account at the end of the year, will be forfeited.

### 13.6 Life Insurance

The City shall provide paid group life insurance, by a carrier of the City's choice, in the amount of \$25,000 which shall include a standard accidental death and dismemberment provision of a like amount. Employees in the classification of Police Chief and Fire Chief shall be provided with life insurance in the amount of \$100,000, which shall include a standard accidental death and dismemberment provision of a like amount. Life insurance shall become effective the first day of the calendar month following appointment, and shall continue until the last day of the calendar month in a pay status.

In addition, all unrepresented benefitted employees may purchase additional coverage, in increments of \$10,000, up to a maximum of \$300,000, at the rate offered by the City's insurance carrier, subject to any rules and restrictions of the carrier, including but not limited to any medical exam that might be required by the insurance carrier.

### 13.7 Medical/Dental Insurance for Employees/Dependents

Except as provided in Section 8.1 (Group Medical-Dental Insurance Benefits), the City offers fully paid and/ or partially paid health insurance plans and a fully paid dental plan for the employee and eligible dependents, including a domestic partner. The dental plan currently provides orthodontic coverage for the employee's dependent children through age 26 and 90% of the Bay Area Usual, Customary and Reasonable charges. Effective January 1, 2007, the maximum annual coverage will be \$2,000 annual coverage, and \$2,000 lifetime orthodontia limit. Any employee, who is required to partially pay premiums, shall be allowed to make these payments with pre-tax deductions. The medical and dental benefit coverage for dependent children extends to the date of their 26<sup>th</sup> birthday, providing they meet the Internal Revenue Service definition of "dependent". If an employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for medical benefits and/or dental benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

Medical and dental benefits shall begin the first day of the calendar month following the date of hire, and end the last day of the month an employee is in pay status, except in the case of parental and Family and Medical Leave Act, as described in the Administrative Regulation No. 2.4. Maximum annual coverage amounts are found in the Employee Benefits Handbook.

**13.7.1 Dental Coverage for Fire Management:** Effective January 15, 2015, employees in the classification of Fire Chief and Deputy Fire Chief, shall be provided with dental insurance with an annual maximum coverage of \$3,000 and lifetime orthodontia limit of \$3,000.

**13.8 Retiree Medical Plan**

The terms and conditions of this benefit shall be set forth in a separate document which shall contain a full plan description and shall control the administration of the retiree medical plan.

**13.9 Amendment of Retiree Health Premium Assistance Plans I and II, effective June 28, 1998, Restated and Amended effective March 22, 2011**

Employees who retire on or after June 21, 2015, shall be permitted, at their discretion, to enroll in non-City sponsored health plans. After Council approval of this Unrepresented Employee Manual, the City shall amend the Retiree Health Premium Assistance Plans I and II as soon as practicable to allow enrollment in non-City sponsored health plans. In the event a retiree elects to enroll in a non-City sponsored health plan, the City shall make medical insurance premium payments directly to the health insurance provider in an amount equal to what the City would contribute to the City sponsored health plan. Retiree shall be solely responsible for all aspects of the requirements to enroll in a non-City sponsored health plan and maintain eligibility for such a plan; the City's sole obligation is to pay the medical insurance premium contribution required under this section, as directed by the retiree to a non-City sponsored health plan. The City shall not be responsible for any excess cost differentials associated with the direct payment of premiums to non-City sponsored plans. The City will only make payments through its third party administrator to provide medical insurance premium payments for an individual plan and will not make payments for a group plan. The retiree and/or surviving spouse or domestic partner that enroll in non-City sponsored health plans shall be solely responsible for paying the administrative set up fee, the monthly administrative fee, and/or any other fees established by the third party administrator, and said fees will be deducted directly from the retiree's monthly contribution. No cash payments will be paid directly to the retiree or the retiree's spouse/domestic partner. There shall be no cash in lieu payments made under this benefit.

The City will also amend the Retiree Premium Assistance Plans I and II to allow eligible retirees who retired prior to June 21, 2015 to enroll in a non-City sponsored health plan.

**13.10 Retiree Medical for Unrepresented Benefitted Employees**

Effective June 28, 1998, the City will provide the retiree medical coverage set forth below for all unrepresented benefitted employees, except employees in the classifications of Police Chief, Fire Chief, and Deputy Fire Chief (see separate plans below). An employee's entitlement to any and all benefits provided by the City under this retiree medical plan is subject to the funding limitations set forth in the plan document.

- 13.10.1 Eligibility and Percentage of City Contribution:** An employee is eligible for the retiree health insurance coverage as set forth in Sections 13.10.3 (Pre Age 65 Retiree Health Insurance) and 13.10.4 (Retiree

Benefits for Employees Age 65 or Over) below if he or she meets all the following criteria:

- a. retires from career service on or after June 28, 1998;
- b. is vested with CalPERS;
- c. has at least eight (8) years of CalPERS qualifying service with the City; and
- d. is at least age 55.

An “Eligible Retiree” also includes individuals who meet the definition as set forth in Section 2.11.1 of the Retiree Health Premium Assistance Plan I for Confidential and Executive Management Employees (Representation Unit Z-1; Z-5; Z-7; Z-9 and Elected Officials) Restated and Amended effective as of March 22, 2011 (Resolution No. 65,196-N.S.) for “Eligible Retiree.”

**Percentage of City Contribution:** The actual monthly amount of money the City will contribute on the employee’s behalf will be based on the employee’s total years of CalPERS service as provided in the following chart:

Years of CalPERS Qualifying Service	Percentage of City Contribution
8	30%
9	40%
10	50%
11	58%
12	66%
13	74%
14	82%
15	90%
16	92%
17	94%
18	96%
19	98%
20	100%

- 13.10.2 **Annual Increase:** Retirees will pay the difference between the City’s monthly contribution and the actual monthly medical insurance premium charged by the health plan he or she has elected for retiree medical coverage. If the premiums for such health insurance are increased, the amount the City contributes shall increase no more than 4.5% above the previous year’s contribution. No increases in the amount the City contributes shall occur before July 1, 1999. Thereafter, any increase in the amount contributed by the City will occur on July 1 each year thereafter.

- 13.10.3 **Pre Age 65 Retiree Health Insurance:** Beginning June 28, 1998, the City shall make available health insurance coverage to the employee and his or her spouse or domestic partner. The City will pay on the employee's behalf no more than \$166.26 per month for an employee electing single party health coverage and no more than \$332.52 per month for an employee electing two party coverage.
- 13.10.4 **Retiree Benefits for Employees Age 65 and over:** Once an employee or retiree reaches age 65, he or she is eligible for Medicare. As a result his or her eligibility for the retiree medical benefits set forth in Section 13.10.1 (Eligibility) ceases. On reaching age 65, the City will make available health insurance coverage in addition to Medicare. When an employee or retiree reaches age 65, the City will contribute no more than \$16.17 per month on the employee's behalf for single party health insurance coverage and no more than \$32.34 per month for two-party health coverage.
- 13.10.5 **Termination by City of Retiree Medical Benefit:** Failure of the retiree or surviving spouse to pay their monthly share of the health insurance premium will result in termination of the retiree medical benefit and relieve the City of any further obligation to provide any further benefits under Section 13.10 (Retiree Medical for Unrepresented Benefitted Employees).
- 13.10.6 **Retiree Medical Benefit for Employees Retiring between the Ages of 50 and 55:** An employee who is at least 50 years of age, but less than 55, has at least eight (8) years of CalPERS qualifying employment with the City will retain eligibility for the retiree medical benefits provided in Section 13.10.1 (Eligibility) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his or her termination from City employment until the employee's 55th birthday. If for any reason the employee has a lapse in group health care coverage the employee forfeits his or her eligibility for the retiree health plan benefits upon reaching age 55 and the City has no further obligation to provide any benefits under this Section to the employee and/or his spouse or domestic partner.
- 13.10.7 **Employees Retiring with a CalPERS Approved Disability Retirement:** If an employee retires from the City before age 55 with a CalPERS approved disability retirement, the employee will retain eligibility for the retiree medical benefits provided in Section 13.10.1 (Eligibility) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his or her termination from City employment until the employee's 55th birthday. If for any reason the employee has a lapse in health care coverage the employee forfeits his or her eligibility for the retiree health plan benefits upon reaching age 55 and the City has no further obligation to provide

any benefits under this Section to the employee and/or his spouse or domestic partner.

- 13.10.8 **City Funding of Retiree Health Benefit:** City contributions to the retiree medical benefit began on July 1, 1998. Funding of this benefit has been set aside in a trust to be established by the City.

The retiree medical benefit will be funded by a charge of 0.25% of payroll in each year, so that contributions are at 1% of the payroll after four years. The City will fund the benefit at approximately 1% of the payroll for every year thereafter with the intent of achieving a funding level of 70% after 30 years. The funding will be ongoing to maintain a 70% funding level thereafter.

Effective July 4, 2004, an additional charge of 0.25% of payroll was charged each year in the subsequent four years so that contributions are at 2% by July 1, 2007. The purpose of this 1% increase in payroll contribution is to fund post age 65 Medicare supplement plans. As a result of this change, the amount the City contributes toward the post-65 Medicare Supplement coverage under the Retiree Health Premium Assistance Plan was \$102 effective July 7, 2002 for all post 65 retirees as well as future retirees.

- 13.10.9 **Retiree Medical Plan for Unrepresented Employees (Rep Units Z-2, Z-3, Z-6):** Eligible retirees who retired from positions in Representation Units Z-2, Z-3 and Z-6 on or after July 1, 2008.

**Not Medicare Eligible:** Effective July 1, 2008, between the ages of 55 and 65 who retire on or after June 29, 2008 the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by \$50 per month in addition to the 4.5% that occurs on July 1 as provided in Section 13.10.2 (Annual Increase). Effective July 1, 2009, the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by an additional \$25 per month (i.e., an aggregate \$75 per month increase) in addition to the 4.5% that occurs on July 1 as provided in Section 13.10.2 (Annual Increase). Effective July 1, 2011, the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by an additional \$25 per month (i.e., an aggregate \$100 per month increase) in addition to the 4.5% that occurs on July 1 as provided in Section 13.10.2 (Annual Increase).

- 13.10.10 **Retiree Medical Plan for Confidential and Executive Management Employees (Rep Unit Z-1; Z-5; Z-7; Z-9; and Elected Officials):** Eligible retirees who retired from positions in Representation Unit Z-1 on or after July 1, 2008.



**Medicare and Not Medicare Eligible:** Effective June 29, 2008, an additional charge of 0.50% of payroll will be charged so that contributions are at 2.5%. The purpose of this 0.50% increase in payroll contribution is to fund both pre-65 retiree health care premium costs and post age 65 Medicare Supplement plans for eligible retiree who retired from positions in Representation Unit Z-1; Z-5; Z-7; Z-9 and Elected Officials on or after July 1, 2008. As a result of this change, the amount the City contributes toward pre age 65 health insurance premium costs shall increase from \$258.19 per month to \$309.39 per month for single coverage and from \$516.38 per month to \$618.78 per month for 2-party coverage. The City's contribution toward the post-65 Medicare Supplement coverage shall increase from \$132.83 per month to \$184.03 per month for single coverage and from \$265.67 per month to \$368.06 per month for 2-party coverage.

### 13.11 Reimbursement Plan

After Council approval of this Unrepresented Employee Manual, the City shall amend the Retiree Health Premium Assistance Plans I and II as soon as practicable to allow for the reimbursement of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner until the death of both. If there is no spouse or domestic partner at the time of retirement, the City shall only reimburse the single party rate. The reimbursement shall be paid directly to the retiree or surviving spouse or domestic partner. The maximum amount the City will reimburse for the cost of Medical Insurance Premiums is based on the schedule described in Section 13.10.1 (Eligibility and Percentage of City Contribution) above.

#### 13.11.1 Retiree Medical Reimbursement Plan for Unrepresented Confidential and Executive Management Employees (Rep Units Z-1; Z-5; Z-7; Z-9; and Elected Officials) Who Retire on or After June 28, 1998 through June 30, 2008

13.11.1.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner until the death of both as follows:

- a. **Reimbursement as of June 28, 1998:** Effective June 28, 1998, as provided in Section 13.10.2 (Annual Increase), each month after the employee retires, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$166.26 for single party coverage for the retiree or \$332.52 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

- b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Annual Increase), total \$338.60 for single party coverage for the retiree or \$677.19 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

13.11.1.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of June 28, 1998:** Effective June 28, 1998, as provided in Section 13.10.4 (Retiree Benefits for Employees Age 65 and Over) each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$16.17 for single party coverage for the retiree or \$32.34 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of July 7, 2002:** Effective July 7, 2002, as provided in Section 13.10.8 (City Funding of Health Benefits) each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$102.00 for single party coverage for the retiree or \$204.00 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- c. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$172.98 for single party coverage for the retiree or \$345.96 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

13.11.2 **Retiree Medical Reimbursement Plan for Unrepresented Confidential and Executive Management Employees (Rep Units Z-1; Z-5; Z-7; Z9 and Elected Officials) Who Retire on or After July 1, 2008**

- 13.11.2.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:
- a. **Reimbursement as of July 1, 2008:** On July 1, 2008, as provided in Section 13.10.10 (Retiree Medical Plan for Unrepresented Confidential and Executive Management Employees), the City will reimburse the cost of Medical Insurance Premiums in an amount totaling \$309.39 for single party coverage for the retiree or \$618.78 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
  - b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$405.73 for single party coverage for the retiree or \$811.46 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- 13.11.2.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:
- a. **Reimbursement as of July 1, 2008:** Effective July 1, 2008, as provided in Section 13.10.10 (Retiree Medical Plan for Unrepresented Confidential and Executive Management Employees), each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$184.03 for single party coverage for the retiree or \$368.06 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
  - b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$239.65 for single party coverage for the retiree or \$479.31 for two party

coverage for the retiree and/or surviving spouse/domestic partner coverage.

### 13.11.3 **Retiree Medical Reimbursement Plan for Unrepresented Employees (Rep Units Z-2; Z-3; Z-6) Who Retire on or After June 28, 1998 through June 30, 2008**

13.11.3.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of June 28, 1998:** Effective June 28, 1998, as provided in Section 13.10.2 (Annual Increase), each month after the employee retires, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$166.26 for single party coverage for the retiree or \$332.52 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Annual Increase), total \$338.60 for single party coverage for the retiree or \$677.19 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

13.11.3.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of June 28, 1998:** Effective June 28, 1998, as provided in Section 13.10.4 (Retiree Benefits for Employees Age 65 and Over) each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$16.17 for single party coverage for the retiree or \$32.34 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of July 7, 2002:** Effective July 7, 2002, as provided in Section 13.10.8 (City Funding of

Health Benefits) each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$102.00 for single party coverage for the retiree or \$204.00 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

- c. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$180.76 for single party coverage for the retiree or \$361.53 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

#### 13.11.4 **Retiree Medical Reimbursement Plan for Unrepresented Employees (Rep Units Z-2; Z-3; and Z-6) Who Retire on or After June 29, 2008**

13.11.4.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of July 1, 2008:** On July 1, 2008, as provided in Section 13.10.9 (Retiree Medical Plan for Unrepresented Employees), the City will reimburse the cost of Medical Insurance Premiums in an amount totaling \$297.08 for single party coverage for the retiree or \$544.16 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of July 1, 2009:** As of July 1, 2009, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.9 (Retiree Medical Plan for Unrepresented Employees), total \$335.45 for single party coverage for the retiree or \$593.64 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- c. **Reimbursement as of July 1, 2011:** As of July 1, 2011, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.9 (Retiree Medical

Plan for Unrepresented Employees), total \$391.32 for single party coverage for the retiree or \$673.27 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

- d. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$469.92 for single party coverage for the retiree or \$808.52 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

3.11.4.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of July 1, 2008:** As of July 1, 2008, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$138.81 for single party coverage for the retiree or \$277.62 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$172.98 for single party coverage for the retiree or \$345.96 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

#### 13.11.5 **Enrollment in City Group Plans**

Retiring employees may receive continuing health coverage in City sponsored group health plans subject to the limitations and co-pay amounts permitted by the health care providers.

### 13.12 **Fire Chief and Deputy Fire Chief Retiree Medical Plan**

Internal City of Berkeley candidates who promote and are appointed to the Fire Chief or Deputy Fire Chief classification, without a break in service, shall be eligible for the same Retiree Medical Plan as provided to sworn fire employees in Representation Unit B.

- 13.12.1 **Retiree Medical Benefits for External Appointments:** External City of Berkeley candidates appointed to the Fire Chief or Deputy Fire Chief classifications shall be covered by the Retiree Health Premium Assistance Plan described herein at Section 13.10 (Retiree medical Plan) et seq., except that the employee shall not be required to meet the eligibility requirements of sub-Sections 13.10.1(b) and 13.10.1(c) and instead credited with 15 years of qualifying years of service for eligibility in the Plan and shall receive benefits as a Representation Unit Z-1 employee.

### 13.13 Retiree Medical for Police Chief Classification

Internal City of Berkeley candidates who promote and are appointed to the Police Chief classification, without a break in service, shall be eligible for the same Retiree Medical Plan as provided to sworn police employees in Representation Units E and F.

- 13.13.1 **Retiree Medical Benefits for External Appointments:** External City of Berkeley candidates appointed to the Police Chief classification shall be covered by the Retiree Health Premium Assistance Plan described herein at Section 13.10 (Retiree medical Plan) et seq., except that the employee shall not be required to meet the eligibility requirements of sub-Sections 13.10.1(b) and 13.10.1(c) and instead credited with 15 years of qualifying years of service for eligibility in the Plan and shall receive benefits as a Representation Unit Z-1 employee.

### 13.14 Partially Subsidized YMCA Membership

The City currently provides a partially subsidized membership in the Berkeley YMCA for those employees who agree to pay the required monthly fee. Use of a YMCA membership by a City of Berkeley employee, as provided by this provision, is not part of the employee's work related duties, is not required for continued employment and is not considered part of a City sponsored physical fitness program. The City of Berkeley nor its Claims Administrator shall not be liable for any injury that may arise out of a City of Berkeley employee's participation in and use of a YMCA membership. The amount the City contributes toward the employee's monthly membership fee is subject to federal and state income tax withholding.

### 13.15 Part-Time Employees Eligible for Full Benefits

Those part time employees who have been continuously employed by the City in benefitted part time career positions since prior to July 1, 1977 and who have not accepted a full time career position are eligible to participate in the City's health and dental insurance programs with the City's payment of premiums at the same level as for full time benefitted employees.

### 13.16 Probationary Periods for Unrepresented Classifications

The competitive appointment to a career classification will include a probationary period during which time the incumbent may be dismissed without right of appeal. The probationary period for unrepresented classifications varies from six (6) months of actual work hours (1040 hours for full time employees and 520 hours for half time) to one year of actual work hours (2080 hours for full time and 1040 hours for half time).

Presently, unrepresented classifications require a six (6) month probationary period except for the following unrepresented classifications which require a one year probationary period:

- (a) All classifications in Unit Z-1 in the career service; and
- (b) All classifications in Unit Z-2 in the career service.

### 13.17 Public Safety Uniform Allowance

- (a) Fire Uniform Allowance: Effective November 9, 2004, \$1,000 annual allowance. Effective December 1, 2015, \$1,100 annual allowance.
- (b) Police Uniform Allowance: Effective July 7, 2002, \$1,000 annual allowance.

### 13.18 Regular “At-Will” Classifications

The following classifications are exempt from the career service and in accordance with the Personnel Ordinance (Berkeley Municipal Code Section 4.04.120), At-Will appointments are eligible to receive benefits:

- All department heads
- Assistant City Manager
- Assistant to the City Manager
- Assistant to the Mayor
- Assistant, Associate and Senior Management Analyst in the City Manager's Department and in the Office of Budget and Fiscal Management
- Budget Manager
- Capital Improvement Programs Manager
- Deputy City Manager
- Economic Development Manager
- Health Officer
- Legislative Assistant
- Police Review Commission Investigator
- Police Review Commission Officer
- Secretary to the Mayor, Administrative Secretary and Secretary in the Mayor's Office
- Supervising Psychiatrist



**13.19 City Manager Department Differential**

Assistant, Associate and Senior Management Analysts in the City Manager's Department and in the Office of Budget and Fiscal Management shall receive a 5% salary differential.

**13.20 Shift Differential**

Employees whose regular schedules meet the definition, as specified by Unrepresented Employee Manual Section 1.12 (Shift Differential), for shift differential, for the hours of 5:00 p.m. to 12:00 a.m., shall be paid their regular salary plus seven and one-half percent (7.5%) of their monthly salary per month. Those whose regular schedule meets the definition for shift differential, for the hours of 12:00 a.m. to 7:00 a.m., shall be paid their regular monthly salary plus ten percent (10%) of their monthly salary per month.

**13.21 SRIP II Disability Insurance**

The City shall pay the premium for the current cost of long term disability insurance for SRIP covered employees who are enrolled in the SRIP II (Supplementary Retirement and Income Plan).

**13.22 Vacation Schedules**

Unrepresented employees, except those confidential executive, management and professional employees in Section 13.20.1 (Confidential Executive Management and Professional Employees) below, shall be entitled to earn annual vacation leave as follows:

Authorized Annual Vacation (in work weeks)	Years of Actual Benefitted Service
2-workweeks (FTE 80 hours)	During the first 3-years
3-workweeks (FTE 120 hours)	During the 4 <sup>th</sup> through 11 <sup>th</sup> year
4-workweeks (FTE 160 hours)	During the 12 <sup>th</sup> through 17 <sup>th</sup> year
5-workweeks (FTE 200 hours)	During the 18 <sup>th</sup> through 24 <sup>th</sup> year
6 workweeks (FTE 240 hours)	During the 25 <sup>th</sup> and subsequent years

- 13.22.1 **Confidential Executive, Management and Professional Employees:** Confidential executive, management and professional employees who were eligible under the City's Administrative Leave Policy are entitled to earn annual vacation leave as follows:

Authorized Annual Vacation (in work weeks)	Years of Actual Benefitted Service
2-workweeks (FTE 80 hours)	During the first 2-years
3-workweeks (FTE 120 hours)	During the 3 <sup>rd</sup> through 5 <sup>th</sup> year
4-workweeks (FTE 160 hours)	During the 6 <sup>th</sup> through 17 <sup>th</sup> year
5-workweeks (FTE 200 hours)	During the 18 <sup>th</sup> through 24 <sup>th</sup> year

6 workweeks (FTE 240 hours)	During the 25 <sup>th</sup> and subsequent years
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- 13.22.2 **Director of Library Services and Deputy Director of Library Services:** Employees in the classifications of Director of Library Services and Deputy Director of Library Services are entitled to earn annual vacation Leave as follows:

Years of Actual Benefited Service	Authorized Annual Vacation Accrual
Through the first 5 Years of Service	3 weeks (120 Hours)
Beginning the 6th through 17th Years of Service	4 weeks (160 Hours)
Beginning the 18th through 24th Years of Service	5 weeks (200 Hours)
Beginning the 25th and subsequent Years of Service	6 weeks (240 Hours)

### 13.23 Special Pay for Camps Personnel

When an employee, who has a valid Red Cross Senior Lifesaving Certificate and occupies a camps classification, is specifically assigned in writing by the Camps Manager or an authorized representative, with approval by the City Manager, to temporarily serve as a lifeguard for one day or more, said employee shall be paid a five percent (5%) differential, more than the employee's current salary.

### 13.24 Hazard Premium Pay for Clerical Mental Health Personnel

Clerical employees who are regularly assigned to work in Mental Health Programs, in direct contact with clinic patients, shall receive a five percent (5%) differential. This Hazard Premium Pay shall be reported to CalPERS as "Hazard Premium" under PERL Section 571 (Definition of Special Compensation), (4) Special Assignment Pay.

### 13.25 Longevity Pay

Effective June 28, 2009, employees in Representation Units Z-2, Z-3 and Z-6 who complete twenty-four (24) years of service shall receive a three percent (3%) differential beginning with the anniversary date of beginning the twenty-fifth (25th) year of service and shall apply to all hours in a paid status. Longevity pay shall be paid at the beginning of the pay period following completion of the 24 years of service. This Longevity Pay shall be reported to CalPERS as "Longevity Pay" under PERL Section 571.a.(1) Incentive Pay.

### 13.26 Longevity Pay for Confidential and Executive Management Employees

Effective June 29, 2008, and except as noted below in Section 13.24.1 (Longevity Pay for Unit Z1 Fire Chief and Deputy Fire Chief), employees in Representation Unit Z-1 who have completed twenty-four (24) years of service shall receive a three percent (3%) differential beginning with the anniversary date of beginning the

twenty-fifth (25th) year of service and shall apply to all hours in a paid status. This Longevity Pay shall be reported to CalPERS as Longevity Pay Incentive Pay.

- 13.26.1 **Longevity Pay for Unit Z1 Fire Chief and Deputy Fire Chief:** The longevity pay for the Fire Chief and Deputy Fire Chief classifications is intended to provide the same benefits as the Longevity Pay for represented sworn fire employees under the Berkeley Fire Fighters Association (Unit B) Memorandum of Understanding.

### 13.27 Automobile Allowance for Police Chief

The City Manager may authorize an automobile allowance of \$400 per month in lieu of a City provided vehicle for an employee appointed after November 1, 2009 to the classification of Police Chief.

### 13.28 Video Display Terminal Screening/Glasses

The City offers VDT screening and glasses as medically required, every two years, to employees who in the course of their employment operate VDT equipment more than four hours in a work day.

### 13.29 Emergency Medical Technician

Effective September 13, 2015, Unit Z-1 Fire Chief and Deputy Fire Chief who maintain current Emergency Medical Technician (EMT) certification shall receive an EMT pay differential of four percent (4.0%).

### 13.30 Shoe Allowance

An annual allowance of two hundred dollars (\$200) shall be paid to benefitted employees in the classification of Janitor, Groundskeeper, Laborer, and Solid Waste Worker.

### 13.31 Training Differential

- 13.31.1 **Trainer Differential:** Effective July 1, 2016, any employee, excluding those classifications that require training as part of the assignment (e.g. supervisors), designated by the department and approved by the Director of Human Resources as qualified trainers or instructors for specific specialized skills (identified by the departments in consultation with Human Resources) who is required to provide formalized training to a new employee or an employee who management has identified as needing formalized training, shall receive a five percent (5%) differential in salary for that time served in such capacity. Such assignment shall be in writing by the department and approved by the Director of Human Resources. This Training Differential will be reported to CalPERS as Training Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

- 13.31.2 **Higher Class Training Differential:** For training purposes, employees not meeting all of the minimum qualifications of a higher classification may be temporarily assigned for a minimum of one (1) week, to perform the duties of the higher classification and will receive a five percent (5%) increase in their current base salary for the duration of the temporary assignment. Such assignments shall be in writing and shall indicate the reasons, length and duties of the assignment. Assignments shall be approved in advance by the City Manager, or his or her designee by an Employee Transaction Form, and forwarded to the Human Resources Department for inclusion in the employee's official Personnel file.
- 13.31.3 **Trainee Differential:** For training purposes and to enhance an employee skills and abilities, any employee designated in advance by the department director and approved by the Director of Human Resources to perform duties that are outside of the employee's classification, shall receive a three percent (3%) differential in salary for that time served in such capacity. Such assignments shall be in writing and shall indicate the reasons, length and duties of the assignment. Assignments shall be approved in advance by the City Manager, or his or her designee by an Employee Transaction Form, and forwarded to the Human Resources Department for inclusion in the employee's official Personnel file.

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### 13.32 Summary of May 2017 Changes to the Unrepresented Employee Manual

- Included reference to Unrepresented Unit Z-9 (Deputy Director Rent Stabilization Program).
  - Former Section 1.14 (One-Time Allocation) - deleted obsolete provision.
  - Section 5.2 (Floating Holidays) - corrected omission of one (1) day.
  - Section 8.3 (Hourly Rated Employees in Lieu of Benefits) – codified existing benefit.
  - Section 13.11 (Reimbursement Plan) – revise plan as reimbursement.
  - Section 13.12 (Fire Chief and Deputy Fire Chief Retiree Medical Plan) – clarified benefit for internal and external appointments.
  - Section 13.13 (Retiree medical for Police Chief Classification) – clarified benefit for internal and external appointments.
  - Section 13.18 (Regular “At-Will” Classifications) – deleted duplicate classification.
  - Section 13.31.3 (Trainee Differential) – included provision authorizing differential for employees assigned duties outside of classification.
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**13.33 Summary of October 2017 Changes to the Unrepresented Employee Manual**

- Section 8.4.5 Miscellaneous Employees Classic Employee Pension Contribution through a 20516 Contract Amendment – added subsection 8.4.5.3

**13.34 Summary of July 2018 Changes to the Unrepresented Employee Manual**

- Section 1.14 (One-Time Allocation) - \$2,000 paid August 17, 2018.
- Section 8.1.3 (Medical Contribution Executive Managers) – Cost-share of \$50.00 for medical contributions by all department heads, City Manager and Deputy City Manager effective July 1, 2019.
- Section 8.4.6.4 – Correct typographical error.
- Section 11.5 (Written Reprimand for Non-Safety Employees) – Include provision allowing written rebuttal.
- Section 12.3.1 (Compensation Complaints) – Include provision that specifies appeal time lines.
- 13.1 (Administrative Leave) – Clarify leave extended to career and benefitted at-will employees; benefit is prorated based on assignment; and codifies practice that unused administrative leave rolls into vacation.
- 13.24 (Hazard Premium Pay for Clerical Mental Health Personnel) – Clarify pay is reportable to CalPERS.
- 13.25 (Longevity Pay) – Include CalPERS reportable section.
- 13.30 (Shoe Allowance) – Clarify benefit extended to benefitted employees.
- Shoe Allowance
- 13.31 Training Differential
- 13.32 Summary of July 2018 Changes to the Unrepresented Employee Manual
- 13.33 Summary of October 2017 Changes to the Unrepresented Employee Manual

**13.35 Summary of July 2020 Changes to the Unrepresented Employee Manual**

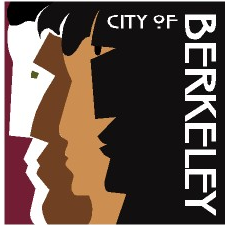
<u>Section</u>	<u>Change</u>
<u>Term Duration</u>	<u>Parties agree to a one-year term Agreement ending on June 30, 2021</u>
<u>Living Wage –</u>	<u>NEW LANGUAGE: The City agrees to pay each of its direct employees an hourly wage of no less than \$18.33 effective the first full pay period in January 2021. The City agrees to pay each of its direct employees an hourly wage of no less than \$19.33 effective the first full pay period in June 2021. If the Living Wage</u>

<u>Section</u>	<u>Change</u>
	<p><u>increases beyond \$19.33, as outlined in the Berkeley Municipal Code effective July 2021, the City shall implement the increases the first full pay period in September 2021 and July 1st of each year thereafter.</u></p>
<p><u>Additional City Emergency Paid Sick Leave Allocation</u></p>	<p><u>NEW LANGUAGE: The City shall provide an additional 80 hours of emergency paid sick leave to be used for COVID-19 related reasons as listed in the Emergency Paid Sick Leave Act. Part-time employees receive a prorated number of hours. In order to use this additional City emergency paid sick leave, the employee must first exhaust all hours that they received under the Emergency Paid Sick Leave Act. The City will use a specific pay code for this additional emergency paid sick leave and these additional hours will be available until June 30, 2021. These additional 80 emergency paid sick leave hours shall have no cash value and may not be used towards any CalPERS retirement service credit as outlined 4.13 of the Unrepresented Employees Manual.</u></p>
<p><u>Additional Floating Holidays</u></p>	<p><u>NEW LANGUAGE: For employees who were required to remain in the workplace from March 17, 2020 – June 1, 2020, the City will provide 8 hours of floating holidays for every 40 hours of regularly scheduled hours worked in the workplace up to a maximum of 32 hours of floating holiday. The City will credit these floating holiday hours in the first full pay period after adoption of the Agreement for classifications which, due to the nature of the assignment, require backfill, employees will be paid a stipend in the amount of the earned floating holiday hours up to a maximum of 32 hours the first full pay period in August 2020. The City will use a specific pay code for these additional floating holiday hours will be available until June 30, 2021. These additional 32 hours of floating holiday shall have no cash value and may not be used towards CalPERS retirement service credit as outlined 4.13 of the Unrepresented Employees Manual.</u></p>
<p><u>Additional language on Layoffs for the Term of the Agreement</u></p>	<p><u>NEW LANGUAGE: The City recognizes the important role that the employee workforce plays in delivering public services; therefore, during the period ending June 30, 2021 the City agrees to not layoff any Unrepresented career employees. However, should the City determine that its expenditures exceed its revenues during the period ending June 24, 2021, the City may notice the Unrepresented group in writing and the</u></p>

<u>Section</u>	<u>Change</u>
	<p><u>Unrepresented group shall be provided an opportunity to meet and discuss one-time cost savings and alternatives such as furloughs, VTO, etc. Nothing in this section requires the City to retain positions (filled or vacant) where state, federal or grant funding has been reduced or eliminated and would require the City to backfill such positions. All other provisions on Layoffs remain unchanged.</u></p>
<p><u>Provisional Employee</u></p>	<p><u>No employees shall hold a provisional appointment in the same position for more than 12 months. The City Manager may extend the provisional appointment beyond this 12- month limitation with the mutual agreement of the parties.</u></p>
<p><u>Limited Reopener</u></p>	<p><u>If during the fiscal year 2020 -2021 the City reaches agreement with SEIU or extends to other unrepresented employees an opportunity to confer on an across the board Cost of Living Adjustment (COLA) increase and/or an additional City contribution towards medical premiums, the City agrees to a limited reopener to meet and discuss with the Unrepresented group on these increases.</u></p>







Kate Harrison  
Councilmember District 4

## **REVISED AGENDA MATERIAL**

**Meeting Date:** July 30, 2020

**Item Number:** TBD

**Item Description:** **Placing Charter Amendment Measure on the November 3, 2020 Ballot Related to Salaries for the Mayor and Councilmembers**

**Submitted by:** Councilmember Harrison

### **Revisions**

1. Clarified that the measure would set the Mayor's compensation consistent with the Alameda County median income for a three-person household and maintaining Councilmember salaries at 63% of that amount, with annual adjustments based on adjustments to the area median income.
2. Clarified that in cases where the Mayor or Councilmember is prevented from attending a regularly scheduled Council meeting due to either their own illness or the illness or death of a "close family member" as defined in the City's bereavement policy, they shall be paid for up to two such meetings a year in an amount equal to the monthly remuneration divided by the number of regular meetings held during such month.
3. Replaced "his or her" with "their" and "himself or herself" with "themselves" pursuant to the Council's gender-neutral language policy.



Kate Harrison  
Councilmember, District 4

ACTION CALENDAR

July ~~21~~30, 2020

(Continued from ~~June 30~~ July 21, 2020)

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison

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
<b>No. of Measures</b>	10	7	11	0	4
<b>No. of Candidates</b>	26	23	29	2	30
<b>General Costs</b>	\$367,884	\$392,331	\$706,901	-	\$385,246
<b>RCV Costs</b>	\$101,041	\$189,148	\$181,954	-	\$185,578
<b>Total Costs</b>	<b>\$468,925</b>	<b>\$581,479</b>	<b>\$888,855</b>	<b>\$85,628</b>	<b>\$570,824</b>

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 thereflect the much more than part-time nature of the work of the~~ office of Mayor and City Councilmembers ~~s full-time positions~~, with remuneration set at a level reflecting ~~full-time employment~~ ~~the time commitment and complexity of the positions~~. ~~Currently, the Mayor is compensated at \$61,304 per year, approximating that for a of that of a very low income households of three persons. Councilmembers receive \$38,695, representing compensation approximating that of extremely low-income households.~~

~~The proposed Charter Amendment would~~ ~~The measure would~~ provide that the ~~office of Mayor~~ ~~receive the average area moderate income as established each year by the California Department of Housing and Community Development (\$107,300 for 2020)~~ and Councilmembers ~~would are full-time positions~~ ~~receive compensation of \$67,599, between very low income and low income area median income, which maintains the current ratio between the Mayor's and Councilmembers' compensation, where councilmembers are compensated at 63% of the Mayor. The amount would be adjusted each year as the area median income (AMI) is adjusted.~~

~~The proposed Charter Amendment would recognize that the current compensation has not kept pace with increases in housing costs and the area median income since the compensation was set in December, 1998, Inflation adjustments provided for in the Charter rely on a cost of living index that significantly understates the increase in housing costs at time when the requirements of the positions have grown exponentially. 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~~ have not allowed compensation for the Mayor and Councilmembers to keep pace with increases and do not reflect the increased complexity of the positions since the compensation was changed in 1998.. This amendment would ~~designate~~ recognize the offices as ~~full-time and more than part-time~~ task the Personnel Board with setting the and set the salary of the salaries of Mayor at 100% of area median income and maintain the ratio between the compensation for Councilmembers and that of the Mayor at 63%. 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

Kate Harrison, (510) 981-7140

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:

<b>CITY OF BERKELEY CHARTER AMENDMENT</b>	
<p>Shall the measure amending the City Charter to provide that <del>the compensation for the offices of Mayor be set at Alameda County's median three-person household income from the California Department of Housing and Community Development and that of Councilmembers maintained at 63% of the Mayor's compensation, with annual increases based on changes in Area Median Income, 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,</del> but which may be lowered <del>in defined instances, including</del> for unexcused <u>Council meeting</u> absences <del>from Council meetings</del> or negotiated salary reductions for City employees, be adopted?</p>	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 Alameda County median income for a three-person household and Councilmembers at 63% of that amount, with annual adjustments based on adjustments to the area median income. ~~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 ~~his or her~~ their sole discretion, reduce the remuneration paid ~~himself or herself~~ themselves. 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 their own illness or the illness or death of a "close family member" as defined in the City's bereavement policy 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

**ACTION CALENDAR**  
**July 30, 2020**  
*(Continued from 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  
 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
<b>No. of Measures</b>	10	7	11	0	4
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<b>RCV Costs</b>	\$101,041	\$189,148	\$181,954	-	\$185,578
<b>Total Costs</b>	<b>\$468,925</b>	<b>\$581,479</b>	<b>\$888,855</b>	<b>\$85,628</b>	<b>\$570,824</b>

### 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:

<b>CITY OF BERKELEY CHARTER AMENDMENT</b>	
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.





Attachment 2

RESOLUTION NO. -N.S.

SUBMITTING TO THE BERKELEY ELECTORATE ON THE NOVEMBER 3, 2020 BALLOT 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, REMOVE GENDER-SPECIFIC LANGUAGE THROUGHOUT THE CHARTER, AND AMEND ARTICLE VII, SECTION 28 AND ARTICLE XVI, SECTION 113 TO UPDATE TERMS AND DUTIES OF THE OFFICE OF CITY ATTORNEY.

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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, <del>remove gender-specific language and amend Article VII, Section 28 and Article XVI, Section 113 to</del> <b>update</b> terms and duties of the office of City Attorney be adopted?	YES
	NO

- Deleted:** , allow for amendments to the redistricting ordinance due to changes in the Charter, and
- Deleted:** conform
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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

Exhibit A

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, REMOVE GENDER-SPECIFIC LANGUAGE, AND AMEND ARTICLE VII, SECTION 28 AND ARTICLE XVI, SECTION 113 TO UPDATE TERMS AND DUTIES OF THE OFFICE OF CITY ATTORNEY

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 resident of the City of Berkeley. The application and selection process set forth below and by ordinance is intended to produce an Independent 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 Berkeley residents who are 18 years of age or older at the time their application is submitted, are eligible for membership on the 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 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 Independent Redistricting Commission. The nomination process shall be open to Berkeley residents 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 (b)(3), a Commissioner may be removed by a two-thirds vote of the Independent 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.

Section 10. Article VII, Section 28 (c) of the Charter of the City of Berkeley is amended as follows:

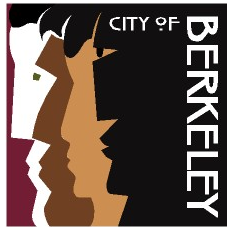
(c) Except as otherwise provided in this Charter, ~~T~~to exercise control over all departments, divisions and bureaus of the City Government and over all the appointive officers and employees thereof.

Section 11. Article XVI, Section 113 of the Charter of the City of Berkeley is amended as follows:

**Section 113. Office of the City Attorney and Conduct of legal proceedings.**

The City Attorney shall be an officer of the City of Berkeley, appointed by a vote of five members of the Council, serving at the will of the Council for an indefinite period, and removed only by a vote of five members of the Council, and shall receive such salary as may be fixed by the Council. Upon presentation of a proposed budget by the City Attorney, the Council shall provide funds sufficient to carry out the responsibilities of the office of City Attorney and for the City Attorney's department (subject to available resources), which shall be under the administrative control of the City Attorney.

Except in the case of **the Berkeley Housing Authority, and in the case of** the Board of Education, Rent Stabilization Board and any other boards whose members are elective officers pursuant to this Charter, and in addition to duties and powers provided elsewhere in this Charter, the City Attorney shall prosecute all violations of the Charter and ordinances of the City; shall, subject to the general direction of the Council, prosecute and defend for the City and all boards, officers and employees in their official capacity, all proceedings before judicial and quasi-judicial tribunals; shall not compromise, settle or dismiss any action for or against the City, and shall not commence any action, without permission of the Council; shall be the legal advisor of and attorney and counsel for the City and for all officers and boards thereof, in all matters relating to their official duties; and shall draft proposed City ordinances and amendments thereto.



Office of the Mayor

## REVISED AGENDA MATERIAL

**Meeting Date:** July 21, 2020

**Item Number:** #2a

**Item Description:** Placing Charter Amendment Measure on the November 3, 2020 Ballot to Amend Multiple Administrative Provisions

**Supplemental/Revision Submitted By:** Mayor Jesse Arreguín

**“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 Council this afternoon is considering a Charter Amendment measure to amend multiple administrative provisions of the Charter. Since the submission of this package of Charter changes, it has come to the Mayor’s attention that many California cities specifically name the City Attorney as a Charter officer and the governing body appoints the City Attorney.

The Mayor, Vice-Mayor Hahn, and Councilmember Harrison submitted a revision to item 2a to propose amendments to Section 28 and Section 113 of the Charter to conform the terms and duties of the City Attorney to existing ethical and legal standards. The revision in Supplemental Packet 2 did not include an amended resolution, ballot question and Charter text. This item is submitting an amended resolution so that the proposed revisions to item 2a can be voted on and submitted to the voters at the November 3, 2020 election.

***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/revised 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.

RESOLUTION NO. -N.S.

SUBMITTING TO THE BERKELEY ELECTORATE ON THE NOVEMBER 3, 2020 BALLOT 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, REMOVE GENDER-SPECIFIC LANGUAGE THROUGHOUT THE CHARTER, AND AMEND ARTICLE VII, SECTION 28 AND ARTICLE XVI, SECTION 113 TO CONFORM TERMS AND DUTIES OF THE OFFICE OF CITY ATTORNEY TO EXISTING LEGAL AND ETHICAL STANDARDS.

Deleted: AND

Deleted: 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, <del>remove gender-specific language</del> <u>and amend Article VII, Section 28 and Article XVI, Section 113 to conform terms and duties of the office of City Attorney with existing legal and ethical standards</u> be adopted?	YES
	NO

**Deleted:** , allow for amendments to the redistricting ordinance due to changes in the Charter, and

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

Exhibit A

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, REMOVE GENDER-SPECIFIC LANGUAGE, AND AMEND ARTICLE VII, SECTION 28 AND ARTICLE XVI, SECTION 113 TO CONFORM TERMS AND DUTIES OF THE OFFICE OF CITY ATTORNEY TO EXISTING LEGAL AND ETHICAL STANDARDS

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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 resident of the City of Berkeley. The application and selection process set forth

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below and by ordinance is intended to produce an Independent Redistricting Commission that is independent from legislative and political influence, and reasonably representative of the City's population.

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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 Berkeley residents who are 18 years of age or older at the time their application is submitted, are eligible for membership on the Independent Redistricting Commission, subject to the following limitations.

Deleted: registered

Deleted: who have voted in the last two General Municipal elections, unless ineligible to do so by reason of age,

Deleted: Citizens

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 Independent Redistricting Commission:

Deleted: Citizens

(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;

Deleted:

(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:

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- Deleted: voters

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 (b)(3), a Commissioner may be removed by a two-thirds vote of the Independent Redistricting Commission, after having been served written notice and provided with an opportunity to respond.

- Deleted: (d)
- Deleted: Citizens

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.

Section 10. Article VII, Section 28 (c) of the Charter of the City of Berkeley is amended as follows:

(c) Except as otherwise provided in this Charter, Tto exercise control over all departments, divisions and bureaus of the City Government and over all the appointive officers and employees thereof.

Section 11. Article XVI, Section 113 of the Charter of the City of Berkeley is amended as follows:

**Section 113. Office of the City Attorney and Conduct of legal proceedings.**

The City Attorney shall be an officer of the City of Berkeley, appointed by a vote of five members of the Council, serving at the will of the Council for an indefinite period, and removed only by a vote of five members of the Council, and shall receive such salary as may be fixed by the Council. Upon presentation of a proposed budget by the City Attorney, the Council shall provide funds sufficient to carry out the responsibilities of the office of City Attorney and for the City Attorney's department (subject to available resources), which shall be under the administrative control of the City Attorney.

Except in the case of the Board of Education, Rent Stabilization Board and any other boards whose members are elective officers pursuant to this Charter, and in addition to duties and powers provided elsewhere in this Charter, the City Attorney shall prosecute all violations of the Charter and ordinances of the City; shall, subject to the general direction of the Council, prosecute and defend for the City and all boards, officers and employees in their official capacity, all proceedings before judicial and quasi-judicial tribunals; shall not compromise, settle or dismiss any action for or against the City, and shall not commence any action, without permission of the Council; shall be the legal advisor of and attorney and counsel for the City and for all officers and boards thereof, in all matters relating to their official duties; and shall draft proposed City ordinances and amendments thereto.

**Deleted: ¶**  
**Deleted:** The City Attorney shall prosecute, in behalf of the people, all criminal cases arising from violations of the provisions of this Charter and the ordinances of the City, and shall attend to all suits and proceedings in which the City may be legally interested; provided, the Council shall have control of all litigation of the City and may employ other attorneys to take charge of any litigation or to assist the City Attorney therein.¶



**SOPHIE HAHN**

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Berkeley, CA 94704  
(510) 981-7150  
shahn@cityofberkeley.info

Supplemental 2  
**ITEM 2a**  
**JULY 21, 2020**

## SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

**Meeting Date:** July 21, 2020

**Item Number:** Item 2a

**Item Description:** Placing Charter Amendment Measure on the November 3, 2020 Ballot to Amend Multiple Administrative Provisions

**Submitted by:** Vice Mayor Sophie Hahn, Councilmember Kate Harrison, Mayor Jesse Arreguin

This supplemental proposes additional amendments to administrative provisions of the Charter, to bring the Charter into conformance with legal and ethical standards related to the office of City Attorney, and to reflect standard best practices for charter cities in the Bay Area and throughout California.



SUPPLEMENTAL MATERIALS FOR ITEM 2a  
Special Meeting of the City Council, July 21, 2020, 4:00 PM

To: Members of the City Council

From: Vice Mayor Sophie Hahn, Councilmember Kate Harrison, Mayor Jesse Arreguin

Subject: Supplemental Materials for Item 2a - Placing Charter Amendment Measure on the November 3, 2020 Ballot to Amend Multiple Administrative Provisions

RECOMMENDATION

This supplemental proposes additional amendments to administrative provisions of the Charter, to bring the Charter into conformance with legal and ethical standards related to the office of City Attorney, and to reflect standard best practices for charter cities in the Bay Area and throughout California. Proposed amendments are shown in redline in the Charter at Attachment A (see Article XVI Section 113 and Article VI Section 28(c)).

SUMMARY

The public office of City Attorney is a fundamental unit of municipal government serving all other divisions with vital legal services. By law and pursuant to California State Bar Rules of Professional Conduct, the City Attorney's client is the city as an organization, acting through its highest authorized office or body, which in the case of the City of Berkeley is the City Council. Although a variety of City Attorney duties are referenced in the Charter of the City of Berkeley and elaborated in Berkeley Municipal Code Section 2.56, the language of both the Charter and Municipal Code lacks important clarity regarding the establishment and independence of a City Attorney office. Other California Charter Cities with a Council-Manager form of government, including neighboring Bay Area cities, provide significantly more clarity in their Charters, establishing the office of City Attorney and providing clear statements of the City Attorney's responsibilities and duties.

Supplemental Materials for Item 2a - Placing Charter Amendment Measure on the November 3, 2020 Ballot to Amend Multiple Administrative Provisions

Establishing a City Attorney Office in the Charter is an important good governance reform that will enhance organizational clarity, better support the delivery of legal services to the City as an organization, and more affirmatively bring the City Charter into conformance with State Supreme Court and other judicial interpretations, the California State Bar Rules of Professional Conduct, and standard best practices in similar jurisdictions.

## BACKGROUND

An analysis presented by the Fairfield City Attorney at the 2011 League of California Cities Attorney Conference lays out the role of City Attorney according to relevant judicial interpretations of state law and California State Bar Rules of Professional Conduct.<sup>1</sup>

The California Supreme Court has found that City Attorneys are considered public officials holding office regardless of whether they are appointed or elected.<sup>2</sup> This represents a clear and significant distinction between City Attorneys and their departments and other administrative departments or divisions of municipal governments.

Additionally, Rule 3-600(A) of the California State Bar Rules of Professional Conduct specifies that, despite providing advice to various units of a single government, the City Attorney's client is the City organization as a whole, acting through its highest authorized entity. "In representing an organization, a member shall conform his or her representation to the concept that the client is the organization itself."<sup>3</sup>

The Court of Appeal of the State of California has further found that the City Attorney represents the organization acting through its highest authorized overseeing body, which in Berkeley is the City Council.<sup>4</sup> Thus, regardless of whether a City Attorney is elected or appointed, and despite the fact that the City Attorney provides advice to all

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<sup>1</sup> Gregory W. Stepanicich, "City Attorney Ethics: The Client, Confidentiality and Misconduct," May 5, 2011, <https://www.cacities.org/UploadedFiles/LeagueInternet/57/5742e521-696c-49d6-a411-44dd17c15f55.pdf>.

<sup>2</sup> Id.; See *People Ex.Rel. Clancy v. Superior Court*, 39 Cal.3d 740, 746-747 (1985), <https://scocal.stanford.edu/opinion/people-ex-rel-clancy-v-superior-court-28480>.

<sup>3</sup> State Bar of California, Rules of Professional Conduct, "Rule 3-600 Organization as Client," <http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Previous-Rules/Rule-3-600>.

<sup>4</sup> Gregory W. Stepanicich, "City Attorney Ethics: The Client, Confidentiality and Misconduct," May 5, 2011, <https://www.cacities.org/UploadedFiles/LeagueInternet/57/5742e521-696c-49d6-a411-44dd17c15f55.pdf>; See *Ward v. Superior Court*, 70 Cal.App.3d 23 (1977), <https://cite.case.law/cal-app-3d/70/23/>.



Supplemental Materials for Item 2a - Placing Charter Amendment Measure on the November 3, 2020 Ballot to Amend Multiple Administrative Provisions

departments and the City Manager, the City Attorney's "client" is the City as a whole, as represented by the City Council.

To ensure this unique and important role for the City Attorney is clarified and reflected in the City's organizational structure, the office of City Attorney – whether elected or appointed – is usually provided for in a City's charter. Berkeley's charter is fairly unique among Council-Manager charter cities in that it does not explicitly establish the City Attorney as a public office. Berkeley leaves the City Attorney's position to be created by the City Council under its authority, in Section 31 of the Charter, to create departments, with the City Attorney as the head of the department, not explicitly as an officer of the City as a whole.

Berkeley's City Charter was first adopted in 1895 and, as stated in the Charter's introduction, has been amended many times, but "at no time was a revision of the entire Charter attempted." The Charter introduction, which focuses on the evolution of the meaning of the "municipal affairs doctrine," further notes that "we find many provisions in the Charter that are unnecessary but if they are not limitations they do no harm." Berkeley's Charter is thus built on a very old and in many ways outdated foundation, and would likely benefit from a comprehensive revision. Until such time as a full Charter revision is undertaken, it is important to continue to update and amend the Charter to provide additional clarity, and to ensure its provisions conform with law and best practices.

For example, neighboring El Cerrito was a general law City until November 6, 2018, when voters converted their municipality from a general law city to a charter city in recognition that state law and local best practices have evolved immensely since El Cerrito was first incorporated as a general law city in 1917. Emeryville also converted from a general law to a charter city in 2014. When adopting their respective charters, each city benefited from the hindsight of more than a century of evolving California state and municipal law.

One area of the City Charter that is overdue for updating is its provisions with respect to the very important office of City Attorney. Unlike the charters of many Charter Cities in California, Berkeley's Charter does not formally establish the office of City Attorney, nor does it delineate their duties and powers in a clear and comprehensive manner.

In most Bay Area jurisdictions, the City Charter provides for the City Attorney to be appointed (and removed) by the City Council. For example, under the City Charter of El Cerrito, the City Council appoints the City Manager, who in turn appoints all department heads except the City Attorney. The Charter provides that the City Council appoints the

Supplemental Materials for Item 2a - Placing Charter Amendment Measure on the November 3, 2020 Ballot to Amend Multiple Administrative Provisions

City Attorney, who may be a city employee or independent contractor. El Cerrito's municipal code provides that the City Manager has the duty to appoint, remove, promote, and demote all city officers and employees *except* the City Attorney.

In addition, the City Charter of Alameda provides that the "City Manager, *City Attorney*, [and] City Clerk" are appointed or removed by a majority vote of the full City Council. In Hayward, the Charter provides that the "City Manager, City Clerk, and *City Attorney* shall be appointed by . . . the Council." In Palo Alto, the Charter provides that "the council shall appoint a city manager, clerk, *attorney*, and auditor." The Richmond City Charter provides that "the Council shall appoint or provide for the appointment of a Clerk, *Attorney* and City Manager." In San Leandro, the "City Manager, *City Attorney*, and City Clerk shall be appointed by the council" (emphasis added throughout).

In other Bay Area jurisdictions, the City Attorney is an elected official. For example, the San Rafael City Charter provides that "[t]he elective officers of the city of San Rafael shall be: a mayor, four councilmen, five members of the board of education, a city clerk, *a city attorney*, a city assessor" (emphasis added).

The City Attorney is appointed (and removed) by the City Council in other jurisdictions in California as well. For example, the Modesto City Charter provides that "The officers of the City of Modesto shall consist of a Mayor, the Council, a City Manager, a *City Attorney*, a Clerk, a City Auditor" and "the *City Attorney*, the City Clerk and the City Auditor shall be appointed by and may be removed by the affirmative votes of four (4) members of the Council"; the Santa Monica City Charter provides that, "the City Council shall appoint the City Manager and the *City Attorney* . . . who may be removed by motion of the City Council adopted by at least five affirmative votes . . . It shall also appoint the City Clerk . . . The City Council in its discretion shall establish by resolution the salary and such other terms of employment of the City Manager, *City Attorney* and City Clerk as the City Council determines to be appropriate" (emphasis added). A table showing charter provisions related to the City Attorney in these and additional California charter cities is provided at Attachment B.

The City of Berkeley's Charter is different from many Charter City charters in that it does not specify or establish the office of City Attorney, nor clearly state that the City Attorney is hired by, and thus is directly responsible to, the City Council. The general duties and obligations of the office of City Attorney also are not described. Section 113 "Conduct of legal proceedings" does not mention the City Attorney at all, includes some elements that are outdated, and is silent on other important matters. The Berkeley City Charter mentions a few specific City Attorney duties in other Charter provisions, but the office of City Attorney is not established. Thus, the Charter is silent on an area of critical citywide

concern; namely, the fact that the City Attorney is an independent officer representing the City as an organization, as embodied by the City Council.

The City Charter is over 50 pages long and includes 124 Sections organized under seventeen Articles. Despite the length of the Charter and the large number of important topics covered, the term “City Attorney” appears only five times – sprinkled across four sections where a few duties of the City Attorney are provided. By contrast, the City Auditor’s duties are well articulated in the Charter at Section 61 (Article X), which lists the City Auditor’s authority and responsibilities and specifies that the City Council shall provide the Auditor with funds sufficient to carry out their responsibilities. Section 19 (Article V) of the Charter further provides that “The Auditor shall receive such salary as may be fixed by the Council,” clarifying yet another important element of independence from the City administration.

The following excerpts include all mentions of the City Attorney in the body of the City Charter (emphasis added; there are additional mentions in the table of contents):

1. Article V - Section 17 – Bonds: All bonds shall be approved by the *City Attorney* as to form and shall be filed with the City Clerk.
2. Article VII – Section 28 – Powers and duties of the City Manager, subsection (I): The City Manager shall be charged with the general supervision of all public utility companies insofar as they are subject to municipal control. . . The City Manager shall cause to be instituted such actions or proceedings as may be necessary to prosecute public utility companies for violations of law . . . The *City Attorney*, on demand of the City Manager, must institute and prosecute the necessary actions to enforce the provisions of this subsection.
3. Article XI – Section 65 – Form of contracts: All contracts shall be drawn under supervision of the *City Attorney*.
4. Article XVI – Section 113 – Conduct of legal proceedings: The *City Attorney* shall prosecute, in behalf of the people, all criminal cases arising from violations of the provisions of this Charter and the ordinances of the City, and shall attend to all suits and proceedings in which the City may be legally interested; provided, the Council shall have control of all litigation of the City and may employ other attorneys to take charge of any litigation or to assist the *City Attorney* therein.

Thus, while the office of “City Attorney” is clearly contemplated by the Charter, it is not formally established therein, the City Attorney’s legally and ethically mandated duty to

Supplemental Materials for Item 2a - Placing Charter Amendment Measure on the November 3, 2020 Ballot to Amend Multiple Administrative Provisions

serve the City as embodied and represented by the City Council, its highest body, is not delineated, and the City Attorney's administrative independence is not established.

In the absence of a Charter provision establishing the public office of City Attorney and clearly articulating the office's basic duties and responsibilities, the City Attorney's department is established by the City Council and is presumed to fall under the general administrative authority of the City Manager. As the administrative head of the Municipal Government, the City Manager is "responsible for the efficient administration of all departments" (Article VII, Section 27) and their "powers and duties" under Article VII, Section 28(c) include the power "To exercise control over all departments, divisions and bureaus of the City Government and over all of the appointive officers and employees thereof."

Establishment of the City Attorney's Office as a department, division or bureau of the City under the City Manager's "efficient administration" and placing the City Attorney under the administrative "control" of the City Manager has created a potentially difficult-to-navigate tension with the City Attorney's legal and ethical responsibilities. The City itself is the City Attorney's client, as represented by the City Council, but the City Attorney and their department are under the administrative "control" of the City Manager. This tension, and the fact that the City Attorney's budget, personnel and salary are also subject to the City Manager's control, has the potential to create administrative conflicts with the City Attorney's ability to serve the City as fully and directly as in jurisdictions where the role and independence of the City Attorney is clearly articulated in the Charter.

BMC Section 2.56, which establishes the City Attorney's Office (under the Council's authority to create departments, which then are presumed to be under the City Manager's administrative control), provides additional City Attorney duties but does nothing to clarify that the City Attorney's client is the City, as embodied by the City Council, and to ensure the City Attorney and their office is not controlled in such a way as to diminish or interfere with their ability to fully carry out their important functions. On the contrary, BMC Section 2.56.010 states that "A City Attorney's Office is created which shall be under the direction of the City Attorney, subject to the general administrative direction of the City Manager," reinforcing rather than alleviating any potential tension between the City Attorney's administrative superior, the City Manager, and the City Attorney's client, the City, as represented by the City Council.

Rather than reflect the City Attorney's unique responsibilities, this administrative posture is similar to other departments which do not have the same legal and ethical relationship to the City Council. Among other examples, BMC Section 2.46.010

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establishes a Human Resources Department “under the direction of the Director of Human Resources, subject to the general administrative direction of the City Manager.” BMC Section 1.43.020 establishes the Office of Economic Development “under the direction of the Manager of Economic Development, subject to the general administrative direction of the City Manager.”

The City Auditor’s Office, by contrast, “is created under the direction of the Auditor, which shall consist of such employees as are budgeted and approved by the City Council” (BMC Section 2.24.040). This language clearly differentiates the City Auditor’s Office from a typical City department or office and reinforces the Charter’s provisions that ensure the City Auditor’s budget and personnel are determined by the City Council. The City Auditor’s ability to carry out its functions is thus not subject to the City Manager’s “general administrative direction,” and is further guaranteed independence and clarity of purpose by the fact that the City Auditor’s employee classifications are “unique to the Auditor’s Office” (BMC Section 2.24.030.C) and the Auditor has “the right to place items on the City Council Agenda” directly, rather than being required to submit items through, and at the discretion of, the City Manager (BMC Section 2.24.030.E).

Neighboring Council-Manager cities such as El Cerrito, Richmond and Alameda all establish City Attorney offices as specific entities in their respective charters with independence from other administrative units. At the same time, their charters ensure that the office is responsive to the legal needs of the city government as a whole.

Under the Charter of the City of Richmond: “[t]he Attorney shall act as the legal adviser of the Council and any officer of the City who requests his advice. [They] shall prepare all ordinances and contracts whenever required so to do by the Council. [They] shall prosecute all violators of the City ordinances and shall represent the City in all actions.”

The Charter of the City of Alameda provides: “The City Attorney shall prosecute all violations of the ordinances of the City. [They] shall, subject to the general direction of the Council, board or elective officer having jurisdiction of the matter, prosecute and defend for the City, and all boards, officers and employees in their official capacity all proceedings before judicial and quasi-judicial tribunals. [They] shall not compromise, settle or dismiss any action for or against the City without permission of the Council.”

The Charter of the City of San Leandro provides that “[t]he Council shall appoint a City Attorney, who shall serve at the pleasure of the Council; shall be the chief legal officer of the City; shall perform such duties consistent with this Charter as may be required by the Council; [and] shall recommend to the Council proposals for additions to, deletions from, and amendments of this Charter as are deemed necessary or desirable.”

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The proposed Charter amendment to Article XVI Section 113 - Miscellaneous - Conduct of legal proceedings, clarifies and codifies that the City Attorney is a public office, is appointed by the City Council, receives directly from the City Council the funds necessary to carry out its mandate, and leads an office independent from other City administrative departments, thereby clarifying and supporting the legally and ethically required attorney-client relationship on behalf of the entire City organization. The proposed amendments also update existing Charter language about the “conduct of legal proceedings” and clarify that it is the City Attorney who carries out these duties.

The proposed amendments in no way limit the City Manager or city department access to City Attorney services. By amending the Charter in this manner, the City’s most important organizing document will reflect well established legal and ethical standards and conform with standard best practices for Charter Cities.

ATTACHMENTS:

- A - City Charter with proposed amendments  
(see Article XVI Section 113 and Article VI Section 28(c))
- B - Charter provisions related to the office of City Attorney in other California jurisdictions

**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/83061922519>. 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: **830 6192 2519**. 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](mailto: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.

**Archived Video Available**

To review the proceedings of this City Council Meeting, you may watch a full recording of the live webcast in your web browser (archived videos of live webcasts are normally posted within 1-2 business days of the meeting). Please visit our [Online Video Page](#) for more information and instructions.

■

**Attachment B****Charter provisions related to the office of City Attorney in other California jurisdictions**

	<u>Relevant Charter Provision</u>
<u>Alameda</u>	Officers. “The following offices are hereby established and the incumbents thereof shall be appointed or removed by a vote of a majority of the full Council: City Manager, City Attorney, City Clerk.” <a href="#">Article II, Sec. 2-2</a>
<u>El Cerrito</u>	City Council, City Manager, and City Attorney (c) The City Manager, as the chief administrative officer of the City, shall appoint all department heads other than the City Attorney. Involvement in administrative matters by the City Council or by any individual Councilmember shall occur only through the City Manager or pursuant to direction by the City Manager to members of the administrative staff. (d) The City Council shall appoint the City Attorney. The City Attorney may be an employee of the City or an independent contractor providing legal services pursuant to a contract. <a href="#">Article II, Sec. 202</a>
<u>Hayward</u>	Appointment and Removal “The City Manager, City Clerk, and City Attorney shall be appointed by and may be removed by the affirmative votes of no less than four members of the Council.” <a href="#">Section 801</a>
<u>Modesto</u>	OFFICERS AND EMPLOYEES. GENERAL. “The officers of the City of Modesto shall consist of a Mayor, the Council, a City Manager, a City Attorney, a Clerk, a City Auditor” “The City Attorney, the City Clerk and the City Auditor shall be appointed by and may be removed by the affirmative votes of four (4) members of the Council” <a href="#">Section 900</a>
<u>Palo Alto</u>	Council Officers appointed by council - Boards, committees, and commissions. “The council shall appoint a city manager, clerk, attorney, and auditor, and, except as otherwise provided, may by ordinance or otherwise create or abolish offices, boards, committees, or commissions, and provide for their manner of appointment, their tenure, and the duties which they shall perform.” <a href="#">Article III, Section 9</a>
<u>Richmond</u>	The Council The Council shall appoint or provide for the appointment of a Clerk, Attorney and City Manager.” <a href="#">Article III, Section 9</a>
<u>San Leandro</u>	Administration The Council shall appoint a City Attorney, who: (a) shall serve at the pleasure of the Council; (b) shall be the chief legal officer of the City; (c) shall perform such duties consistent with this Charter as may be required by the Council; (d) shall recommend to the Council proposals for additions to, deletions from, and amendments of this Charter as are deemed necessary or desirable. <a href="#">Article IV, Sec. 425</a>
<u>San Rafael</u>	City Officials, Elective Officers “The elective officers of the city of San Rafael shall be: a mayor, four councilmen, five members of the board of education, a city clerk, a city attorney, a city assessor.”



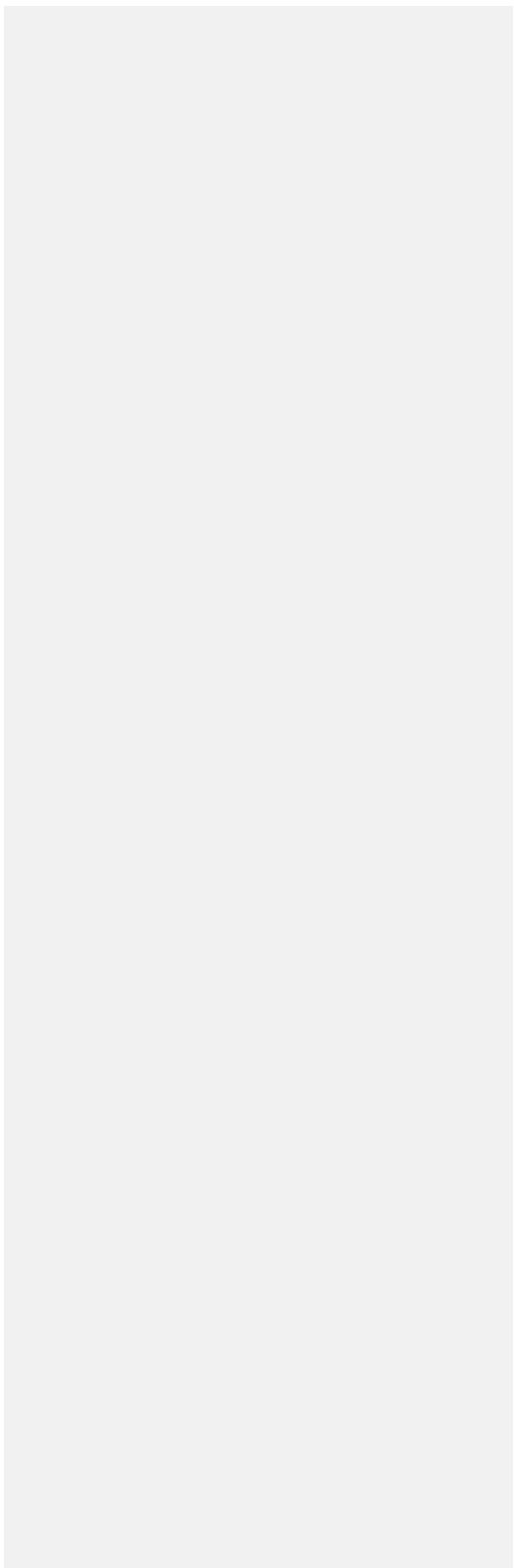
	<a href="#">Article VI, Section 1</a>
<u>Santa Monica</u>	Officers to be appointed by City Council “The City Council shall appoint the City Manager and the City Attorney, which positions shall not be in the Classified Service and who may be removed by motion of the City Council adopted by at least five affirmative votes. It shall also appoint the City Clerk, which position shall be in the Classified Service. The City Council in its discretion shall establish by resolution the salary and such other terms of employment of the City Manager, City Attorney and City Clerk as the City Council determines to be appropriate.” <a href="#">Article VII, Sec. 700</a>

# Charter



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CITY OF BERKELEY  
CALIFORNIA



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TTY: 1-510-981-6347

# CHARTER of the CITY OF BERKELEY CALIFORNIA

PREPARED AND PROPOSED BY  
THE BOARD OF FREEHOLDERS

Elected November 21, 1908, in Pursuance of the Provisions  
of Section 8, Article XI of the Constitution of the  
State of California

Ratified by the qualified electors of the Town of Berkeley  
at a Special Municipal Election held on January 30, 1909.  
Subsequently presented to the Legislature  
of the State of California and  
thereafter approved.

In effect July 1, 1909  
Amended in 1913, 1917, 1921, 1923, 1927, 1933, 1939,  
1941, 1943, 1945, 1946, 1947, 1949, 1951, 1953,  
1955, 1957, 1959, 1963, 1965, 1969, 1971,  
1972, 1973, 1974, 1975, 1977, 1982,  
1984, 1986, 1988, 1994, 1996, 1998,  
2002, 2004, 2008, 2012, 2014, and 2016

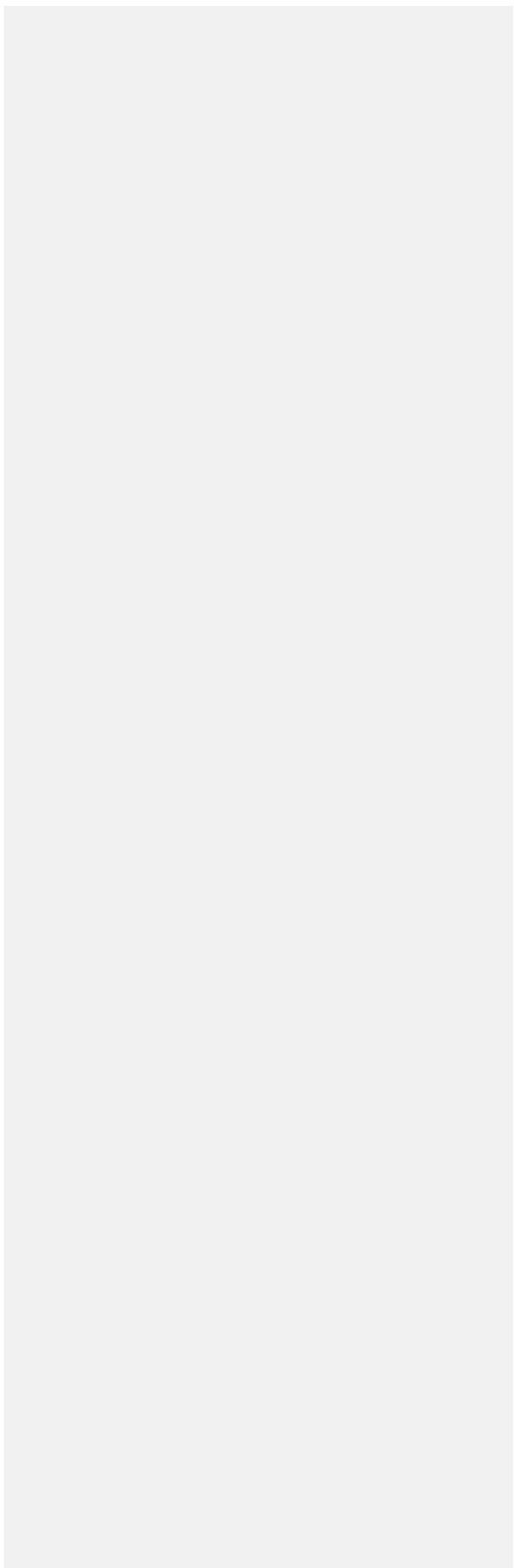
**(Revised to November 8, 2016)**

Prepared by City Clerk Department  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900



"Westward the course of empire takes its way  
The four first acts already past,  
A fifth shall close the drama with the day:  
Time's noblest offspring is the last."

George Berkeley, Bishop of Cloyne, a distinguished Irish philosopher and writer, after whom Berkeley California is named, was born at Dysert Castle, near Thomastown, Ireland, March 12, 1685. Educated in Trinity College, Dublin, he was appointed in Episcopal prelate, and devoted himself to literature and to philanthropic efforts to establish in America a college for the education and conversion of the Indians to Christianity. He lived nearly four years in Rhode Island, respected, esteemed and beloved by the people of early New England. The British government neglected to furnish the promised funds for the college, and, having exhausted much of his own fortune in his benevolent design, Bishop Berkeley was compelled to return to his native land. So powerfully impressed had he become with the great future of the American colonies that he wrote the famous poem, "Destiny of America," the concluding stanza of which is quoted above. Alexander Pope, his intimate friend, declared he was "possessed of every virtue." He died January 14, 1753, at Oxford, England.



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## **INTRODUCTION THE CITY OF BERKELEY**

The City of Berkeley is located in the County of Alameda and is one of the oldest CouncilManager Cities in California, this form of government having been adopted in 1923. The City Manager is appointed by the City Council and all other employees and officers are appointed by the City Manager.

The elective Officers of the City consist of a Mayor, eight Councilmembers, an Auditor, a School Board comprised of five directors and a Rent Stabilization Board comprised of nine commissioners. The Auditor, School Board Directors and Rent Board Commissioners are elected at large for four-year terms. The Mayor is also elected at large for a four-year term. The Council is elected by districts for four-year terms.

## **THE CHARTER**

This Charter of the City of Berkeley was originally adopted in 1909 and has been amended from time to time to keep pace with changes made in the State Constitution and with changing times. A complete list of all Charter amendments, repealed sections, and statutory references is set forth in Appendix A.

The present Charter may be referred to as a Freeholders Home Rule Charter. The City of Berkeley has full control over its municipal affairs and such control extends to all municipal affairs even though they may not be mentioned in the Charter. In other words, as to municipal affairs, the Charter instead of being a grant of power is, in effect, a limitation of power. Therefore, the City of Berkeley has complete authority over all municipal affairs subject only to the limitations and restrictions specified in the Charter or the Constitution of the State. A review of the historical development of the Charter is included here to provide better understanding of the Charter.

The original Town of Berkeley was incorporated on April 4, 1878 by an Act of the State Legislature, Stats. 187879, Chapter DLXV, Pg. 888. The Town had no Charter but was able to act as a Town and was governed in its actions by the laws of the State and by its Articles of Incorporation.

The first Charter was adopted under authority of the State Constitution and approved by the legislature on March 5, 1895, and may be found in Stats. 1895, Pg. 407. Chapter XI, Sec. 6 of Art. XI of the State Constitution in 1895 authorized cities to adopt charters but provided that all such charters were subject to and controlled by general state laws.

In 1896, Sec. 6 of Art XI of the Constitution was amended to provide that all city charters shall be subject to and controlled by general laws except in municipal affairs.

### INTRODUCTION

In 1908, a Board of Freeholders was elected to prepare a new Charter for the City of Berkeley. The courts of the State had decided that the charter of a city would control over general state laws on all municipal affairs whenever the specific power was given to the city in the charter. The charter was considered a grant of power and as a result the Board of Freeholders included all of the powers that they could imagine that the City would ever need in the original Charter.

In 1914, Section 6 of Article XI of the Constitution was again amended to provide that the electors of a city could amend their charters to provide that the city could make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in the charter. It was not until 1921 that the City of Berkeley took advantage of this amendment and added Section 115 to the Charter that reads as follows:

#### "MUNICIPAL AFFAIRS

**Sec. 115.** The City of Berkeley shall have the right and power to make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in this Charter; provided, however, that nothing herein shall be construed to prevent or restrict the City from exercising or consenting to, and the City is hereby authorized to exercise any and all rights, powers and privileges heretofore or hereafter granted or prescribed by general laws of the State."

The Courts of the State of California have held that the effect of the 1914 amendment was to change the theory of city charters. The Charter was no longer a grant of power but became a limitation of power. In 1970, Section 6 of Article XI of the State Constitution was repealed, and the provisions discussed in this introduction formerly contained in Section 6 are now set forth in Section 5 of Article XI of the State Constitution.

In *Rivera v. City of Fresno* (1971) 6 C. 3d 132, 135, the court restated the principle established by a long line of court decisions that a city is sovereign in the area of municipal affairs which has adopted a provision such as the City of Berkeley Charter Section 115. The court said "Accordingly, the City is empowered to exercise full control over its municipal affairs, unaffected by general laws on the same subject matters and subject only to the limitations found in the Constitution and the City Charter."

Further review of cases establishing this principle will be found in *West Coast Advertising Co. v. SF* (1939) 14 C. 2d 516.

Since 1921, the Charter has been amended many times but at no time was a revision of the entire Charter attempted. Therefore, we find many provisions in the Charter that are unnecessary but if they are not limitations they do no harm. If they are limitations they have been left alone because the people want the limitation.

### INTRODUCTION

In general, a municipal affair is one which refers to the internal business affairs of the city. It only affects the people living in the city as distinguished from a state affair that affects all the people of the state. As stated in *Bishop v. City of San Jose* (1969) 1 Cal. 3d 56, at p. 62:

“Because the various sections of article XI fail to define municipal affairs, it becomes necessary for the courts to decide, under the facts of each case, whether the subject matter under discussion is of municipal or statewide concern.’ In other words, ‘No exact definition of the term "municipal affairs" can be formulated, and the courts have made no attempt to do so, but instead have indicated that judicial interpretation is necessary to give it meaning in each controverted case. The comprehensive nature of the power is, however, conceded in all the decisions....”

This brief review of the development of the "municipal affairs" doctrine is intended to describe the history of the Berkeley City Charter and its scope and function.



Mark Numainville  
City Clerk

# CHARTER OF THE CITY OF BERKELEY

## ARTICLE I NAME AND RIGHTS OF THE CITY

### Section 1. Name of the City.

The municipal corporation now existing and known as the City of Berkeley shall remain and continue a body politic and corporate in name and in fact, by the name of the City of Berkeley, and by such name shall have perpetual succession.

### Section 2. Rights and Liabilities.

The City of Berkeley shall remain vested with and continue to have, hold and enjoy all property, rights of property and rights of action of every nature and description now pertaining to this municipality, and is hereby declared to be the successor of the same. It shall be subject to all the liabilities that now exist against this municipality.

## ARTICLE II BOUNDARIES

### Section 3. Boundaries.

The boundaries of the City shall be the boundaries as established at the time this Charter takes effect, and as such boundaries may be changed thereafter from time to time in the manner authorized by law.

## ARTICLE III ELECTIONS

### Section 4. General and Special Municipal Elections.

A municipal election shall be held on the first Tuesday following the first Monday of November, 1982 and biennially thereafter. All such elections shall be known as general municipal elections, and shall be held on the same date as the regularly occurring statewide California general elections held on the first Tuesday following the first Monday of November of even numbered years. The City Council shall take the necessary actions to consolidate general municipal elections with statewide California general elections. All other municipal elections that may be held shall be known as special municipal elections.

**CHARTER OF THE CITY OF BERKELEY**  
**Sections 4 to 5, Article III**



No special municipal election shall be held in the City, except as provided for in this section:

(a) A special municipal election may be held in accordance with the Recall provisions of Article IV of this Charter; provided, however, that if the provisions of Article IV would require such election to be held between the 10th day of June and the 10th day of October, then such election shall be held on the following first Tuesday after the first Monday in November.

(b) A special municipal election may be held to fill any vacancy in accordance with Article V, Section 12 of this Charter; provided however, if the provisions of Article V, Section 12 would require such election to be held between the 10th day of June and the 10th day of October, then such election shall be held on the following first Tuesday after the first Monday in November.

(c) A special municipal election, other than those provided for in subsections (a) and (b) of this section, may be held upon a determination, by a vote of twothirds of the Council, that an urgent necessity exists therefor.

**Section 4½. Rent Stabilization Board Election.**

Notwithstanding the provisions of Section 4, there shall be a Rent Stabilization Board Election as provided in Section 122 of Article XVII.

**Section 5. Nomination and Election of Certain Officers.**

**(1) Procedure for holding elections.**

Except as otherwise provided in this Charter, all elections shall be held in accordance with the provisions of the Elections Code of the State of California, as the same now exist or may hereafter be amended, for the holding of elections in general law cities.

**(2) Posting of Notices.**

All notices and other matters which are now or may hereafter be required to be published by the Elections Code, may be publicized in the manner determined by the Council.

**(3) Youth Voting.**

(a) Notwithstanding anything to the contrary in this Charter, the City Council may, by ordinance, provide for the voting by persons aged 16 and 17 years old who would otherwise be eligible to be electors under the Elections Code, for the office of School Director, subject to all of the following conditions.

**Section 5, Article III**

(1) No City of Berkeley funds may be used, directly or indirectly, to pay any cost related to voting by persons aged 16 and 17 years old pursuant to this Section, including litigation costs and attorneys' fees, nor shall City of Berkeley funds be used to replace funds used for these purposes by any other public agency or private entity.

(2) Equipment, software, systems, and procedures for voter registration and voting are technically ready to handle voting by persons aged 16 and 17 years old.

(3) Voting by persons aged 16 and 17 years old will not preclude the City from consolidating its municipal elections with the County.

(4) Voting by persons aged 16 and 17 years old will not result in additional election costs that will be paid directly or indirectly by the City of Berkeley.

(b) Any program for allowing voting by persons aged 16 and 17 years may specify the manner in which, method by which, and times at which, votes by such persons may be cast. The manner, method and time of voting for persons aged 16 and 17 years old need not be the same as for other persons.

**(4 through 9)** (repealed)

**(10) Canvass of returns and declaration of results.**

The City Council shall meet at its usual place of meeting as soon as practicable after the election, including any runoff election, to receive the certification of results prepared by the City Clerk. The City Clerk shall canvass the results of the election in accordance with procedures established in the State of California Elections Code. The persons having the number of votes required by this Charter for each elective office shall be declared elected.

**(11) Use of voting machines, voting devices or vote tabulating devices.**

If the use of voting machines, voting devices or vote tabulating devices at a municipal election is authorized by the City Council, any of the provisions of this Section 5 may be modified by the City Council to the extent necessary to permit the use of such voting machines, voting devices or vote tabulating devices.

**Sections 5 to 6, Article III**

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**(12) Use of instant runoff voting in lieu of runoff elections.**

For purposes of this charter "instant runoff voting" shall refer to a voting system which, in a single election, determines the candidate supported by the voters. Notwithstanding any section of this Charter to the contrary, upon a determination by the City Council of all of the following, that: a) the voting equipment and procedures are technically ready to handle instant runoff voting in municipal elections; b) instant runoff voting will not preclude the City from consolidating its municipal elections with the County; and c) instant runoff elections will not result in additional City election costs, the Council may by ordinance establish a system of instant runoff voting for the offices of Mayor, City Council, and Auditor in any manner permitted by the State of California Elections Code. Once the Council institutes a system of instant runoff voting, future elections shall be conducted as instant runoff voting elections, unless the Council finds that circumstances have changed such that one or more of the prior Council findings required by this section are no longer valid. In such case, the Council shall articulate the specific basis therefore in order to suspend an existing system of instant runoff voting. Subdivision (e) of Section 9 of Article V relating to the percentage threshold to trigger a runoff election shall have no application to a system of instant runoff voting. The City Clerk shall conduct voter and community education to familiarize voters with instant runoff voting.

**Section 6. Votes for Deceased Candidates.**

Whenever a candidate whose name appears upon the ballot at a general municipal election dies before the time of the closing of the polls on the day of election, the votes cast for such deceased candidate shall be counted in determining the results of the election for the office for which the decedent was a candidate. If the deceased candidate receives the highest number of the votes cast for the office, or if more than one is to be elected to such office and the deceased candidate receives sufficient votes to be one of those elected for such office, he or she shall be considered elected and the office to which he or she was elected shall be vacant at the beginning of the term for which he or she was elected. The vacancy thus created shall be filled in the same manner as if the candidate had died subsequent to taking office for that term

**Section 6.1, Article III**

**Section 6.1. Nomination - Filing Fee - Candidate's Statement of Qualifications.**

Candidates for council office shall be nominated by registered voters from the council district for which they nominate the council candidate, as further provided in the State of California Elections Code.

At the time of filing his or her nomination papers, each candidate for the office of mayor, councilmember, auditor, rent stabilization board commissioner, and school board director shall pay a filing fee, in the amount of \$150. The filing fee may be offset in whole or in part by the submission of up to 150 signatures of registered voters in the City. Each signature of a registered voter shall offset \$1 of the filing fee. Any such required submission of signatures, in lieu of filing fees, shall be in addition to the signatures otherwise required by the State of California Election Code to nominate a candidate, but may be of voters registered anywhere in the City.

At the time of filing his or her nomination papers, each candidate for an elective office may file with the City Clerk a verified statement showing the name of the candidate, the office for which he or she is a candidate, his or her place of residence, place of birth, present occupation, what public offices he or she has held, whether he or she is a taxpayer in the City of Berkeley, a statement giving information as to his or her experience and qualifications, and a recent photograph, to the end that the electors may be in a position to estimate his or her fitness to fill the office, and the names of not less than five or more than twenty residents of the City of Berkeley to whom he or she refers. Until otherwise provided by ordinance, such statements shall not exceed two hundred words in length. At the time of filing said statement, each candidate shall also pay to the City Clerk a printing fee which, until otherwise provided by ordinance, shall be the sum of \$35.00. The City Clerk shall cause said candidates' statements to be printed in some convenient form and shall mail a copy of said statements to each registered voter with the sample ballot, provided that no name to which the candidate refers shall be included in the publication by the Clerk unless the written consent of the person named is filed with the City Clerk. The provisions of this section are selfexecuting, but the City Council, by ordinance, may more definitely prescribe the form of said candidate's statement. The printing fees so collected by the City Clerk shall be paid into the City Treasury, and the expense of printing said candidates' statements shall be paid from the City Treasury. No refund from printing fees shall be made to candidates, nor shall any extra charge be made, regardless of whether the printing expense is more or less than the amount of the fees received.



**Section 6.2, Article III**

**Section 6.2. Fair Elections Fund.**

**(1) Establishment of Fair Elections Fund.**

A special, dedicated, non-lapsing Fair Elections Fund shall be established by the City Council for the purpose of:

(a) Providing public financing for the election campaigns of certified participating candidates; and

(b) Paying for the administrative and enforcement costs of the Berkeley Fair Campaign Practices Commission ("Commission") and City staff related to the Fair Elections Fund public campaign financing program. The administrative and enforcement costs shall not exceed \$250,000 in any four year election cycle.

**(2) Appropriations to the Fair Elections Fund.**

(a) The City Council shall appropriate \$4 per Berkeley Resident per year, as determined by the most recent official United States Census Bureau Population Estimate for the City of Berkeley, from the City General Fund to the Fair Elections Fund.

(b) Other sources of revenue to be deposited in the Fund shall include:

i) Unspent funds distributed to any participating candidate who does not remain a candidate until the election for which they were distributed, or such funds that remain unspent by a participating candidate following the date of the election for which they were distributed;

ii) Fines levied by the Commission against candidates for violation of election laws;

iii) Voluntary donations made directly to the Fair Elections Fund;

iv) Other funds appropriated by the City Council;

v) Any interest generated by the Fund; and

vi) Any other sources of revenue determined as necessary by the City Council.

**Section 6.2, Article III**

(c) The amount in the Fair Elections Fund shall not exceed \$2 million at any time. In order to comply with this limitation, revenue that would otherwise be deposited in the Fair Elections Fund pursuant to subsections (a) and (b) shall instead be deposited in the City General Fund.

(d) The City Council may, by adoption of an ordinance by not less than two-thirds vote of its membership, make an official declaration of fiscal emergency and suspend or reduce the amount of the annual appropriation specified in subsection (a). Any such ordinance suspending or reducing the annual appropriation shall be effective for no more than one year.

**(3) Cost of Living Adjustments.**

The Commission shall adjust the dollar amounts specified in subsections (1)(b), (2)(a) and (2)(c) of this Section upward or downward, for changes in the cost of living, by the percent change in the Consumer Price Index.

Section 7, Article IV

**ARTICLE IV  
RECALL OF ELECTIVE OFFICERS**

**Section 7. Recall of Elective Officers.**

**(1) Persons subject to recall.**

Every incumbent of an elective office, whether elected by popular vote or appointed to fill a vacancy, is subject to recall by the voters of the City. The procedure for recall shall be as provided in this Section 7.

**(2) Commencement of recall proceedings.**

Recall proceedings may be commenced by the service, filing and publication of a notice of intention to circulate a recall petition pursuant to subdivision (6) of this Section 7. Proceedings may not be commenced against the holder of an office unless, at the time of commencement, the holder has held office for at least six months and no recall petition has been filed against such holder within the preceding six months. Recall proceedings may not be commenced if the office holder's term of office ends in six months or less.

**(3) Recall petition.**

A petition demanding the recall of the officer sought to be recalled shall be filed with the City Clerk. The petition shall be signed by not less than 25 percent of the registered electors of the City eligible to vote for said officer as indicated by the most recent Report of Registration by the county elections official to the Secretary of State.

**(4) Repealed.**

**(5) Recall of more than one officer.**

One election is sufficient for the recall of one or more officers, but a separate petition is necessary to propose the recall of each officer.

**(6) Notice of intention to circulate petition; statement.**

The proponents shall serve, file and publish a notice of intention to circulate a recall petition. Said notice shall contain the name of the officer sought to be recalled and the title of his or her office, a statement in not more than 500 words of the grounds on which the recall is sought, and the name and address of at least one proponent. The notice of intention shall be served, personally or by certified mail, on the officer sought to be recalled, and a copy thereof with a certificate of the time and manner of service shall be filed with the City Clerk.

**Section 7, Article IV**

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**(7) Answer to statement of proponents.**

Within seven days after the filing of the notice of intention, the officer sought to be recalled may file with the City Clerk an answer in not more than 500 words to the statement of the proponents, and, if an answer is filed, shall serve a copy thereof, personally or by certified mail, on one of the proponents named in the notice of intention. The statement and answer are intended solely for the information of the voters and no insufficiency in the form or substance thereof shall affect the validity of the election or proceedings.

**(8) Publication of notice, statement and answer.**

The notice, statement and answer, if any, shall be published by the proponents at least once in a newspaper of general circulation published in the City, or, if there be no such newspaper, then in a newspaper published in the County and of general circulation within the City. The provision of Section 68 of this Charter indicating that posting shall be sufficient publication of any matter required by the Charter to be published shall not be applicable to the publication requirement of this Subdivision (8) of Section 7.

**(9) Circulation of petition.**

Seven days after filing an affidavit of publication of the notice, statement and answer, if any, with the City Clerk, the recall petition may be circulated and signed. The petition shall bear a copy of the notice of intention, statement and answer, if any. If the officer has not answered, the petition shall so state. Signatures shall be secured and the petition filed within 90 days from the filing of the affidavit of publication.

**(10) Signatures.**

The signatures appended to the petition need not all be appended to one paper but may be in sections. Each signer shall print his or her name, add his or her signature, and list his or her residence, giving street and number. If no street or number exists, then a designation of the place of residence shall be given which will enable the location to be readily ascertained.

**(11) Affidavit of Circulator.**

Each section of the petition shall have attached to it an affidavit made by the circulator of the petition. The affidavit shall be sworn to under penalty of perjury and shall conform to the requirements of the state Elections Code Sections 104 and 9022 or their successors.

Any section of a petition may include a number of attached sheets.

Section 7, Article IV

**(12) Clerk's examination of petition**

In order to be acceptable for filing, the petition must on its face purport to have appended to it signatures of voters in the required number. Within 30 business days from the date the petition is filed, the Clerk shall examine and from the records of registration ascertain whether or not the petition is signed by the requisite number of voters. He or she shall attach to the petition his or her certificate showing the result of his or her examination.

**(13) Insufficient petition.**

If the certificate of the City Clerk shows that the petition is insufficient, no action shall be taken thereon. The petition shall remain on file pursuant to Elections Code Section 11226 as it may be amended from time to time, and the failure to secure sufficient names shall not prejudice the filing later of an entirely new petition to the same effect.

**(14) Submission to Council; order for election.**

If the petition is sufficient, the Clerk shall submit certification of petition's sufficiency to the Council without delay. The Council shall at once order a special election to be held, not less than 100 nor more than 180 days after the date of the order, to determine whether the voters will recall the officer sought to be recalled. If a regular municipal election, a previously called special municipal election, or any statewide election is to be held within this time period, the Council may order the recall election to be held on the day of that election.

**(15) Nominations.**

(a) The provisions of Section 6 1/2 of Article III of the Charter shall be applicable in recall proceedings and elections.

(b) The officer sought to be recalled as well as the candidate or candidates nominated to succeed him or her may file the candidate's statement provided for in Section 6 1/2 of Article III of the Charter. The candidate's statement of the officer sought to be recalled shall be filed not later than the last day upon which nomination papers may be filed.

(c) The City Council shall set the nomination period by resolution. Said filing period shall end no later than the 88th day prior to the election.

**(15.5) Sample ballot.**

The Clerk shall cause to have mailed to each voter, at least 10 days prior to the election, a sample ballot and a separate printed copy of the statement of the proponents and of the answer, if any, of the officer sought to be recalled. If the recall of more than one officer is sought, the statement and answer for each shall be printed together and shall be clearly distinguished from those of any other officer.

**Section 7, Article IV**

**(16) Form of recall question.**

There shall be printed on the recall ballot, as to each officer whose recall is to be voted on, the following question: "Shall (name of person) be recalled from the office of (title of the office)?" Following which question shall be the words "yes" and "no" on separate lines, with a voting square at the right of each, in which the voter shall indicate in the manner prescribed his or her vote for or against the recall.

**(17) Ballot; nominees; counting votes.**

On the recall ballots, under each question, there shall be printed the names of those persons who have been nominated, in the manner provided by this Charter for nominations at municipal elections, as candidates to succeed the incumbent if he or she is recalled from office by the recall election. The name of the person against whom the petition is filed shall not appear on the ballot as a candidate for the office. Voting procedure shall be in accordance with Article III, Section 5, Paragraph 12 and Article V, Section 9 of the City Charter.

**(18) Canvass of votes.**

The City Council shall meet at its usual place of meeting on the first Tuesday after the completion of the canvass of votes cast to declare the results as in a regular election. If a majority of those voting at the election voted in favor of the recall of any incumbent from office, the incumbent shall be deemed removed from office upon the qualification of his successor.

If all of the members of the City Council or Board of Education are recalled, and no candidates are elected to succeed them, the recall shall fail and the incumbents shall remain in office.

If all or part of the members of the City Council or Board of Education are recalled, and not enough candidates are elected to provide a quorum, the appointment of persons to bring the membership up to a quorum shall be by the remaining members of the City Council or Board of Education, as the case may be. The quorum shall fill the remaining vacancies by appointments. If there are any unfilled vacancies remaining 60 days after the completion of the canvass of votes cast, and more than 180 days will elapse before the next general municipal election will be held, the City Council shall immediately cause an election to be held to fill the vacancies.

A person appointed to office under this section shall hold office for the remainder of the unexpired term of the recalled officer whose position he or she is appointed to fill.

**Section 7, Article IV**

**(19) Declaration of election of candidate; failure to qualify; filling vacancy.**

If the vote recalls the officer, the candidate who has received the highest number of votes for the office shall be declared elected for the unexpired term of the former incumbent. If the person who received the highest number of votes fails to qualify within 10 days after the declaration of his or her election, the office shall become vacant and shall be filled according to law.

**(20) Vacancy in office after recall petition is filed.**

(1) If a vacancy occurs in the office sought to be recalled and more than one candidate has been nominated for the office, then the election shall be held as a special election to fill the vacancy and the recall question shall not appear on the ballot.

(2) If a vacancy occurs in the office sought to be recalled and only one person has been nominated for the office or no person has been nominated for the office, an election shall not be held. In such case the City Council or Board of Education, as the case may be, shall appoint to the office the person nominated, or, if no person has been nominated, shall appoint any qualified person.

**(21) Disqualification from office.**

A person who has been recalled, or who has resigned from office while recall proceedings were pending against him or her, shall not be a candidate for nor appointed to such office within one year after his or her resignation or recall.

**(22) Further regulations.**

The City Council may, by resolution, make such further regulations as may be necessary to carry out the provisions of this Section.

Sections 8 to 9, Article V

**ARTICLE V  
ELECTIVE OFFICERS**

**Section 8. The elective officers.**

The elective officers of the City shall be a Mayor, an Auditor, eight (8) Councilmembers, five (5) School Directors and nine (9) Rent Board Commissioners.

The Council shall consist of the Mayor and eight (8) Councilmembers, each of whom, including the Mayor, shall have the right to vote on all questions coming before the Council.

The Board of Education shall consist of five (5) School Directors, each of whom shall have the right to vote on all questions coming before the Board; provided, however, that the Mayor shall serve as a School Director with the right to vote on all questions coming before the Board for the four (4) year term commencing July 1, 1951.

**Section 9. Election and Districts.**

(a) The Mayor, Auditor and School Directors shall be elected at the general municipal election on a general ticket from the City at large.

(b) The Councilmembers shall be elected at the general municipal election by districts. The Councilmembers shall be recalled by districts. Any person appointed to fill a vacancy on the City Council shall be a citizen of the United States and a qualified elector in the State of California and of the City of Berkeley as required in Article V, Section 10 of the City Charter, and must reside in the district in which he or she runs for election.

(c) No later than April 1st of the second year following the year in which each decennial federal census is taken, commencing with the 2020 census, unless a later deadline is established by Section 9.5(d)(1), the City shall be divided into eight Council districts as set forth in Section 9.5 and any implementing legislation. Any such redistricting shall become effective as of the next general election of Councilmembers immediately following the effective date of the ordinance adopted pursuant to Section 9.5(d).

(d) Each Councilmember shall be elected by the electors within a Council district, must have resided in the District in which he or she is elected for a period of not less than thirty days immediately preceding the date he or she files a declaration of candidacy for the office of Councilmember, must continue to reside therein during his or her incumbency, and shall be removed from office upon ceasing to be such resident, except as set forth in Section 9.5(g)(6).



**Sections 9 to 9.5, Article V**

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(e) The candidate receiving the highest number of votes for the offices, respectively, of Mayor, Auditor and Councilmembers of the City shall be elected to such offices, provided that such candidate receives at least 40% of the votes cast for each such office. In the event that no candidate for Mayor, Auditor and Councilmember for one or more Council offices receives at least 40% of the votes cast for that office, then there shall be a runoff election between the two candidates receiving the most votes, which runoff election shall be held on the first Tuesday after the first Monday in February of the odd numbered year following the initial election. No other issues shall appear on the ballot of any runoff election. The successful candidate in any runoff election shall assume office on March 1, after the election results have been declared by the Council. If the provisions of Article III, Section 5, Paragraph 12 related to instant runoff voting are operative, the vote threshold requirements in this section shall have no application to municipal elections.

(f) Should any provision of this section be held invalid, the remainder of this section shall not be affected thereby, and such word, phrase, sentence, part, section, subsection, or other portion shall be severable, and the remaining provisions of this section shall remain in full force and effect. The voters hereby declares that they would have passed this section and each subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more, subsections, sentences, clauses or phrases had been declared invalid.

**Section 9.5. Citizens Redistricting Commission**

The purposes of this Section are to: 1) establish a redistricting process that is open and transparent and allows public comment on the drawing of district boundaries; 2) ensure that City Council district boundaries are drawn according to the redistricting criteria set forth in this Charter and applicable State and Federal laws; and 3) ensure that the redistricting process is conducted with integrity, fairness, and without personal or political considerations. In order to accomplish these purposes, a Citizens Redistricting Commission (Commission) is hereby created.

(a) Duties and authority of Commission and City Council.

(1) The Citizens Redistricting Commission shall be solely responsible for drawing City Council district boundaries in accordance with state and federal law and this Charter, and shall make adjustments as appropriate, taking into consideration public comment at public meetings and public hearings. The City Council shall have no role in developing or adopting a redistricting plan, and its sole responsibilities in redistricting shall be to: adopt an ordinance establishing procedures to implement this Section; adopt a redistricting ordinance as set forth in subdivision (d)(3); submit a final redistricting plan to the voters as set forth in subdivision (d)(4); submit a redistricting ordinance that is the subject of a referendum to the voters as set forth in subdivision (d)(5); and to adopt the redistricting plan determined by a special master as set forth in subdivision (d)(4).

**Section 9.5, Article V**

(2) The City Council, as part of the adoption of the City Budget, shall allocate sufficient funds to support the work of the Citizens Redistricting Commission, including funds necessary for community outreach, costs for city staff time associated with supporting the work of the Citizens Redistricting Commission, and the hiring of any necessary consultants or outside counsel.

(3) The City Clerk or his or her designee shall serve as Secretary to the Commission.

(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.

(b) Appointment of Commission.

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

(2) Term. Members of the Citizens Redistricting Commission shall be appointed following each decennial federal census as set forth below. The term of office of each member of the Commission shall expire upon the effectiveness of a redistricting plan for that decennial federal census period.

(3) Qualifications and eligibility. All registered Berkeley residents 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 Redistricting Commission, subject to the following limitations.

(i) The following individuals are prohibited from serving on the Citizens 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;

**Section 9.5, Article V**

(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.

(ii) If an applicant currently serves on a City of Berkeley board or commission whose members are appointed by the Mayor, a City Councilmember, or the full City Council, he or she may serve on the Citizens Redistricting Commission if selected, provided he or she resigns from the board or commission and he or she agrees not to serve on another City of Berkeley board or commission during his or her term of office on the Citizens Redistricting Commission.

(iii) If an applicant has made a disclosable monetary or non-monetary contribution to a candidate for Mayor or Councilmember, he or she shall be permitted to serve on the Citizens Redistricting Commission if selected, under the condition that he or she discloses under penalty of perjury all monetary and non-monetary contributions made within the four years prior to the date of application to a candidate for Mayor or Councilmember in the City of Berkeley.

(iv) No person, within two years after the termination of his or her service on the Commission, will be eligible for employment as a paid staff member for the Mayor or any Councilmember or to serve on a City of Berkeley board or commission.

**Section 9.5, Article V**

(4) Outreach. The City shall widely publicize the fact that a Citizens Redistricting Commission will be appointed during the following year, the date by which applications for appointment to the Commission must be received, and such other information as will adequately inform potentially interested residents of the Commission. The City shall conduct outreach throughout the City of Berkeley in order to solicit a large pool of applicants and applicant diversity by race, ethnicity, gender, and geography.

(5) Application process. The City Clerk shall initiate and advertise a 30-day nomination period for appointment to the Citizens Redistricting Commission. The nomination process shall be open to all registered Berkeley voters, and be conducted in a manner that promotes a diverse and qualified applicant pool.

(6) Selection process.

(i) The City Clerk shall screen all applications submitted to ensure that each applicant satisfies the eligibility criteria of subsection (b)(3)(i). Procedures to implement the nomination and screening process that are not specified in this Section will be specified in the implementing ordinance adopted by Council.

(ii) At a time and place open to the public, and subject to at least ten days public notice, the City Clerk shall select the initial eight members of the Citizens Redistricting Commission. The City Clerk shall randomly select one person from each of the eight council districts. The first person chosen from each pool shall be appointed to the Citizens Redistricting Commission. The City Clerk shall then randomly select one additional individual from each of the eight council districts to serve as an alternate for the individual who has been appointed from that district. To implement this paragraph, the City Clerk shall determine a randomized method that meets professional standards and best achieves a random selection.

(iii) The Citizens Redistricting Commission, consisting of the initial eight (8) members, shall then convene within ten days for the purpose of selecting the remaining five members and five alternates from the pool of eligible applicants. In appointing the remaining (“at-large”) five members, the Citizens Redistricting Commission shall attempt to achieve community representation by taking into consideration geographic diversity, race, age and gender. At-large alternates shall be appointed as voting members as the at-large commissioners leave office for any reason. The order in which the alternates shall be seated on the Commission as voting members shall be established by a random method at the time they are selected. All appointments under this paragraph shall be at a noticed meeting of the Citizens Redistricting Commission open to the public.

**Section 9.5, Article V**

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(c) Commission procedures.

(1) The Citizens Redistricting Commission shall establish and implement an open process for public input and Commission deliberation that shall be promoted through a thorough outreach program to solicit broad public participation in the redistricting process. All Citizens Redistricting Commission meetings shall be open to the public unless necessary to convene in closed session under California Government Code sections 54950 et seq. Members of the public shall have the opportunity to provide written and oral comments to the Citizens Redistricting Commission. The Commission's process must be designed to provide the widest public access reasonably possible to draft redistricting maps and to provide ample opportunity for the public to observe and participate in the redistricting process.

(2) The City Manager shall produce redistricting plans and maps based on specific direction from the Commission. The Commission shall also accept and consider maps that are submitted by the public.

(d) Commission redistricting proceedings.

(1) The Citizens Redistricting Commission shall adopt City Council district boundaries no later than February 1st of the second year after the year in which each decennial federal census is taken, or nine months after final adjustments are made to the census data, whichever is later. The boundaries shall be effective until the adoption of new district boundaries following the next decennial federal census. The City Council may not rescind, supersede or revise the district boundaries adopted by the Citizens Redistricting Commission.

(2) Decisions by the Citizens Redistricting Commission to adopt a redistricting plan shall be by seven votes of the Commission.

(3) Concurrently with its adoption of a redistricting plan, the Commission shall issue a report that explains its decisions in achieving compliance with the criteria listed in this Section and shall include definitions of the terms and standards used in drawing the final City Council districts map. The redistricting plan adopted by the Commission shall be submitted to the City Council at its next regular or special meeting consistent with Berkeley Municipal Code Chapter 2.06, and the City Council shall at that meeting adopt a redistricting ordinance that implements the redistricting plan without change.

**Section 9.5, Article V**

(4) Impasse procedure. If the Commission is unable to achieve seven affirmative votes to adopt a redistricting plan, then the Commission shall submit to the City Council the map which received the most votes of the Commission to be placed on the ballot. In the event that redistricting plan is rejected by the voters, the Commission shall have 30 days to adopt a new redistricting plan by seven affirmative votes. If the Commission, after rejection of the map by the voters, cannot adopt a final redistricting plan by seven affirmative votes, then the Commission shall request that the City Clerk recommend a list of at least three special masters to develop a redistricting plan. The Commission shall consider the recommendations of the City Clerk and select a special master, by majority vote, to develop a redistricting plan. The City Council shall adopt by ordinance the redistricting plan determined by the special master.

(5) A redistricting ordinance adopted by the City Council shall be subject to referendum in the same manner that an ordinance is subject to referendum pursuant to state law and Article XIV of the City Charter. The date of final adoption of the ordinance by the City Council shall be deemed the date of final passage for the purposes of Section 93 of the Charter. The procedures of Section 93 shall apply to a referendum of a redistricting ordinance, except that if a referendum petition is signed by the requisite number of qualified electors the City Council shall submit the ordinance to the voters at the next General Municipal Election.

(e) Removal of Commissioners.

(1) Commissioners should apply the law in a manner that is impartial and reinforces public confidence and integrity in the redistricting process.

(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)(3), a Commissioner may be removed by a two-thirds vote of the Citizens Redistricting Commission, after having been served written notice and provided with an opportunity to respond.

(3) Any vacancy, whether created by removal, resignation, or absence pursuant to Berkeley Municipal Code Section 3.02.020 or its successor, shall be filled by the alternate for that Commission seat selected at the time of the original selection. If the alternate is unable to serve, the Citizens Redistricting Commission shall fill the vacancy by selecting an applicant from the original pool of applicants by a two-thirds vote at a noticed meeting open to the public. If the seat to be filled is one representing a specific City Council district, the Citizens Redistricting Commission shall appoint an individual who resides in that City Council district.

(4) No disqualification of a commissioner shall have any effect on the validity of any action by the Commission or any redistricting map it may adopt.

**Section 9.5, Article V**

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(f) Criteria for redistricting.

(1) The Commission shall adjust the boundaries of City Council districts in a manner that complies with the Constitution and statutes of the United States and the State of California, in order that the eight City Council districts shall be as nearly equal in population as may be according to the most recent decennial federal census, except where deviation is required to comply with the federal Voting Rights Act.

(2) In establishing and modifying district boundaries, the Citizens Redistricting Commission shall take into consideration topography, geography, cohesiveness, contiguity, integrity and compactness of territory of the districts, as well as existing communities of interest as defined below, and shall utilize easily understood district boundaries such as major traffic arteries and geographic boundaries to the extent they are consistent with communities of interest. The geographic integrity of a neighborhood or community of interest shall be respected to the extent possible without violating State or Federal law or the requirements of this Section. For purposes of this subsection "communities of interest" shall mean the following: A community of interest is a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Such shared interests include but are not limited to those common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process, as well as neighborhoods, students, organized student housing, shared age, and racial demographics. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.

(3) Districts shall not be drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or political party.

(4) The Citizens Redistricting Commission may consider existing district boundaries as a basis for developing new district boundaries. Should the Commission deviate substantially in its redistricting plan from the previous district boundaries in order to reflect population growth, protect communities of interest or better comply with the redistricting criteria in the Charter, it shall issue a report explaining its reasons for doing so.

(5) The Citizens Redistricting Commission shall not consider the residence of sitting Councilmembers.

(6) If the Citizens Redistricting Commission adopts a redistricting plan that removes the residence of a sitting Councilmember from his or her then-current district, that Councilmember shall continue to serve on the City Council until the expiration of his or her term.

**Sections 9.5 to 11, Article V**

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(g) Severability.

Should any provision of this Section be held invalid, the remainder of this Section shall not be affected thereby, and such word, phrase, sentence, part, section, subsection, or other portion shall be severable, and the remaining provisions of this Section shall remain in full force and effect. The voters hereby declare that they would have passed this Section and each subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more, subsections, sentences, clauses or phrases had been declared invalid.

**Section 10. Eligibility of Mayor, Auditor, Councilmember, and School Director.**

To be eligible for the office of Mayor, Auditor, Councilmember, or School Director, a person must, at the time of filing nomination papers for the office, be a citizen of the United States and a qualified elector of the State of California and of the City of Berkeley. Any person who has served as a voting member of the Citizens Redistricting Commission shall be ineligible to file nomination papers for the office of Council member in his or her district of residence or Mayor in the next occurring general municipal election in which said office appears on the ballot after his or her service on the Commission terminates under Sections 9.5(b)(2) or 9.5(e).

**Section 11. (repealed)**



**Section 12, Article V**

**Section 12. Vacancy in Office of Mayor or Councilmember.**

(1) If a vacancy shall occur in the office of Mayor or Councilmember:

(a) If the unexpired term is less than one year, the remaining members of the Council shall elect a successor with requisite qualifications to fill the vacancy for the unexpired term. Vacancies shall be filled only at a regular meeting of the Council after reasonable notice of intent to fill the vacancy has been given to all remaining members of the Council by any Councilmember by placement on the agenda. Should the Council fail to fill any vacancy within 60 days after its occurrence, the Council shall, within 10 days, order a special municipal election, to be held not less than 60 nor more than 90 days after the date of the order; provided, however, if any regular statewide or general municipal election is to be held in the City not more than 180 days or less than 80 days from the date of the occurrence of the vacancy in the case of a regular statewide election, or not more than 180 days nor less than 60 days from the date of the occurrence of the vacancy in the case of a general municipal election, then the vacancy shall not be filled by the Council nor by special election, but at said regularly occurring election.

(b) If the unexpired term is for one year or more, the vacancy shall be filled by special election, to be called by the Council within ten days after the occurrence of the vacancy and to be held not less than 60 nor more than 90 days after the date of the order; provided, however, if any regular statewide or general municipal election is to be held in the City not more than 180 days nor less than 80 days from the date of the occurrence of the vacancy in the case of a regular statewide election, or not more than 180 days nor less than 60 days from the date of the occurrence of the vacancy in the case of a general municipal election, then the vacancy shall not be filled by special election, but at said regularly occurring election.

(2) If at any municipal election a Mayor or the required number of Councilmembers be not elected by reason of a tie vote among any of the candidates therefor, then the Council, after the qualification of the persons, if any, elected thereto at such election, shall appoint one of the persons receiving such tie vote to fill such office. In such case the person so appointed shall hold office, subject to the provisions of the Recall, to and including the April 30th following the next general municipal election.

**Section 12.1 to 12.2, Article V**

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**Section 12.1. Vacancy in office of Auditor.**

If a vacancy shall occur in the office of Auditor, the Council shall appoint a person to fill such vacancy. If at any municipal election an Auditor be not elected by reason of a tie vote among any of the candidates therefor, then the Council, after the qualification of the persons, if any, elected thereto at such election, shall appoint one of the persons receiving such tie vote to fill such office as in the case of a vacancy therein. In such case the person so appointed shall hold office, subject to the provisions of the Recall, to and including the June 30th following the next general municipal election.

**Section 12.2. Vacancy in Office of Rent Stabilization Board Commissioner.**

(1) If a vacancy shall occur in the office of Rent Stabilization Board Commissioner:

(a) An election shall be held at the next feasible general municipal election to elect a successor, as provided in subsection (b). In the interim, the remaining members of the Rent Stabilization Board shall appoint a successor with requisite qualifications to fill the vacancy until such election. Such interim appointment shall be made only at a regular meeting of the Rent Stabilization Board after reasonable notice of intent to fill the vacancy has been given to the remaining members of the Board by any Rent Stabilization Board Commissioner by placement on the Rent Stabilization Board agenda. The term of such appointed Commissioner shall expire on November 30 of the year that an election is held to elect a successor, as provided in subsection (b).

(b) If the vacancy occurs within the first two years of the four year term of the office being vacated, and there is sufficient time to nominate and elect a successor at the next general municipal election, the Commissioner elected shall serve the remaining two years of the term of the vacated office. At any general municipal election that includes an election to fill the unexpired term of a Rent Stabilization Board Commissioner, the Commissioner elected with the fewest votes shall serve the remaining two years of the unexpired term. If the vacancy occurs after the first two years of the four year term of the vacated office, the election for that office shall be held at the next general municipal election as required by this Charter even if the office was not vacant.

(2) If at any municipal election the required number of Rent Stabilization Board Commissioners are not elected by reason of a tie vote among any of the candidates, then the Rent Stabilization Board, after the qualification of the persons, if any, elected at the election, shall appoint the necessary number of the persons receiving the tie vote to fill any office vacant by reason of the tie vote. In this case, any person so appointed shall hold office, subject to the provisions of a recall, to and including November 30, following the next general municipal election.

**Sections 13 to 15, Article V**

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**Section 13. Vacancy in office of School Director.**

If a vacancy shall occur in the office of School Director, the Board of Education shall appoint a person to fill such vacancy. If at any municipal election a School Director be not elected by reason of a tie vote among any of the candidates therefor, then the Board of Education, after the qualification of the persons, (if any, elected thereto at such election, shall appoint one of the persons) receiving such tie vote, to fill such office as in case of a vacancy therein. In each case the person so appointed shall hold office, subject to the provisions of the Recall, to and including the April 30th following the next general municipal election.

**Section 14. Mayor's term of office.**

The Mayor shall hold office for a term of four years from and after the first day of December after his or her election is certified by the City Clerk and until a successor is elected and qualified. However, the term of the Mayor elected in the November 2006 general municipal election shall expire on the first day of December, 2008 after a successor is elected in the November, 2008 general municipal election. Thereafter, mayoral elections shall coincide with presidential elections.

**Section 14.1. Auditor's term of office.**

The Auditor shall hold office for a term of four years from and after the first day of December after his or her election is certified by the City Clerk and until a successor is elected and qualified. However, the term of the Auditor elected in the April, 1979 general municipal election shall expire on the first day of December, 1982 after a successor is elected in the November, 1982 general municipal election.

**Section 15. Councilmember's term of office.**

Except as provided in this section, Councilmembers shall hold office for a term of four years from and after the first day of December after their election is certified by the City Clerk and until their successors are elected and qualified. However, the terms of the Councilmembers elected in the November, 1994 general municipal election shall expire on the first day of December, 1996 after their successors are elected and qualified in the November, 1996 general municipal election. In addition, four of the eight Councilmembers elected at the November, 1996 general municipal election shall serve two year terms which shall expire on the first day of December, 1998 after their successors are elected and qualified in the November, 1998 general municipal election. The remaining four Councilmembers elected at the November, 1996 general municipal election shall serve four year terms which shall expire on the first day of December 2000, until their successors are elected and qualified in the November 2000 general municipal election.

**Sections 15 to 17, Article V**

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At the City Council meeting which occurs immediately after the effective date of this charter amendment establishing four year terms commencing with the November 1996 general municipal election, the City Clerk shall conduct a drawing by lot to determine the four Council districts in which Councilmembers shall serve the two year terms which expire on the first day of December, 1998. In the remaining Council districts, the Councilmembers from those districts shall serve four year terms commencing with the November, 1996 general municipal election. Commencing with the November, 1998 general municipal election, and at each general municipal election thereafter, each Councilmember elected at each general municipal election shall serve a four year term.

**Section 16. School Director's term of office.**

The School Directors shall hold office for a term of four (4) years from and after the first day of December after their election and until their successors are elected in the November, 1982 general municipal election, and the terms of the School Directors elected in the April, 1981 general municipal election shall expire on the first day of December, 1984 after their successors are elected in the November, 1984 general municipal election.

At the general municipal election of November, 1982, and at each second general municipal election thereafter, three School Directors shall be elected; and at the general municipal election of November, 1984, and at each second general municipal election thereafter, two School Directors shall be elected.

**Section 17. Bonds.**

The Mayor, the Auditor, each Councilmember and each School Director shall, before entering upon the duties of their respective offices, be covered by an official bond with a surety company as sole surety.

The Council shall, by ordinance, fix the form, conditions, terms and amounts of the official bond or bonds of all officers and employees of the City who are required by this Charter or by ordinance to be covered by such bond or bonds.

A blanket or master official bond, or other form of blanket or master bond may be used which shall provide coverage on more than one officer or employee.

All bonds shall be approved by the City Attorney as to form and shall be filed with the City Clerk.

The premium on any official bond or bonds providing coverage for any officer or officers or employee or employees and executed by a corporate surety shall be paid by the City.

Sections 18 to 19, Article V

**Section 18. Oath of office.**

Every officer of the City, including the City Manager, before entering upon the duties of their respective offices, shall take the oath of office as provided for in the Constitution of this State, and shall file the same with the City Clerk.

**Section 19. Salaries.**

The 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. 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.

The Auditor shall receive such salary as may be fixed by the Council, provided, however, that said salary shall not be less than \$3,600.00 per annum.

The School Directors shall receive remuneration for the performance of their official duties at the rate of \$1500 per month, effective the School Board term beginning in December, 2002. Any School Director absent from one or more regular meetings of the Board of Education during any calendar month unless excused by the Board in order to attend to official business of the Board, shall be paid for each regular meeting of the Board attended during such month an amount equal to the monthly remuneration divided by the number of regular meetings held during such month. Any School Director 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 Director and the amount of remuneration authorized by this Article may be used by such Director for the expenses of conducting official business. The City Council is authorized and directed to increase the remuneration authorized by this chapter for School Directors by the cost of living in the immediate San Francisco Bay Area.

**Section 20, Article V**

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**Section 20. Administering oaths, subpoenas.**

The City Council or, when authorized by ordinance, any subcommittee of the Council, Board, Commission or Committee, shall have the power to subpoena witnesses, take testimony under oath and require the production of records by subpoena. Every elected officer, every department head and every member of any such Board, Commission or Committee, when authorized by such Board, Commission or Committee, shall have the power to administer oaths and affirmations. The Chief of Police must, on request of any such body, detail a police officer or officers to serve such subpoena. Any person so subpoenaed who neglects or refuses to appear, to produce any records or refuses to testify or answer any question, which a majority of such body shall decide to be proper and pertinent, shall be subject to contempt proceedings brought in accordance with the general laws of the State.

**Sections 21 to 24, Article VI**

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**ARTICLE VI  
THE MAYOR**

**Section 21. The Mayor's powers.**

The Mayor shall be the chairman of the Council, and shall preside at the meetings of the Council and perform such other duties consistent with his or her office as may be imposed by the Council. He or she shall be entitled to a vote on all matters coming before the Council, but shall possess no veto power. He or she shall be recognized as the official head of the City for all ceremonial purposes, by the courts for the purposes of serving civil processes, and by the Governor for military purpose. He or she may use the title of Mayor in any case in which the execution of contracts or other legal instruments in writing, or other necessity arising from the general laws of this State, may so require; but this shall not be construed as conferring upon him or her administrative or judicial functions or other powers or functions of a Mayor, under the general laws of the State. The powers and duties of the Mayor shall be such as are conferred upon him or her by this amendment, together with such others as may be conferred by the Council in the pursuance of the provisions of this amendment, and no others.

**Section 22. Mayor pro tempore.**

During the temporary absence or disability of the Mayor, the VicePresident of the Council shall act as Mayor pro tempore. In case of the temporary absence or disability of both the Mayor and VicePresident the Council shall elect one of its members to be Mayor pro tempore. In case of vacancy in the office of Mayor, the VicePresident of the Council shall act as Mayor until such vacancy can be filled as provided in this Charter.

**Section 23.** (repealed)

**Section 24. Mayor to have City's books examined.**

The Mayor shall employ, for a stipulated compensation, at the beginning of each fiscal year, a certified public accountant, who shall examine, at least once during the year, the books, records and reports of the Auditor and of all officers and employees who receive or disburse City moneys, and the books, records and reports of such other officers and departments as the Mayor may direct, and annually, after the close of each fiscal year, make a report of such examination. Such report shall be presented to the Mayor and copies thereof shall be filed with the Auditor, City Manager and City Clerk. Such accountant shall have unlimited privilege of investigation, to examine under oath or otherwise all officers, clerks and employees of the City, and every such officer, clerk and employee shall give all required assistance and information to such accountant, and submit to him or her for examination such books and papers of his or her office as may be requested, and failure to do so shall be deemed and held to be a forfeiture and abandonment of his or her office. The Council shall provide for the payment of the services of such accountant.

**Sections 25 and 26.** (repealed)

Sections 27 to 28, Article VII

**ARTICLE VII  
EXECUTIVE AND ADMINISTRATIVE DEPARTMENTS**

**Section 27. The City Manager.**

The Council shall appoint an officer known as the City Manager, who shall be the administrative head of the Municipal Government and who shall be responsible for the efficient administration of all departments. The City Manager shall receive such salary as may be fixed by the Council. The City Manager shall be chosen by the Council without regard to his or her political beliefs, and solely on the basis of executive and administrative qualifications.

Except as otherwise provided in this Charter, the City Manager shall be appointed for an indefinite period, and cannot be removed from office except by a vote of five members of the Council. The City Manager shall serve at the will of the Council, and in case of removal may demand written charges and a public hearing thereon before the Council, prior to the date upon which this final removal is to take place; but the decision and action of the Council upon such hearing shall be final, and pending such hearing the Council may suspend the City Manager from duty.

During the absence or disability of the City Manager, the Council shall designate some properly qualified person to perform his or her duties. Whenever a vacancy occurs in this office, the Council shall immediately proceed to appoint a City Manager.

**Section 28. Powers and duties of City Manager.**

The City Manager shall be responsible to the Council for the implementation of Council policy and for the efficient administration of all the affairs of the City. The City Manager shall have the following powers and duties:

(a) To see that all laws and ordinances are duly enforced, and the City Manager is hereby declared to be beneficially interested in their enforcement and to have the power to sue in the proper court to enforce them.



Section 28, Article VII

(b) Except as otherwise provided in this Charter, to appoint, discipline or remove all officers and employees of the City, subject to the Civil Service provisions of this Charter. The appointment of a department head by the City Manager shall become effective upon affirmative vote of five members of the Council. Neither the Council nor any of its committees or members dictate or attempt to dictate, either directly or indirectly, the appointment of any specific person to office or employment by the City Manager. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager, and neither the Council nor any member thereof shall give orders to any of the subordinates of the City Manager, either publicly or privately.

(c) ~~Except as otherwise provided in this Charter, to exercise control over all departments, divisions and bureaus of the City Government and over all the appointive officers and employees thereof.~~

Deleted: T

(d) Except when the Council is considering the City Manager's removal, to attend all regular meetings of the Council and its committees, with the right to take part in discussions, but without power to vote. The City Manager shall receive notice of all special meetings.

(e) To recommend to the Council for adoption such measures and ordinances as may be deemed necessary.

(f) To make investigations into the affairs of the City, or any department or division thereof, or any contract, or the proper performance of any obligation running to the City.

(g) To prepare and submit to the Council for its consideration the proposed annual budget.

(h) To keep the Council at all times fully advised as to the financial condition and needs of the City.

(i) To submit to the Council, at least once each month, a list of all claims and bills approved by the City Manager for payment.

(j) To devote full time to the duties and interests of the City.

(k) To perform such other duties as may be prescribed by this Charter or be required by ordinance or resolution of the Council.

**Sections 28 to 32, Article VII**

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(l) The City Manager shall be charged with the general supervision of all public utility companies insofar as they are subject to municipal control; the City Manager shall keep fully informed as to their compliance in all respects with the law, and shall see that all franchises granted by the City are faithfully observed. The City Manager shall cause to be instituted such actions or proceedings as may be necessary to prosecute public utility companies for violations of law, and revoke, cancel or annul all franchises that may have been granted by the City to any person, firm or corporation, which have become forfeitable in whole or in part, or which for any reason are illegal and void and not binding upon the City. The City Attorney, on demand of the City Manager, must institute and prosecute the necessary actions to enforce the provisions of this subsection.

**Section 29. Probation period.**

The Council may by ordinance prescribe a probation period for a City Manager or department head appointed after the effective date of this section. At the end of the probation period the City Manager or department head may be retained only upon affirmative vote of five members of the Council.

**Section 30. Library trustees.**

Five Library Trustees shall be appointed and may be removed by a vote of five members of the Council and one of such trustees must be appointed by the Council from its own members.<sup>1</sup> The Board of Library Trustees shall have power to manage the library and to appoint, discipline and dismiss all officers and employees of the library.

**Section 31. Creation of departments and job classifications.**

The Council shall have power by ordinance to create and discontinue departments and by resolution establish job classifications to prescribe the duties thereof.

**Section 32. Compensation of officers and employees.**

The Council shall fix the compensation of all officers and employees on recommendation of the City Manager, except as in this Charter otherwise provided. No officer or employee shall be allowed any fees, perquisites, emoluments, rewards or compensation, aside from the salary or compensation as fixed by the Council, but all fees received by him or her in connection with his or her official duties shall be paid into the City Treasury.

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<sup>1</sup> "...of the Council and one of such trustees must be appointed by the Council from its own members" was inadvertently omitted from the 1994 through 2004 printings of the Charter due to a clerical error. The complete sentence was corrected in November, 2005.

**Sections 33 to 36, Article VII**

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**Section 33. Reports of departments.**

Each department and commission shall annually on such date as may be fixed by the Council, render to the City Manager and the Council a full report of all operations of such department or commission for the year.

**Section 34. Reports to be published.**

The Council shall provide for the publication of the annual report of the City Manager.

**Section 35. Councilmembers to hold no other office.**

No member of the Council shall hold any other position, office or employment, the compensation of which is paid by the City, except as otherwise provided in this Charter.

No member of the Council, during the term for which he or she has been elected or appointed, or within one year after the term's expiration, shall be appointed to the office of the City Manager or as a department head.

No member of the Council, during the term for which he or she has been elected or appointed, or within one year after the term's expiration, shall be appointed to any other position, office or employment the compensation of which is paid by the City, if such other position, office or employment was created or the compensation increased by the Council while he or she was a member.

This section shall not prevent the appointment of any member of the Council to any noncompensated position, office or employment or from being appointed to fill a vacancy in the office of Mayor.

**Section 36. Officers not to be interested in contracts or franchises.**

No officer or employee shall be directly or indirectly interested in any contract, work or business of the City, or in the sale of any article, the expense, price or consideration of which is paid for from the treasury or by assessment levied by any act or ordinance; nor in the purchase or lease of any real estate or other property belonging to the City or which shall be sold for taxes or assessments or by virtue of legal process at the suit of the City. No officer shall be in the employ of any public service corporation in the City or of any person having any contract with the City or of any grantee of a franchise granted by the City.

**Sections 36 to 37a, Article VII**

Provided, however, the prohibitions in this Section contained shall not apply to the following:

(a) Members of advisory Boards, Commissions, or Committees of the City, who serve without salary or other compensation; provided, however members of Boards, Commissions or Committees which perform functions other than advisory functions shall not be included within this exception.

(b) Officers or employees of the State of California or of any department, division, or constitutionally created agency thereof.

Any contract or agreement made in contravention of this Section shall be void.

Any violation of the provisions of this Section shall be deemed a misdemeanor.

The Council shall enforce the provisions of this Section by appropriate legislation.

**Section 37. Nondiscrimination.**

No appointment to position under the City Government shall be made or be withheld by reasons of any religious or political opinions or affiliations or political services, or by reason of sex, race, color, national origin or ancestry, and no appointment to or selection for or removal from any office of employment, and no transfer, promotion, reduction, reward or punishment shall be in any manner affected by such opinions, affiliations or services, or by sex, race, color, national origin or ancestry.

**Section 37a. 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.

Sections 38 to 44, Article VIII

**ARTICLE VIII  
THE COUNCIL**

**Section 38. The Council, the governing body.**

The Council shall be the governing body of the municipality. It shall exercise the corporate powers of the City, and, subject to the express limitations of this Charter, shall be vested with all powers of legislation in municipal affairs adequate to a complete system of local government consistent with the Constitution of the State.

**Section 39. President and VicePresident.**

The Mayor shall be President of the Council and shall preside at its meetings when present. The Council shall elect one of its number to be VicePresident.

**Section 40. Meetings of Council.**

The Council shall provide for the time and place of holding its meetings and the manner in which its special meetings may be called.

**Section 41. Meetings to be public.**

All legislative sessions of the Council, whether regular or special, shall be open to the public.

**Section 42. Quorum.**

A majority of the members of the Council shall constitute a quorum for the transaction of business.

**Section 43. Rules of proceeding.**

The Council shall establish rules for its proceedings.

**Section 44. Ordinances, resolutions and motions.**

**(1) Action by Council.**

The Council may act by ordinance, resolution or motion.

**(2) Ayes and noes.**

The ayes and noes shall be taken upon the passage of all ordinances, resolutions and motions and entered upon the journal of the proceedings of the Council.

**Section 44, Article VIII**

**(3) Majority vote of Council.**

No ordinance, resolution or motion shall be passed or become effective without receiving the affirmative votes of at least five members of the Council.

**(4) Subject and title.**

Every ordinance or resolution, except an ordinance making appropriations, shall be confined to one subject, which shall be clearly expressed in the title, and every ordinance making appropriations shall be confined to the subject of appropriations. If any subject shall be embraced in an ordinance which shall not be expressed in its title, such ordinance shall be void only as to so much thereof as shall not be expressed in its title.

**(5) Enacting clause of ordinances.**

The enacting clause of all ordinances passed by the Council shall be in these words: "Be it ordained by the Council of the City of Berkeley as follows:".

**(6) Requirements of an ordinance.**

To constitute an ordinance a bill must before final action thereon be publicized as provided in Article III Section 5(2) with the ayes and noes for two days, and, in case of any amendment being made thereto before the final adoption of the ordinance, must in like manner be republicized as amended for not less than one day.

**(7) Ordinance required in certain cases.**

No action providing for the acquisition, sale or lease of public property; for the levying of any tax or assessment; for the granting of any franchise; for establishing or changing fire limits; or for the imposing of any penalty, shall be taken except by ordinance; provided, that such exceptions be observed as may be called for in cases where the Council takes action in pursuance of a general law of the State.

**(8) Reconsideration.**

When any bill is put upon its final passage and fails to pass, and a motion is made to reconsider, the vote upon such motion shall not be taken except at a meeting of the Council held not less than one week after the meeting at which such motion was made.

**(9) Signing and attesting.**

All resolutions and ordinances shall be signed by the Mayor and attested by the City Clerk.

**Sections 44 to 46, Article VIII**

**(10) Revision and amendment.**

No ordinance shall be revised, reenacted or amended by reference to its title only; but the ordinance to be revised or reenacted, or the section or sections thereof to be amended, or the new section or sections to be added thereto, shall be set forth and adopted in the method provided in this section for the adoption of ordinances.

**(11) Repeal.**

No ordinance nor section thereof shall be repealed except by ordinance adopted in the manner provided in this section.

**(12) (repealed)**

**(13) Record of City ordinances.**

A true and correct copy of all ordinances shall be kept and certified to by the City Clerk in a book marked "City Ordinances." Such record copy, with such certificate, or the original ordinance, shall be prima facie evidence of the contents of the ordinance and of the due passage and publication of the same, and shall be admissible as such in any court or proceeding. Such records shall not be filed in any case, but shall be returned to the custody of the City Clerk. Nothing herein contained shall be construed to prevent the proof of the passage and publication of an ordinance in the usual way.

**Section 45.** (repealed)

**Section 46. Publication of Charter and ordinances.**

The Council, during the first year after its organization under this Charter and from time to time thereafter, shall cause all ordinances at such time in force to be classified under appropriate heads, and, together with or separately from the Charter of the City and such provisions of the Constitution and laws of the State as the Council may deem expedient, to be published in book form.

**ARTICLE IX  
POWERS OF THE CITY AND OF THE CITY COUNCIL**

**Sections 48 and 49.** (repealed)

Sections 50 to 53, Article X

**ARTICLE X  
FINANCE AND TAXATION**

**Section 50. The fiscal year.**

The fiscal year of the City shall commence upon the first day of July of each year, or at such other time as may be fixed by ordinance.

**Section 51. Tax system.**

The Council shall by ordinance provide a system for the assessment, levy and collection of all City taxes not inconsistent with the provisions of this Charter.

The Council shall have power to avail itself by ordinance of any law of the State of California now or hereafter in force and comply with the requirements thereof whereby assessments may be made by the Assessor of the County in which the City of Berkeley is situated and taxes collected by the Tax Collector of said County for and on behalf of the City of Berkeley. Other provisions of this Charter concerning the assessment, levy and collection of taxes shall be subject to the provisions of any such ordinance while the same shall be in force.

**Section 52. Department estimates of annual requirements.**

On such date in each year as shall be fixed by the City Manager, the heads of departments, offices, boards and commissions, shall send to the City Manager a careful estimate, in writing, of the amounts, specifying in detail the objects thereof, required for the business and proper conduct of their respective departments, offices, boards and commissions, during the next ensuing fiscal year.

**Section 53. Annual estimate of City's requirements and revenue.**

On or before the first Monday in May in each year, or on such date in each year as shall be fixed by the Council, the City Manager shall submit to the Council a tentative budget which shall contain an estimate of the probable expenditures of the City Government for the next ensuing fiscal year, stating the amount required to meet the interest and sinking funds for the outstanding funded indebtedness of the City, and the wants of all the departments of the municipal government in detail, and showing specifically the amount necessary to be provided for each fund and department; also an estimate of the amount of income from fines, licenses and other sources of revenue, exclusive of taxes upon property, and the probable amount required to be levied and raised by taxation.



Sections 54 to 56, Article X

**Section 54. Annual Budget.**

The Council shall meet annually prior to fixing the tax levy, and after considering the tentative budget submitted by the City Manager shall make a final budget of the estimated amounts required to pay the expenses of conducting the business of the City Government for the next ensuing fiscal year. The final budget shall be prepared in such detail as to the aggregate sum and the items thereof allowed to each department, office, board or commission, as the Council may deem advisable. The Council may also provide, in the final budget, an emergency fund in such amount as it may deem advisable, which said fund shall not be allotted to any particular department, office, board or commission except as hereinafter provided.

And the Council at the same time shall pass an annual appropriation ordinance, which shall be based upon the budget submitted by the City Manager, and made up as herein provided. The total amount of appropriations shall not exceed the estimated revenues of the City.

Before the annual appropriation ordinance has been passed, the Council may make temporary appropriations for current department expenses, chargeable to the appropriations of the year when passed, to an amount sufficient to cover the necessary expenses of the various departments until the annual appropriation is in force. No other liabilities shall be incurred by any officer or employee of the City except in accordance with the provisions of the annual appropriation ordinance, or under continuing contracts and loans authorized under the provisions of this Charter.

At any meeting after the passage of the appropriation ordinance, the Council by a vote of six of its members may amend such ordinance, so as to authorize the transfer of unused balances appropriated for any purpose, including the emergency fund, to another purpose, or to appropriate available revenues not included in the annual budget.

**Section 55.** (repealed)

**Section 56. Annual tax levy.**

The Council must finally adopt, not later than the first day of August, an ordinance levying, subject to the provisions of this Charter, a rate of taxation sufficient to raise the amount estimated to be required in the annual budget for support of general debt obligations of the City and other voter approved obligations consistent with Article XIII(a) of the Constitution of the State of California.

**Section 57.** (repealed)

### Sections 58 to 61, Article X

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**Section 58. Bond tax. Library tax.**

The Council shall have power to levy and collect taxes, in addition to the taxes herein authorized to be levied and collected, sufficient to pay the interest and maintain the sinking fund of the bonded indebtedness of the City and to provide for the establishment and support of free public libraries and reading rooms.

**Section 59.** (repealed)

**Section 60. Tax liens.**

All taxes assessed, together with any percentage imposed for delinquency and the cost of collection, shall constitute liens on the property assessed; every tax upon the personal property shall be a lien upon the real property of the owner thereof. The liens provided for in this section shall attach as of the first Monday in March in each year, and may be enforced by actions in any court of competent jurisdiction to foreclose such liens, or by a sale of the property affected and the execution and delivery of all necessary certificates and deeds therefor, under such regulations as may be prescribed by ordinance; provided that when real estate is offered for sale for City taxes due thereon, the same shall be struck off and sold to the City, in like case and in like manner and with like effect and with like right of redemption, as it may be struck off and sold to the State when offered for sale for State and County taxes; and the Council shall have power to provide for the procedure to be followed in such sales to the City and redemption thereafter.

**Section 61. Duties of the Auditor.**

The Auditor shall have the authority and responsibility to conduct performance and financial audits or special studies of all phases of the City of Berkeley government in accordance with government auditing standards. Such audits may include financial, compliance, efficiency and economy, and program results auditing. The Auditor shall consult with the Mayor, City Council, and City Manager regarding the selection of audit entities, but the final decision of what to audit shall remain with the Auditor. The Auditor shall furnish the City Council with a planned audit schedule by the beginning of each fiscal year. The Auditor may modify the audit schedule as necessary and will notify the City Council of such modifications.

The Auditor shall have unrestricted access to employees, officials, records and reports, and as necessary, require all branches, departments, and officials of government to produce documents, files, and other records and information.

Audit reports completed by the Auditor shall be provided to the Council and made available to the public. The Auditor shall retain workpaper files concerning all audit reports issued for at least three years.

Funds sufficient to carry out the responsibilities specified herein shall be provided (subject to available resources).

### Section 61 to 64, Article X

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Payment by the City, excepting redemption of bonds and interest coupons, shall be made only upon vouchers certified by the head of the appropriate department and approved by the City Manager, and by means of warrants on the City Treasury, or by checks drawn upon deposits maintained in a bank or banks, issued by the Auditor and countersigned by the City Manager. The Auditor shall examine all payrolls, bills and other claims and demands against the City, and shall issue no warrant or check for payment unless he finds the claim is in proper form, correctly computed and duly certified; that it is justly and legally due and payable; that a budget appropriation has been made therefor which has not been exhausted, or that the payment has been otherwise legally authorized; and that there is money available to make payment. He may require any claimant to make oath as to the validity of the claim. He may investigate any claim, and for such purpose may examine witnesses under oath; and if he finds it fraudulent, erroneous or otherwise invalid, he shall not issue a warrant or check therefor. No suit shall be brought on any claim for money against the City or of any officer, board or commission of the City until a demand for the same has been presented and rejected in whole or in part. If rejected in art, suit may be brought to recover the whole. Nor shall suit be brought against the City or any officer, board or commission thereof upon any claim or demand which has been approved and audited; provided, that nothing therein shall be construed so as to deprive the holder of any demand of his right to resort to writ of mandamus or other proceeding against the City Council or any officer, board or commission to compel him or it to act upon such claim or demand, or to pay the same when audited.

**Section 62. Money to meet warrants or checks.**

When the running expenses of the City have been placed on a cash basis, warrants payable on demand shall be drawn upon the Treasurer, or against any funds in his or her hands, or checks drawn upon deposits maintained in a bank or banks, only when at the time of the drawing and issuing of such warrants or checks there shall be sufficient money in the appropriate fund in the treasury or bank or banks to pay said warrants or checks.

**Section 63. Disposition of money collected.**

Every officer collecting or receiving any moneys belonging to or for the use of the City shall settle for the same with the Treasurer on or before the last day of each month, or at more frequent intervals as may be directed by the Council, and immediately pay all the same into the treasury, on the order of the Auditor, for the benefit of the funds to which such moneys severally belong. When the last day of the month falls upon Sunday or legal holiday, the said payments shall be made on the next preceding business day. The Council may provide, in its discretion, for the deposit of the City moneys in banks in accordance with the State law.

**Section 64. Uniform accounts and reports.**

The Council shall prescribe uniform forms of accounts, which shall be observed by all officers and departments of the City which receive or disburse moneys.

Sections 65 to 67.1, Article XI

**ARTICLE XI  
PUBLIC WORKS AND SUPPLIES**

**Section 65. Form of contracts.**

All contracts shall be drawn under the supervision of the City Attorney. All contracts must be in writing, executed in the name of the City of Berkeley by an officer or officers authorized to sign the same, and must be countersigned by the Auditor, who shall number and register the same in a book kept for that purpose.

**Section 66. Progressive payments on contracts.**

Any contract may provide for progressive payments, if in the ordinance or resolution authorizing or ordering the work permission is given for such a contract. But no progressive payments can be provided for or made at any time which, with prior payments, if there have been such, shall exceed in amount at that time ninety per cent of the value of the labor done and the materials used up to that time, and no contract shall provide for or authorize or permit the payment of more than ninety per cent of the contract price before the completion of the work done under said contract and the acceptance thereof by the proper officer, department or board.

**Section 67. Expenditures in excess of the limitation established by ordinance.**

(a) Each specific improvement and each purchase of supplies, equipment or materials the expenditure for which exceeds an amount set by ordinance, as provided for in Section 67(b) hereof, shall be done by contract authorized by resolution of the Council and said contract shall be let to the lowest responsible bidder after advertising for sealed proposals for five (5) consecutive days as required by this Charter. Such notice shall give a brief description of the work to be done or the supplies, equipment or materials to be purchased. The Council may reject any and all bids. If all bids are so rejected or if no bids are received, the Council may readvertise for new bids, or authorize the City Manager to negotiate in the open market for a contract at a reasonable price, or authorize the City Manager to purchase in the open market, or authorize the City Manager to have the work performed by City employees.

(b) The ordinance establishing the amount for which each specific improvement or purchase shall be approved by the City Council shall not be adopted or amended except upon a 6/9 vote of the City Council.

**Section 67.1. Work performed by City employees.**

The provisions of Section 67 of this Charter shall not apply to any work which is being performed by City employees with City materials and with equipment owned or rented by the City.

**Sections 67.2 to 67.5, Article XI**

**Section 67.2.**

The Council may, by resolution, authorize the purchase of any personal property from the United States of America or any State, municipality or other public corporation or agency without calling for bids as required by Section 67, and may, in said resolution, authorize any municipal officer to submit a bid for said personal property, or to make a down payment or payment in full that may be required in connection with such bidding or sale.

Any provisions of this Charter which are inconsistent with the provisions of this Section are suspended to the extent that such provisions are inconsistent herewith.

**Section 67.3. Purchases from utilities.**

The provisions of Section 67 of this Charter shall not apply to the purchases from any utility publicly owned or regulated by the Public Utilities Commission of the State of California or its successor.

**Section 67.4. Emergencies.**

(a) The provisions of Section 67 of this Charter shall not apply to work done or purchases made for that which is deemed by the City Manager to be an actual emergency and of urgent necessity for the preservation of life, health or property; provided, that any such expenditure in excess of an amount set by ordinance, as provided for in Section 67.4(b), must be authorized by resolution of the Council.

(b) The ordinance establishing the maximum expenditure which the City Manager may make in an actual emergency shall not be adopted or amended except upon a 6/9 vote of the City Council.

**Section 67.5. Other expenditures in excess of the limitation established by ordinance.**

(a) Except as specifically authorized in Sections 67.1, 67.2 or 67.3, any action providing for the expenditure of public money the amount of which exceeds an amount set by ordinance, as provided for in Section 67.5(b), shall be authorized by resolution of the Council or shall be done by contract authorized by resolution of the Council.

(b) The ordinance establishing the amount for which each expenditure authorized in Section 67.5(a) must be approved by the City Council shall not be adopted or amended except upon a 6/9 vote of the City Council.

**Sections 68 to 73, Article XI**

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**Section 68. Publication.**

The Council may in its discretion establish the manner of publicizing all matters required by this Charter to be publicized including any matter required by Section 44(6) of this Charter.

**Sections 69 and 70.** (repealed)

**Section 71. Hours of labor.**

The maximum time of labor or service required of any laborer, workman or mechanic employed upon any municipal work, whether so employed directly by the City and its officers, or by a contractor or subcontractor, shall be eight hours during any one calendar day.

**Section 72. Collusion with bidder.**

Any officer of the City, or of any department thereof, who shall aid or assist a bidder in securing a contract to furnish labor, material or supplies at a higher price than that proposed by any other bidder, or who shall favor one bidder over another by giving or withholding information, or who shall willfully mislead any bidder in regard to the character of the material or supplies called for, or who shall knowingly accept materials or supplies of a quality inferior to those called for by the contract, or who shall knowingly certify to a greater amount of labor performed than has been actually performed, or to the receipt of a greater amount or different kind of material or supplies than has been actually received, shall be deemed guilty of malfeasance and shall be removed from office.

**Section 73. Collusion by bidder.**

If at any time it shall be found that the person to whom a contract has been awarded has, in presenting any bid or bids, colluded with any other party or parties for the purpose of preventing any other bid being made, then the contract so awarded shall be null and void, and the Council shall advertise for a new contract for said work, or provide for such public work to be done by the Department of Public Works.

**Sections 74 to 77, Article XII**

**ARTICLE XII  
FRANCHISES**

**Section 74. Franchises to operate.**

No person, firm or corporation shall exercise any franchise right or privilege mentioned in this Article, except insofar as he, she, or it may be entitled to do so by direct authority of the Constitution of the State of California or of the United States, in the City of Berkeley, unless he, she, or it shall have obtained a grant therefor in accordance with the provisions of this Article of this Charter and in accordance with the procedure prescribed by ordinance. Nothing in this Article contained shall be construed to invalidate any lawful franchise heretofore granted nor to necessitate the obtaining of a new franchise for a use for which a franchise holder shall have a valid unexpired franchise.

**Section 75. Authority to grant franchises.**

The City Council is empowered to grant by ordinance a franchise to any person, firm or corporation, whether operating under an existing franchise or not, to furnish the City and its inhabitants with transportation, communication, terminal facilities, water, light, heat, power, refrigeration, storage or any other public utility or service, or to use the public streets, ways, alleys and places, as the same may now or may hereafter exist, in connection therewith.

**Section 76. Franchise terms, conditions and procedures.**

The City Council shall, by ordinance, prescribe the terms and conditions under which franchises will be granted, subject to the provisions of this Charter, and the procedure for granting franchises; providing, however, that such procedural ordinance or ordinances shall make provisions for the giving of notice of franchise applications, for protests against the granting of such franchises and for public hearings on such applications.

The City Council, in granting franchises, shall prescribe the terms and conditions of such franchises in accordance with the applicable provisions of this Charter and any ordinance adopted pursuant thereto, and may in such franchise impose such other and additional terms and conditions not in conflict with said Charter or ordinances, whether governmental or contractual in character, as in the judgment of said Council are in the public interest or as the people, by initiative, indicate they desire to have so imposed.

**Section 77. Method of granting franchise.**

The City Council may grant a franchise without calling for bids or may, in its discretion, advertise for bids for the sale of a franchise upon a basis, not in conflict with the provisions of this Article, to be set out in the advertisement for bids and notice of sale.

**Sections 78 to 80, Article XII**



**Section 78. Term of franchise.**

Every franchise shall be either a fixed term not to exceed twentyfive (25) years, or for an indeterminate period. If for a fixed term, the franchise shall state the term for which it is granted; if indeterminate, it shall set forth the terms and conditions under which it may be terminated.

**Section 79. Purchase or condemnation by City.**

No franchise grant shall in any way or to any extent impair or affect the right of the City now or hereafter conferred upon it by law to acquire the property of the grantee thereof either by purchase or through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away or to modify or to abridge either for a term or in perpetuity the City's right of eminent domain with respect to any public utility.

**Section 80. Article not applicable in certain cases.**

Nothing in this Article shall be construed as applying to spur or side tracks provided for in subdivision fiftytwo (52) of section forty-nine (49) of this Charter, nor to require the operators of refrigeration or storage facilities or the carriers of freight or passengers not operating over a fixed route, or other public utilities or services not specifically listed in section seventyfive (75), to obtain a franchise to operate within the City unless required so to do by ordinance of the City of Berkeley.

**ARTICLE XIII  
OFF-STREET VEHICULAR PARKING**

**Sections 81 through 91.** (repealed)



**Section 92, Article XIII**

**ARTICLE XIII  
THE INITIATIVE**

**Section 92. Direct legislation.**

The qualified voters of the City shall have power through the initiative and otherwise, as provided by this Charter and the general laws of the State, to enact appropriate legislation to carry out and enforce any of the powers of the City or any of the powers of the Council.

(1) Any proposed ordinance or charter amendment may be submitted to the Council by a petition signed by registered electors of the City equal in number to the percentage hereinafter required.

**(2) Provisions of Article III apply.**

The provisions of Article III respecting the forms and conditions of the petition and the mode of verification and certification and filing shall be substantially followed, with such modification as the nature of the case requires.

**(3) Initiative Ordinance: Ten percent petition.**

If the petition accompanying the proposed ordinance be signed by electors equal in number to ten percent of the entire vote cast for all candidates for Mayor at the last preceding general municipal election at which a Mayor was elected, and contain a request that said ordinance be submitted forthwith to the vote of the people at the next occurring regular statewide or general municipal election, then the Council shall either:

(a) Pass said ordinance without alteration within twenty days after the attachment of the City Clerk's certificate of sufficiency to the accompanying petition (subject to a referendary vote, under the provision of Article XIV of this Charter); or

(b) Within twentyfive days after the City Clerk shall have attached to the petition accompanying such ordinance the certificate of sufficiency, the Council shall cause said ordinance without alteration to be submitted to a vote of the people at the next occurring regular statewide or general or special municipal election providing no posting, publication or other legal deadline as set forth in the California Elections Code and Government Code, has expired at the time the City Clerk reports verification of the petition to the City Council.

**Section 92, Article XIII**

**(4) Initiative Ordinance: Five percent petition.**

If the petition be signed by electors in number to at least five but less than ten percent of the entire vote cast for all candidates for Mayor at the last preceding general municipal election at which a Mayor was elected, and said ordinance be not passed by the Council as provided in the preceding subdivision, then such ordinance, without alteration, shall be submitted by the Council to a vote of the people at the next general municipal election providing no posting, publication or other legal deadline as set forth in the California Elections Code and Government Code, has expired at the time the City Clerk reports verification of the petition to the City Council.

(5) The Charter may be amended by initiative pursuant to the California Elections Code and Government Code.

**(6) Publicizing of Popular Ordinance or Charter Amendment.**

Whenever any ordinance, charter amendment, or proposition is required by this Charter to be submitted to the voters of the City at any election, (a) the Council shall cause the ordinance, charter amendment, or proposition to be printed and it shall be the duty of the City Clerk to enclose a printed copy thereof in an envelope with a sample ballot and mail the same to each voter prior to the election, and (b) the Council shall order such ordinance, charter amendment, or proposition to be printed in the official newspaper of the City and publicized in the like manner as ordinances adopted by the Council are required to be publicized.

(7) (repealed)

**(8) Several ordinances or charter amendments at one election.**

Any number of proposed ordinances, charter amendments, or both may be voted upon at the same election, in accordance with the provisions of this Article.

**(9) Repeal of popular ordinance or charter amendment.**

The Council may submit a proposition for the repeal of any such ordinance, charter amendment, or for amendments thereto, to be voted on at any succeeding general municipal election; and should such proposition, so submitted, receive a majority of the votes cast thereon at such election, such ordinance or charter amendment shall be repealed or amended accordingly. An ordinance or charter amendment proposed by petition, or adopted by a vote of the people, cannot be repealed or amended except by a vote of the people.

**(10) Further regulations.**

The Council may, by ordinance, make such further regulations as may be necessary to carry out the provisions of this section, and to adapt the provisions of Article III thereto.

Sections 93 to 95, Article XIV

**ARTICLE XIV  
THE REFERENDUM**

**Section 93. Mode of protesting against ordinances.**

No ordinance passed by the Council shall go into effect before thirty days from the time of its final passage except when otherwise required by the general laws of the State or by the provisions of this Charter respecting street improvements, and except the ordinance making the annual tax levy, and except an ordinance for the immediate preservation of the public peace, health or safety, which contains a statement of its urgency, and is passed by a sevenninths (7/9) vote of the Council, provided, that no grant of any franchise shall be construed to be an urgency measure, but all franchises shall be subject to the referendum vote herein provided. If during said thirty days a petition signed by qualified electors of the City equal in number to at least ten percent of the entire vote cast for all candidates for Mayor at the last preceding general municipal election at which a Mayor was elected, protesting against the passage of such ordinance, be presented to the Council, the same shall thereupon be suspended from going into operation and it shall be the duty of the Council to reconsider such ordinance, and if the same be not entirely repealed, the council shall submit the ordinance, as is provided in Article XIII of the Charter, to the vote of the electors of the city, at the next occurring regular statewide or general or special municipal election providing no posting, publication or other legal deadline as set forth in the California Elections Code and Government Code, has expired at the time the City Clerk reports verification of the petition to the City Council, and such ordinance shall not go into effect or become operative unless a majority of the qualified electors voting on the same shall vote in favor thereof. The provisions of Article III respecting the forms and conditions of the petition and the mode of verification and certification and filing shall be substantially followed with such modification as the nature of the case requires.

**Section 94. Reference of measures to popular vote.**

Any ordinance or measure that the Council or the qualified electors of the City shall have authority to enact, the Council may of its own motion submit to the electors for adoption or rejection at a regular statewide or general or special municipal election, in the same manner and with the same force and effect as is provided in this Charter for ordinances or measures submitted on petition. At any such election there shall be no bar to the submission of other questions to a vote of the electors in addition to the ordinance or measures herein provided for, if said other questions are such as may legally be submitted at such election. If the provisions of two or more measures approved or adopted at the same election conflict then the measure receiving the highest affirmative vote shall control.

**Section 95. Further regulations.**

The Council may, by ordinance, make such further regulations as may be necessary to carry out the provisions of this Article, and to adapt the provisions of Article III thereto.

Sections 96 to 101, Article XV

**ARTICLE XV  
THE PUBLIC SCHOOLS**

**Section 96. The Board of Education.**

The Board of Education shall have entire control and management of the public schools in the City in accordance with the Constitution and general laws of the State, and is hereby vested with all the powers and charged with all the duties provided by this Charter and by the general laws of the State for City Boards of Education.

**Section 97. President of the Board.**

The Board of Education shall annually elect one of its own members to be President of the Board. He or she may be removed by the affirmative vote of four members. The President shall have no other vote than his or her vote as member of the Board.

**Section 98. Meetings.**

The Board of Education shall meet at such times as may be designated by resolution of said Board and in the place provided therefor by the Council. The Board shall provide the manner in which special meetings shall be called.

**Section 99. Quorum.**

Three members of the Board shall constitute a quorum, and the affirmative votes of three members shall be necessary to pass any measure, but a less number than three may adjourn from day to day and compel the attendance of absent members in such manner as the Board may prescribe.

**Section 100. Rules of proceedings.**

The Board of Education may determine the rules of its proceedings.

**Section 101. Meetings to be public.**

All meetings of the Board of Education shall be public.

**Sections 102 through 108. (repealed)**

Sections 109 to 114, Article XVI

ARTICLE XVI  
MISCELLANEOUS

**Section 109. When this Charter takes effect.**

For the purpose of nominating candidates and electing Mayor, Auditor, Councilmembers and School Directors in accordance with this Charter, this Charter shall take effect from the time of the approval of the same by the Legislature; for all other purposes it shall take effect on the first day of July, 1909.

**Sections 110 and 111. (repealed)**

**Section 112. Existing ordinances continued in force.**

All lawful City ordinances, resolutions and regulations in force at the time this Charter takes effect and not inconsistent with the provisions thereof are hereby continued in force until the same shall be duly amended or repealed.

**Section 113. City Attorney Office and Conduct of legal proceedings.**

The City Attorney shall be an officer of the City of Berkeley, appointed by a vote of five members of the Council, serving at the will of the Council for an indefinite period, and removed only by a vote of five members of the Council, and shall receive such salary as may be fixed by the Council. Upon presentation of a proposed budget by the City Attorney, the Council shall provide funds sufficient to carry out the responsibilities of the office of City Attorney and for the City Attorney's department (subject to available resources), which shall be under the administrative control of the City Attorney.

In addition to duties and powers provided elsewhere in this Charter, the City Attorney shall prosecute all violations of the ordinances of the City. They shall, subject to the general direction of the Council, prosecute and defend for the City and all boards, officers and employees in their official capacity, all proceedings before judicial and quasi-judicial tribunals. The City Attorney shall not compromise, settle or dismiss any action for or against the City, and shall not commence any action, without permission of the Council. The City Attorney shall be the legal advisor of and attorney and counsel for the City and for all officers and boards thereof, in all matters relating to their official duties, and shall draft proposed City ordinances and amendments thereto.

**Section 114. Violation of Charter and ordinances.**

The violation of any provision of this Charter or of any ordinance of the City may be deemed a misdemeanor, and may be prosecuted by the authorities of the City in the name of the people of the State of California, or may be redressed by civil action, at the option of said authorities. Any person sentenced to imprisonment for the violation of a provision of this Charter or of an ordinance may be imprisoned in the City jail, or, if the Council by ordinance shall so prescribe, in the county jail of the county in which the City

**Deleted:** The City Attorney shall prosecute, in behalf of the people, all criminal cases arising from violations of the provisions of this Charter and the ordinances of the City, and shall attend to all suits and proceedings in which the City may be legally interested; provided, the Council shall have control of all litigation of the City and may employ other attorneys to take charge of any litigation or to assist the City Attorney therein.¶

of Berkeley is situated, in which case the expense of such imprisonment shall be a charge in favor of such county against the City of Berkeley.

**Sections 115 to 119, Article XVI**

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**Section 115. Municipal affairs.**

The City of Berkeley shall have the right and power to make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in this Charter; provided, however, that nothing herein shall be construed to prevent or restrict the City from exercising or consenting to, and the City is hereby authorized to exercise any and all rights, powers and privileges heretofore or hereafter granted or prescribed by general laws of the State.

**Section 116. (repealed)**

**Section 117. Rights of existing bondholders.**

The City of Berkeley shall issue no bonds for the financing of offstreet vehicular parking that in any way affect, alter or diminish the rights of bondholders who purchased municipal revenue bonds pursuant to City Council Resolution No. 35,324N.S.

**Section 118. Additional powers.**

The City Council shall have the power to enact appropriate legislation and do and perform any and all other acts and things which may be necessary and proper to carry out any of the powers of the City or any of the provisions of this Charter, and to exercise all powers not in conflict with the Constitution of the State, with this Charter or with ordinances adopted by the people of the City.

**Section 119. Personnel Board.**

The City Council shall have the power to establish a Personnel Board and to appoint the members thereof to serve without compensation, to administer a personnel system under rules and regulations to be made by the Council. Such Board shall, among other things, provide for the classification of all employments in the administrative service of the City not excepted by the provisions of this Charter, by the Council, or by the people, for open, competitive and free examinations as to fitness, for an eligible list from which vacancies shall be filled for a period of probation before employment is made permanent, and for promotion on the basis of merit, experience and record.

Sections 120 to 122, Article XVII

**ARTICLE XVII  
ELECTED RENT STABILIZATION BOARD**

**Section 120. Purpose of Elected Rent Stabilization Board.**

The purpose of this article is to provide for proper administration of programs to regulate residential rents; to protect tenants from unwarranted rent increases and arbitrary, discriminatory or retaliatory evictions; to help maintain the diversity of the Berkeley community; and to ensure compliance with legal obligations relating to the rental of housing.

**Section 121. Composition of Rent Board.**

There shall be in the City of Berkeley an elected Rent Stabilization Board. The Board shall consist of nine elected Commissioners. The Board shall elect annually one of its members to serve as Chairperson.

**(1) Eligibility.**

Residents who are duly qualified electors of Berkeley are eligible to serve as Commissioners of the Board.

**(2) Full Disclosure of Holdings.**

Candidates for the position of Commissioner shall fulfill the requirements as set forth in this Charter in Article III, Sec. 6 1/2.

In addition, when filing nomination papers, candidates shall submit a verified statement of their interests and dealings in real property, including but not limited to its ownership, sale or management and investment in and association with partnerships, corporations, joint ventures and syndicates engaged in its ownership, sale or management during the previous three years.

**(3) Conflict of Interest.**

Commissioners shall be subject to the requirements of the California Political Reform Act and other applicable state and local conflict of interest codes.

**Section 122. Election of Commissioners.**

Commissioners shall be elected at the statewide general election held in November of even numbered years, except as provided by subsection (3) below.

**(1) Term of Office.**

Commissioners shall serve terms beginning on the first day of the month following their election. Terms shall be four years, except as provided by subsection (4) below. Commissioners shall serve a maximum of two full terms.



**Sections 122 to 123, Article XVII**

**(2) Recall.**

Commissioners shall be subject to recall as provided in Article IV of this charter.

**(3) The First Election of Board.**

The election for the first board shall be held at the regular municipal, statewide primary or statewide general election, whichever first occurs at least 90 days after enactment of this article.

**(4) Term of Office of First Board.**

Of the nine Commissioners elected under subsection (3), the five Commissioners receiving the least votes shall hold office until the last day of November in the next even numbered year. The remaining four Commissioners shall hold office for an additional two years, those terms also ending on the last day of November of the appropriate year.

**Section 123. Powers and Duties.**

The elected Rent Stabilization Board shall have the power to determine, to arbitrate and to set rent levels, whether through general or individual adjustments, of any unit which has controlled rents under any Berkeley Ordinance, and to administer any Berkeley program which regulates rents and evictions.

**(1) Replacement of Appointed Board.**

The Board provided for in this Article shall, upon taking office, replace and supersede the appointed Board provided in Berkeley Ordinance 5261N.S. The elected Board shall assume each and every, all and singular, powers, duties, rights and responsibilities of said appointed Board. At such time, said appointed Board shall cease exercising any of the above except to aid in transition as requested by the newly elected Board. At the conclusion of the transitional period (as determined by the elected Board) said appointed Board shall cease to exist as a legal entity.

**(2) Hiring of Staff.**

The Board shall be a working Board and shall employ such staff as may be necessary to perform its functions efficiently and as provided by Berkeley Ordinance. The Board shall have the power to hire and fire staff notwithstanding Article VII, Sections 28(b) and (c) and Article XVI, Section 119 of the City Charter. The City Manager shall continue to provide such supportive services as are appropriate under Berkeley Ordinance. The Board shall follow the City of Berkeley affirmative action employment policy.

**Sections 123 to 124, Article XVII**

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**(3) Financing.**

The Board shall finance its reasonable and necessary expenses by charging landlords, annual registration fees in amounts deemed reasonable by the Board. Such registration fees shall not be passed on to tenants in the form of rent increases except with the express prior approval of the Board. The Board is also empowered to request and receive funding, when and if necessary, from the City of Berkeley and/or any other available source for its reasonable and necessary expenses.

**(4) Additional Powers and Duties.**

With the Rent Board's consent, the City Council may assign additional powers and duties to the Rent Board as appropriate. Furthermore, the electorate may give additional powers or duties through initiative ordinance as provided by this Charter.

**(5) Quorum.**

Five (5) Commissioners shall constitute a quorum for the Board. The affirmative vote of five (5) Commissioners of the Board is required for a decision, including all motions, rules, regulations and orders of the Board.

**Section 124. Severability.**

If any provision of this Article is adjudged by a court of competent jurisdiction to be unenforceable, such adjudication shall not affect the enforceability of any other provisions, and this Article shall continue in full force and effect as if such unenforceable provision were not a part hereof.

**CHARTER OF THE CITY OF BERKELEY**

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**APPENDIX A  
REFERENCES TO STATE STATUTES AUTHORIZING  
CHARTER AND AMENDMENTS**

The present Charter of the City of Berkeley was adopted at an election held on January 30, 1909 and was approved by the Legislature on March 4, 1909 as Chapter 17, Statutes 1909, pg. 1208 and became effective July 1, 1909.

Amendments adopted since 1909 and in effect as of November 5, 2002, are as follows:

Article	Section	Action	Statutes	Chapter
I	1	Amended	1974	95
II	3	Amended	1974	95
III	4	Amended	1923	20
	4	"	1949	146
	4	"	1972	96
	4	Added	1974	95
	4	Amended	1982	6
	4 1/2	Added	1982	8
	5(1)	Amended	1923	20
	5(1)	"	1949	146
	5(1)	"	1963	2
	5(2)	Amended	1949	146
	5(2)	"	1996	30
	5(3)	Amended	1949	146
	5(3)	Repealed	1984	14
	5(3)	Added	2016	30
	5(4)	Repealed	1949	146
	5(4)	"	1963	2
	5(4)	"	1975	24
	5(4)	Repealed	1984	14
	5(5)	Amended	1949	146
	5(5)	"	1951	88
5(5)	"	1963	2	
5(5)	"	1974	95	
5(5)	Repealed	1984	14	

**CHARTER OF THE CITY OF BERKELEY  
APPENDIX A**

Article	Section	Action	Statutes	Chapter
III	5(6)	Amended	1949	146
	5(6)	Repealed	1984	14
	5(7)	Amended	1939	81
	5(7)	"	1949	146
	5(7)	Repealed	1963	2
	5(8)	Amended	1949	146
	5(8)	Repealed	1963	2
	5(9)	Amended	1949	146
	5(9)	Repealed	1963	2
	5(10)	Amended	1939	81
	5(10)	"	1949	146
	5(10)	"	1984	14
	5(10)	Amended	1986	9
	5(10)	"	2004	6
	5(10 1/2)	Added	1939	1
	5(10 1/2)	Repealed	1951	88
	5(11)	Amended	1939	81
	5(11)	Repealed	1949	146
	5(11)	Added	1965	94
	5(12)	Repealed	1949	146
	5(12)	Added	1974	95
	5(12)	Repealed	1984	14
	5(12)	Added	2004	6
	5(12)	Amended	2012	3
	5(13)	Repealed	1949	146
	5(14)	Amended	1923	20
	5(14)	Repealed	1949	146
	5(15)	"	1949	146
	5(16)	"	1949	146
	5(17)	"	1949	146
	5(18)	"	1949	146
	5(19)	"	1949	146
5(20)	"	1949	146	
5(21)	"	1923	20	
5(22)	"	1923	20	
5(23)	"	1923	20	
5(24)	"	1923	20	
5(25)	Repealed	1949	146	
5(26)	"	1949	146	

Article	Section	Action	Statutes	Chapter
III	5 1/2	Added	1923	20
	5 1/2	Amended	1927	20
	5 1/2(1)	Repealed	1949	146
	5 1/2(2)	"	1949	146
	5 1/2(3)	"	1949	146
	5 1/2(4)	"	1949	146
	5 1/2(5)	"	1949	146
	5 1/2(6)	"	1949	146
	5 1/2(7)	"	1949	146
	5 1/2(8)	"	1949	146
	5 1/2(9)	"	1949	146
	6	Amended	1969	163
	6	"	1975	24
	6(1)	"	1923	20
	6(1)	Repealed	1949	146
	6(2)	"	1949	146
	6(1)	Added	1969	163
	6 1/2 <sup>2</sup>	Added	1949	146
	6 1/2 <sup>2</sup>	Amended	1953	145
	6 1/2 <sup>2</sup>	"	1975	24
	6 1/2 <sup>2</sup>	"	2004	6
	6.2	Added	2016	29
	IV	7(1)	Amended	1965
7(2)		"	1965	94
7(2)		Amended	2014	14
7(3)		Repealed	1949	146
7(3)		Added	1965	94
7(3)		Amended	1974	95
7(3)		"	1986	9
7(3)		Amended	2014	14
7(4)		Amended	1965	94
7(4)		Repealed	2014	14
7(5)		Amended	1965	94
7(6)		Amended	1949	146
7(6)		"	1965	94
7(6)		"	1975	24
7(6)		Amended	2014	14
7(7)	Amended	1965	94	

<sup>2</sup>All references to "Section 6 1/2" in the Charter were recodified as "Section 6.1" in 2016.

Article	Section	Action	Statutes	Chapter
IV	7(8)	Amended	1965	94
	7(8)	Amended	2014	14
	7(9)	"	1965	94
	7(9)	Amended	2014	14
	7(10)	Amended	1949	146
	7(10)	"	1965	94
	7(10)	"	1975	24
	7(10)	Amended	2014	14
	7(11)	Added	1965	94
	7(11)	Amended	2014	14
	7(12)	"	1965	94
	7(12)	Amended	1975	24
	7(12)	Amended	2014	14
	7(13)	Added	1965	94
	7(13)	Amended	1975	24
	7(13)	Amended	2014	14
	7(14)	Added	1965	94
	7(14)	Amended	2014	14
	7(15)	"	1965	94
	7(15)	Amended	2014	14
	7(15.5)	Added	2014	14
	7(16)	"	1965	94
	7(16)	Amended	1975	24
	7(17)	Added	1965	94
	7(17)	Amended	1975	24
	7(17)	Amended	2014	14
	7(18)	Added	1965	94
	7(18)	Amended	1975	24
	7(18)	Amended	2014	14
	7(19)	Added	1965	94
	7(19)	Amended	1975	24
	7(20)	Added	1965	94
	7(20)	Amended	2014	14
7(21)	"	1965	94	
7(21)	Amended	1975	24	
7(22)	Added	1965	94	
7(23)	"	1974	95	
7(23)	Repealed	2014	14	

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Article	Section	Action	Statutes	Chapter
V	8	Amended	1923	20
	8	"	1951	88
	8	"	1972	96
	8	"	1982	6
	8	"	1982	8
	9	Amended	1986	9
	9	"	1998	17
	9	Amended	2004	6
	9	"	2008	17
	9	"	2012	3
	9	Amended	2016	28
	9.5	Added	2016	28
	10	Amended	1974	95
	10	Amended	2016	28
	11	Repealed	1974	95
	12	Amended	1949	146
	12	Amended	1974	95
	12.1	Added	1949	146
	12.2	Added	1984	29
	12.2	Amended	2007	7
	13	Amended	1949	146
	13	"	1963	2
	14	Amended	1923	20
	14	"	1949	146
	14	"	1974	95
	14	"	1975	24
	14	"	1982	6
	14	"	1986	9
	14	"	2005	33
	14.1	Added	1949	146
	14.1	Amended	1975	24
	14.1	"	1982	6
	14.1	"	1986	9
	15	Amended	1923	20
	15	"	1949	146
	15	"	1974	95
	15	"	1982	6
	15	"	1986	9
	15	"	1995	1
	16	Amended	1951	88
	16	"	1963	2

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Article	Section	Action	Statutes	Chapter
V	16	"	1974	95
	16	"	1982	6
	17	Amended	1923	20
	17	"	1949	146
	17	"	1965	94
	17	"	1975	24
	18	Amended	1923	20
	18	"	1975	24
	19	Amended	1913	6
	19	"	1923	20
	19	"	1945	96
	19	"	1955	147
	19	Amended	1965	94
	19	"	1971	64
	19	"	1973	102
	19	"	1975	24
	19	"	1982	8
	19	"	1988	19
	19	"	1998	17
	19	"	2002	65
20	Amended	1923	20	
20	"	1975	24	
VI	21	Amended	1923	20
	21	"	1975	24
	23	Repealed	1923	20
	24	Amended	1923	20
	24	"	1965	94
	24	"	1975	24
	25	Repealed	1923	20
	26	Repealed	1923	20
VII	27	Amended	1923	20
	27	"	1947	138
	27	"	1975	24
	28	Amended	1923	20
	28	"	1975	24
	28(i)	"	1951	88

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Article	Section	Action	Statutes	Chapter
VII	29	Repealed	1923	20
	29	Added	1975	24
	30	Amended	1923	20
	30	"	1965	94
	30	"	1975	24
	31	Amended	1923	20
	31	"	1975	24
	31	"	1982	8
	32	Amended	1923	20
	32	"	1975	24
	33	Amended	1923	20
	33	"	1975	24
	34	Amended	1923	20
	35	Amended	1923	20
	35	"	1947	138
	35	"	1975	24
	36	Amended	1949	146
	36	"	1965	94
	36	"	1974	95
	37	Amended	1965	94
37	"	1974	95	
37a	Added	1995	1	
VIII	44(1)	Amended	1951	88
	44(2)	"	1951	88
	44(3)	Amended	1923	20
	44(3)	"	1951	88
	44(6)	Amended	1996	30
	44(7)	Amended	1945	96
	44(7)	"	1951	88
	44(12)	Repealed	1949	146
	45	Repealed	1923	20
	47(9)	Repealed	1951	88
	47	Added	1975	24
	47	Repealed	1982	6
	IX	All	Repealed	1974

Article	Section	Action	Statutes	Chapter	
X	52	Amended	1923	20	
	52	"	1965	94	
	53	Amended	1923	20	
	54	Amended	1923	20	
	55	Amended	1923	20	
	55	Repealed	1982	6	
	56	Amended	1951	88	
	56	"	1982	8	
	57	Amended	1913	6	
	57	"	1943	7	
	57	"	1946	2	
	57	"	1951	88	
	57	Repealed	1957	206	
	58 1/2	Added	1941	98	
	58 1/2	Repealed	1949	146	
	59	Amended	1965	94	
	59	Repealed	1982	8	
	61	Amended	1923	20	
	61	"	1959	188	
	61	"	1998	17	
	62	Amended	1959	188	
	62	"	1975	24	
	63	Amended	1982	8	
	64	Amended	1965	94	
	XI	66	Amended	1953	145
		67	Amended	1945	96
		67	"	1951	88
67		"	1959	188	
67		"	1965	94	
67		"	1977	5	
67.1		Added	1945	96	
67.1		Amended	1951	88	
67.2		Added	1945	96	
67.3		Added	1949	146	
67.3		Amended	1951	88	
67.4		Added	1951	88	

Article	Section	Action	Statutes	Chapter	
XI	67.4	Amended	1953	145	
	67.4	"	1977	5	
	67.5	Added	1953	145	
	67.5	Amended	1959	188	
	67.5	"	1965	94	
	67.5	"	1977	5	
	68	Amended	1923	20	
	68	"	1927	20	
	68	"	1984	29	
	68	"	1996	30	
	69	Repealed	1949	146	
	70	Repealed	1949	146	
	XII	74	Amended	1949	146
		74	"	1975	24
75		Amended	1949	146	
76		Amended	1949	146	
77		Amended	1949	146	
77(2)		"	1917	16	
77(3)		"	1917	16	
77 1/2		Added	1917	16	
77 1/2		Repealed	1949	146	
78		Amended	1917	16	
78		"	1949	146	
79		Amended	1949	146	
80		Amended	1949	146	
81		Repealed	1949	146	
82		Amended	1917	16	
82		Repealed	1949	146	
83		Repealed	1949	146	
84		Repealed	1949	146	
85		Amended	1917	16	
85		Repealed	1949	146	
86	Repealed	1949	146		
87	Repealed	1949	146		
88	Amended	1917	16		
88	Repealed	1949	146		
89	Repealed	1949	146		

XII	90	Repealed	1949	146
	91	Repealed	1949	146
XIIA	81	Added	1953	145
	81.1	"	1953	145
	81.2	"	1953	145
	81.3	"	1953	145
	81.4	"	1953	145
	81.5	"	1953	145
	81.6	"	1953	145
	82	Added	1953	145
	83	Added	1953	145
	83.1	"	1953	145
	83.2	"	1953	145
	83.3	"	1953	145
	83.4	"	1953	145
	83.5	"	1953	145
	83.6	"	1953	145
	83.7	"	1953	145
	83.8	"	1953	145
	83.9	"	1953	145
	83.10	"	1953	145
	84	Added	1953	145
	85	Added	1953	145
	85.1	"	1953	145
	85.2	"	1953	145
	85.3	"	1953	145
	85.4	"	1953	145
	85.5	"	1953	145
	85.6	"	1953	145
85.7	"	1953	145	
85.8	"	1953	145	
85.9	"	1953	145	
85.10	"	1953	145	
85.11	"	1953	145	
85.12	"	1953	145	

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XII-A	85.13	Added	1953	145	
	85.14	"	1953	145	
	85.15	"	1953	145	
	85.16	"	1953	145	
	85.17	"	1953	145	
	85.18	"	1953	145	
	86	Added	1953	145	
	87	Added	1953	145	
	88	Added	1953	145	
	88.1	"	1953	145	
	88.2	"	1953	145	
	88.3	"	1953	145	
	88.4	"	1953	145	
	88.5	"	1953	145	
	88.6	"	1953	145	
	88.7	"	1953	145	
	88.8	"	1953	145	
	88.9	"	1953	145	
	88.10	"	1953	145	
	88.11	"	1953	145	
	88.12	"	1953	145	
	88.13	"	1953	145	
	88.14	"	1953	145	
	88.15	"	1953	145	
	89	Added	1953	145	
	90	Added	1953	145	
	91	Added	1953	145	
	XIIA	All	Repealed	1974	95
	XIII	92	Amended	1974	95
92(1)		Added	1974	95	
92(2)		Amended	1949	146	
92(3)(b)		"	1984	14	
92(4)		"	1939	81	

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XIII	92(4)	Amended	1984	14
	92(5)	"	1984	14
	92(6)	Amended	1996	30
	92(7)	Repealed	1984	14
	92(10)	Amended	1939	81
XIV	93	Amended	1923	20
	93	"	1949	146
	93	"	1974	95
	93	"	1984	14
	94	Amended	1974	95
	94	"	1984	14
	95	Amended	1949	146
XV	97	Amended	1975	24
	102	Repealed	1965	94
	103	Repealed	1965	94
	104	Repealed	1965	94
	105	Repealed	1965	94
	106	Repealed	1965	94
	107	Repealed	1951	88
	108	Repealed	1951	88
XVI	109	Repealed	1975	24
	110	Repealed	1974	95
	111	Repealed	1974	95
	114	Amended	1982	6
	115	Added	1921	16
	116	Added	1923	20
	116	Repealed	1974	95
	117	Added	1974	95
	118	Added	1974	95
	119	Added	1974	95

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XVII	1	Added	1972	96
	2	"	1972	96
	3	"	1972	96
	4	"	1972	96
	5	"	1972	96
	6	"	1972	96
	7	"	1972	96
	8	"	1972	96
	9	"	1972	96
	10	"	1972	96
	11	"	1972	96
	12	"	1972	96
	All	Repealed	1982	6
	120	Added	1982	8
	121	Added	1982	8
121(3)	Amended	1989	3	
122	Amended	1982	8	
123	Amended	1982	8	
124	Amended	1982	8	

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Office of the City Manager

ACTION CALENDAR  
 July 30, 2020  
 (Continued from 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
<b>No. of Measures</b>	10	7	11	0	4
<b>No. of Candidates</b>	26	23	29	2	30
<b>General Costs</b>	\$367,884	\$392,331	\$706,901	-	\$385,246
<b>RCV Costs</b>	\$101,041	\$189,148	\$181,954	-	\$185,578
<b>Total Costs</b>	<b>\$468,925</b>	<b>\$581,479</b>	<b>\$888,855</b>	<b>\$85,628</b>	<b>\$570,824</b>

### 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**

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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. Berra* (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:

<b>CITY OF BERKELEY CHARTER AMENDMENT</b>	
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.

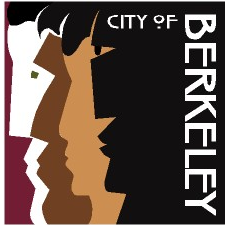
Section 9. Article XVI, Section 109.5 is hereby added to the Charter of the City of Berkeley as follows:

**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

## SUPPLEMENTAL AGENDA MATERIAL

**Meeting Date:** July 30, 2020

**Item Number:** 7a

**Item Description:** **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**

**Submitted by:** **Farimah Brown, City Attorney and David White, Deputy City Manager**

At the Special City Council Meeting on July 21, 2020, city staff presented a tax measure for the November 3, 2020 ballot that would increase the Utility Users Tax by 2.5% from 7.5% to 10% for general municipal services and to establish a Climate Equity Action Fund. At the Special City Council meeting, city staff received direction to revise the text of the UUT measure. The following is a summary of comments received from City Council that formed the basis for the revisions to the proposed tax measure for the November 3, 2020 ballot:

- Increase the Utility Users Tax on electricity and gas only from 7.5% to 10%. For all other items (i.e., telephone and video) subject to the Utility Users Tax, the Utility Users Tax remains unchanged at 7.5%.
- City Council may increase the Utility Users Tax for gas up to an additional 2.5%.
- Individuals that are enrolled in PG&E's California Alternate Rates for Energy Program or Family Electric Rate Assistance Program are exempted from the Utility Users Tax on gas and electricity.
- Climate Equity Action Fund. The proposed ballot measures establishes a Climate Equity Action Fund in which revenues received from the Utility Users Tax imposed on electricity and gas above 7.5% and any other funds designated by the City Council may be deposited. At the City Council's discretion, the proceeds may be spent to reduce local greenhouse gas emissions, mitigate

climate impacts on disadvantaged communities, or for any other general municipal purpose.

- Oversight. The proposed tax measure renames the Energy Commission to the Climate Action and Energy Commission that shall provide recommendations to City Council on how to allocate funds deposited into the Climate Equity Action Fund, among other responsibilities.

The revised tax measure is attached for City Council consideration. The revised tax measure is a general tax that requires a majority vote to pass, and is estimated to generate approximately \$2.4 million per year.

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 ON ELECTRICITY AND GAS FROM 7.5% TO 10%, WITH EXEMPTIONS FOR LOW-INCOME USERS, ~~TO PAY~~ FOR GENERAL MUNICIPAL SERVICES, TO ESTABLISH A CLIMATE EQUITY ACTION FUND TO EQUITABLY REDUCE LOCAL GREENHOUSE GAS EMISSIONS AND CLIMATE POLLUTANTS ~~AIR POLLUTION~~, AND TO AUTHORIZE THE CITY COUNCIL TO INCREASE THE GAS USERS TAX BY UP TO AN ADDITIONAL 2.5% ~~AS FEASIBLE, 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 on electricity and gas 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 for~~ general municipal services, and to establish a ~~c~~Climate ~~e~~Equity ~~a~~Action ~~f~~und that may receive ~~a portion of the~~ revenues from the increase in electricity and gas users taxes that could be used to reduce ~~the local impact of climate change and~~ greenhouse gas emissions, with a focus on protecting disadvantaged communities by mitigating their impacts 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 <u>on electricity and gas</u> from 7.5% to 10%, <u>with exemptions for low-income users and oversight, to fund for</u> general municipal services, including programs to <u>equitably</u> reduce local <u>climate change impacts and</u> greenhouse gas emissions <u>using an equity lens and air pollution</u> , and authorizing the City Council to increase the gas users tax by an additional 2.5% <u>when feasible, and modernizing and updating technical provisions of the Utility Users Tax</u> , with the total tax estimated to generate <u>\$2.7544</u> -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.

Exhibit A

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

**INCREASING THE UTILITY USERS TAXES ~~ON (TELEPHONE, ELECTRICITY AND, 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 ~~CLIMATE POLLUTANTS AIR POLLUTON,~~ AND 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, [Berkeley had not yet achieved its 33% reduction target by 2020.](#)

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~~ [Climate equity Equity action Action fund Fund](#) to reduce greenhouse gas emissions, ~~and climate local air pollutants~~ [including such as](#) 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 [mitigate the impacts of address reduce energy use and costs, and benefit from solutions to](#) 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; 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.

D. "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.

E. "Service supplier" shall mean any entity or person, including the City, that provides telephone communication, electric, gas or cable television 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 cable television service suppliers.

F. "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.

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

H. "Month" shall mean a calendar month.

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

J. "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.

L. "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).

M. "Video service supplier" shall mean any person, company, or service which provides one or more channels of video programming, including any communications that are ancillary, necessary or common to the use 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 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, master antenna television, satellite master antenna television, multichannel multipoint distribution services, direct broadcast satellite (to the extent allowed by federal law), and other suppliers of video programming or communications (including two-way communications), whatever their technology.

N. "Video services" shall mean any and all services related to the providing of video programming (including origination programming), including any communications that are ancillary, 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.

O. "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 service user, "service address" shall mean the residential street address or the business street address of the service user's primary place of telephone communication service usage.

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

Q. "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, 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 telecommunications 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: 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 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); and value-added non-voice data service. For purposes of this section, "private telecommunication service" means any dedicated telephone communications service that entitles a user to exclusive or priority use of communications channels. "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.

S. "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. Services that link two or more participants of an audio or video conference call, including the provision of a telephone number.
2. Services that separately state information pertaining to individual calls on a customer's billing statement.
3. Services that provide telephone number information, and/or address information.
4. Services offered in connection with one or more telecommunications services, which offer advanced calling features that allow customers to identify callers and to manage multiple calls and call connections.
5. Services that enable customers to store, send or receive recorded messages.

Section 3. 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 enrolled have been accepted into the California Alternate Rates for Energy Program ("CARE") or the Family~~

Electric Rate Assistance Program (“FERA”). 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 e~~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 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 4. 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, except individuals that have been accepted/enrolled into the CARE or FERA Program. 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, transportation, 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-c~~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 5. 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; Climate Action and Energy Commission.**

A. 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, as well as donations from the public, foundations, or corporations, may be placed in the fund.~~ and ~~t~~The Climate Action and Energy Commission or successor 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 climate change impacts and climate pollutants~~greenhouse gas emissions or ~~air pollution~~greenhouse gas emissions or for any other municipal purpose. Funds may be used for City government expenditures, and/or to provide grants to local non-profit organizations, businesses, and government agencies. ~~Grants may not be made directly to individuals.~~

B. The Energy Commission is renamed the Climate Action and Energy Commission. The Climate Action and Energy Commission shall develop guidelines for the Climate Equity Action Fund, communicate with the public on the availability and uses of the Fund, and make recommendations to the Council on how and to what extent the City should establish and/or fund programs. Considerations should include the effect of proposed actions on greenhouse gas emissions, on equity and environmental justice, participation of low income, disadvantaged, and vulnerable populations in climate action programs, and reduce the impacts of climate change on the City's low income and most vulnerable populations.

C. Each member of the Climate Action and Energy Commission must have one or more of the following qualifications:

1. Experience in community-based inclusive equity-based programs; and/or
2. Experience in social and racial equity; and/or
3. Experience in climate and energy conservation or renewable energy policies and programs; and/or
4. Experience in municipal-scale inclusive and equitable energy and transportation initiatives; and/or
5. Technical expertise in health and other disproportionate impacts of climate change on low income and vulnerable populations.

D. In addition to its standing duties and responsibilities, the Climate Action and Energy Commission shall, by majority vote, publish an annual report that includes the following:

1. Recommendations on how to allocate funds deposited into the Climate Equity and Action Fund ~~the City's general funds~~ to reduce the emission of greenhouse gases, increase participation of low income, disadvantaged, and vulnerable populations in climate action programs, and reduce the impacts of climate change on the City's low income and most vulnerable populations.

Information, if available, concerning the impact of funds deployed from the Climate Equity and Action Fund ~~this Chapter~~ on the achievement of goals in the City's Climate Action Plan;

2. Any additional information that the Climate Action and Energy Commission deems appropriate.

E. Within 4530 days of receipt of the annual report of the Climate Action and Energy Commission's, the City Manager shall cause the report to be published on the City's website and transmitted to the City Council.

F. The City Council shall consider, but need not follow, the Climate Action and Energy Commission's recommendations and shall annually inform the Climate Action and Energy Commission as to the extent to which it has implemented its recommendations.

Section 6. 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 7. 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-general~~ tax for each of the four fiscal years from 2021 through 2024.

Section 8. 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 9. 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 10. ~~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.



Office of the City Manager

**ACTION CALENDAR**  
 July 30, 2020  
*(Continued from 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
<b>No. of Measures</b>	10	7	11	0	4
<b>No. of Candidates</b>	26	23	29	2	30
<b>General Costs</b>	\$367,884	\$392,331	\$706,901	-	\$385,246
<b>RCV Costs</b>	\$101,041	\$189,148	\$181,954	-	\$185,578
<b>Total Costs</b>	<b>\$468,925</b>	<b>\$581,479</b>	<b>\$888,855</b>	<b>\$85,628</b>	<b>\$570,824</b>

## 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.<sup>1</sup> 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,

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<sup>1</sup> 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](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:

<b>CITY OF BERKELEY GENERAL TAX ORDINANCE MEASURE</b>	
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, includ~~e~~ing 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 e~~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 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.

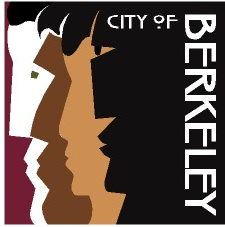
Section 8. **Severability.** If any word, phrase, sentence, part, section, subsection, or other portion of this ordinance, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, 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.

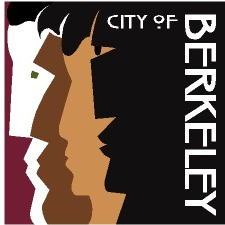
These additions further facilitate Council and public consideration.

***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/revised 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
<b>Total Collections</b>	14,211,318	\$15,109,305	\$14,828,120	\$14,600,000	\$15,000,000	\$15,000,000
<b>\$ Change</b>	(90,739)	897,987	(281,185)	228,120	400,000	0
<b>% Change</b>	(0.63%)	6.32%	(1.90%)	(1.53%)	2.73%	0%
<b>Cable</b>	1,283,102	1,251,842	1,341,570	1,316,080	1,352,008	1,353,008
<b>Gas/Elec</b>	8,675,201	9,445,069	9,441,160	9,300,427	9,555,753	9,555,753
<b>Phone</b>	2,043,557	2,009,0350	1,915,053	1,885,752	1,937,233	1,937,233
<b>Cellular</b>	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%:

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

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.<sup>1</sup> 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.<sup>2</sup> 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.

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

<sup>2</sup> “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 30, 2020  
(Continued from July 21, 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.

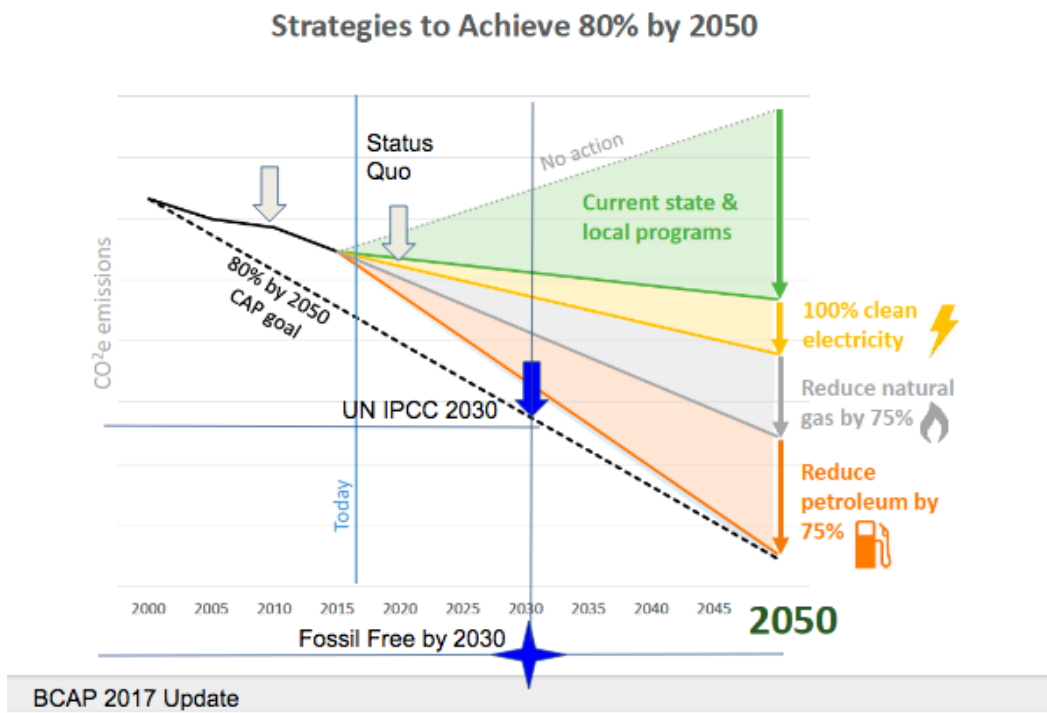
# Executive Summary

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.

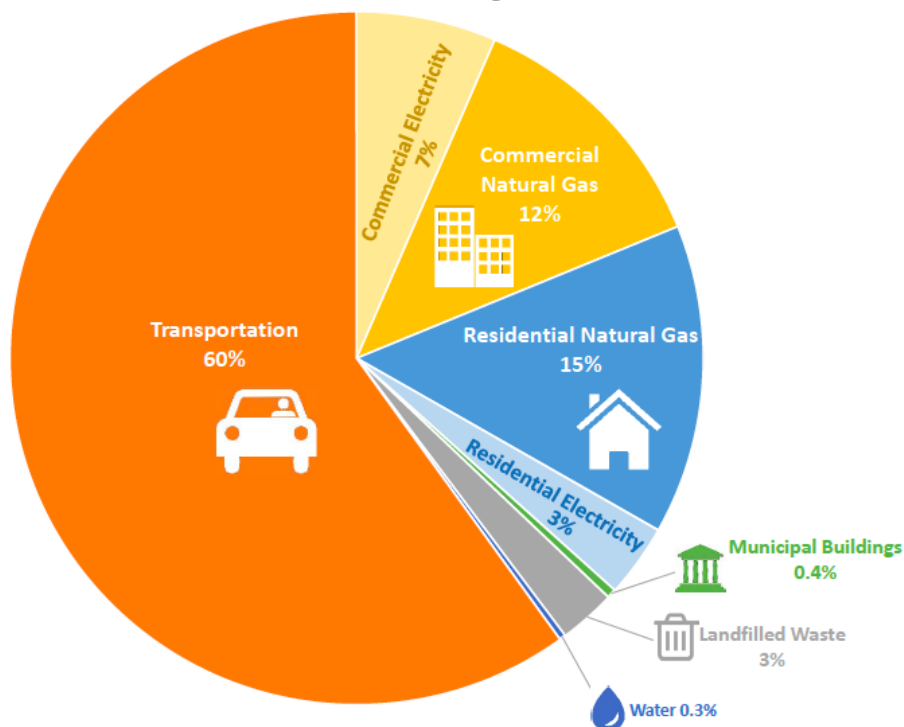
The trajectory of the Berkeley Climate Action Plan's 2020 emission reduction targets, extended to 2030, is roughly in line with the IPCC-SR15 goal. However, according to the city's 2018 [Annual Progress Update](#) Berkeley is significantly behind in achieving the Climate Action Plan 2020 reduction goals, 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 laws<sup>1</sup> 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

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<sup>1</sup> 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 CO<sub>2</sub> 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.<sup>2</sup> 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

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<sup>2</sup> <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 NRDC<sup>3</sup> 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.

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<sup>3</sup> <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.<sup>4</sup> 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.

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<sup>4</sup> 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's<sup>5</sup> 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.

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<sup>5</sup> 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%.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup>

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

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

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

<sup>8</sup> 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%.<sup>9</sup> 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."<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> Berkeley needs to partner with all Bay

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<sup>9</sup> EBCE Enrollment Update, December 5, 2018

<sup>10</sup> Clean Power Exchange, Alliance will provide clean, competitive energy, January 12, 2019 <https://cleanpowerexchange.org/alliance-will-provide-clean-competitive-energy/>

<sup>11</sup> See comments in: <https://www.berkeleyside.com/2018/12/11/why-does-your-december-electricity-bill-look-different>

<sup>12</sup> [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.<sup>13</sup> This indicates that the hunger for the amenities of a more urban lifestyle is widespread. It's quite possible that there is an

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<sup>13</sup> ([https://www.trulia.com/real\\_estate/Berkeley-California/market-trends/](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 CO<sub>2</sub> 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 CO<sub>2</sub> 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.<sup>14</sup>

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<sup>14</sup> 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.

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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 CO<sub>2</sub> from the air but because of the low concentration of CO<sub>2</sub> in the air, the cost is prohibitive. Sequestering the captured CO<sub>2</sub> 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](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 CO<sub>2</sub> per acre annually or about 8000 metric tons of CO<sub>2</sub>. ( Soil Carbon Restoration: Can Biology do the Job? by Jack Kittredge, policy director, NOFA/Mass [www.nofamass.org](http://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 CO<sub>2</sub>. 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.

