

AGENDA



BERKELEY CITY COUNCIL MEETING

**Tuesday, November 10, 2020
6:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/87207824735>. 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 or 1-877-853-5257 (Toll Free) and enter Meeting ID: 872 0782 4735. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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

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

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

Preliminary Matters

Roll Call:

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

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

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

Consent Calendar

The Council will first determine whether to move items on the agenda for "Action" or "Information" to the "Consent Calendar", or move "Consent Calendar" items to "Action." Three members of the City Council must agree to pull an item from the Consent Calendar for it to move to Action. Items that remain on the "Consent Calendar" are voted on in one motion as a group. "Information" items are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent".

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

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

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

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

Consent Calendar

- 1. Amending Berkeley Municipal Code Chapter 12.70 Sections 12.70.020 V, 12.70.035 E and 12.70.037 C to be in accordance with California Health and Safety Code**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,736-N.S. amending Berkeley Municipal Code Chapter 12.70 to update Section 12.70.020 Definitions section V and repealing Section 12.70.035.E and 12.70.037.C and adjusting the definition of "smoke" or "smoking" to include medical cannabis to align with the State of California Health and Safety code.
First Reading Vote: All Ayes.
Financial Implications: None
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 2. Memorandum of Understanding for a Winter Relief Program**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute a memorandum of understanding (MOU) between Alameda County and the City of Berkeley for a Winter Relief Program, consisting of \$25,000 allotted from Alameda County to the City, which will provide homeless people on the streets of Berkeley housing respite through May 31, 2021.
Financial Implications:
Contact: Erin Steffen, City Manager's Office, (510) 981-7000
- 3. Memorandum of Understanding: Berkeley Fire Fighters Association, Local 1227**
From: City Manager
Recommendation: Adopt one Resolution approving a new one (1) year Memorandum of Understanding (hereafter referred to as "MOU") with the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 (hereafter referred to as the "Association") with a term of June 28, 2020 through June 30, 2021 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. Lease for 5385 Cazadero Hwy, Cazadero, CA 95421 – Cazadero Performing Arts Camp (CPAC)**
From: City Manager
Recommendation: Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement and necessary amendments with Cazadero Performing Arts Camp, at 5385 Cazadero Hwy, Cazadero, CA 95421 for a term of twenty-five (25) years, with an option to renew for ten (10) years.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Consent Calendar

- 5. Referral Response: Including Climate Impacts in City Council Reports**
From: City Manager
Recommendation: Request that the City Manager update the templates and associated training materials to add “Climate Impacts” in the “Environmental Sustainability” section of reports to the City Council, and codify the changes in Appendix B in the next update to the Berkeley City Council Rules of Procedure. This recommendation is a partial response to a January 21, 2020 referral, sponsored by Councilmembers Davila and Bartlett, to require that all City Council items and staff reports include “climate impacts” in addition to environmental sustainability.
Financial Implications: See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 6. Acceptance of \$20,000 Grant for utility bill management software analysis**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to accept a \$20,000 grant award from the Energy Council through East Bay Energy Watch Partnership, to support staff analysis of online utility bill database management services.
Financial Implications: See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 7. Resumption of Fees at Oregon Park Senior Apartments** *(Continued from October 13, 2020)*
From: City Manager
Recommendation: Authorize the City Manager to resume charging fees, including housing inspection service fees, at Oregon Park Senior Apartments (OPSA), located at 1425 Oregon Street, to increase the effectiveness of housing code enforcement.
Financial Implications: See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 8. Purchase Order: Pape Machinery, Inc. for One (1) John Deere 310SL Backhoe Loader**
From: City Manager
Recommendation: Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcwell Contract No. 032119-JDC and authorizing the City Manager to execute a purchase order for one 2020 John Deere 310SL Backhoe Loader with Pape Machinery, Inc. in an amount not to exceed \$150,000.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300

Consent Calendar

9. **Purchase Order: Altec Industries, Inc. for One Aerial Bucket Truck**
From: City Manager
Recommendation: Adopt a Resolution satisfying requirements of City Charter Article XI Sections 67.2 allowing the City to participate in Sourcewell contract bid procedures, and authorizing the City Manager to execute a purchase order for one (1) aerial bucket truck with Altec Industries, Inc. in an amount not to exceed \$200,000.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300

Council Consent Items

10. **Berkeley Holiday Fund: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**
From: Mayor Arreguin (Author), Councilmember Davila (Co-Sponsor)
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember including \$500 from Mayor Arreguin to the Berkeley Holiday Fund's annual campaign with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguin and any other Councilmembers who would like to contribute.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, (510) 981-7100
11. **Four Way Stop Signs on Eighth Street at Carleton Street and Pardee Street**
From: Mayor Arreguin (Author)
Recommendation: Refer to the City Manager a proposal to install stop signs at the intersections of Eighth Street and Carleton Street and Eighth Street and Pardee Street.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, (510) 981-7100

Council Consent Items

- 12. Authorize Installation of Security Cameras at Major Berkeley Arterial Streets Serving as Entry and Exit Points for the City and Request an Environmental Safety Assessment in High Crime Areas of the City**
From: Councilmember Kesarwani (Author), Mayor Arreguin (Co-Sponsor)
Recommendation: In order to deter would-be perpetrators of gun violence and apprehend those engaging in gun violence, adopt the following recommendations:
1. Request that the City Manager install security cameras and increased lighting at appropriate arterial streets serving as entry into and exit out of the City of Berkeley in conjunction with prominently displayed signage;
2. Refer to the City Manager to perform an environmental safety assessment of the high crime areas specifically in South and West Berkeley;
3. Refer costs for security cameras and lighting to the mid-year budget process for FY 2020-21.
Financial Implications: See report
Contact: Rashi Kesarwani, Councilmember, District 1 (510) 981-7110
- 13. Budget Referral to Reinstate Partial Funding for the Gun Buyback Program Previously Authorized by City Council**
From: Councilmember Kesarwani (Author), Mayor Arreguin (Co-Sponsor), Councilmember Davila (Co-Sponsor)
Recommendation: Refer to the FY 2020-21 November Amendment to the Annual Appropriations Ordinance (AAO #1) \$40,000 to reinstate partial funding for the Gun Buyback Program—originally proposed by Councilmember Cheryl Davila and authorized by the City Council on Nov. 27, 2018.
Financial Implications: \$40,000
Contact: Rashi Kesarwani, Councilmember, District 1 (510) 981-7110

Council Consent Items

- 14. Open Pathways (including laundry services), West Campus Pool and Martin Luther King Jr. Pool (King pool) to implement the City of Berkeley Shower Program at these locations and provide the ability for our community to shower during the COVID 19 pandemic** *(Item contains revised materials. Reviewed by the Budget & Finance Committee)*
From: Councilmember Davila (Author)
Recommendation: Direct the City Manager to open the Pathways (including laundry services), West Campus Pool and Martin Luther King Jr. Middle School (King pool) Pool to implement the City of Berkeley Shower Program at these locations. Opening these locations will provide the ability for our community to shower during the COVID 19 Pandemic, a humane action required during this crisis.
(On October 8, 2020, the Budget & Finance Committee took action to send the item to Council with a qualified positive recommendation acknowledging that the City Manager is already implementing a shower program and to thank the City Manager for initiating this program and to encourage its continued operation during the COVID emergency. Vote: All Ayes.)
Financial Implications: \$270,100
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
- 15. Refer to the City Manager the design of a companion Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements to low-income residents** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*
From: Councilmember Harrison (Author)
Recommendation: Refer to the City Manager the design of a Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements to low-income residents as a companion to the Council referral to expand the Seismic Transfer Tax Rebate Program to include efficiency and electrification retrofit measures.
(On October 7, 2020, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Harrison/Robinson) to move recommendation two to "Refer to the City Manager the design of a Companion Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements for low income residents" to the City Council with a positive recommendation. Vote: All Ayes.)
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 16. Budget Referral - \$20,000 radar speed feedback sign for Wildcat Canyon Road**
From: Councilmember Wengraf (Author)
Recommendation: Referral to the City Manager for a solar powered radar speed feedback sign to be installed on Wildcat Canyon Road at the cost of \$20,000 to be considered during the Mid-Year Budget Process.
Financial Implications: \$20,000
Contact: Susan Wengraf, Councilmember, District 6 (510) 981-7160

Council Consent Items

17. Consider Fire Safety Options for Fire Pit at Codornices Park

From: Councilmember Wengraf (Author)

Recommendation: Referral to the Parks & Waterfront Commission to consider safety options regarding the future of the fire pit at Codornices Park. Please consider 1) Complete removal of fire pit or 2) Manufacture of a cover that can be secured and locked.

Financial Implications: See report

Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

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.

18. Presentation: Report on Homeless Outreach during COVID 19 Pandemic

From: City Manager

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

19. Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code

From: City Manager

Recommendation: Adopt a Resolution accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code

Financial Implications: None

Contact: Andrew Greenwood, Police, (510) 981-5900, Savita Chaudhary, Director of Information Technology (510) 981-6541, Dave White, City Manager's Office, (510) 981-7000.

Action Calendar

20. **Annual Commission Attendance and Meeting Frequency Report** (*Continued from October 27, 2020*)
From: City Manager
Recommendation: Review and accept the annual Commission Attendance and Meeting Frequency Report.
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6908
21. **Support Community Refrigerators** (*Continued from September 22, 2020*)
From: Councilmember Davila (Author)
Recommendation:
1. Adopt a Resolution to create an allocation of the homeless budget towards the purchasing of community refrigerators to be distributed in Council districts to provide access to food for those who have no refrigeration or may be food insecure.
2. Allocate \$8,000 of the budget for the purchasing of the refrigerators.
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
22. **Vote of No Confidence in the Police Chief** (*Continued from September 15, 2020*)
From: Councilmember Davila (Author)
Recommendation: Adopt a resolution taking a Vote of No Confidence in the Police Chief.
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

Public Comment – Items Not Listed on the Agenda

Adjournment

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

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

Archived indexed video streams are available at <http://www.cityofberkeley.info/citycouncil>. Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service 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.

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***I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on October 29, 2020.***

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

Mark Numainville, City Clerk

## **Communications**

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

### **Housing at North Berkeley and Ashby BART Stations**

1. 20 identical form letters
2. Steve Gilmartin
3. Janice Schroeder
4. Mary Behm-Steinberg
5. Daniel Borgstrom
6. Shirley Dean
7. Virginia Browning
8. Kurk Ribak
9. Claire Broome
10. Sloane and Nick Morgan
11. Vicki Sommer
12. Phil Allen
13. Kenneth Gross
14. Catherine Fox
15. Eileen Hughes

### **Inside Arts Venues**

16. Lisa Bullwinkel
17. Sharon Dolan, Chair, Berkeley Cultural Trust (2)
18. Blake Parker, on behalf of Freight & Salvage
19. Karen Elliot
20. Barbara Higbie
21. Celia Ramsay
22. Evie Ladin
23. Andrea Hirsig
24. Suzy Thompson
25. Stephen Leake
26. Dan Warrick
27. Hali Hammer
28. Fritzi Drosten
29. Susan Wengrofsky
30. Gail Husson
31. Julie Greenfield
32. Tobie Lurie
33. Sharon and Richard Tamm (2)
34. Dee Williams-Ridley, City Manager
35. Virginia Browning
36. Brenda Laribee
37. Esther Lerman
38. Yvonne Martinez
39. Susan Rudio
40. Katy Waffle
41. Sara Sunstein
42. Kathleen Archambeau
43. Diana Dominguez

### **1155-1173 Hearst**

44. Teal Major (2)
45. Dale Anania
46. Councilmember Harrison
47. Pam Ormsby
48. Mark Rhoades
49. Yashu Jiang
50. Stacey Shulman

### **Homelessness and Encampments**

51. Eric Friedman (2)
52. Hillary Kilimnik
53. Erwan Illian

**Vision 2025**

- 54. Emily Raap, on behalf of PETA
- 55. Kathleen Willey

**Public Swimming Pools**

- 56. Paul Preston
- 57. Donna Mickleson
- 58. Linda Worthman

**Affordable Housing**

- 59. Barbara Fisher

**5G and the Berkeley Police Department**

- 60. Virginia Hollins-Davidson
- 61. Phoebe Anne Sorgen (2)

**Taxation**

- 62. Arthur Stopes III (2)

**1811 Delaware**

- 63. Loren Fono, et al neighbors

**Caren Act**

- 64. Louis Lin
- 65. Russbumper

**Mail Not Being Collected**

- 66. Nina Ruymaker
- 67. Councilmember Robinson

**Cal Students Partying**

- 68. Anne Herrick (2)
- 69. Jen Loy, on behalf of the University of California, Berkeley

**Electric Mobility**

- 70. Tom Lent, on behalf of Walk Bike Berkeley (2)

**Berkeley Lab Proposal**

- 71. Dana Perls, on behalf of Friends of the Earth

**Berkeley Police Association Request – Chemical Agents**

- 72. Emily Murphy, on behalf of the Berkeley Police Association

**Plastic Bag Ban**

- 73. Ciara Khor-Brogan

**Ward Street Crosswalk**

74. George Torgun

**Red Flag Event – Berkeley Hills**

75. Ben Glickstein

76. Thomas Lord

77. Phoebe Anne Sorgen

78. David Lerman (2)

**Berkeley High School Distance Learning Challenges**

79. Sara Woods

**Removing Cops from Behavioral Crisis Calls**

80. Russbumper

**Zachary Running Wolf Hate Crime Felonies**

81. Russbumper

**Supplemental Communications and Reports**

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

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



## ORDINANCE NO. 7,736 -N.S.

## AMENDING BERKELEY MUNICIPAL CODE CHAPTER 12.70 SMOKING POLLUTION CONTROL

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

Section 1. That Berkeley Municipal Code Subsection 12.70.020.V is amended to read as follows:

**12.70.020 Definitions**

V. "Smoke" or "smoking" means and includes either (1) inhaling or exhaling upon, burning, or carrying any lighted smoking equipment for tobacco, nicotine, cannabis or any other plant or product used for personal habit commonly known as smoking or (2) inhaling or exhaling upon, vaporizing, or otherwise using any electronic smoking device.

Section 2. That Berkeley Municipal Code 12.70.035 is amended to read as follows:

**12.70.035 Smoking prohibited in multi-unit residences**

- A. Effective May 1, 2014, smoking is prohibited in all units of multi-unit residences and all common areas of multi-unit residences.
- B. All common areas of multi-unit residences shall have signage indicating that smoking is prohibited consistent with the signposting requirements of Section 12.70.060.A.
- C. If the City receives a complaint of a violation of subdivision A, it may issue a notice to the person(s) responsible, informing them of the requirements of this Section. The tenant(s) of a unit, or owner-occupant(s) of an owner-occupied unit, shall be deemed the person(s) responsible for the violation where the violation was caused by the tenant(s) or owner-occupant(s) of the unit, or one or more persons subject to the control of, or present by invitation or permission of, the tenant(s) or owner-occupant(s).
- D. If within a six month period following issuance of a notice under subdivision C, the City receives at least two complaints from residents of at least two separate units of the same multi-unit residence, or in the case of a two-unit multi-unit residence, from a resident of the other unit of a violation of subdivision A by the same person(s) provided notice under subdivision C, the person(s) responsible for the violation shall be guilty of an infraction as provided for in Berkeley Municipal Code Chapter 1.20. In addition, the City may employ any other remedies permitted by law, including but not limited to Chapter 1.28. In order for the City to initiate enforcement under this Section, each person who makes a claim of a violation of this Section must lodge the complaint on a form specified by the City.
- E. Sales contracts for condominiums entered into on or after May 1, 2014 shall disclose the requirements of Sections 12.70.035 and 12.70.037.

Section 3. That Berkeley Municipal Code 12.70.037 is amended to read as follows:

**12.70.037 Required Lease Term for New Leases**

- A. Every lease or other rental agreement for the initial occupancy of a new or existing unit in a multi-unit residence entered into on or after May 1, 2014, shall include a clause providing that it is a material breach of the lease or other rental agreement for the tenant, or any other person subject to the control of the tenant or present by invitation or permission of the tenant, to engage in smoking in any unit of the multi-unit residence or any common area of the multi-unit residence.
- B. Landlords shall offer all current tenants a voluntary lease addendum providing that it is a material breach of the lease or other rental agreement for the tenant, or any other person subject to the control of the tenant or present by invitation or permission of the tenant, to engage in smoking in any unit of the multi-unit residence or any common area of the multi-unit residence.
- C. Applications for tenancy shall include information from the landlord regarding Sections 12.70.035 and 12.70.037.
- D. Landlords shall provide written notice to all existing tenants of the requirements of Sections 12.70.035 and 12.70.037 no later than March 1, 2014.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on October 27, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.





Office of the City Manager

CONSENT CALENDAR  
November 10, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: David White, Deputy City Manager  
 Subject: Memorandum of Understanding for a Winter Relief Program

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute a memorandum of understanding (MOU) between Alameda County and the City of Berkeley for a Winter Relief Program, consisting of \$25,000 allotted from Alameda County to the City, which will provide homeless people on the streets of Berkeley housing respite through May 31, 2021.

FISCAL IMPACTS OF RECOMMENDATION

The County has allocated \$25,000 to be spent on Winter Relief Program activities in Berkeley. The funds will be deposited and expensed from the Alameda County Grants Fund and will be officially appropriated in the Second Amendment to the FY 2021 Annual Appropriations Ordinance. Funds will be used to purchase nightly lodging in area motels and will be administered by the Neighborhood Services Division.

CURRENT SITUATION AND ITS EFFECTS

The unsheltered homeless population in Berkeley, Emeryville and Albany exceeds the number of available shelter beds in North County. Alameda County ("County") has allocated funding to support winter relief programs across the county. This funding will be used to provide homeless people in Berkeley additional temporary housing options (such as motel stays) between October 15, 2020 and May 31, 2021. It will be used to improve the health and safety of residents who would otherwise remain unsheltered during this winter season. The City's Homeless Outreach Coordinator, located in the Neighborhood Services Division, will have access to these funds and place high need and vulnerable homeless people in temporary lodging, allowing them a respite from the streets while support services staff assess needs and develop a long-term housing plan.

BACKGROUND

Annually, the County allocates funding to cities and non-profit agencies to mitigate the impact of inclement weather on people who are literally homeless living on the streets. This year, the funds will be used by the City's Homeless Outreach Coordinator to temporarily house high need and vulnerable people, allowing them a respite from the streets while support services staff assess needs and develop a long-term housing plan.

Last year's Winter Relief program, which received \$75,000 funding, was administered by the Homeless Outreach Treatment Team (HOTT) and provided motel stays for thirty-nine separate individuals, most of whom were disabled, resulting in eight hundred ninety-eight nights of safety and serenity. With the transition of HOTT into a closed case management model, this year's Winter Relief program will be administered by the Homeless Outreach Coordinator, who has been re-assigned to the Neighborhood Services Division.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

This funding will allow more homeless people to quickly move into temporary housing during this winter season while working with housing navigators to move into longer term shelter options.

ALTERNATIVE ACTIONS CONSIDERED

If the City were not to accept the funding from Alameda County for the Winter Relief Program, the City would either need to identify an alternate funding source to provide motel stays for unhoused individuals, or it would need to reduce the number of hotel stays it provides.

CONTACT PERSON

Eve Ahmed, Homeless Outreach Coordinator, Neighborhood Services, 510-981-7655  
Erin Steffen, Assistant to the City Manager, 510-981-7017

Attachments:

- 1: Resolution
- 2: Memorandum of Understanding

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

MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF ALAMEDA AND THE CITY OF BERKELEY WHICH OUTLINES THE SERVICES TO BE PROVIDED AND THE RESPONSIBILITIES OF THE COUNTY AND CITY IN THE WINTER RELIEF PROGRAM

WHEREAS, the County of Alameda ("COUNTY") has allocated a total of \$25,000 for respite from the elements for literally homeless people living on the streets of Berkeley during the period of October 15, 2020 through May 31, 2021; and

WHEREAS, the parties acknowledge that there is a lack of available shelter space to provide shelter for the homeless populations of Berkeley, Albany, and Emeryville; and

WHEREAS, the COUNTY and the City of Berkeley further acknowledge that funding for motel stays for unsheltered homeless individuals during the typically cold and rainy winter season will improve health and safety outcomes for residents who would otherwise remain unsheltered during inclement weather; and

WHEREAS, the City's Neighborhood Services Division staff will utilize these funds and place high need and vulnerable homeless people in temporary lodging, allowing them a respite from the streets while support services staff assess needs and develop a long-term housing plan; and

WHEREAS, the funds will be deposited and expensed from the Alameda County Grants Fund.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to receive funds in the amount of \$25,000 and negotiate and execute a memorandum of understanding (MOU) with the County of Alameda that outlines the services to be provided and the responsibilities of the County and the City in the Winter Relief Program. A record signature copy of said MOU and any amendments to be on file with the Office of the City Clerk.





Office of the City Manager

03

CONSENT CALENDAR  
November 10, 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 Fire Fighters Association/I.A.F.F. Local 1227

RECOMMENDATION

Adopt one Resolution approving a new one (1) year Memorandum of Understanding (hereafter referred to as “MOU”) with the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 (hereafter referred to as the “Association”) with a term of June 28, 2020 through June 30, 2021 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 Memorandum Agreement provide for a 0% salary increase, 2.5% increase in Higher Class Ambulance Transport, and Forty (40) hours of Additional Floating Holiday stipend, effective the of first full pay period after Council adoption. The additional floating holiday hours are in direct response to the COVID 19 pandemic and expire along with the one-year agreement, effective June 30, 2021.

The cumulative total cost for the new Memorandum Agreement is approximately \$245,767 over the term of the agreement (Fiscal Year 2021). The funding for this Memorandum 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 28, 2020. In an effort to reach agreement on a successor Memorandum Agreement, representatives of the City and representatives of the Union held approximately ten negotiating sessions beginning in May 6, 2020. The parties reached agreement on all outstanding economic issues on October 5, 2020.

While the labor contract expired and fully terminated on June 28, 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.

BACKGROUND

There are 121 employees represented by the Association in one representational unit (Unit B). The City’s philosophy during negotiations with the Association 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:

|                              |                                                        |
|------------------------------|--------------------------------------------------------|
| Term                         | June 28, 2020 through June 30, 2021                    |
| Wage Increases               | 0% increase for the term of the contract               |
| Floating Holiday COVID Leave | Forty (40) hours of Floating Holiday COVID stipend     |
| Emergency Medical Services   | 2.5% increase to Higher Class Ambulance Support (HCAT) |

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. Staff believes this settlement is in keeping with City Council’s direction to staff and is fair and equitable to the members of the Association.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

LaTanya Bellow, Director of Human Resources, Human Resources, 981-6800

**Attachments:**

1. Resolution – Memorandum of Understanding: BFFA Local 1227 I.A.F.F.
  - Exhibit A: Memorandum of Understanding between the City of Berkeley and the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 – June 28, 2020 through June 30, 2021 (Edited Version)
  - Exhibit B: Memorandum of Understanding between the City of Berkeley and the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 – June 28, 2020 through June 30, 2021 (Clean Version)

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

MEMORANDUM OF UNDERSTANDING: BFFA LOCAL 1227 I.A.F.F.

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 Fire Fighters Association Local 1227 I.A.F.F. have met and conferred in good faith and have reached agreement on a new one-year Memorandum of Understanding that incorporates all changes and modifications in wages, hours and other terms and conditions of employment agreed to by the parties; and

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 28, 2020 through June 30, 2021 with the Berkeley Fire Fighters Association Local 1227 I.A.F.F., 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.

Exhibit A: Memorandum of Understanding between the City of Berkeley and the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 – June 28, 2020 through June 30, 2021 (Edited Version)

Exhibit B: Memorandum of Understanding between the City of Berkeley and the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 – June 28, 2020 through June 30, 2021 (Clean Version)





## MEMORANDUM OF UNDERSTANDING

Between

CITY OF BERKELEY

And

BERKELEY FIRE FIGHTERS  
ASSOCIATION LOCAL 1227 I.A.F.F.

~~June 18, 2017~~ July 1, 2020 to June ~~27, 2020~~ 30, 2021

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RESOLUTION NO. 68,580-N.S.

MEMORANDUM OF UNDERSTANDING: BFFA LOCAL 1227 I.A.F.F.

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 Fire Fighters Association Local 1227 I.A.F.F. 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; and

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 18, 2017 through June 27, 2020 with the Berkeley Fire Fighters Association Local 1227 I.A.F.F., 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.

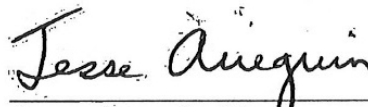
BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute and implement said Memorandum of Understanding including all changes in wages, hours, and other terms and conditions of employment. A fully executed original of said contract is filed in the Office of the City Clerk.

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.

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## **ARTICLE 1 - ADMINISTRATION**

### **SECTION 1: RECITALS**

This Memorandum of 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 (herein - after referred to as "the City") in employer-employee relations as provided in Resolution No. 43,397-N.S. and adopted by the City Council on October 14, 1969 and amended as of 1971, and retains management rights as provided therein unless otherwise specifically provided for in this agreement.

The Berkeley Fire Fighters Association, Local 1227, International Association of Fire Fighters (hereinafter referred to as "the Association"), is the recognized employee organization for Representation Unit B (non-managerial uniformed Fire Department employees), which organization has been certified as such pursuant to said Resolution No. 43,397-N.S. The employee positions in such Representation Unit are set forth in Exhibit "A" attached hereto and made a part hereof. The Berkeley Firefighters Association, Local 1227, 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 Unit B; 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 Memorandum of 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 Unit B (non-managerial, uniformed Fire Department employees); 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 Unit B.



## 2.2 Agency Shop

All current and future employees of the City represented by the Union 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 and exclude amounts used to pay for political and ideological purposes not related to collective bargaining.

Religious Objection: Any represented employee 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, have sums equal to membership fees deducted and paid to one of the following charitable organizations as chosen by the employee: Berkeley Firefighters Random Acts; Alisa Ann Ruch Burn Foundation; or Firefighter Cancer Support Network. Proof of payments by the employee shall be made on a monthly basis to the City as a condition of continued exemption from the requirement of financial support to the Union.

Deductions: The City shall deduct, once monthly, the amount of the membership fee or service fee deductions, as appropriate, from the regular periodic payroll warrant of each City employee and forward the amount to the Union, save amounts deducted due to religious objectors which amount shall be forwarded to the designated charitable organization. An exception from these deductions shall exist in situations when an employee is in a leave without pay or other unpaid status such that there is no payroll amount from which to make a deduction. The City shall continue to deduct insurance premiums and other such deductions as may be specified by the employee in accordance with past practice.

Membership: All employees 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 ninety (90) 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).

Indemnification: The Union shall hold the City harmless, and shall fully and promptly reimburse the City for any fees, costs, charges or penalties incurred in responding to or defending against any claims, disputes, challenges, whether formal or informal, which are actually brought, or attempted or threatened to be brought, against the City or any of its agents or employees, in connection with the interpretation, application, administration or enforcement of any provision of this

Agency Fee agreement. Such reimbursement shall include, but not be limited to, court costs, litigation expenses, and attorneys' fees incurred by the City. The City shall have the right to be represented by its own attorney in any action in which it is a named party to the action.

2.3 The City and the Association recognize this Memorandum of Understanding (see Glossary) as a binding and legal contract between the two parties.

2.4 The City shall print the new Memorandum of Understanding in booklet form and have it ready for distribution within sixty (60) days of final ratification. The City shall provide the Association with one hundred fifty (150) copies of the booklet to assure availability for each member of Unit B, plus twenty-five (25) extra copies for new employees.

### **SECTION 3: EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION STATEMENT**

The Association certifies that it has no restriction on membership based on race, color, creed, ethnicity, ancestry, religion, marital or domestic partner status, gender, age, sexual orientation, national origin, political affiliation, 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. 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.

Neither the City nor the Association shall discriminate against any employee covered by this Memorandum of Understanding in a manner which would violate any applicable laws because of race, creed, religion, marital status, color, religion, political affiliation, sexual orientation, sex, national origin, disability or age.

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 the Department of Human Resources, or by contacting the City's Equal Employment Opportunity and Diversity Officer.

**SECTION 4: ASSOCIATION REPRESENTATIVES**

- 4.1 The City shall allow representatives of the Association, subject to the conditions set forth in Sections 4.2 and 4.3, 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 Memorandum of Understanding in the future.
- 4.2 With respect to the meet-and-confer process, three (3) Association representatives shall be the maximum number who will be allowed concurrent time off, except that for negotiations over language in the Memorandum of Understanding, the City will allow three (3) additional employees (for a total of six [6]) to participate if the Association makes a good faith effort to minimize out-of-service time to the employees involved. For disputes as defined in Section 4.1, the maximum number allowed concurrent time off shall be two (2).
- 4.3 The representatives shall advise their chief officers through the chain of command twenty-four (24) hours in advance before leaving their work assignments, except for emergency situations which require the immediate attention of said representative, and, in such situations, the notice shall be given at the earliest possible time. In no case shall an employee leave his/her job without the approval of a chief officer and such approval of chief officer shall not be unreasonably denied.
- 4.4 Per the requirements of the Fire Fighters' Bill of Rights Act, an employee who requests such may have an Association representative present at any meeting with chief officers and/or the Fire Chief which could result in punitive action of that employee. The Association will make a good faith effort to minimize the response time to an employee's request for representation.
- 4.5 When it is necessary to conduct an Executive Board meeting on shift, the on duty chief shall give his/her full cooperation for company movement and short assignment of personnel to assure that Executive Board members on duty may attend the meeting. Executive Board meetings should not exceed two (2) per month in most circumstances.
- 4.6 The President and/or two officers of the Association will meet with the City Manager and Fire Chief every two months to foster communication.

**SECTION 5: UNION ACTIVITIES TIME OFF**

- 5.1 The Association will be entitled to up to four hundred ten (410) hours paid leave of absence each year to be granted collectively to employees who are designated representatives of the Berkeley Fire Fighters Association, subject to the approval of the Fire Chief or the Chief's designee, 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/her discretion approve additional Association requests. Time spent on such Association business will be recorded with the appropriate code on time sheets.
- 5.2 The City agrees to allow the Berkeley Fire Fighter Association's President or his/her authorized representative no more than four (4) hours off for the purpose of attending funeral services of active and retired Berkeley Fire Fighters and/or their spouses' funeral. Such time off is effective when the President or authorized representative is on duty at the time of the funeral.
- 5.3 At the request of the Association President or his/her designee, the Fire Chief will allow the use of an apparatus for line of duty funerals in the greater Bay Area (i.e., not to exceed 8 hours outside the City). The Fire Chief may also allow, upon request, the use of an apparatus for a retiree funeral. It is understood that the staffing of the apparatus for the line of duty funerals and/or retiree funeral will be by volunteers who will not be compensated.

**SECTION 6: PILOT PROJECTS**

During the term of this Understanding, the parties may mutually agree to discuss changes in working conditions and operational practices that may conflict with provisions of the Understanding and/or departmental operating procedures. Such discussions are not intended to conflict with Section 8 (Finality of Recommendations) of this Understanding. It is the intent of the parties to be able to mutually agree to try out these changes through "pilot projects" of up to one year's duration to determine how these changes work on a day-to-day basis. If such "pilot projects" are mutually agreed to by the parties, they will be implemented during the term of the Understanding. However, both parties to the Understanding reserve their respective rights under the terms and conditions of this Understanding. The parties also recognize that changes in working conditions which conflict with the Understanding and/or departmental operating procedures may trigger a duty to bargain. If such duty to bargain is triggered, the parties reserve their respective rights under Section 8 (Finality of Recommendations).

## **SECTION 7: SEVERABILITY OF PROVISIONS**

This Memorandum of Understanding is subject to all current and future applicable federal and states laws and regulations, and all lawful rules, policies, and regulations of the City of Berkeley in effect at the time this MOU is adopted, except as expressly modified by this MOU. If any provision of this Memorandum of Understanding is determined to be in conflict or inconsistent with any laws, rules, and/or regulations or is otherwise held to be invalid or unenforceable, such provision may be suspended or superseded, and the remainder of this Memorandum of Understanding shall continue in full force and effect. If any provision is invalidated, the parties shall meet and confer in good faith regarding a replacement provision.

Should any City rule, regulation or policy conflict with the MOU, the MOU shall supersede.

## **SECTION 8: FINALITY OF RECOMMENDATIONS**

The recommendations set forth in this Memorandum of Understanding are final. No change or modifications shall be offered, urged, or otherwise presented by the Berkeley Fire Fighters Association or the City Manager prior to the beginning of negotiations for the contract that will go into effect when this one has expired; provided however, that nothing herein shall prevent the parties to this Memorandum of Understanding from meeting and conferring and making modifications herein by mutual consent. No such amendments to this Memorandum of Understanding shall be effective until adopted by City Council and ratified by the Association.

This Memorandum of Understanding shall supersede all existing memoranda agreement between the City and the Association.

## **SECTION 9: DURATION**

The term of this Memorandum of Understanding shall commence when the terms and conditions set forth herein have been adopted by the City Council but in no event shall this Memorandum of Understanding be effective prior to 0001 hours, ~~June 18, 2017~~July 1, 2020. This Memorandum of Understanding and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at 2400 hours ~~June 27, 2020~~June 30, 2021, the last day of the last full pay period in June ~~2020~~2021.

**ARTICLE 2 - SALARIES, HOURS OF WORK AND  
COMPENSATIONS ISSUES**

**SECTION 10: SALARIES**

10.1 Salaries are set according to the classifications and salary ranges assigned to those classifications as listed in the attached Exhibit "A" to this MOU. ~~Effective the first full pay period following Council approval of this 2017-2020 MOU, represented employees still employed in that pay period shall receive a four percent (4.0%) wage increase.~~In recognition of the City's anticipated revenue shortfall for FY 2021 resulting from the COVID-19 pandemic, the City proposes zero (0%) across the board wage increase for the term of this agreement. This is in order to aid the City's ability to continue routine services and minimize fiscal impacts for employees.

~~10.1.1 Effective the first full pay period after Council approval, employees shall receive a one time \$2,000.00 stipend.~~

~~10.1.2 Effective the first full pay period in July 2019 employees shall receive a further two percent (2.0%) wage increase.~~

10.2 Fire Fighter Step Increases: Employees in the rank of Fire Fighter will be placed in the salary schedule reflected in Exhibit "A" according to the chart shown below based on the employee's anniversary date subject to the exception in Section 10.5 for extended unpaid leaves of absence. The time necessary to move from one salary step is expressed in months of service on the chart below:

| <b>Classification</b> | <b>Length of Service</b>                          | <b>Salary Step</b> |
|-----------------------|---------------------------------------------------|--------------------|
| Fire Fighter          | 0 to 6 months                                     | Step A             |
| Fire Fighter          | Beginning month 7 through completion of month 12  | Step B             |
|                       | Beginning month 13 through completion of month 18 | Step C             |
| Fire Fighter          | Beginning month 19 through completion of month 24 | Step D             |
| Fire Fighter          | Beginning month 25 through completion of month 36 | Step E             |
| Fire Fighter          | Beginning month 37 through completion of month 48 | Step F             |
| Fire Fighter          | Beginning month 49 through completion of month 60 | Step G             |
| Fire Fighter          | Beginning month 61 through completion of month 72 | Step H             |
| Fire Fighter          | Beginning month 73 and subsequent months          | Step I             |

10.2.1 All Other Step Increases: Employees in the rank of Fire Apparatus Operator, Fire Prevention Inspector, Deputy Fire Marshal, Fire Captain

I/II, and Paramedic Supervisor I will be placed in the salary schedule reflected in Exhibit “A” according to the chart shown below based on the employee’s anniversary date, subject to the exception in Section 10.5 for extended unpaid leaves of absence. The time necessary to move from one salary step is expressed in months of service on the chart below:

| Classifications                                                                                                        | Length of Service                                    | Salary Steps |
|------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|--------------|
| Fire Apparatus Operator, Fire Prevention Inspector, Deputy Fire Marshal, Fire Captain I/II, and Paramedic Supervisor I | 0 through completion of month 48                     | Step B       |
| Fire Apparatus Operator, Fire Prevention Inspector, Deputy Fire Marshal, Fire Captain I/II, and Paramedic Supervisor I | Beginning of month 49 through completion of month 60 | Step C       |
| Fire Apparatus Operator, Fire Prevention Inspector, Deputy Fire Marshal, Fire Captain I/II, and Paramedic Supervisor I | Beginning of month 61 through completion of month 72 | Step D       |
| Fire Apparatus Operator, Fire Prevention Inspector, Deputy Fire Marshal, Fire Captain I/II, and Paramedic Supervisor I | Beginning of month 73 and subsequent months          | Step E       |

10.2.2 An employee who promotes to any higher classification covered by this Memorandum of Understanding will be placed at the appropriate salary step based on length of service with the Berkeley Fire Department.

**10.3 Salary Placement and Entry – Lateral Incentive**

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" for the appropriate date of appointment. The minimum rate for the class shall apply to employees upon original appointment of the position, except in cases of lateral entry. For the purpose of this Section a “lateral entry appointment” shall be defined as a person who has completed the initial probationary period as a Fire Fighter or similar equivalent classification in a paid organized Fire Department, transfers from another agency, and completed two (2) years of full time continuous service in a paid organized Fire Department. Lateral entry appointment may be made for the classification of Fire Fighter, including Fire Fighter Paramedic, only. The Fire Chief may recommend to the Director of Human Resources and City Manager that a lateral entry appointment be made at a salary step or pay schedule above the entry level that is commensurate with the appointee’s years of service as a sworn firefighter with a paid organized Fire Department.

10.4 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.

- 10.5 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 for employees assigned to a forty hour work week or two hundred eighty eight hours for employees assigned to a fifty six hour work week. If the employee is off the payroll for one hundred sixty consecutive hours for employees assigned to a forty hour work week or two hundred eighty eight hours for employees assigned to a fifty six hour work week, the total amount of time off shall be made up before the employee shall be entitled to such pay increase, except that employees on approved parental leave or military leave are exempt from such requirement. Employees must receive an overall evaluation of "meets requirements" in order to advance to the next step in the salary range.
- 10.6 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 any employee occupying a position in a class for which the salary rate or range is reduced, shall continue to receive his/her present salary. Such salary shall be designated as "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 10.2.
- 10.7 Payment of salaries herein established shall be bi-weekly. Each pay period shall begin at 8:01 a.m. Sunday, up to and including 8:00 a.m. Sunday, 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.
  - 10.7.1 The City has no plans to change the practice of paying employees their annual salary in equal amounts each pay period but if it should become unfeasible to continue this practice, the City will meet and confer with the Association regarding changes to the present practice.
    - 10.7.1.1 For employees on a forty (40) hour week, the hourly rate shall be the quotient of the annual salary (12 times the monthly salary) divided by 2,080 hours carried to four (4) decimal places.
    - 10.7.1.2 For employees on a fifty-six (56) hour week, the hourly rate shall be the quotient of the annual salary (12 times the monthly rate) divided by 2,912 hours carried to four (4) decimal places.
    - 10.7.1.3 The FLSA work period is defined as twenty-four (24) days with an FLSA overtime threshold of 192 hours.



**10.8 Matrix of Comparable Cities**

The City and Association agree to compare and discuss the total compensation of the following agencies as part of the next MOU negotiations: City of Alameda, County of Alameda, County of Contra Costa, City of Daly City, City of Fremont, City of Hayward, Livermore-Pleasanton Fire Department, City of Oakland, City of Palo Alto, City of Richmond, City of Vallejo and City of San Mateo. The City reserves the right to modify these survey agencies, in its discretion, no later than the first MOU negotiations meeting.

**10.9 Emergency Medical Technicians**

All Unit B classifications are required to maintain current EMT certification as a condition of employment.

Effective January 4, 2015, the City will provide EMT pay differential of four percent (4%).

**10.10 Hazardous Materials Response Team**

10.10.1 The City will provide Hazardous Materials Specialist training as needed to maintain a Hazardous Materials Response Team. Upon successful completion of the required Hazardous Materials Specialist Course, a Hazardous Materials Team member, who is regularly assigned, shall receive an additional differential of five percent (5%) to base pay. This Hazardous Materials Response Team 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.

10.10.2 This five percent (5%) Hazardous Materials Response Team member differential shall become effective the closest pay period following completion of the course. Employee is required to make a three (3) year commitment to the team. The duration of the assignment may be for up to three years, but the Fire Chief retains discretion to end the assignment at any time based on operational needs. However, the Hazardous Materials Team shall operate with no less than 12 members across three shifts, except the Chief shall have a reasonable time period to fill vacancies to comply with this requirement, and shall provide notice to BFFA when the team may temporarily have fewer than 12 and the estimated duration of time. The five percent (5%) differential will cease when Employee stops participating or is removed from the Team.

**10.11 Water Rescue Swimmer Differential**

The City will pay a two and one-half percent (2.5%) of base pay differential to persons assigned to serve as part of the Water Rescue Swimmer Team. Initially,

the Team will consist of persons serving as a member of the Team at the time the Council approves this MOU. At all times there will be a minimum of two (2) rescue swimmers assigned between the following companies: Engine 1, Medic 1, Engine 2, Truck 2, Engine 5, Truck 5, Medic 5, and Engine 6. The Fire Chief has the discretion to move personnel to accommodate this minimum staffing requirement.

Through attrition as persons retire, resign, decide not to continue to serve as a member of the team, or fail to maintain proper certification as described further in this Section, the size of the Team shall reduce down to fifteen (15) persons. These grandfathered employee Team members shall be entitled to serve a three (3) year term, assuming they maintain their certification as discussed in the next paragraph.

Employees shall be required to annually and timely pass a swim test administered by the City to be considered a certified Water Rescue Swimmer. Failure to do so shall result in no longer receiving differential pay. Employees will be allowed a second opportunity to get certified within thirty (30) days of failing to timely pass the annual swim test. Failure to do so will result in removal from the Team.

Employees not assigned to the Team who meet and maintain certification may receive the two and one-half percent (2.5%) differential pay when there are fewer than two (2) regularly assigned Team members working a shift, and shall receive this differential pay for the hours they are assigned to work temporarily as a substitute member of the Team. If there are two or more individuals eligible, priority will be given to eligible employees working at Stations 1 or 6, and then thereafter based on Department seniority.

Employees are required to make a three (3) year commitment to the Team. The duration of the assignment may be for up to three (3) years, but the Fire Chief retains discretion to end the assignment at any time based on operational needs, and rotation of someone "off of the team" shall not be deemed disciplinary or punitive or implicate any procedural rights.

#### **10.12 Shift Fire Prevention Inspector**

The Fire Chief may assign one person, regardless of rank, to function as a fire prevention inspector on each fire suppression shift. The duration of the assignment may be for up to three (3) years but the Fire Chief retains discretion to end the assignment at any time. The purpose and scope of the shift fire prevention inspector is to provide assistance with fire investigations, overcrowding issues, for clearance and event inspections, public relations, fire inspections, fire prevention presentations and other duties as may be assigned. Employees assigned as a fire prevention inspector on a fire suppression shift shall receive an additional differential of five percent (5%) to base pay. This Fire Prevention Inspector Premium will be reported to CalPERS as Fire Prevention Assignment Premium.

However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

10.13 All changes in pay rate will go into effect at the beginning of a pay period (see Section 10.7) and stay in effect until the last day of a pay period if they are a result of the following:

- 10.13.1 Application of a cost of living adjustment;
- 10.13.2 Step increases;
- 10.13.3 Retroactive adjustments;
- 10.13.4 Implementation of CalPERS options;
- 10.13.5 Change of employee's status from career to hourly or vice versa;
- 10.13.6 Promotion or demotion;

If the pay rate change is triggered by an event which occurs in the first half of the pay period, the change in pay rate will become effective on the first day of the following pay period. Similarly, the changed pay rate should cease to be in effect on the last day of the pay period during which the employee is no longer eligible if the triggering event occurs during the second half of the pay period; or if the triggering event occurs during the first half of the pay period, the changed pay rate would cease to be in effect on the last day of the preceding pay period.

10.14 For pay purposes of calculating annual pay, the City will utilize the IRS definition of "end of the year" which is the close of the last City pay period for which the payday falls within the calendar year. See Glossary for additional explanation.

### **10.15 Longevity Pay**

Prior to June 19, 2016, the City will provide employees completing twenty four (24) years of service in a classification represented by the Association a three percent (3%) differential beginning with their anniversary date that starts their twenty-fifth (25<sup>th</sup>) year of service, and this differential shall apply to all hours in a paid status. Effective June 19, 2016, this differential shall increase to five percent (5%). This Longevity Pay shall be reported to CalPERS as Longevity Pay Incentive Pay.

### **10.16 Career Development Incentive Program**

Effective the first full pay period in January 2019, the City agrees to pay the following hourly amounts from the first full pay period in January through the last full pay period in December for persons achieving the following levels of combined education, training, and longevity under the Career Development Incentive

Program set forth in a Career Development General Order achieved in the prior calendar year:

- Level I: \$0.085/hour
- Level II: \$0.17/hour
- Level III: \$0.26/hour
- Level IV: \$0.34/hour

These hourly amounts shall be increased by a factor of 1.4 for any full pay periods working a 40 hour per week assignment during the employee's year of eligibility. The specific criteria and applicable procedures for eligibility and payment are set forth in the Career Development General Order. Future changes to the criteria, timing and/or requirements under the Career Development Incentive Program and/or elimination of the Program are subject to applicable meet and confer.

**SECTION 11: 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 Duty Chief of Division Manager. The Duty Chief or Division Manager shall notify the department 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 Deputy Chief. Under payments will be processed as soon as practicable.

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 Deputy Fire Chief. 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. The City and the Association 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 10 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 12: FIRE STAFF PREMIUM DIFFERENTIALS

- 12.1 The Captain assigned by the Fire Chief to perform the duties in the Emergency Medical Services, Office of Emergency Services or Training Division shall receive ten percent (10%) premium pay over base salary. The employee appointed to the position of Deputy Fire Marshal classification shall receive a ten percent (10%) salary increase of the Captain II classification.
- 12.2 An employee assigned in writing by the Fire Chief or his/her designee and approved by the City Manager to a special assignment on a 40-hour week will receive a five percent (5%) Fire Staff Premium Differential above his/her base pay. If the special assignment exceeds one hundred twenty (120) calendar days, then the Fire Staff Premium Differential will be ten percent (10%) above his/her base salary retroactive to the first day of the special assignment. The Fire Staff Premium Differential is determined by the length of the special assignment and not to any specific employee. Employee shall not receive said differentials if Employee is assigned to a 40-hour week for training and/or for modified duty assignment.
- 12.2.1 When a recruit academy is held two (2) recruit training officers will be assigned.

## SECTION 13: BILINGUAL PREMIUM PAY

The Fire Chief may make a Bilingual Premium Pay Differential of two percent (2%) of 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.

The Fire Chief will accept applications from employees wishing to apply for a bilingual differential in the first quarter of each year, or within the first three (3) months of employment. Employees may be tested at the Fire Chief's discretion.

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.

**SECTION 14: ACTING IN HIGHER CLASSIFICATION**

- 14.1 Pay for work in a higher classification shall commence after two (2) hours of work at a higher classification; however, pay for working in a higher classification shall encompass the total time worked in the higher classification. An employee, to receive such pay, must be permanent in the rank immediately below the higher classification, with the only exception that Fire Fighters (in a permanent status) shall be allowed to "act" as a Fire Captain II.
  - 14.1.1 Employees shall only be allowed to act in a higher classification if they are on the current promotional list for the position in which they are to act. If no qualified personnel on the current promotional list are available to act, Minimum Qualification Actors shall be allowed to act in a higher classification. Minimum Qualification Actors must meet all the required qualifications, education, and experience to be eligible to participate in the promotional exam process for the classification in which they are to act. Minimum Qualification Actors must also successfully complete a certification process for the classification in which they are to act, administered by the Division of Training, before they are allowed to act in the specified classification.
  - 14.1.2 Only those individuals who are currently on an active promotion list or who have completed the minimum qualifications task book and have it on file with the City shall be eligible to work in a higher classification. The City shall set the duration a task book shall be valid and the remedial steps a member must take if the member fails an exam, which will be outlined in the "Task Book" General Order.
- 14.2 The temporary assignment to a higher classification referred to herein shall be made at the same salary step in the acting classification as is held in the permanent classification, including the Longevity Pay Plan Range level held in the permanent classification.
  - 14.2.1 For purposes of this section, there will be a distinction between short term and long term acting in a higher classification assignments. Short term acting in a higher classification assignments are those assignments that are expected to be up to but not exceed six weeks duration. Long term acting in a higher classification assignments are those assignments that are expected to be more than six weeks duration.
  - 14.2.2 For short term acting assignments, employees who are on the promotional list will be given priority consideration for acting at their assigned fire station or on their assigned apparatus when the vacancy

occurs on their assigned shift. In the absence of any available actors on the promotional list for a given shift, Minimum Qualification Actors from that shift will be given priority consideration for acting at their assigned fire station or on their assigned apparatus.

- 14.2.3 For long term acting in a higher classification assignments, employees who are on a promotional list or, in the absence of available persons on a promotional list, Minimum Qualification Actors may be assigned from another shift or another station to cover the vacancy and to ensure equal distribution of command and company officers.
- 14.3 An employee assigned to work as a Higher Class Battalion Chief in the fire suppression assignment shall be paid at the Battalion Chief 56 hour per week rate of pay.
- 14.4 In the absence of a Chief Officer assigned as the Fire Marshal for two (2) or more consecutive calendar days, in recognition of responsibility for performing additional duties, the Deputy Fire Marshal shall be paid a differential of ten percent (10%) above the rate of Fire Captain II at the forty (40) hour per week rate of pay. This differential shall be paid from the first day of the absence.
- 14.5 In the absence of a Chief Officer assigned to the Division of Training for five (5) or more consecutive calendar days, in recognition of responsibility for performing additional duties, the staff officer shall be paid a differential of ten percent (10%) above the rate of Fire Captain II at the forty (40) hour per week rate of pay. This differential shall be paid from the first day of the absence.
- 14.6 In the absence of the individual assigned as the Deputy Fire Marshal for two (2) or more consecutive calendar days, in recognition of responsibility for performing additional duties, the Sworn Fire Inspector shall be paid a differential of five percent (5%) above the applicable Sworn Inspector's base salary at the forty (40) hour per week rate of pay. This differential shall be paid from the first day of the absence.
- 14.7 An employee will only be eligible for higher class pay when working.

## **SECTION 15: HOURS & DAYS OF WORK / ALTERNATE WORK SCHEDULE PROGRAM**

Hours and days of work shall be governed by rules established by the City Manager and the Department Head. The present work schedule shall be maintained during the term of this Memorandum of Understanding. In the 10/14 hour (day/night) overtime schedule, employees shall be paid for hours worked.

**15.1 48/96 Work Schedule**

Suppression employees shall work the 48/96 schedule as their regular schedule.

**15.2 48/96 Impacts**

If the Fire Chief determines the 48/96 schedule is causing negative impacts, such as, but not limited to, an increase of vehicle accidents, industrial injuries, sick leave usage, Alameda County EMS unusual occurrences reports, health and safety complaints, quality improvement or assurance issues, performance of duty reprimands, or customer service complaints, the Union agrees to meet with the Fire Chief upon request to discuss concerns, if any, the Fire Chief might have in the future regarding the 48/96 schedule.

- 15.3 The City and the Association share the interest of ensuring responders are well rested and able to make sound decisions during emergency scenarios. Both parties recognize the need to evaluate the potential effects of fatigue secondary to consecutive work hours.

The City and the Association further agree that the Duty Chief shall have the authority to temporarily reassign a transport paramedic to a suppression company for relief purposes whenever the Duty Chief, a Company Officer, or a Paramedic Supervisor I, in his or her sole discretion, deems it necessary.

**15.4 Daylight Saving Time**

15.4.1 **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 for the lost work hour.

15.4.2 **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 14 (Acting in Higher Class) of this MOU.

**SECTION 16: OVERTIME**

- 16.1 Overtime for employees in Unit B covered by this Memorandum of Understanding shall be defined as that time which the employee is required to do work during his/her day off, off-shift, or other scheduled time off during the tour of duty.



- 16.2 The overtime rate shall be one and one-half (1½) times the straight time rate based upon regular monthly salary at the hourly rate to which the employee is entitled under this Memorandum of Understanding at the time he or she works the overtime.
- 16.3 An employee may request compensation for overtime by compensatory time off or by payment. The department head shall consider the employee's preference. Whether the employee shall be compensated for overtime by compensatory time or by payment shall be at the sole discretion of the employee's department head.
- 16.4 For the purposes of this Memorandum of Understanding the term "Compensatory Time" shall mean the same as the term "Due 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 for persons assigned to a forty (40) hour week work schedule. Compensatory time shall not accumulate in excess of one hundred eight (108) overtime hours worked which is the equivalent of one hundred sixty two (162) hours of compensatory time for persons assigned to a fifty-six (56) hour week work schedule.

- 16.4.1 The conversion factor for employees accruing and using compensatory time is as shown below. The intent of the parties is to have the dollar value of the compensatory time 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.
  - 16.4.1.1 Compensatory time 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 compensatory time accrued by the conversion factor of 0.7143.
  - 16.4.1.2 Compensatory time 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 compensatory time accrued by the conversion factor of 1.4.
- 16.4.2 Overtime accumulation in excess of sixty (60) hours for an employee assigned to a forty (40) hour per week schedule or one hundred eight (108) hours for an employee assigned to a fifty six (56) hour per week schedule shall be paid as compensation.
- 16.5 In the event an employee resigns or is terminated, the employee shall be paid for all accrued compensatory time.

- 16.6 For the purpose of computing overtime, the workweek shall be defined as beginning at 8:01 a.m. Sunday morning and ending the following Sunday.
- 16.7 Employees assigned to a position working a regular forty (40) hour week schedule shall receive overtime compensation for all time worked in excess of forty (40) hours per week in that assignment at the applicable 40 hour per week overtime rate for this overtime as provided in Section 16.2. Employees assigned to a 40 hour per week schedule who perform overtime work in suppression shall be paid for this overtime at the applicable suppression overtime rate.
- 16.8 Overtime for activities (i.e., training, CERT classes, community meetings) not related to suppression staffing or emergency callbacks require the Deputy Fire Chief's approval in advance.

**16.9 Call-Back**

- 16.9.1 Employees who are called back to work by the department for normal staffing needs (i.e., during non-emergency times), shall be paid overtime compensation only for actual time worked, commencing upon reporting for duty.
- 16.9.2 **Emergency Call-Back** - an employee who is required to report to work for an emergency will be paid for travel time as well, in accordance with FLSA standards.
- 16.9.3 In any case of emergency call-back when an employee responds, the minimum time for which such overtime compensation shall be paid will be four (4) hours.

**16.10 Overtime Practices**

The Department will adhere to the overtime hiring procedures and policy as stated in the Overtime General Order.

**16.11 Holding Over After Shift Change**

- 16.11.1 At or before 8:00 a.m. on the day of shift termination, the Duty Chief or his/her representative shall notify any personnel who is to be held over to await arrival of replacement personnel. Any personnel not so notified is deemed to have been released at 8:00 a.m.
- 16.11.2 Any personnel so notified who are held over shall be compensated at the overtime rate (see Section 16.2) for any time held over beyond 8:00 a.m.

**SECTION 17: USE OF AUTOMOBILES**

The City Manager shall govern the use of City-owned automotive equipment and privately-owned automotive equipment by such rules and regulations as he/she may establish. Compensation shall be given in the form of a cash allowance in the amount established by the Internal Revenue Service.

**SECTION 18: COURT PAY**

An off-duty employee, who is subpoenaed to appear in court in cases in which the City is a party, or as a witness for criminal acts or civil torts that were witnessed on duty, shall be compensated at one and one-half (1½) times his or her regular straight-time rate for all hours the employee is so ordered to appear.

## **ARTICLE 3 - LEAVES**

### **SECTION 19: VACATION**

- 19.1 A vacation period for employees on a 56-hour week shall consist of three 24-hour shifts (See Glossary), effective July 1, 1970. 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.
- 19.1.1 For employees on the 48/96 schedule, a vacation period for employees on a 56-hour week shall consist of two 24-hour shifts (See Glossary).
- 19.1.2 The City agrees that the present practice of choosing vacation by seniority on each shift shall be continued. Annual vacation picks may be scheduled at any time between January 5 and the last day of February, at the discretion of the Fire Chief. It is understood that the City has the necessity to evenly allocate vacation time throughout the calendar year in order to meet staffing obligations and maintain a manageable overtime liability. Therefore, the City may, after consultation with the Association, but at its sole discretion, schedule vacations on a flexible basis. If assignment of vacations is necessary, the principle of seniority shall prevail insofar as possible.
- 19.1.3 A maximum of up to five (5) vacation slots per shift, shall be allowed for twenty-two (22) vacation weeks. The maximum of four (4) vacation slots per period, per shift shall be allowed for the remainder of the vacation year. Paramedic picks will be included in this number and shall be based on seniority. Up to four (4) paramedics will be allowed off at one time.
- 19.1.4 Not more than three (3) Officers shall be allowed off during a vacation period.
- 19.1.5 Except in cases of emergency declared by the Fire Chief, employees shall not be allowed to work while on vacation. If an employee works on a day when vacation or incremental time off was approved, the number of hours worked will be coded as straight time and the equivalent number of vacation time will be credited.
- 19.1.6 If an employee is allowed to cancel any part of his/her vacation tour or incremental time off, and the vacation period has been fully selected, that vacation or incremental period will be reopened for selection by other members in order of seniority. Fifty-six (56) hour suppression personnel shall not be allowed to cancel less than two (2) shifts of a vacation tour unless another vacation spot exists. If the entire tour or

shift is not selected, the tour or shift(s) shall be opened for incremental time selection. The Duty Chief must announce any cancellation by e-mail for a minimum period of one (1) tour, with the exception that if cancelled vacation notification is made less than twenty-one days in advance. In such case, the Duty Chief may allow selection of the cancelled vacation within one (1) shift.

19.1.7 **Incremental Time Off** - Incremental Time Off is considered time off using vacation, due time, or sick leave bonus. Incremental vacation shall be taken in increments of ten (10) hours (days) from 0800 hours to 1800 hours or fourteen (14) hours (nights) from 1800 hours to 0800 hours.

19.1.8 An employee placed on workers' compensation leave, modified duty, special assignment or sick leave to a forty (40) hour work week shall have his/her vacation tour or incremental time off opened up to the fifty six (56) hour suppression staff in order of seniority. This will be done as soon as it is reasonably determined the member will not be returning to a fifty six (56) hour work week and no later than 1000 hours of the shift prior to the employee's scheduled vacation tour or shift.

19.2 Effective March 1, 2009 the vacation accrual schedule is as follows:

| Years of Service                                                                                             | Vacation Accumulation |           |
|--------------------------------------------------------------------------------------------------------------|-----------------------|-----------|
|                                                                                                              | 56 Hours              | 40 Hours  |
| Through the first five (5) years of service (as provided in Sections 19.5, 19.5.1 and 19.6. below)           | 2 Vacation Periods    |           |
|                                                                                                              | 144 hours             | 80 hours  |
| Six (6) through eleven (11) years of service (as provided in Sections 19.5, 19.5.1 and 19.6. below)          | 3 Vacation Periods    |           |
|                                                                                                              | 216 hours             | 120 hours |
| Twelve (12) through eighteen (18) years of service (as provided in Sections 19.5, 19.5.1 and 19.6. below)    | 4 Vacation Periods    |           |
|                                                                                                              | 288 hours             | 160 hours |
| Nineteen (19 through twenty-four (24) years of service (as provided in Sections 19.5, 19.5.1 and 19.6 below) | 5 Vacation Periods    |           |
|                                                                                                              | 360 hours             | 200 hours |
| Twenty-five (25) and subsequent years of service as provided in Sections 19.5, 19.5.1 and 19.6 below).       | 6 Vacation Periods    |           |
|                                                                                                              | 432 hours             | 240 hours |

19.2.1 **Lateral Entry Vacation Accrual Rate at Time of Appointment:** Subject to the provisions of Section 19.1, an employee appointed on or after October 1, 2006 as a lateral entry appointment as described in the Section 10.3 of the Agreement, shall accrue and be eligible to take Vacation Leave commensurate with his or her years of experience as a paid sworn Fire Fighter, as defined in Section 19.2. However, such leave accrual shall be prospective. Vacation privileges associated with seniority from prior employment in another Fire Department as a Fire Fighter shall not apply in Berkeley.

19.3 Employees shall earn vacation leave according to the following schedule:

| <b>Hours of Vacation Leave Earned For Each Hour of Service</b> |                              |                      |
|----------------------------------------------------------------|------------------------------|----------------------|
| <b>Vacation Periods Earned Per Year</b>                        | <b>For Employees Working</b> |                      |
|                                                                | <b>56 Hours/Week</b>         | <b>40 Hours/Week</b> |
| 2                                                              | .0495                        | .0385                |
| 3                                                              | .0742                        | .0577                |
| 4                                                              | .0989                        | .0769                |
| 5                                                              | .1236                        | .0962                |
| 6                                                              | .1484                        | .1154                |

19.3.1 Each employee shall be entitled to take, during his/her first two (2) full years of City 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.

19.4 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 three (3), four (4), five (5) and six (6) vacation period rate.

19.4.1 Employees working on an intermittent or part-time basis who have worked half-time or more in the preceding twelve (12) months without termination 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.

19.4.2 For the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5) or six (6) vacation period rate, time spent on extended military leave or parental leave shall be counted as time spent in the service of the City.

19.5 Employees can carry over from one vacation year (see Glossary) to the next, no more than eight (8) vacation periods of earned vacation.

19.6 Not later than November 1st of each year, the City will notify each affected employee whose earned vacation is projected to exceed eight (8) weeks by the end of the vacation year (see Glossary). By November 30th, those employees with projected excess vacation will submit to the Deputy Chief a proposal for use of that projected excess vacation prior to the end of the vacation year. An employee who has attained maximum accumulation may be required to take all 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 the Leave Requests General Order and this Memorandum of Understanding.

- 19.7 An employee who is anticipating retirement in the next vacation year will not be forced to use accumulated vacation time in the last year of employment. He/she may request to sell the vacation to the City and the City will honor that request, provided that 1) the employee has filed a CalPERS option form indicating that he/she is planning to retire, and 2) this requirement that the City buy the employee's vacation will be in effect for one (1) year maximum.
- 19.8 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 An 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 for employees assigned to a forty (40) hour work week or two hundred eighty eight (288) hours for employees assigned to a fifty six (56) hour work week shall be entitled to a full vacation. If such an employee is off the payroll for one hundred sixty (160) consecutive hours for employees assigned to a forty (40) hour work week or two hundred eighty eight (288) hours for employees assigned to a fifty six (56) hour work week, the employee's vacation shall be as provided in Sections 19.12, 19.13, 19.14, 19.15 or 19.16.
- 19.10 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 earned vacation periods 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 earned, as the case may be.
- 19.11 Upon termination, extended military leave, or other extended leave of absence without pay, if the employee's vacation balance is positive, such employee, or his or her estate, shall be paid for the excess of credits on the basis hereinafter set forth. If the vacation balance is negative, 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, deferred compensation, accrued floating holidays, holiday pay due, compensatory time due or sick leave, in the listed order of priority.
- 19.12 The basis for such payment by the City or for such reimbursement to the City shall

be as follows:

19.12.1 The employee's regular hourly salary, as defined in the Glossary at date of termination, extended military leave, or other extended leave of absence without pay, multiplied by the excess of vacation leave hours earned or vacation leave hours taken, as the case may be.

19.13 Upon retirement, termination or extended military leave, employees shall be paid off one hundred percent (100%) of all vacation which he or she has earned, banked, or held over.

19.14 Employees shall accrue vacation leave credits for only those hours in which the employee is on the payroll and receiving pay.

### **19.15 Vacation Buy Back**

Vacation buy back shall be done at the time of vacation picks, but prior to the vacation selection process. The buy back shall be done in order of seniority, by shift, similar to vacation selection. Employees have the option to sell some of their vacation back to the City at this time. Employees may sell in increments of one (1) week at a time during each round.

19.15.1 Employees may sell up to half ( $\frac{1}{2}$ ) of their earned vacation, including any vacation carry-over.

19.15.2 For purposes of computing earned vacation, time may be counted up to the end of the second paycheck in February of the current year. Employees will be paid only for vacation time actually earned up to the time of buy back payoff.

19.15.3 Only whole weeks shall be counted for vacation buy back. For example, seven (7) weeks, twenty - one (21) hours would count as seven (7) weeks of earned vacation.

19.15.4 The City will allow up to twenty (20) weeks of vacation buy back per shift for personnel assigned to fire suppression for a given vacation year. Once that number has been reached no further vacation buy back request shall be honored.

19.15.5 Employees will be paid in March for vacation sold back to the City at the beginning of the vacation year, but in no event sooner than the first pay period after the fiscal year's budget is approved.

19.15.6 The vacation buy back provision as provided for in this section applies only to Unit B Personnel assigned to fire suppression and medical response vehicles.



19.15.6.1 Unit B Personnel not assigned to fire suppression and medical response vehicles will be able to sell back vacation leave as provided in Section 19.15.1 and this sell back of vacation will not apply to the twenty (20) week limit set forth in Section 19.15.4 for personnel assigned to fire suppression.

19.15.6.2 The Fire Department, at its discretion, may allow incremental vacation to be taken on short notice, in excess of the maximum number of vacation spots selected, when in the opinion of the Fire Chief or his/her representative, there are extra personnel working who are able to provide relief, and, the employee's absence will have no adverse impact on any departmental, or employee training program or other activity which is scheduled.

19.16 The conversion factor for employees accruing and using vacation leave is as shown below. The intent of the parties is to have the dollar value of the vacation leave 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.

19.16.1 Vacation leave 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 accrued by the conversion factor of 0.7143.

19.16.2 Vacation leave 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.

## SECTION 20: HOLIDAYS

All employees in Representation Unit B shall be paid additional compensation for the holidays hereinafter enumerated at the straight time salary rate based upon their regular monthly salaries. Employees who are regularly scheduled to work forty (40) hours per week will receive eight (8) hours of holiday pay and those regularly scheduled to work fifty-six (56) hours will receive twelve (12) hours of holiday pay. The holidays to which this provision applies are:

- 20.1 New Year's Day
- 20.2 Martin Luther King, Jr. Birthday (3rd Monday in January)
- 20.3 Lincoln's Birthday
- 20.4 Washington's Birthday
- 20.5 \*International Women's Day - March 8 of each year (no time off is given for this

- holiday; only additional compensation is provided.)
- 20.6 Malcolm X's Birthday
- 20.7 Memorial Day
- 20.8 Independence Day
- 20.9 Labor Day (observed on the first Monday in September)
- 20.10 \*Admission Day (no time off is given for this holiday; only additional compensation is provided.)
- 20.11 Indigenous People's Day (observed on the second Monday in October)
- 20.12 Veterans' Day
- 20.13 Thanksgiving Day
- 20.14 The day after Thanksgiving Day
- 20.15 Christmas Day
- 20.16 Any other special holiday as declared by the City Manager

\*If, during the life of this contract, the City agrees to give International Women's Day as a holiday to other City Employees, in addition to the Holidays listed herein, one (1) additional floating holiday will be credited for the Fire Service.

20.17 If any other represented bargaining unit receives an additional holiday above fifteen (15) holidays, the City agrees to grant an additional holiday to the Berkeley Fire Fighters Association.

**20.18 Floating Holiday COVID Leave:** Due to the nature of bargaining unit work, backfill is required so the City will credit these floating holiday hours in the form of a stipend equal to forty (40) hours the first full pay period after Council adoption.

**SECTION 21: SICK LEAVE**

- 21.1 An employee shall be entitled to take sick leave with full pay in case of sickness, disability or serious illness of that employee or within the immediate family of the employee in accordance with the provisions of Sections 21.2 to 21.7 inclusive.
- 21.2 Each employee shall be credited with one (1) sick leave day (see Glossary) with full pay for each month of service, provided that each employee shall be credited with two (2) sick leave days with full pay for each month of service during the seventeenth (17th) year of employment and thereafter.

For purposes of this Section 21 (Sick Leave), a month of service shall mean thirty (30) consecutive calendar days in the case of employees working on a full-time or part-time basis and shall mean one hundred seventy three (173) hours of work in the case of employees working in a forty (40) hour per week assignments or two hundred forty three (243) hours for a fifty six (56) hour per week employees on an intermittent basis. Provided that effective upon the implementation of necessary data processing and programming changes, actual accrual of sick leave will be

based upon those hours in which the employee was on the payroll and receiving pay.

- 21.3 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 half-time basis.
- 21.4 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.
- 21.5 Such sick leave as provided in Section 21.2 when not used shall be cumulative, but the accumulated, unused period of sick leave, beginning in 1990, shall not exceed the following schedule:

| <b>For 56-hour A Week Employees</b>             | <b>For 40-hour A Week Employees</b> |
|-------------------------------------------------|-------------------------------------|
| base - 1800 hrs.                                | base - 1200 hrs.                    |
| 1st year - 1944 hrs.                            | 1st year - 1296 hrs.                |
| 2nd year - 2088 hrs.                            | 2nd year - 1392 hrs.                |
| 3rd year - 2232 hrs.                            | 3rd year - 1488 hrs.                |
| 4th year - 2376 hrs.                            | 4th year - 1584 hrs.                |
| (and so on, as described in the next paragraph) |                                     |

The previously established maximum accumulation level of 1800 hours (1200 hours for 40-hour a week employees) may at the employee's option, be increased by up to 144 hours (96 hours for 40-hour a week employees) each year following the year when the employee reaches 1800 hours (1200 hours for 40-hour a week employees) level.

In each year following that 1800 hour (1200 hour for 40 hour a week employees) 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 their sick leave accumulated base by the 144 hours (96 hours for 40 hour a week employees) 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 144 hours (96 hours for 40 hour a week employees) 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 144 hours (96 hours for 40 hour a week employees) 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 provided in Section 21.2.

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.

- 21.6 All accumulated sick leave shall be canceled when an employee terminates or is terminated, except that all employees hired on or before June 30, 2014 that retire (non-disability) or voluntarily terminate with twenty (20) years of service shall be entitled to receive payment at retirement or termination of unused sick leave days, based on the following schedule:

| Number of Unused Sick Leave Days | Percentage Payout |
|----------------------------------|-------------------|
| 0 - 74 days                      | 38%               |
| 75 - 99 days                     | 41%               |
| 100 - 124 days                   | 44%               |
| 125 - 149 days                   | 47%               |
| 150 and over                     | 50%               |

This pay-out schedule shall also apply to any employee retiring on permanent disability arising out of and incurred in the course and scope of his/her employment with the City. Employees hired on or after July 1, 2014 shall not be eligible for payment of any unused sick leave days.

- 21.7 Sick leave shall not be considered as a privilege which an employee may use at his/her 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. Not more than twelve (12) sick leave days in any calendar year may be taken 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: child or dependent residing in the employee's household or spouse, domestic partner, son, daughter or parent.
- 21.8 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, and no other provision for payment for time off because of 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 In order to receive compensation while absent on sick leave, the employee shall notify the on-duty supervisor one (1) hour prior to the commencement of the employee's assigned shift. The reasons why an employee is off on sick leave is considered to be a matter of some privacy. Therefore, only the type of leave (sick leave or family sick leave,) shall be noted to the Station Officer, and recorded in station and dispatch logs.
- 21.10 The employee must inform the Duty Chief or Division Manager as to the nature of the illness. This is to be done via e-mail in a short format no later than two (2) hours after the employee reports for work. Records of such information will be kept confidential within the Fire Department office. The Duty Chief or Division Manager may use such information to initiate further action as circumstances or details warrant.
- 21.11 If an illness or injury is anticipated to continue for more than two (2) 24-hour shifts, it shall be reported immediately to the Duty Chief or Division Manager via telephone.
- 21.12 An employee who is granted a leave of absence without pay and who is off the payroll for less than two (2) pay periods shall receive earned sick leave credit. If an employee is off the payroll for two (2) or more successive pay periods, the employee shall not earn sick leave credit for each two (2) successive pay periods that he or she is off the payroll.
- 21.13 The City may establish a reasonable program for the control of abuse of sick leave and absenteeism, subject to Association review and comment.
- 21.14 Accumulated unused sick leave which has been canceled by reason of any employee's termination shall be credited back to such employee if he or she returns to City of Berkeley employment within two (2) years of such termination.
- 21.15 The City and Association agree that for every six (6) months of uninterrupted non-use of sick leave, a 40-hour per week employee will receive eight (8) hours of bonus time and a 56-hour per week employee will receive twelve (12) hours of sick leave bonus time. A Workers Compensation leave of absence from work pursuant to workers' compensation is counted as an absence from work in the same manner as sick leave for the purpose of this bonus, except for partial day absences due to a prescribed follow-up physical therapy or medical appointment (Payroll Code M0) for a Workers' Compensation claim which absences shall not disqualify an employee from the sick leave bonus described in this paragraph. Such bonus time can be used for any leave purpose covered by this Memorandum of Understanding and may, in addition, be used as emergency personal leave.

The Department shall track sick leave bonus time separately. Sick leave bonus time accrual will not exceed 300 hours plus the current calendar year accrual. At the end of the calendar year, excess sick leave bonus time will be converted to vacation leave and the rules regarding maximum vacation leave accrual will apply.

21.16 The use of sick leave bonus time for emergency personal reasons shall not interrupt the earning cycle of sick leave bonus as long as the time being requested is not for use as sick leave or family sick leave. Requests for emergency personal time off shall be directed through the Company Officer to the Duty Chief or Division Manager. Such leave time may be taken in one (1) hour increments; however, the Assistant Chief shall be advised of the expected time of return to work as soon as possible and in no case later than four (4) hours from the time reported off. Upon the return of the employee, the Duty Chief or Division Manager may require a written explanation of the circumstances.

21.17 The conversion factor for employees accruing and using sick leave or sick leave bonus time is as shown below. The intent of the parties is to have the dollar value of the sick leave or sick leave bonus time 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.

21.17.1 Sick leave or sick leave bonus time 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 sick leave or sick leave bonus time by the conversion factor of 0.7143.

21.17.2 Sick leave or sick leave bonus time 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 sick leave or sick leave bonus time accrued by the conversion factor of 1.4.

## **SECTION 22: WORKERS' COMPENSATION**

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.

## **SECTION 23: FUNERAL LEAVE**

23.1 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 48 hours for employees assigned to the fire suppression schedule and 40 hours for employees on a 40 hour per

week work schedule. 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, aunt, uncle, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and grandchildren or dependent residing within the household.

23.2 Leave of absence with pay, because of death in an employee's immediate family, is allowed solely for the purpose of attending funeral and memorial services, 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.

**23.3 Discretionary Approval:**

An employee may submit a request for additional time off as vacation or compensatory time to adjust to the death of a family member.

**SECTION 24: MILITARY & MARITIME LEAVE**

Military and Maritime Leave shall be governed by the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), regulations implementing USERRA and the California Military & Veteran's Code.

**SECTION 25: PARENTAL LEAVE**

25.1 A continuous leave of up to one (1) year will be granted to any employee with one (1) [2080 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 legal adoption of a child who is five (5) years or younger, providing that:

25.1.1 An employee wishing to exercise his/her rights under this provision must provide the City with at least thirty (30) day notice prior to the anticipated commencement date of the parental leave, and that one (1) 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.

25.1.2 The employee, at his or her option, may request that all or any portion of sick leave days (see Glossary) or vacation leave days (see Glossary) or other accumulated compensatory time 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 vacation during the leave. In the event both parents are employed by the City, nothing in Administrative Regulation 2.4 (Family Care Leave) shall prohibit both employees from taking simultaneous parental leave.

- 25.1.3 During approved parental leave, after all earned leaves are exhausted, the City agrees to maintain life and health insurance coverage for twelve (12) months subject to any regular participation requirement of the employee. Thereafter the City agrees to continue coverage for the employee at the employee's expense.
- 25.1.4 The foregoing leave shall be granted upon medical certification of pregnancy or the presentation of legal evidence of adoption.
- 25.1.5 Approved Parental Leaves shall not be deducted from the employee's seniority service date.
- 25.1.6 Parental leave may be taken intermittently upon advance mutual agreement between the employee and department director.

**SECTION 26: LEAVE OF ABSENCE WITHOUT PAY**

- 26.1 Upon the 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) leave days (see Glossary). No leave without pay shall be granted for more than fifteen (15) leave 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.
- 26.2 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.

**SECTION 27: JURY DUTY LEAVE**

- 27.1 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 jury service as defined in the Glossary. The employee shall keep any payment received for jury service, including mileage reimbursement, upon submittal of proof of jury service.
- 27.2 Employees who receive compensation for jury service during off-shift hours shall



not be required to assign such compensation to the City. Employees shall not lose pay for adhering to court established rules pertaining to jurors not working on days they perform jury duty. The City may require written instructions from the Court.

**ARTICLE 4 - HEALTH AND WELFARE BENEFITS**

**SECTION 28: MEDICAL, DENTAL & LIFE INSURANCE**

**28.1 Medical Insurance:** The City will maintain life and health insurance during parental leave, as provided in Section 25.1.3.

**28.2 Medical Cash in Lieu**

Effective January 1, 2014, the cash in lieu payment to employees who show proof of alternate coverage will be a flat dollar amount equal to the amount of the Kaiser employee only rate as of January 1, 2014 (\$560.72).

**28.3 Dental Coverage**

The City shall provide a dental care program for employees, spouses, domestic partners and dependents. The City shall pay dental coverage to 90% of the Bay Area Usual, Customary and Reasonable charges. Effective January 1, 2007, the maximum annual coverage will increase from \$2,500 to \$3,000 and the lifetime orthodontia limit will increase from \$2,500 to \$3,000.

**28.4** 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, a prorated portion of the health and dental insurance premiums.

**28.5 Life Insurance**

Effective with the beginning of the first month after Council approval of this Memorandum of Understanding, the City shall increase the term life insurance to \$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 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.

**28.6 Replacement Health Plan Meet and Confer:**

The Union agrees to meet with the City during the term of this MOU in a timely fashion following a City request, regarding whether the Union will agree to meet and confer regarding how the City can avoid potential 2015 Affordable Care Act (ACA) excise tax obligations and on a new and/or replacement health plan or plans and other methods to reduce the cost of health benefits.

**SECTION 29: RETIREE MEDICAL COVERAGE**

29.1 Effective January 1, 2001, for employees who retire on or after July 1, 1997, the City will assist in the payment of medical insurance payments for the retiree and/or surviving spouse/domestic partner by making payment directly to the medical insurance provider. The maximum amount the City contributes toward the payment of medical premiums is described below and is based on the combination of the following factors:

- 29.1.1 the years of service of the employee at time of retirement
- 29.1.2 whether the employee is eligible to participate in Medicare
- 29.1.3 the annual increase of 4.5% on the amount the City will contribute toward the payment of the medical premium

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

| <b>Years of City Service to be Completed</b> | <b>Percentage Paid by City</b>                                                                       |
|----------------------------------------------|------------------------------------------------------------------------------------------------------|
| 10 years of service                          | City to pay 25% of either the Health Net Senior Advantage or Health Net Standard rate as applicable  |
| 15 years of service                          | City to pay 50% of either the Health Net Senior Advantage or Health Net Standard rate as applicable  |
| 20 years of service                          | City to pay 75% of either the Health Net Senior Advantage or Health Net Standard rate as applicable  |
| 25 years of service                          | City to pay 100% of either the Health Net Senior Advantage or Health Net Standard rate as applicable |

29.2 For employees who are not eligible for Medicare, the City will assist the retiree and/or surviving spouse or domestic partner in the payment of the medical insurance premium as follows:

- 29.2.1 Effective January 1, 2001, each month after the employee retires, the City will pay directly to the health care service provider an amount equal to the Health Net Standard premium rate which is \$387.47 for two party coverage for the retiree and spouse or domestic partner or \$194.41 for single party coverage. 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 or 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.
- 29.2.2 Effective each January 1 that follows, the base rates shall be increased by 4.5%. The employee or his/her surviving spouse or domestic partner shall pay the difference between the amount the City contributes toward payment of the premium and the actual premium cost.

29.3 For employees or retirees who reach age 65 and are eligible for Medicare, the City

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

- 29.3.1 Effective January 1, 2001, each month after the employee retires and reaches age 65, the City will pay directly to the health care service provider an amount equal to the Health Net Seniority Plus premium rate which is \$315.40 for two party coverage for the retiree and spouse or domestic partner or \$157.70 for single party coverage. 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 or 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.
- 29.3.2 Effective each January 1 that follows, the base rates shall be increased by 4.5%. The employee or his/her surviving spouse or domestic partner shall pay the difference between the amount the City contributes toward payment of the premium and the actual premium cost.
- 29.4 For the purposes of this section a "Retiree" is anyone who is vested in CalPERS, has reached the age of 50 for classic employees or age of 57 for new members as defined in Section 59 of this MOU, and has chosen to separate from the City. A retiree is also anyone, regardless of age, who receives a retirement benefit (disability or industrial disability) from CalPERS.
- 29.5 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. The City has no present intention, nor any proposal under consideration, to remove retirees from eligibility to participate in the City's group health and medical plan. Should such a proposal receive future consideration, the Association will be notified in advance and shall be afforded the opportunity to discuss such proposal.
- 29.6 Retiring employees may obtain other health care coverage at his or her own initiative. The retiring employee who selects other health care coverage must provide proof of alternate coverage at the time and in the form and manner required by the third party administrator. The third party administrator will pay up to the applicable amount set forth in this Section to the health care service provider.
- 29.7 For employees who retire on or after July 1, 2006 and have not reached the age of 65 and become eligible for Medicare, the City will assist in the payment of medical insurance payments for the retiree and/or surviving spouse/domestic partner until the death of both by making payment directly to the medical insurance provider. On July 1, 2006, the City will increase the amount the City contributes from \$242.26 per month (single party) and \$482.86 per month (two party) to

\$327.76 per month (single party) and \$653.86 per month (two party). Effective each January 1 that follows, the base rates shall be increased by 4.5%. The employee or his/her surviving spouse or domestic partner shall pay the difference between the amount the City contributes toward payment of the premium and the actual premium cost.

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

| Years of City Service to be Completed | Percentage Paid by City                                               |
|---------------------------------------|-----------------------------------------------------------------------|
| 10 years of service                   | City to pay 25% of the Kaiser single or two-party rate as applicable  |
| 15 years of service                   | City to pay 50% of the Kaiser single or two-party rate as applicable  |
| 20 years of service                   | City to pay 75% of the Kaiser single or two-party rate as applicable  |
| 25 years of service                   | City to pay 100% of the Kaiser single or two-party rate as applicable |

Minimum eligibility is 10 years of service with the City of Berkeley Fire Department.

29.8 The parties will meet and confer in good faith regarding the possibility of the City ~~utilizing a Health Reimbursement Account for retired persons not yet Medicare eligible. providing two party premium assistance reimbursement for retirees who are Medicare eligible and their spouse/domestic partner who are on two separate plans.~~ The parties agree that the first meeting shall be no later than sixty (60) days following Council ~~approval~~ adoption of this MOU.

**SECTION 30: 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. Termination pay means pay due to an eligible career benefited employee from the City on account of termination of his/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 5 - TERMS AND CONDITIONS OF EMPLOYMENT**

### **SECTION 31: PROBATIONARY PERIOD**

- 31.1 Original appointments from employment lists for the classification of Fire Fighter/Fire Fighter Paramedic shall be tentative and subject to a probationary period within a period of two (2) years of actual service. Probationary employees who are granted parental leave or 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. Probationary employees who are granted military leaves of absence shall complete the balance upon their return to City service. No provision of this Section 31 (Probationary Period) shall be interpreted to preclude the City from establishing new classifications that may require probationary periods of varying lengths.

For probationary employees originally appointed to the class of Fire Fighter/Fire Fighter Paramedic, City of Berkeley Performance Appraisal Report shall be made at the completion of the Fire Academy, six (6) months after the Fire Academy, twelve (12) months after the Fire Academy, and prior to ten (10) days before the end of the probationary period.

Original and promotional appointments to classes of Fire Captain II, Fire Prevention Inspector, Deputy Fire Marshal, Paramedic Supervisor I, and Fire Apparatus Operator, shall be tentative and subject to a probationary period of one (1) year of actual service.

- 31.2 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.
- 31.3 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 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.

### **SECTION 32: PROMOTIONS/EXAMINATIONS & FILLING OF VACANCIES**

#### **32.1 Eligibility for Promotion**

- 32.1.1 Insofar as is practical 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.
- 32.1.2 To be eligible for promotion, an employee must have completed his/her probationary period at each level before they are allowed to participate in an examination for the next highest classification, with the sole exception that a Fire Fighter wishing to take the examination for the classification of Captain II shall not be required to hold the classification of Fire Apparatus Operator. The Fire Captain II classification specification will be modified to reflect this provision.
- 32.1.3 The experience related qualification requirements for Captain II must be attained with the Berkeley Fire Department.

**32.2 Development of Examinations**

Examinations will be developed with the assistance of qualified persons in the subject matter being tested. The job announcement for promotional examinations will be reviewed by Human Resources, the Fire Chief or his or her designee, and Association representatives.

**32.3 Scheduling & Announcing Examinations**

- 32.3.1 Regular tests shall be given for all ranks including entry level personnel. Testing for entry level personnel shall take place at least every three (3) years and will, to the extent feasible, be administered within the provisions of a contract that may be negotiated between the City of Berkeley and the Joint Apprenticeship Committee (JAC).
- 32.3.2 The City will make a good faith effort to meet the following test schedule and if deviation from the goals becomes necessary, the City will provide the Association with written reason or reasons for the deviation.

| TEST                   | CYCLE BEGINS             | QUARTER FOR TEST | INTERVAL BETWEEN TEST    |
|------------------------|--------------------------|------------------|--------------------------|
| Apparatus Operator     | Odd Years                | Second Quarter   | 2 years                  |
| Captain                | Even Years               | Third Quarter    | 2 years                  |
| Paramedic Supervisor I | Even Years               | First Quarter    | 2 years                  |
| Battalion Chief        | 2018 and then Even Years | First Quarter    | 2 Years starting in 2018 |
| Assistant Chief        | 2018 and                 | First Quarter    | 2 Years starting in 2018 |

|  |                    |  |  |
|--|--------------------|--|--|
|  | then Even<br>Years |  |  |
|--|--------------------|--|--|

32.3.3.1 The Fire Chief will make every reasonable attempt to send internal notice of a promotional examination by Department bulletin or via e-mail sent to all represented employees on the date the application period opens, which shall be no less than sixty (60) calendar days in advance of the written test date.

32.3.3.2 Promotional examination announcements shall include the following information: identification of all component parts to the exam; type of exam; (e.g., multiple choice, true/false); and on scoring methodology (See Glossary). A study list shall be included in each promotional examination announcement.

32.3.3.3 The Association and the City of Berkeley agree to form a Joint Apprenticeship Committee for the Fire Department. The Committee shall include at least two (2) members of the Association, and two (2) representatives from Fire Administration plus alternates as may be designated by each party.

**32.4 Accommodating Employees Taking Examinations**

The Fire Department will provide relief for employees taking examinations for promotion if they are scheduled for duty during the examination.

**32.5 Questions & Protests about Examinations**

All questions regarding the examination will be directed to the Human Resources Analyst in charge of recruitment.

32.5.1 After the conclusion of the written examination for promotional positions represented by the Association, a protest period will take place. During the protest period, a written test participant will be allowed an amount of time equal to the time allowed for the test to review the written examination and the test participant's individual answer sheet with incorrect responses marked.

32.5.2 A Written Question Protest Review Committee shall be convened at the conclusion of the protest period. The Written Question Protest Review Committee shall have access to the written test and the answer key. The purpose of the Written Question Protest Review Committee is to review the written protests and determine whether a test question should be discarded or the answer re-keyed.

32.5.3 There will, if the Association so desires, be a member of the Association



assigned by the Association Executive Committee on the Question Protest Review Committee as established by the Chief.

32.5.4 The Human Resources Department will provide the Fire Department with a list of the protested questions. The Fire Department will post a list of the numbers of the protests that are upheld and denied. Upon request, a representative of the Protest Committee will discuss the reasons for denial with the protesting employee.

32.5.5 The Human Resources Department, upon request of the employee, will check the accuracy of the scoring of a written examination in the presence of the employee.

### **32.6 Examination Results**

Each candidate in a formal written examination where scores are provided shall be given notice of his or her score. Each candidate shall be given notice of his or her score on each phase of the exam process. The final score used to establish the eligible list with category ranking shall be a standard test score that is calculated using only the test scores of those candidates who successfully complete all phases of the examination.

The Human Resources Department will provide the Fire Chief with a list of applicants, in alphabetical order, who successfully completed the examination process and are eligible for appointment. The Fire Chief will make this list available to supervisors who need this information in order to assign employees to work in a higher class and to Association Officers so that they can monitor the consistency of such appointments with the terms of this Memorandum of Understanding.

### **32.7 Selection**

32.7.1 Following the determination to fill vacancies and the certification of an eligibility list to the Fire Department, the selection by the Department will be made as soon as possible.

32.7.2 Promotional vacancies shall be filled within thirty (30) days when practicable after the vacancy is final, subject to the approval of the City Manager.

32.7.3 Employees shall be considered for promotion based on examination results, previous work performance, previous training and experience, merit, ability, seniority and other job-related criteria.

32.7.4 Where an eligible list exists, and the Fire Chief desires to interview persons on the eligible list for a vacancy, the interview shall be conducted by the Fire Chief or his/her designee with any sworn Chief

Officer or Fire Marshal. The City will arrange for consistent interview panels; i.e., the same individuals as interviewers for all candidates for the particular vacancies. The Association recognizes that the requirement for consistent panels may lead to unavoidable delays in filling positions.

32.7.5 When the City Manager makes an appointment on the recommendation of the Fire Chief after a department level interview, all members interviewed who are not successful at the Department level in being selected, shall be notified by the City Human Resources Department in writing that they were not selected. At the request of the employee, the Fire Chief or a Deputy Fire Chief will meet with the employee to discuss non-selection.

**32.8 The Life Span of a List**

If a list includes two (2) or more eligible candidates on that list, the City will not allow that list to expire more than thirty (30) days before giving a new examination.

**SECTION 33: TRANSFER BETWEEN SHIFTS**

33.1 The present administrative practices shall continue for assuring that the employees on each shift will, as a group, represent a broad range of seniority (i.e., that each shift will include some employees with high and some with low seniority ranking).

A shift balancing meeting will take place each year. The actual shift changes will take place after January 1st of each year. Employees will be notified of transfer of shift by February 1. Actual transfer dates will be completed prior to the implementation of the vacation year. Employees may submit requests for possible shift changes through the chain of command.

When a vacancy is created by a retirement or promotion, the Department shall announce the vacancy through an e-mail to all personnel covered by this MOU. Fire Personnel may submit letters of interest through channels to the Deputy Chief.

The Department may award the position based on seniority at the discretion of the Fire Chief. The Association recognizes that the Fire Chief retains full discretion to place personnel in positions based on the needs of the Department.

The Fire Chief or his or her designee still has the ability to transfer, at other times of the year, personnel based on the needs of the department.

**33.2 Seniority**

33.2.1 The Fire Department shall establish and maintain two (2) seniority lists,

one (1) by total service in the Department and one (1) by time in classification, and they shall be brought up-to-date once a year prior to vacation picks and shall be immediately posted in all Fire stations, and the Fire Prevention Office. Any objections to the seniority lists, as posted, shall be reported to the Fire Chief in written form within ten (10) days.

- 33.2.2 Rank seniority shall be seriously considered in the selection of personnel in assigned fire stations (positions) providing that seniority assignments do not conflict with Department personnel needs, i.e. special qualities or skills assigned to a position.
- 33.2.3 Promotions: If two (2) or more employees have the same promotion date in rank, seniority in the promoted rank at the time of promotion shall be determined based on the selection order made by the Fire Chief.

**SECTION 34: PERFORMANCE EVALUATION**

The City will implement a program of annual performance evaluation. Such evaluation shall be conducted by the employee's immediate supervisor(s) 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.

## **ARTICLE 6 - GRIEVANCE AND APPEAL PROCEDURE**

### **SECTION 35: GRIEVANCE PROCEDURE**

35.1 A grievance is any dispute which involves the interpretation, application, claimed violation, or claimed noncompliance with the provisions of the Memorandum of Understanding between the City and the Association or 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 the City's employees covered by such Memorandum of 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 sole grievance mechanism applicable to employees covered by this Memorandum of Understanding. No matter shall be considered as a grievance under this Section unless it is presented within thirty (30) calendar days after the employee or the Association could reasonably have been aware of events on which the grievance is based. Failure to comply with the time lines of the Grievance Procedure by either party will constitute forfeiture of their position on the grievance. In the event of a forfeiture by the City, the City will comply with the request for resolution. However, the provisions of Section 35.8 (Suspension or Discharge) of this Memorandum of Understanding will apply in the event of forfeiture. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.

### **35.2 Grievances shall be processed in the following manner:**

35.2.1 **Step I: Informal Step:** Any employee who believes he or she has a grievance (and/or the employee's Association representative) shall discuss the employee's complaint with the Deputy Fire Chief. If the issue is not resolved within fifteen (15) calendar days, the employee (and/or the employee's Association representative) may elect to invoke the procedure hereinafter specified by filing a formal grievance.

35.2.2 **Step II: Fire Chief:** Any grievance that has not been resolved at Step I (Informal Step) may be referred to the Fire Chief (or his or her designee) by the grievant (and/or the employee's Association representative). Any such referral shall be in writing to the Fire Chief with a copy to the Human Resources Department, on a grievance form provided by the City (see Exhibit E), and approved by the Association. The written statement shall be a clear concise statement of the grievance, including specific provisions of this agreement and/or City ordinance, rule or regulation, and/or past practice alleged to have been violated, the circumstances involved in the decision rendered at Step I, and the specific remedy sought. Either party shall be entitled to a

personal conference upon request.

The Fire Chief shall communicate a decision to the grievant with a copy to the Association and to the Director of Human Resources in writing within ten (10) working days after receiving the grievance or ten (10) working days from the date of the personal conference, whichever is later, and such action will terminate Step II.

- 35.2.3 **Step III: City Manager:** In the event that the employee (or the employee's Association representative) is not satisfied with the decision at Step II, the employee (or the employee's Association representative) may appeal the decision in writing to the City Manager or his/her designee within ten (10) working days after the termination of Step II.

The written statement shall include a copy of the original grievance, the decision rendered at Step II, and a clear and concise statement of the reasons for the appeal. The grievant or the City Manager or his / her designee shall be entitled to a personal conference upon request within the time limits specified.

The City Manager or his/her designee shall communicate a decision within ten (10) working days after receiving the appeal or ten (10) working days from the date of the personal conference, whichever is later and such decision will terminate Step III.

- 35.2.4 **Step IV: Arbitration:** If the Association is not satisfied with the City Manager's response at Step III- the Association may require that the grievance be referred to an impartial arbitrator, who shall be designated by mutual agreement between the Association and the City Manager. The Association must notify the City Manager in writing within ten (10) working days of receipt of the City Manager's decision that they intend to move the grievance to arbitration.

The fees and expenses of the State Mediation and Conciliation Services arbitrator and the 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. The Association shall provide the City with half of the cost charged by State Mediation to provide the parties with an arbitrator list no later than 30 days following notification to the City Manager that the Association wishes to advance the grievance to arbitration. Failure to timely do so shall result in a waiver of the right to advance the grievance to arbitration.

**35.3 Suspensions or Discharge Arbitration Decisions**

Arbitrator decisions on matters properly before them which pertain to the suspension or discharge of an employee shall be final and binding upon both parties hereto to the extent permitted by the Charter of the City.

**35.4 Non-Disciplinary Arbitration Matters**

Those arbitration decisions on matters properly before them which do not pertain to suspension or discharge shall be in the form of recommendations to the City Manager, who may, within five (5) working 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 court reporter shall not be shared by the Association, and full payment thereof shall be the sole responsibility of the City.

**35.5 Written Reprimand**

Consistent with the Firefighter Bill of Rights Act, an employee 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/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.

Formal letters of reprimand concerning work rules or time and attendance shall be removed from an employee's official files upon request after 18 months provided the employee has maintained satisfactory performance. Letters of reprimand concerning all other subjects shall be removed from an employees' official personnel file upon request after 36 months provided the employee has maintained satisfactory performance.

**35.6 Equal Employment Opportunity (EEO) Program**

Any grievance which in any way affects implementation of the City's EEO program shall not be subject to arbitration. The decision as to whether or not implementation of the EEO program is in any way involved shall be made in the sole discretion of the City Manager. If, in the City Manager's judgment, any grievance involves the EEO program, the EEO & Diversity Officer shall notify the Association to that effect in writing within seven (7) days of the date upon which the grievance is received by the City Manager and, in such notification shall refer

to that section of the EEO 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 EEO & Diversity Officer on the basis of which he/she considers it appropriate to change his /her original determination.

35.7 No arbitrator shall entertain, hear, decide, or make recommendations on the dispute a) unless the Association seeks a determination, or b) if the dispute involves the issue of unit determination, or c) if the dispute involves a question of representation, or d) if the aggrieved employee is not in a classification within the unit represented by the Association.

### **35.8 Suspension or Discharge**

No grievance involving the suspension or discharge of an employee will be entertained unless it is filed in writing with the City Manager within fifteen (15) calendar days of the time at which the affected employee was notified by certified mail. If the City Manager, in pursuance of the procedures outlined in Section 35.2 above, resolves a grievance which involves suspension or discharge, he/she may order payment for lost time or reinstatement with or without payment for lost time.

### **35.9 Compensation Grievances**

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Fire Chief or his or her designated representative for payroll issues within 30 working days from the date when the employee may reasonably be expected to have learned of the alleged compensation violation. If such issues cannot be resolved by the Fire Chief (or in consultation with the Auditor), the Fire Chief will refer the matter to the Director of Human Resources within ten (10) working days of receipt of the grievance. The Director of Human Resources or his or her designee shall have 30 working days to research the issue and provide a written response to the Association and the affected employee. 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 whichever is later. 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 Memorandum of Understanding which has resulted from meet-and-confer process shall be considered as grievances. Any other matters of compensation shall be deemed withdrawn until the meet-and-confer process is next opened for discussion.

If the affected employee is not satisfied with the written decision of the Director of Human Resources or his or her designee, the affected employee will have ten (10) working days to appeal the decision in writing to the City Manager and the grievance will move to Step III of the Grievance Procedure as provided in Section 35.2.4.

35.10 No changes in the Memorandum of Understanding or interpretation thereof (except interpretation resulting from arbitration proceedings hereunder) will be recognized unless agreed to by the City Manager and the Association.



### **35.11 Probationary Employees**

- 35.11.1 Notwithstanding their probationary status, probationary employees have appeal rights for disciplinary actions where the employee's allegation is 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 alleging a violation of his/her rights under Title VII (42 U.S.C. Section 2000e, et. seq.) or the California Fair Employment Practices Act (California Labor Code Section 12900, et seq.) may be pursued only as provided in the City's Equal Employment Opportunity program, which shall be specifically amended to allow probationary employee rights of appeal under that program.
  
- 35.11.2 The grievance procedure is also available to probationary employees for matters other than those related to discharge, discipline, or other performance issues, where the claim is a City breach of agreed-upon wages, hours, working conditions, or discrimination based on Association activity.

### **35.12 Calendar Days**

All references in this Section 35 (Grievance Procedures) to days shall mean calendar day unless otherwise provided.

### **35.13 Association Right to File**

No provisions shall prevent the Association from filing and/or appealing grievances on behalf of the employees represented by the Association.

## **ARTICLE 7 - MISCELLANEOUS TERMS AND CONDITIONS**

### **SECTION 36: UNIFORM ALLOWANCE & DRESS UNIFORM REQUIREMENTS**

#### **36.1 Uniform Allowance**

- 36.1.1 Effective December 1, 2015, the uniform allowance will be increased from \$1,000.00 to \$1,100.00 and is to be paid annually by the first pay period in December thereafter. The entire uniform allowance will be paid to those employees who are on the payroll on December 1 of any year. However, the amount the City contributes toward the uniform allowance is subject to federal and state income tax withholding.
- 36.1.2 The City agrees to advance the sum of \$500.00 to new hires (\$550.00 if hired during or after the first full pay period in December 2015), which shall be used for uniform purchase and which shall then be repayable in two (2) equal yearly installments over the first two (2) years of employment, to be deducted by the City from the uniform allowance of the employee.
- 36.1.3 The uniform allowance shall be paid with a separate check. CalPERS will be deducted for all members in accordance with the provisions of Section 59 (Public Employees Retirement System). The check title shall be "Uniform Allowance". If the purpose of payment is other than uniform allowance then a letter of explanation shall accompany each annual payment.
- 36.1.4 The uniform allowance is for the purpose of purchase and maintenance of station uniforms, and other required or optional garments, as necessary, for the duration of this contract. The City shall continue to purchase turn out gear.

### **SECTION 37: SAFETY COMMITTEE**

- 37.1 The Assistant Fire Chief assigned to the Training and Safety Division shall be the designated safety officer for the department. The Safety Officer shall appoint a safety committee consisting of three (3) individuals on each shift (preferably one (1) complete company). The City's Occupational Safety Officer shall be a standing member of that Committee.
- 37.2 The safety committee shall meet on shift every two (2) months and shall review personal injury reports and reported safety deficiencies and perform follow-up investigations if necessary.

- 37.3 The purpose of the committee shall be to recommend changes based on the reviews or investigations to help avoid future accidents or injuries in the areas looked at.
- 37.4 The committee shall investigate possible short comings in equipment, methods, tactics, and procedures and report their findings to the safety officer who shall forward the committee findings to the Deputy Fire Chief through channels in writing.
- 37.5 The Training Chief shall determine the appropriate action needed to reduce the possibility of similar accidents happening in the future and shall inform the appropriate committee and employee(s) in writing of the actions taken. A copy of the committee findings will be included with the Training Chief's recommendations.

**SECTION 38: EDUCATION/ESTABLISHMENT OF AN ASSOCIATION SPONSORED EDUCATION FUND**

- 38.1 Funding for not less than five (5) Unit B employees to attend the National Fire Academy shall be provided each year. Personnel must be qualified by being in a position to make good use of the information learned for the benefit of the Fire Department, at the discretion of the Fire Chief.
- 38.2 Personnel desiring to attend the National Fire Academy shall submit requests to the Fire Chief no less than three (3) months prior to the beginning of the course. If less than three (3) months are available before the course notifications have been distributed, requests shall be submitted no more than one (1) week after distribution of course notification.
- 38.3 The Fire Chief will not restrict the number of departmental personnel attempting to attend National Fire Academy, Asilomar or other pertinent classes if such attendance involves no cost to the City. Attendance will be subject to the conditions imposed by the National Fire Academy, Asilomar, or other teaching institutions sponsoring the course of instruction. If in the event more personnel attempt to attend National Fire Academy, Asilomar, or other pertinent classes than there are classes available and the teaching institution sponsoring the course request the Fire Chief to limit the number of attendees, the Fire Chief will determine the personnel to attend, based on the needs of the fire service.
- 38.4 Educational funds shall be equally shared except in special circumstances to be determined at the discretion of the Fire Chief.

**38.5 Association Sponsored Education Fund**

On or around July 1<sup>st</sup> of each year, the City shall pay the Association an amount sufficient to fund the Education Fund to \$80,000. The Education Fund is to be used for educational purposes at the sole and exclusive discretion of the Association.

38.5.1 The Association shall manage the Education Fund for the purposes outlined above but shall provide reimbursement of paramedics for completion of CE classes required by the Alameda County EMS Agency.

38.5.2 Personnel attending classes are not eligible for overtime compensation. Reimbursement shall only be provided to members who are off duty.

38.5.3 Of the total amount, \$10,000 annually shall be allocated to support the education and development of firefighter recruits assigned to the Division of Training. These moneys shall be managed by the Division of Training.

In addition, if there is more than one Firefighter I academy that begins in the same fiscal year, the City shall provide to the Education Fund an additional \$10,000. The prior sentence shall be effective only following Council approval of this MOU and for the remainder of this 2017-2020 MOU, at the end of which the prior sentence will sunset and no longer be effective.

**SECTION 39: WELLNESS FITNESS INITIATIVE (WFI)**

39.1 The City and the Association are committed to maintaining a wellness program that provides represented employees information and resources that aid in maintaining health and wellness.

39.2 Part of this WFI may include a physical assessment (based on the City’s specification as to scope of examination and examiner), diagnostics, education and referrals to other practitioners at a schedule to be determined by the Fire Chief or when required by MOU, Department policy and/or applicable law.

**SECTION 40: ASSIGNMENTS FOR TEMPORARILY DISABLED EMPLOYEES**

40.1 The City may accommodate, when feasible, employees covered by this Memorandum of Understanding who are on Workers’ Compensation leave, and

such work assignments are to incorporate the following provisions:

- 40.1.1 The modified assignment shall be consistent with medical limitations as determined by the attending physician.
- 40.1.2 The assignment shall be within the Fire Department, if feasible, or in other City departments if an assignment is not available in the Fire Department and shall be on the day shift (8:00 a.m. to 5:00 p.m., Monday through Friday). The assignment shall be consistent with the skills and abilities of the individual employee.
- 40.2 The City may accommodate an employee temporarily disabled with a non-industrial disability by providing a modified work assignment in that employee's classification. If modification of that position does not serve the best interests of the City, other classifications within the City may be considered, subject to the approval of the Director of Human Resources. 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. Compensation will be provided at the level of the classification in which the temporarily disabled employee is reassigned. The employee must meet standards of satisfactory performance for the duration of the work assignment. However, an employee who is temporarily transferred as a result of pregnancy to a less strenuous or hazardous position or to less strenuous or hazardous duties shall receive the equivalent rate of pay and benefits of the employee's regular position. The alternative position must be one for which the employee is qualified, and the position must better accommodate recurring periods of leave than the employee's regular job.
- 40.3 Nothing herein shall require the City Manager to approve modified work assignments nor shall give an employee the right to refuse an assignment which complies with medical restrictions. Such refusal may subject an employee to loss of benefits and/or disciplinary action.

**SECTION 41: RESIDENCY REQUIREMENT**

~~Employees who are hired subsequent to January 1, 1995, may not reside greater than forty (40) air miles from Berkeley City limits. City accepts the deletion of Section 41: Residency Requirement contingent upon Council adoption and passing of the ballot measure.~~

**SECTION 42: MEAL PERIODS**

- 42.1 Meal periods will be interrupted as little as possible, and, with the exception of

emergencies, any interruption will be limited to situations involving a substantial Department need.

- 42.2 Because each employee may be called upon to perform emergency services during the meal period, employees rarely leave the station during their scheduled meal periods. Meals are often organized at each station because employees are required to be available for emergency calls during meal periods. Because of this, employees are required to contribute financially to an organized meal, supervised at each individual station, at a charge equal to the value of each employee's portion of the meal, regardless of whether the employee chooses to eat the meal. The portion of each organized meal attributable to each employee is required to be contributed to an organized "kitty" fund, which will be deducted monthly by the Association. Employees shall be solely responsible for any financial or tax liability regarding this provision.

### **SECTION 43: STATION WORK ACTIVITIES**

- 43.1 Employees shall not be required to move office furniture and equipment from one station or headquarters to another.
- 43.2 Prior to any major work being done within the fire stations, the designated Captain will be informed as to the plans.

### **SECTION 44: MUTUAL RESPONSE AGREEMENTS**

Prior to entering into any new mutual response agreements, the City and the Association shall form a committee of two (2) representatives from the Association and two (2) from the City who shall meet and confer to discuss mutual aid response agreements which will provide for automatic, prearranged (as distinguished from existing emergency mutual aid agreement) mutual aid response from other jurisdictions.

### **SECTION 45: STAFFING AND UNITS IN OPERATION**

- 45.1 Except as specifically provided for herein, the normal staffing requirements shall provide that at all times there shall be on duty at least the staffing set forth in Exhibit D of the MOU.
- 45.2 The City retains the discretion to temporarily reduce staffing in the Division of Operations only upon the declaration of a "fiscal emergency" via a 2/3 vote of the City Council.
- 45.2.1 If the City Manager determines during the Fiscal Year that fund revenues

have or will decline substantially below the estimate of fund revenues in the adopted Budget and/or expenditures have or will increase substantially above the projected expenditures in the adopted Budget, the City Council may declare a "fiscal emergency" that shall thereupon cause the City of Berkeley and the Berkeley Fire Fighters Association to assemble in a meet and confer process regarding a temporary staffing reduction plan.

- 45.3 Prior to a policy change which will result in a temporary reduction in the number of employees assigned to the Division of Operations (see Sections 45.1 through 45.2) or a temporary change in staffing levels of suppression or transport units, as soon as is reasonably possible, the City will meet and confer about the matter with the Association.
- 45.4 As soon as possible following the end of the "fiscal emergency", it is the intent of the City to restore the staffing of the fire department to the levels defined above.
- 45.5 The Association strenuously objects to any reduction, on the grounds of standards set forth by the National Fire Protection Association (#1500 and #1710), employee safety, and reduced firefighting efficiency, but understands that, in the City's view, fiscal constraints may dictate such a reduction. The Association accepts no responsibility for any increased exposure or liability to employees or the public resulting from any such reduction.
- 45.6 All reductions necessary to accomplish this staffing reduction shall be accomplished by attrition, and not by reduction in force or by layoffs.
- See General Order - Apparatus Staffing Levels (Exhibit D).
- 45.7 In the event of sending an engine, truck or ambulance company outside the City for training, including CERT, or drills, for eight (8) or more hours, during a twenty-four (24) hour shift, causes the on duty assignment to fall below normal staffing (see Exhibit D); additional personnel will be hired or held over to maintain this minimum level of safety. Staffing can be accomplished by using extra on duty staffing and/or overtime. Overtime staffing can include the use of mandatory hiring but would not include emergency recall procedures.
- 45.8 Training or drill events held in the areas of East Bay Regional Parks District Tilden Park or Claremont Canyon Regional Preserve, Lawrence Berkeley National Laboratory or University of California Berkeley properties shall not be considered outside the city. The Duty Chief has the option of replacing companies based on the eight (8) hour requirement for planned events in these areas.
- 45.9 When unplanned events such as mutual aid responses or other emergencies, but not limited to, will cause an engine, truck or ambulance companies to be

unavailable, out of service to the City of Berkeley and outside the city limits for more than eight (8) hours the Duty Chief shall have the option to replace the companies. The decision to replace the companies will be based on various factors in no defined order.

- 45.9.1 Nature of the unplanned event?
- 45.9.2 Coverage available within the City of Berkeley and call activity?
- 45.9.3 When did the determination of exceeding the eight (8) hour requirement become apparent?
- 45.9.4 What is the estimated time before the company or companies will become available?
- 45.9.5 Time of day and length of shift remaining?
- 45.9.6 Availability of apparatus for staffing?
- 45.9.7 Availability of personnel for staffing?

45.10 Emergency recall can be used for staffing for unplanned events once other staffing options have been utilized and shall be done in consultation with management.

45.11 Nothing prevents the immediate use of emergency recall based on a local or regional emergency that requires extra staffing as quickly as possible.

## **SECTION 46: DEPARTMENT TRAINING SCHEDULE**

Generally, there are two windows that companies will be expected to report for training. This does not preclude the Department from scheduling training in alternative configurations, during evening time and/or at night. The Department will avoid holding companies through a meal period whenever possible.

Morning Schedule: Companies shall arrive no later than 0845 hours and may be required to stay until 1200 hours.

Afternoon Schedule: Companies shall arrive no later than 1330 hours and may be required to stay until 1645 hours.

There shall be no "routine" hose drills in the rain except as needed for the fire academy or probationary testing. During winter months, the Division of Training shall schedule an alternative drill with each scheduled "routine or standard" hose drill. If rain occurs when a standard hose drill is scheduled, the alternative drill may be used instead. An effort will be made by the Division of Training to keep personnel and equipment dry during rainy weather.

## **SECTION 47: FIRE APPARATUS**

47.1 All fire apparatus and equipment used in emergency operations, in need of repairs,



will be repaired in a timely manner.

- 47.2 The City agrees, when purchasing fire apparatus in the future, development of the specifications will be conducted by the Apparatus Specification Committee in conjunction with the Chief Officer designated as the Apparatus Maintenance Officer, and will be forwarded to the Fire Chief for approval.

**SECTION 48: EQUIPMENT MAINTENANCE**

- 48.1 Electrical and natural gas appliances will be repaired as soon as possible by qualified outside repair persons.
- 48.2 Fire extinguishers of all types will be tested, refilled, and maintained by licensed contractors in the manner prescribed by state and federal law.
- 48.3 Hose repair will be done only by qualified personnel who have been properly instructed in the various types of couplings and types of hoses and in the proper operation of the mechanical hose repair equipment.
- 48.4 There will be a qualified mechanic from Equipment Maintenance or the Fire Department assigned to the testing, repair, and maintenance of all Fire Department vehicles. This assignment will be his/her first priority.
- 48.5 The washing, waxing, and cleaning of Assistant Chief - Fire Suppression vehicles shall not be assigned to personnel covered by this Memorandum of Understanding. Daily cleaning of windows and car interiors and the checking of the battery, oil, gas, water, and other safety and emergency equipment may be assigned.
- 48.6 Painting in the interior of the fire stations shall be considered a special project.

**SECTION 49: TRADES**

Procedures for trades are covered in the Trade Policy General Order.

**SECTION 50: EQUAL TREATMENT OF COMMITTEE MEMBERS**

Unit B members on any committee that is formed at the direction of the Fire Chief are entitled to equal treatment. A single standard will be used to determine the number of hours for which off-duty participants will receive time off, (due time) etc. for all committee members who participate equally. Payment of hours will be hour-for-hour pay or hour-for-hour due time in accordance with FLSA. All members shall have an opportunity if

desired, to apply for committee membership.

### **SECTION 51: TIME OF RECEIPT OF PAYCHECKS**

If the City utilizes a new computer and/or payroll system, it will extend "best efforts" to achieving, and treat as a very high priority the end that Fire Department employees have checks ready for pickup by 8 a.m. on the relevant Friday. Further, if the situation changes such that any City employees routinely receive their paychecks at or before 8 a.m. on paydays, all Fire Department employees shall receive their checks at or before that same time.

### **SECTION 52: COURTESY**

The Fire Chief will add the following policy statement to the General Orders: When making routine visits to stations, chief officers and division captains shall make a reasonable effort to announce themselves and/or knock before entering the private areas (bathrooms, private areas within dormitories, private office areas) of fire stations.

### **SECTION 53: PHYSICAL & PSYCHOLOGICAL EXAMINATIONS/MOP**

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/her duties. 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 forty-eight (48) hours of such an examination.

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/she shall advise the City of any functional limitations which relate to the employee's ability to perform his/her duties, if such information may be provided without revealing the cause of those limitations. 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.

Failure to report for a medical or psychiatric examination under this section may constitute grounds for discipline.

**SECTION 54: HAIR SAFETY STANDARDS**

54.1 There are many hair styles that are acceptable. So long as the person's hair is kept in a neat, clean manner, the acceptability of the style will be judged by the following criteria:

54.1.1 Hair styles that preclude the proper wearing of SCBA are not permitted.

54.1.2 Hair may be pinned or worn so as to minimize the potential of being caught in machinery or in any way become a safety hazard.

54.2 These standards have been developed to accommodate contemporary hair styles without jeopardizing the safety of Fire Fighters involved in the hazardous activities associated with the varied operational requirements of the modern fire service.

**SECTION 55: NON-UNIFORMED FIRE PREVENTION INSPECTORS**

In the event any remaining uniform Inspectors vacate their Fire Prevention Inspector's position, the City may fill their position with non-uniformed personnel.

**SECTION 56: HYDRANT TESTING, HOSE AND LADDER INSPECTIONS**

56.1 Hydrant inspections will be performed on an annual basis starting by April 15<sup>th</sup> and ending by June 30<sup>th</sup> of each year. Hydrant servicing and testing will occur on even numbered years during the annual inspection period.

56.2 The City will contract with an outside vendor to perform testing of fire hoses and ground ladders each year. Scheduling of this testing will be factored into the department training schedule.

**SECTION 57: YMCA**

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.

## **ARTICLE 8 - PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

### **SECTION 59: CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

59.1 The City shall continue participating under the Safety Members Plan of the Public Employees' Retirement System (CalPERS).

#### **59.2 CalPERS Retirement Formula for "New Members"**

"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 57 retirement formula with highest three year average compensation as set forth in PEPRA.

#### **59.3 CalPERS Retirement Formula for Classic Employees**

Current employees and other employees who do not qualify as "New Members" under PEPRA shall continue to be entitled to the 3% at 50 retirement formula with single highest year compensation. In addition to the single highest year earnings formula, Legacy Employees' retirement benefit will continue to include all other benefits as were in effect as of November 28, 1996. The Plan will continue to require retirement at age sixty (60) as permitted by law.

#### **59.4 Optional Benefits**

For both Legacy Employees and New Members, the City's contract with CalPERS shall include the following optional benefits:

59.4.1 One-Year Final Compensation as provided in Section 20042 (July 22, 1976).

59.4.2 Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (March 1, 1973).

59.4.3 Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).

59.4.4 Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988).

59.4.5 1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (March 1, 1973).

59.4.6 Military Service Credit as Public Service as provided in Section 21024 (July 14, 2000).

59.4.7 Indexed Level 1959 Survivor Benefit as provided in Section 21574.5 (June 13, 2003).

**59.5 Legacy Employees' Pension Contribution**

On July 1, 1994, the City increased the base salary of employees in the amount of nine percent (9%). Effective January 1, 2015, Legacy employees will contribute an additional one percent (1%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis. The City and Association agree that, effective 1<sup>st</sup> pay period after Council approval of this MOU, employees will pay an additional one percent (1%) to the City's CalPERS employer contribution rate via automatic payroll deduction. Employees then assumed, and shall continue while the terms of this MOU are effective to assume, responsibility for payment of the normal employee retirement contribution to CalPERS. The City shall designate such payment as an Employer Pickup as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code. The employee contribution shall be made through automatic payroll deductions.

**59.6 New Members' Pension Contributions**

New Members hired on or after January 1, 2013 shall pay 50% of the normal share of cost required by PEPRA. Effective January 1, 2015, New Members shall also contribute an additional one percent (1%) of pensionable compensation (in addition to contributing 50% of the normal cost) towards the City's CalPERS employer contribution through automatic payroll deduction on a pre-tax basis. The City and Association agree that, effective 1<sup>st</sup> pay period after Council approval of this MOU, employees will pay an additional one percent (1%) to the City's CalPERS employer contribution rate via automatic payroll deduction.

## **ARTICLE 9 - LAYOFF PROCEDURE**

### **SECTION 60: LAYOFF PROCEDURE**

The layoff policy for the City of Berkeley is intended to provide the maximum employment protection to 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.

#### **60.1 Announcement of Layoff**

- 60.1.1 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 for more than thirty (30) 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 funds, the City Manager shall notify the Director of Human Resources of the intended action and the reason for layoff.
- 60.1.2 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 notify all department heads that such current and anticipated vacancies will be frozen until further notice in order to implement the provisions of Section 60.7.

#### **60.2 Seniority Service Date**

- 60.2.1 All service in the employ of the City shall be counted toward the establishment of the employee's 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 parental leave or 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 seniority service date. Time off as result of formal disciplinary action will be subtracted from the seniority service date.
- 60.2.2 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 parental leave or 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.

- 60.2.3 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 absence shall be included, and all time spent on unpaid leaves of absence in excess of two consecutive payroll periods shall be excluded with the exception of parental leave.
- 60.2.4 The Human Resources Department will maintain up-to-date and current seniority dates for all City employees holding probationary and permanent appointments.

### **60.3 Establishment of Seniority Lists**

- 60.3.1 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.
- 60.3.2 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 60.4 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.
- 60.3.3 Probationary or permanent employees 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.

- 60.3.4 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: If an employee has taken the one-year written probationary examination, the score on that examination will be used to break ties. If an employee has not taken that examination, then the written entrance examination and agility test scores shall be used to break ties; the written exam and the agility test will be equally considered.
- 60.3.5 Promotions: If two (2) or more employees have the same promotion date in rank, seniority in the promoted rank at the time of promotion shall be determined based on the selection order made by the Fire Chief.

#### **60.4 Employee Retreat Rights**

- 60.4.1 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.
- 60.4.2 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 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 basis. Retreat rights to the rank of permanent Fire Apparatus Operator will be available only to employees who have previously held this rank on a permanent or probationary basis. There shall be no retreat rights to appointed ranks or positions, i.e., Assistant Fire Marshal, Assistant Director of Training.
- 60.4.3 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.

- 60.4.4 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.

## 60.5 Employee Notification

- 60.5.1 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.
- 60.5.2 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.
- 60.5.3 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 days notification if targeted for release or 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 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 60.9 (Appeal Procedures).

## 60.6 Flexible Placement Program

- 60.6.1 In order to minimize the negative impact of a layoff, the City Manager will, as previously stated in Section 60.1 (Announcement of Layoff), 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.
- 60.6.2 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 have been identified and the provisions

under Section 60.4 (Employee Retreat Rights) 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 standard 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.

- 60.6.3 Assignments under the flexible placement program shall be limited to positions in the same or lesser salary range as the classification for which the employee is to be laid off.
- 60.6.4 Offers of 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 60.3 (Establishment of Seniority Lists). 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, including written acceptance of the offer.
- 60.6.5 If an employee fails to accept a bona fide written offer of an alternative job within five (5) 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 60.7 (Reemployment Lists).

## 60.7 Reemployment Lists

- 60.7.1 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 60.4 Employee Retreat Rights).
- 60.7.2 A reemployment priority list shall remain in effect for three (3) years. Said list shall remain in effect indefinitely for employees who were retreated.
- 60.7.3 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.

- 60.7.4 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.
- 60.7.5 If a former employee fails to accept a bona fide written offer or 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 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.
- 60.7.6 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.
- 60.7.7 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 and working on a part-time basis, shall be paid in proportion to the time worked as described in their appointment.

### **60.8 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".

### **60.9 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 Section 35 (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.

## 60.10 Audit

- 60.10.1 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 60.7 (Reemployment Lists). In the event vacancies for which reemployment priority 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 must be transmitted to the City Manager and the City Council.
- 60.10.2 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 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.

**SIGNATURE PAGE**

Employee Representatives  
Berkeley Fire Fighters Association  
International Association of Fire Fighters  
Local 1227:

City of Berkeley:

\_\_\_\_\_

\_\_\_\_\_  
Justin Ironside, President BFFA, Local 1227

\_\_\_\_\_  
Dee Williams-Ridley, City Manager

\_\_\_\_\_  
Cal Mettler, BFFA, Local 1227

\_\_\_\_\_  
LaTanya Bellow, Chief Negotiator

\_\_\_\_\_  
James Geissinger, BFFA, Local 1227

\_\_\_\_\_  
David Brannigan, Fire Chief

\_\_\_\_\_  
Scott Hall, BFFA, Local 1227

\_\_\_\_\_  
Abe Roman, Assistant Fire Chief

\_\_\_\_\_  
Levon Thaxton, BFFA, Local 1227

\_\_\_\_\_  
Alicia Platt, Senior Human Resources Analyst

\_\_\_\_\_  
Jon Fischer, BFFA, Local 1227

**EXHIBIT A – Hourly**

| <b>Hourly Salary Schedule as of June 18, 2017</b> |               |               |               |               |               |
|---------------------------------------------------|---------------|---------------|---------------|---------------|---------------|
| <b>CLASSIFICATION TITLE</b>                       | <b>STEP A</b> | <b>STEP B</b> | <b>STEP C</b> | <b>STEP D</b> | <b>STEP E</b> |
| Fire Fighter                                      | \$28.8805     | \$29.5422     | \$30.2202     | \$30.2902     | \$31.9320     |
|                                                   | <b>STEP F</b> | <b>STEP G</b> | <b>STEP H</b> | <b>STEP I</b> |               |
|                                                   | \$32.9874     | \$34.0759     | \$35.2021     | \$36.3798     |               |
| <b>CLASSIFICATION TITLE</b>                       | <b>STEP A</b> | <b>STEP B</b> | <b>STEP C</b> | <b>STEP D</b> | <b>STEP E</b> |
| Fire Apparatus Operator                           |               | \$35.4703     | \$36.6461     | \$37.8546     | \$39.1014     |
| Fire Prevention Inspector                         |               | \$52.1543     | \$53.8845     | \$55.6609     | \$57.4983     |
| Deputy Fire Marshal                               |               | \$60.5704     | \$62.5673     | \$64.6363     | \$66.7657     |
| Fire Captain I                                    |               | \$42.5142     | \$43.9195     | \$45.3687     | \$46.8674     |
| Fire Captain II                                   |               | \$39.3308     | \$40.6277     | \$41.9720     | \$43.3552     |
| Paramedic Supervisor I                            |               | \$42.1529     | \$43.5421     | \$44.9860     | \$46.4626     |

| <b>Hourly Salary Schedule as of August 12, 2018 (Four Percent (4%) Wage Increase)</b> |               |               |               |               |               |
|---------------------------------------------------------------------------------------|---------------|---------------|---------------|---------------|---------------|
| <b>CLASSIFICATION TITLE</b>                                                           | <b>STEP A</b> | <b>STEP B</b> | <b>STEP C</b> | <b>STEP D</b> | <b>STEP E</b> |
| Fire Fighter                                                                          | \$30.0357     | \$30.7239     | \$31.4290     | \$32.1570     | \$33.2093     |
|                                                                                       | <b>STEP F</b> | <b>STEP G</b> | <b>STEP H</b> | <b>STEP I</b> |               |
|                                                                                       | \$34.3069     | \$35.4389     | \$36.6102     | \$37.8350     |               |
| <b>CLASSIFICATION TITLE</b>                                                           | <b>STEP A</b> | <b>STEP B</b> | <b>STEP C</b> | <b>STEP D</b> | <b>STEP E</b> |
| Fire Apparatus Operator                                                               |               | \$36.8891     | \$38.1119     | \$39.3688     | \$40.6655     |
| Fire Prevention Inspector                                                             |               | \$54.2405     | \$56.0399     | \$57.8873     | \$59.7982     |
| Deputy Fire Marshal                                                                   |               | \$62.9932     | \$65.0700     | \$67.2218     | \$69.4363     |
| Fire Captain I                                                                        |               | \$44.2148     | \$45.6763     | \$47.1834     | \$48.7421     |
| Fire Captain II                                                                       |               | \$40.9040     | \$42.2528     | \$43.6509     | \$45.0894     |
| Paramedic Supervisor I                                                                |               | \$43.8390     | \$45.2838     | \$46.7854     | \$48.3211     |

| <b>Hourly Salary Schedule as of July 14, 2019 (Two Percent (2%) Wage Increase)</b> |               |               |               |               |               |
|------------------------------------------------------------------------------------|---------------|---------------|---------------|---------------|---------------|
| <b>CLASSIFICATION TITLE</b>                                                        | <b>STEP A</b> | <b>STEP B</b> | <b>STEP C</b> | <b>STEP D</b> | <b>STEP E</b> |
| Fire Fighter                                                                       | \$30.6364     | \$31.3384     | \$32.0576     | \$32.8001     | \$33.8735     |
|                                                                                    | <b>STEP F</b> | <b>STEP G</b> | <b>STEP H</b> | <b>STEP I</b> |               |
|                                                                                    | \$34.9930     | \$36.1477     | \$37.3424     | \$38.5917     | \$34.9930     |
| <b>CLASSIFICATION TITLE</b>                                                        | <b>STEP A</b> | <b>STEP B</b> | <b>STEP C</b> | <b>STEP D</b> | <b>STEP E</b> |
| Fire Apparatus Operator                                                            |               | \$37.6269     | \$38.8742     | \$40.1562     | \$41.4788     |
| Fire Prevention Inspector                                                          |               | \$55.3253     | \$57.1607     | \$59.0451     | \$60.9942     |
| Deputy Fire Marshal                                                                |               | \$64.2531     | \$66.3714     | \$68.5662     | \$70.8251     |
| Fire Captain I                                                                     |               | \$45.0991     | \$46.5898     | \$48.1271     | \$49.7169     |
| Fire Captain II                                                                    |               | \$41.7221     | \$43.0979     | \$44.5239     | \$45.9912     |
| Paramedic Supervisor I                                                             |               | \$44.7158     | \$46.1895     | \$47.7211     | \$49.2875     |



| <b>Hourly Salary Schedule as of January 12, 2020 (Illustrated Purpose Only – Subject to the Provision of Section 10.1.2)</b> |               |               |               |               |               |
|------------------------------------------------------------------------------------------------------------------------------|---------------|---------------|---------------|---------------|---------------|
| <b>CLASSIFICATION TITLE</b>                                                                                                  | <b>STEP A</b> | <b>STEP B</b> | <b>STEP C</b> | <b>STEP D</b> | <b>STEP E</b> |
| Fire Fighter                                                                                                                 | \$30.6482     | \$31.3504     | \$32.0699     | \$32.8128     | \$33.8865     |
|                                                                                                                              | <b>STEP F</b> | <b>STEP G</b> | <b>STEP H</b> | <b>STEP I</b> |               |
|                                                                                                                              | \$35.0065     | \$36.1616     | \$37.3568     | \$38.6065     |               |
|                                                                                                                              |               |               |               |               |               |
| <b>CLASSIFICATION TITLE</b>                                                                                                  | <b>STEP A</b> | <b>STEP B</b> | <b>STEP C</b> | <b>STEP D</b> | <b>STEP E</b> |
| Fire Apparatus Operator                                                                                                      |               | \$37.6414     | \$38.8891     | \$40.1716     | \$41.4947     |
| Fire Prevention Inspector                                                                                                    |               | \$55.3466     | \$57.1827     | \$59.0678     | \$61.0177     |
| Deputy Fire Marshal                                                                                                          |               | \$64.2778     | \$66.3969     | \$68.5926     | \$70.8523     |
| Fire Captain I                                                                                                               |               | \$45.1164     | \$46.6077     | \$48.1456     | \$49.7361     |
| Fire Captain II                                                                                                              |               | \$41.7382     | \$43.1144     | \$44.5410     | \$46.0089     |
| Paramedic Supervisor I                                                                                                       |               | \$44.7330     | \$46.2072     | \$47.7395     | \$49.3065     |

## **EXHIBIT B – Glossary of Terms**

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

**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.

**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 or substantially the same employment conditions.

**COMPENSATORY TIME:** Shall mean paid time off the job which is earned and accrued by an employee in lieu of immediate cash payment for employment in excess of the statutory hours for which overtime is required by this Memorandum of Understanding or the Fair Labor Standards Act. For the purpose of this Memorandum of Understanding, the term “Due Time” shall mean the same as Compensatory Time.

**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.

**END OF YEAR:** For payroll-related purposes, the last day of the last pay period in December for which the payday occurs in December. For example, if the last pay day in December falls on Thursday, the 31st (because the following Friday, January 1st is a holiday), the corresponding pay period would end on December 26. The last day of the year for payroll-related purposes would be December 26. Similarly, if the last pay day of

the calendar year were December 28, the last day of the payroll year would be December 22.

**EXEMPT:** Appointment which is exempt from the competitive service, in accordance with Section 4.04.120 of City of Berkeley Personnel Ordinance, No. 6280- N.S.

**FRALS PARAMEDIC:** A paramedic with current certification who is assigned to an engine or truck company and is entitled to receive the full FRALS paramedic differential pay.

**FULL-TIME:** An assignment or combination of assignments which total forty (40) or fifty-six (56) 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.

**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.

**LEAVE DAY:** A leave day is used for computing earned leave and is equivalent to a 12-hour working day for a 56-hour per week employee, or is equivalent to an 8-hour working day for a 40-hour per week employee. Leave taken is computed as the actual hours used.

**MEMORANDUM OF UNDERSTANDING:** A binding contract, as provided for by the Meyers-Miliias-Brown Act, between the City of Berkeley and the Berkeley Fire Fighters Association specifying wages, hours and other terms and conditions of employment.

**MINIMUM QUALIFICATION ACTOR:** An employee allowed to act in a higher classification, when there are no qualified personnel on the current promotional list available, shall be known as a Minimum Qualification Actor. They must meet all the required qualifications, education, and experience to be eligible to participate in the promotional exam process for the classification in which they are to act. Minimum Qualification Actors must also successfully complete a certification process for the classification in which they are to act, administered by the Division of Training, before they are allowed to act in the specified classification.

**OFF THE UNIT:** An active paramedic who, on a given day, is assigned to suppression and is not working on an ambulance.

**ON THE UNIT:** An active paramedic who is actually assigned and is working on an ambulance.

**OPEN COMPETITIVE EXAMINATION:** An examination for a class (entry level or higher) in the competitive service in which participation is open to all qualified applicants.

**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 59.7 in this Memorandum of Understanding.

**REGULAR HOURLY SALARY:** The Regular Monthly Salary multiplied by twelve (12) months and divided by 2080 annual work hours for forty (40) hour per week employees. For fifty six (56) hour per week assignments, the Regular Monthly Salary is multiplied by twelve (12) and divided by 2912 annual work hours, except that time worked on the day shift is multiplied by a factor of 1.2 and time worked on the night shift is multiplied by a factor of 0.85714.

**REGULAR MONTHLY SALARY:** The base pay for a classification (as included in Exhibits "A" through "E" of this Memorandum of Understanding) and for paramedic assignments.

**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 31 (Probationary Period).

**REJECTION (PROBATION):** The separation of an employee from the service during or at 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.

**SCORING METHODOLOGY:** The relative weights of components of a specific examination. This information is to be included in the announcement of the opening of the application process. For example, the announcement would specify that in the scoring of applicants that the written examination shall contribute a maximum of x per cent of the total score and that an assessment center shall contribute a maximum of y per cent, with  $x + y = 100\%$ .

**SHIFT:** A set of continuous work hours. For 40-hour per week employees, a shift comprises eight (8) hours. For 56-hour per week employees, a shift comprises twenty-four (24) hours, except that the term "day shift" means ten (10) consecutive hours and "night shift" means fourteen (14) consecutive hours and "12-hour shift" is used for purposes of computing leave time and compensatory overtime (for purposes of this Memorandum of Understanding). The term "working shift" refers to a day or night shift for 56-hour employees or a regular shift for 40-hour employees. The term "assigned shift" refers to separate schedules in effect for 56 hour employees, such as A-shift", "B-Shift" and "C-Shift". For purposes of computing leave time and compensatory overtime (for purposes of this Memorandum of Understanding), an average twelve (12) hour shift is used.

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

**TOUR:** The basic work cycle; for example, the 56-hour employee's tour consists of nine consecutive days, during which time the employee is scheduled for 3 shifts on duty and 6 off duty

**TOUR (48/96):** The basic work cycle; for example, the 56-hour employee's tour consists of six consecutive days, during which time the employee is scheduled for 2 shifts on duty and 4 off duty.

**TRANSFER:** The movement of an 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.

**TRANSPORT PARAMEDIC:** A paramedic with current certification who is assigned to ambulance duty and is entitled to receive the full paramedic transport differential pay.

**VACATION YEAR:** A vacation year runs twelve months, (i.e. 26 payroll periods), starting and ending on a payroll period break.

**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 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.

## **EXHIBIT C – Emergency Medical Services Programs**

### **I. PROGRAM ADMINISTRATION**

- A. The Fire Chief will be responsible for program administration.

### **II. GUIDING PRINCIPALS OF THE PROGRAM**

- A. Create and sustain Emergency Medical Service (EMS) programs that deliver the highest quality care to the Berkeley community.
- B. Minimize personnel movement and support program adjustments that maintain a high level of morale.

### **III. PARAMEDIC PROGRAM – WORKING CONDITIONS**

- A. A paramedic shall not be assigned Fire Prevention inspection details while assigned to an ambulance.
- B. A paramedic shall be responsible for the maintenance of their equipment and vehicle (i.e. cleanliness, minor servicing, and operational readiness).
- C. A paramedic shall be responsible for maintenance of their own quarters and normal shift assignments. Station maintenance will be determined by the Station Commander and supervising Officer(s).
- D. All paramedics will assist in EMS training.
- E. A paramedic shall complete all EMS related paperwork in accordance with established Alameda County EMS and Berkeley Fire Department policies and procedures.

### **IV. LICENSURE & ACCREDITATION**

- A. Employees who function as paramedics and are permanently assigned as paramedics as a condition of employment will maintain a current State of California Paramedic License, current Alameda County accreditation, and current California Class C Driver's License with firefighter endorsement or equivalent California Vehicle Code requirements to drive fire apparatus and ambulances.
- B. During any period or lapse in which an individual does not possess required accreditation or licensure the individual shall not receive any paramedic differential pay.

## V. OPERATIONS

- A. The Department will seek to maintain sufficient paramedics for each shift. To maintain three (3) paramedic Transport units, seven (7) engine companies and two (2) truck companies with ALS capabilities a staff of 72 paramedics or 24 per shift is considered desirable (*emphasis added*).
1. To maintain four (4) paramedic Transport units, a staff of 42 paramedics or 14 per shift, assigned to permanent ambulance rotation is considered desirable (*emphasis added*).
  2. To maintain seven (7) engine companies and two (2) truck companies with FRALS capabilities, a staff of 36 FRALS paramedics or 12 per shift is considered desirable (*emphasis added*).
- B. Engines and Truck companies shall be staffed with a minimum of one (1) paramedic.
- C. Transport companies shall be staffed with two (2) paramedics.
- D. Additional advanced life support units placed in service for special events, or multi-casualty incidents may be staffed with a minimum of one (1) paramedic and one (1) EMT only to avoid mandatory and emergency hires.
- E. Each working day a paramedic who is assigned to rotate on the ambulance will be classified in one of the following ways:
1. ON – Employee is assigned to a transport unit.
  2. OFF – Employee may not be assigned to a transport unit.
  3. DUE ON – Employee may be assigned to a suppression or transport unit.
    - a. When a paramedic is “off the ambulance” the individual is required to serve as a paramedic on a suppression company unless assigned as a Higher class Captain (though the employee shall still receive the FRALS paramedic pay).
- F. Paramedics assigned to the ambulance will work a rotational schedule of a maximum of two tours on the ambulance and a minimum of one tour on fire apparatus.
1. By mutual agreement between the paramedic and the shift’s Duty Chief, a paramedic may voluntarily remain on the ambulance longer



than the rotational schedule described above for special needs such as to precept paramedic interns. However, such additional volunteer time on the ambulance will not be counted toward time off the ambulance as described in the rotational schedule above. The paramedic rotational schedule will always determine time off and on the ambulance.

- G. The City and BFFA will form a joint committee consisting of BFFA and City representatives that will explore possible changes to the City's service delivery model.

#### VI. TRANSFER TO SUPPRESSION

- A. Effective July 1, 2013, the department will no longer fill "firefighter" only assignments or assign individuals to an engine firefighter position.
- B. Any paramedic that was transferred to suppression as a firefighter prior to February 1, 2013 will be considered "legacy firefighters" and may be assigned to a transport ambulance not to exceed 24 hours per calendar quarter to meet department needs (mandatory hires do not count toward this hourly total). They shall not be placed in the rotation on the paramedic schedule.
- C. All Apparatus Operators assigned as paramedics may be assigned to a transport ambulance not to exceed 24 hours per calendar quarter to avoid mandatory hires or meet department needs. They shall not be assigned to the transport unit in a routine manner nor shall they be placed in regular rotation on the paramedic schedule.
- D. There shall be no more than six (6) Paramedic Supervisor I positions. In lieu of an available Paramedic Supervisor, a Supervisor shall be appointed and paid a Paramedic Supervisor I's rate (HCPS). An employee working as an HCPS will not be paid the 12.5% HCAT differential.

#### VII. TRADES

- A. **A paramedic shall be limited to trading with a paramedic so long as each employee possesses the minimum qualifications (as set by the department) to fulfill the responsibilities of the assignment.**

#### VIII. PARAMEDIC COMPENSATION

- A. Fire Officers shall not be eligible to act as a paramedic.
- B. Personnel who "transferred to suppression" as a firefighter prior to January

- 1, 2013 will continue to provide service as a FRALS paramedic until they retire or promote.
  - C. The differential for being assigned as a paramedic by the department is 6.25% above base pay for that employee's rank.
    1. This paramedic differential will be reported to CalPERS as Paramedic Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.
  - D. Any employee assigned to work on the transport unit shall be paid a differential when assigned and works on an ambulance (Higher Class Ambulance Transport - HCAT) of 12.50% above base pay for that employee's rank.
    1. For all time an employee is assigned to work a transport unit they shall receive both the base paramedic differential and the HCAT differential.
    2. Paramedic Supervisor Is are exempt from receiving the paramedic differential or HCAT pay.
    3. This HCAT differential will be reported to CalPERS as Higher Class Ambulance Transport Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.
  - E. A permanent employee assigned as a transport or FRALS paramedic will be given an allowance of \$1,500 after submission of a renewed California paramedic license, completion of Alameda County EMS requirements, and submission of a Fire Department reaccreditation form. Paramedic Reaccreditation Form submission must occur within three (3) calendar months of the effective date on the California paramedic license.
- IX. PARAMEDIC FIELD TRAINING OFFICER (FTO)
- A. Any paramedic that is assigned by the Fire Chief as a Field Training Officer (FTO) for the purpose of evaluating and training probationary employees on a paramedic transport unit shall be compensated as FTOs at a rate of 5% above base pay for that employee's rank.
    1. The Paramedic Supervisor I, in consultation with the EMS Chief &

EMS Captain shall recommend which employees will be assigned FTO duties.

2. FTO pay shall be provided for hours worked as an FTO on an ambulance.
3. FTO pay shall not be provided to Paramedic Supervisor I's when they are tasked with these evaluations as those responsibilities are part of the PSI job description.

X. PARAMEDIC SUPERVISOR I ADMINISTRATIVE TIME

To handle administrative duties and staff work that are challenging to complete while in service and running calls, a paramedic supervisor will be back-filled from 0800 – 1800 hours the first day of each calendar month.

XI. EMT CERTIFICATION IS A CONDITION OF CONTINUED EMPLOYMENT

- A. The Department will offer on-duty EMT recertification classes and online continuing education for the benefit of employees to meet the twenty-four hour requirement. The City of Berkeley will give sufficient notice for the scheduling of recertification classes or online continuing education. A limited number of make-up classes will be offered. The City of Berkeley will provide up to twelve (12) hours of make-up classes or online continuing education per shift for a total of 36 hours in each certification cycle. However, if an employee misses the available classes he/she will be responsible to obtain the training on his/her own time at his or her own cost. It is not the department's policy to pay for recertification classes taken while off-duty.
- B. In the event that EMT recertification requirements from the State and/or County are modified, the City of Berkeley and the Association agree to meet and confer on this issue.
- C. The City agrees to provide the required testing for EMT employees in each four-year cycle.

XII. CONDITIONS FOR WHICH PARTIES AGREE TO REOPEN AND MEET AND CONFER

- A. The parties agree to meet and confer if there is an increase or decrease in either Measure GG or the Paramedic Tax revenues (with the exception of the increase of Consumer Priced Index or Personal Income Growth rate increases).

- B. The City and Association hereby agree to reopen labor negotiations and to immediately begin to meet and confer specifically to address Exhibit C Sections III-X of this MOU if Berkeley voters fail to approve Gann limit reauthorization of the 2008 Measure GG.

## **EXHIBIT D – General Order – Apparatus Staffing Levels**

### **A. NORMAL STAFFING**

1. Normal in-service staffing for fire apparatus shall be as follows:

- a. Seven (7) Engine Companies: three personnel each.
- b. Two (2) Truck Companies: three personnel each.
- c. Four (4) Ambulance Units: two personnel each.

2. Truck Company Out of Service:

When a truck apparatus is placed out of service for mechanical reasons, and no reserve truck is available, the truck personnel will staff a reserve engine.

### **B. BELOW NORMAL STAFFING**

When fire companies are below strength in personnel, the following guidelines shall apply:

1. Two (2) Personnel:

- a. Fire units, Engine and Truck companies, with a minimum of two (2) persons on board shall be called a "Medical Unit".
  1. They shall take medical calls within district.
  2. They shall normally be Out-of-Service for fires.
    - i. Shall monitor radio and respond to fires if needed.
    - ii. Dispatch shall notify Asst. Chief when a unit is short of personnel.
    - iii. Dispatch shall indicate medical units when dispatching full assignments.

2. Less Than Two (2) Personnel:

- a. When fire units have less than two personnel, companies are placed out-of-service.

### **C. IMPLEMENTATION OF POLICY**

Deputy Chiefs may use discretion in exercising this policy, based upon realistic department needs for training, special assignments, fire patrols, UC Football coverage, or additional coverage during critical fire weather.

## **EXHIBIT E – Grievance Forms**

STEP 1 - Informal Step

STEP 1.1 - Deputy Fire Chief Response

STEP 2 – Appeal to Fire Chief

STEP 2.1 – Fire Chief Response

STEP 2.2 – Director of Human Resources Response (Compensation)

STEP 3 – Appeal to City Manager

STEP 3.1 - City Manager Response

STEP 4 – Appeal to Arbitration



## BFFA Local 1227 – City of Berkeley Grievance Form

*(Days defined as Calendar Days, unless otherwise noted)*



### STEP 1 – Informal Step

**Important Notes (MOU Section 35.1):** A grievance is any dispute which involves the interpretation, application, claimed violation, or claimed noncompliance with the provisions of the Memorandum of Understanding between the City and the Association or any City ordinance, rule, regulation, or past practice which may have been or may hereafter be adopted by the City to govern personnel practices or working conditions of the City's employees covered by such Memorandum of Understanding, including any rule, regulation, or resolution which may be adopted by the City Council which results from the meet-and-confer process.

No matter shall be considered as a grievance under this Section unless it is presented within thirty (30) calendar days after the employee or the Association could reasonably have been aware of events on which the grievance is based. All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Fire Chief or his or her designated representative for payroll issues within 30 working days from the date when the employee may reasonably be expected to have learned of the alleged compensation violation. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.

Grievance Tracking  
No.: \_\_\_\_\_

Grievant First Name \_\_\_\_\_ Grievant Last Name \_\_\_\_\_ Date: \_\_\_\_\_

|            |             |                |             |              |                  |
|------------|-------------|----------------|-------------|--------------|------------------|
| Job Title: | Firefighter | Dept/Location: | Station One | E-Board Rep: | First, Last Name |
|------------|-------------|----------------|-------------|--------------|------------------|

Nature of Grievance *(Include specific provisions of the MOU, City ordinance, rule or regulation and/or past practice, and the circumstances involved):*

Relief Desired:

Grievant: \_\_\_\_\_ Rep./Steward: \_\_\_\_\_  
*Signature* *Signature*

Date Rec'd by Chief Officer: \_\_\_\_\_ Meeting Requested: Yes  No  Date meeting occurred: \_\_\_\_\_

Deputy Fire Chief: \_\_\_\_\_ Date: \_\_\_\_\_  
*Signature*

**Instructions:** The grievant should complete this form electronically and print it out. It should then be given to an Executive Board member who will submit it to the Deputy Fire Chief and obtain a signature confirming receipt. Return a copy of the signed form to your assigned 1227 Executive Board representative.



BFFA Local 1227 – City of Berkeley  
Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking  
No.:

Grievant First Name

Grievant Last Name

Date:

**STEP 1.1 – Deputy Fire Chief Response**

**Important Note:** Any employee who believes he or she has a grievance (and/or the employee's Association representative) shall discuss the employee's complaint with the Deputy Fire Chief. If the issue is not resolved within fifteen (15) calendar days, the employee (and/or the employee's Association representative) may elect to invoke the formal grievance procedure (Step II).

Deputy Fire Chief's Response (1227 must be in receipt of this response within 15-days of their initial receipt of this grievance):

Deputy Fire Chief:

Date:

Signature

Receipt of Return to 1227:

Rep/Steward:

Date  
Rec'd:

Signature

Rep/Steward:

First Name

Printed Name

**Response to Deputy Fire Chief (to be completed by 1227 Rep./Steward):**

Date:

Deputy Fire Chief's Response is:

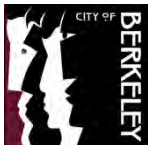
Satisfactory:  Unsatisfactory:

Grievance is:

Appealed:  Withdrawn:

**Instructions:** The Deputy Fire Chief shall complete this page electronically, print and return to a 1227 Executive Board representative. The 1227 representative shall immediately notify the President, 1<sup>st</sup> Vice President, or the 2<sup>nd</sup> Vice President.





# BFFA Local 1227 – City of Berkeley Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking  
No.:

Grievant First Name

Grievant Last Name

Date:

## STEP 2 – Appeal to Fire Chief

**Important Notes:** The written statement shall be a clear concise statement of the grievance, including specific provisions of this agreement and/or City ordinance, rule or regulation, and/or past practice alleged to have been violated, the circumstances involved in the decision rendered at Step I, and the specific remedy sought. Either party shall be entitled to a personal conference upon request.

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Fire Chief or his or her designated representative for payroll issues within 30 working days from the date when the employee may reasonably be expected to have learned of the alleged compensation violation. If such issues cannot be resolved by the Fire Chief (or in consultation with the Auditor), the Fire Chief will refer the matter to the Director of Human Resources within ten (10) working days of receipt of the grievance.

Reasons for the appeal:

Date Rec'd by  
Fire Chief:

Fire Chief:

Signature

Meeting  
Requested  
1227:

by Yes  No

Meeting  
Requested  
Fire Chief:

by Yes  No

Date meeting occurred:

**Instructions:** The grievant and their Executive Board representative shall complete this form electronically, print it out and submit it directly to the Fire Chief along with all previous forms (Step I Nature, Step I DC Response, and any addendum documents) within 10 working days of receiving the DC response.



# BFFA Local 1227 – City of Berkeley Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking  
No.:

Grievant First Name

Grievant Last Name

Date:

## STEP 2.1 – Fire Chief Response

**Important Notes:** The Fire Chief shall communicate a decision to the grievant with a copy to the Association and to the Director of Human Resources in writing within ten (10) working days after receiving the grievance or ten (10) working days from the date of the personal conference, whichever is later, and such action will terminate Step II.

Fire Chief's Response:

Fire Chief:

*Signature*

Date:

Receipt of Return to 1227:

Rep/Steward:

*Signature*

Date Rec'd:

**Response to Fire Chief (to be completed by 1227 Rep./Steward):**

Date:

Fire Chief's Response is:

Satisfactory:

Unsatisfactory:

Grievance is:

Appealed:

Withdrawn:

**Instructions:** The Fire Chief shall complete this page electronically, print and return to a 1227 Executive Board representative. The 1227 representative shall immediately notify the President, 1<sup>st</sup> Vice President, or the 2<sup>nd</sup> Vice President.



# BFFA Local 1227 – City of Berkeley Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking  
No.:

Grievant First Name

Grievant Last Name

Date:

## STEP 2.2 – Director of Human Resources Response (Compensation)

**Important Notes:** The Director of Human Resources or his or her designee shall have 30 working days to research the issue and provide a written response to the Association and the affected employee. 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 whichever is later.

If the affected employee is not satisfied with the written decision of the Director of Human Resources or his or her designee, the affected employee will have ten (10) working days to appeal the decision in writing to the City Manager and the grievance will move to Step III of the Grievance Procedure as provided in Section 35.2.4.

**Compensation** Yes:  No:   
**Matter:**

HR  
Representative: Enter Name

Date:

Signature

HR Response (required within 30-working days of receipt of grievance) received:

Receipt of Return to 1227:

Rep/Steward:

Date Rec'd:

Signature

**Response to Human Resources (to be completed by 1227 Rep./Steward):**

Human Resources Response is:

Satisfactory:  Unsatisfactory:

Grievance is:

Appealed:  Withdrawn:

Appeal deadline: 10-working days from receipt of HR response.



# BFFA Local 1227 – City of Berkeley Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking  
No.:

Grievant First Name

Grievant Last Name

Date:

## STEP 3 – Appeal to City Manager

**Important Notes:** In the event that the employee (or the employee’s Association representative) is not satisfied with the decision at Step II, the employee (or the employee’s Association representative) may appeal the decision in writing to the City Manager or his/her designee within ten (10) working days after the termination of Step II.

The grievant or the City Manager or his / her designee shall be entitled to a personal conference upon request within the time limits specified.

Reasons for the appeal:

Date Rec’d by  
City Manager:

City Manager  
(or designee):

Date:

*Signature*

Meeting Requested: Yes  No

Date meeting  
occurred:

**Instructions:** The grievant and their Executive Board representative shall complete this form electronically, print it out and submit it to the City Manager along with all previous forms (Step I Nature, Step I DC Response, and any addendum documents) within **10 working days** after the termination of Step II. Once a signature of receipt is obtained a copy of this form shall be made and returned to the assigned Executive Board representative.



# BFFA Local 1227 – City of Berkeley Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking  
No.:

Grievant First Name

Grievant Last Name

Date:

## STEP 3.1 – City Manager Response

**Important Notes:** The City Manager or his/her designee shall communicate a decision within ten (10) working days after receiving the appeal or ten (10) working days from the date of the personal conference, whichever is later and such decision will terminate Step III.

City Manager Response:

City Manager:

Date:

*Signature*

Return to 1227:

Rep/Steward:

Date Rec'd:

*Signature*

**Response to City Manager (to be completed by 1227 Rep./Steward):**

Date:

City Manager's Response is:

Satisfactory:       Unsatisfactory:

Grievance is:

Appealed:       Withdrawn:

Instructions: The City Manager (or his/her designee) shall complete this page electronically, print and return to a 1227 Executive Board representative. The 1227 representative shall immediately notify the President, 1<sup>st</sup> Vice President, or the 2<sup>nd</sup> Vice President.



# BFFA Local 1227 – City of Berkeley Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking  
No.:

Grievant First Name

Grievant Last Name

Date:

## STEP 4 – Appeal to Arbitration

**Important Notes:** If the Association is not satisfied with the City Manager's response at Step III- the Association may require that the grievance be referred to an impartial arbitrator, who shall be designated by mutual agreement between the Association and the City Manager. The Association must notify the City Manager in writing within ten (10) working days of receipt of the City Manager's decision that they intend to move the grievance to arbitration.

### 1227 Executive Board Arbitration Request:

Date:

City Manager's Response was:

Satisfactory:       Unsatisfactory:

Association Requires Grievance to be Submitted to Arbitration:

Yes:       Withdrawn:

President:

*Signature*

1<sup>st</sup> Vice  
President:

*Signature*

2<sup>nd</sup> Vice  
President:

*Signature*

**Instructions:** The 1227 Executive Board shall complete this form electronically and submit it to the City Manager along with all previous forms (Step I Nature, Step I DC Response, and any addendum documents) with copies to the Director of Human Resources, the Fire Chief, the Union President, and the 1<sup>st</sup> Vice President. This must occur within ten (10) **working days** of receipt of the City Manager's decision that they intend to move the grievance to arbitration.

## **EXHIBIT F – Wellness/Fitness Program**

### **A. Participation**

1. The City and the Association realize the importance of establishing and maintaining an effective Wellness Fitness program. It is the intent of this program to effectively increase the overall health of the workforce, thereby reducing workers compensation claims and chronic illnesses caused by improper nutrition and poor exercise habits.
2. All uniformed members of the Berkeley Fire Department are encouraged to participate in the B.F.D. Wellness/Fitness Program.
3. All approved on-duty activities will be covered by Workers' Compensation. However, due to the potential for injury, competitive sports activities (tennis, volleyball, etc.) are strictly prohibited while on duty.
4. It shall be the responsibility of each member to participate daily (while on duty) in the program and to make every effort to maintain his/her physical fitness so as to be able to perform the duties of a Firefighter.
5. Daily scheduling of the program shall be the responsibility of each company officer.

### **B. Off-Duty Activities**

No off-duty conditioning activities can be covered by Workers' Compensation. All reference to off-duty activities are merely suggestions to be considered for physical fitness.

### **C. Funding**

1. On or around July 1<sup>st</sup> of each year, the City shall pay the Association an amount sufficient to replenish the Wellness Fitness Initiative (WFI) fund to \$30,000 for the next fiscal year. The WFI Fund expenditures shall be managed by the Association. WFI funds shall be used to maintain the WFI program through education and training of peer fitness trainers, for executing repairs to existing equipment, for reimbursement to members who are pursuing changes to their health and wellness through practitioners approved by the City's WFI (Section 39), and for the purchase or replacement of equipment necessary to maintain a safe and effective exercising environment.
2. The Association will contract with a third party vendor who will provide repair

services and scheduled maintenance for all exercise equipment. All claims for service will be made from the Association to the Department and will be acted upon in an expedient manner.

3. The Association may transmit equipment purchase order requests to the Department in order to take advantage of GSA pricing. The Department will act on said requests within fifteen (15) calendar days of receipt. The Association and the Department recognize there is a blackout period for all purchasing at the end of each fiscal year. The Association will be specific with make, model and suggested vendor.



## **EXHIBIT G – Hazardous Materials Response Team**

### **1. STAFFING**

- A. It is recognized that to be operational, the Hazardous Materials Response Team need not be staffed at the current level. It is understood that operational effectiveness may be reduced when current certified staffing levels are reduced. The Department shall make every effort to keep nine (9) personnel (3 on each shift) assigned to the team.
- B. Though the Berkeley Fire Fighters Association's position is that the Hazardous Materials Team staffing should remain at its current level of eighteen (18) with adequate funding for equipment and training, we recognize the City's managerial right to reduce staffing due to budget consideration.
- C. We propose that the Department pursue and develop a multi-agency response capability with adjacent municipalities. In addition all remaining team members should be trained to a specialist level.
- D. To reduce the team down to nine (9), the Fire Chief will consider recommendations by the Hazardous Materials Leader and the appropriate staff officers.

### **2. TEAM OPERATIONAL LEVELS**

- A. Guidelines for team operational levels shall be dictated by State regulations.
- B. To keep team staffed a maximum operational levels, the on-duty Battalion Chief shall have the discretion to change personnel assignments as needed. This includes personnel working overtime, trades, etc.
- C. Team members may be drawn from other stations if needed to respond to an incident. The on-duty Battalion Chief shall have this discretion should the need arise.

### **3. TRAINING**

- A. All Hazardous Materials Response training required for certification as Hazardous Materials Specialist must be completed by selected personnel in order to remain on the team. However, the specialist requirement will apply only to those members joining the team after the ratification of this agreement. Every effort will be made by the fire administration to upgrade the remaining team members to the specialist level by January 1, 1996.

- B. Team members may be required by City Fire Administration to assist in providing appropriate Hazardous Materials training to other Fire Department personnel. Team members providing training will possess the necessary credentials as required by current State and/or Federal standards for hazardous materials instructors.
- C. Staffing during training shall be in accordance with Section 45 (Staffing and Units in Operations) of the Memorandum of Understanding.

4. **CONDITIONS**

- A. Participation on the Hazardous Materials Response Team will not limit members ability to be eligible for higher class assignments, trades, overtime or vacation scheduling.
- B. The "HAZ-MAT" Team may be required to enforce those sections of the fire code relating to Hazardous Materials and Fire Prevention.

5. **COMPENSATION**

- A. After appointment to the HMRT employees will be compensated for attending hazardous materials training while off duty.
- B. The City will provide Hazardous Materials Specialist Training as needed to maintain a Hazardous Materials Response Team of up to four (4) per shift. Upon successful completion of the required Hazardous Materials Specialist Course, a Hazardous Materials team member, who is regularly assigned, shall receive an additional five percent (5%) to base pay. This Hazardous Materials Response Team 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.
- C. This 5% Hazardous Materials Response Team member differential shall become effective the closest pay period following completion of the course. To receive the above compensation, a three (3) year commitment to the team will be required.
- D. Employees not assigned to the Hazardous Materials Response Team who meet and maintain the Hazardous Materials Team Specialist Training requirements may receive a five percent (5%) higher classification Haz Mat Team differential when there are fewer than four (4) regularly assigned members absent from duty for the hours they are assigned to work temporarily as a substitute member of the Team. If there are two or more

individuals that have the Hazardous Materials Specialist Training, priority for this assignment will be given to a person assigned to Station 2, followed by department seniority.

- E. Hazardous Materials Response Team member who fails to complete the Hazardous Materials training will no longer receive the above mentioned compensation and shall be removed from the team.
- F. HMRT members will be assigned to Station 2. Any member who voluntarily changes assignments from Station 2 will be removed from the HMRT. If a member is moved from Station 2 due to departmental need, he/she will be removed from the HMRT.
- G. The Fire Chief reserves the right to reassign personnel from Station 2 in order to assign a HMRT member to Station 2 based on departmental need.



## **MEMORANDUM OF UNDERSTANDING**

**Between**

**CITY OF BERKELEY**

**And**

**BERKELEY FIRE FIGHTERS  
ASSOCIATION LOCAL 1227 I.A.F.F.**

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

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

MEMORANDUM OF UNDERSTANDING: BFFA LOCAL 1227 I.A.F.F.

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 Fire Fighters Association Local 1227 I.A.F.F. have met and conferred in good faith and have reached agreement on a new one-year Memorandum of Understanding that incorporates all changes and modifications in wages, hours and other terms and conditions of employment agreed to by the parties; and

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 28, 2020 through June 30, 2021 with the Berkeley Fire Fighters Association Local 1227 I.A.F.F., 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.

Exhibit A: Memorandum of Understanding between the City of Berkeley and the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 – June 28, 2020 through June 30, 2021 (Edited Version)

Exhibit B: Memorandum of Understanding between the City of Berkeley and the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 – June 28, 2020 through June 30, 2021 (Clean Version)

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## **ARTICLE 1 - ADMINISTRATION**

### **SECTION 1: RECITALS**

This Memorandum of 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 (herein - after referred to as "the City") in employer-employee relations as provided in Resolution No. 43,397-N.S. and adopted by the City Council on October 14, 1969 and amended as of 1971, and retains management rights as provided therein unless otherwise specifically provided for in this agreement.

The Berkeley Fire Fighters Association, Local 1227, International Association of Fire Fighters (hereinafter referred to as "the Association"), is the recognized employee organization for Representation Unit B (non-managerial uniformed Fire Department employees), which organization has been certified as such pursuant to said Resolution No. 43,397-N.S. The employee positions in such Representation Unit are set forth in Exhibit "A" attached hereto and made a part hereof. The Berkeley Firefighters Association, Local 1227, 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 Unit B; 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 Memorandum of 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 Unit B (non-managerial, uniformed Fire Department employees); 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 Unit B.

## 2.2 Agency Shop

All current and future employees of the City represented by the Union 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 and exclude amounts used to pay for political and ideological purposes not related to collective bargaining.

Religious Objection: Any represented employee 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, have sums equal to membership fees deducted and paid to one of the following charitable organizations as chosen by the employee: Berkeley Firefighters Random Acts; Alisa Ann Ruch Burn Foundation; or Firefighter Cancer Support Network. Proof of payments by the employee shall be made on a monthly basis to the City as a condition of continued exemption from the requirement of financial support to the Union.

Deductions: The City shall deduct, once monthly, the amount of the membership fee or service fee deductions, as appropriate, from the regular periodic payroll warrant of each City employee and forward the amount to the Union, save amounts deducted due to religious objectors which amount shall be forwarded to the designated charitable organization. An exception from these deductions shall exist in situations when an employee is in a leave without pay or other unpaid status such that there is no payroll amount from which to make a deduction. The City shall continue to deduct insurance premiums and other such deductions as may be specified by the employee in accordance with past practice.

Membership: All employees 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 ninety (90) 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).

Indemnification: The Union shall hold the City harmless, and shall fully and promptly reimburse the City for any fees, costs, charges or penalties incurred in responding to or defending against any claims, disputes, challenges, whether formal or informal, which are actually brought, or attempted or threatened to be brought, against the City or any of its agents or employees, in connection with the interpretation, application, administration or enforcement of any provision of this

Agency Fee agreement. Such reimbursement shall include, but not be limited to, court costs, litigation expenses, and attorneys' fees incurred by the City. The City shall have the right to be represented by its own attorney in any action in which it is a named party to the action.

- 2.3 The City and the Association recognize this Memorandum of Understanding (see Glossary) as a binding and legal contract between the two parties.
- 2.4 The City shall print the new Memorandum of Understanding in booklet form and have it ready for distribution within sixty (60) days of final ratification. The City shall provide the Association with one hundred fifty (150) copies of the booklet to assure availability for each member of Unit B, plus twenty-five (25) extra copies for new employees.

### **SECTION 3: EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION STATEMENT**

The Association certifies that it has no restriction on membership based on race, color, creed, ethnicity, ancestry, religion, marital or domestic partner status, gender, age, sexual orientation, national origin, political affiliation, 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. 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.

Neither the City nor the Association shall discriminate against any employee covered by this Memorandum of Understanding in a manner which would violate any applicable laws because of race, creed, religion, marital status, color, religion, political affiliation, sexual orientation, sex, national origin, disability or age.

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 the Department of Human Resources, or by contacting the City's Equal Employment Opportunity and Diversity Officer.

**SECTION 4: ASSOCIATION REPRESENTATIVES**

- 4.1 The City shall allow representatives of the Association, subject to the conditions set forth in Sections 4.2 and 4.3, 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 Memorandum of Understanding in the future.
- 4.2 With respect to the meet-and-confer process, three (3) Association representatives shall be the maximum number who will be allowed concurrent time off, except that for negotiations over language in the Memorandum of Understanding, the City will allow three (3) additional employees (for a total of six [6]) to participate if the Association makes a good faith effort to minimize out-of-service time to the employees involved. For disputes as defined in Section 4.1, the maximum number allowed concurrent time off shall be two (2).
- 4.3 The representatives shall advise their chief officers through the chain of command twenty-four (24) hours in advance before leaving their work assignments, except for emergency situations which require the immediate attention of said representative, and, in such situations, the notice shall be given at the earliest possible time. In no case shall an employee leave his/her job without the approval of a chief officer and such approval of chief officer shall not be unreasonably denied.
- 4.4 Per the requirements of the Fire Fighters' Bill of Rights Act, an employee who requests such may have an Association representative present at any meeting with chief officers and/or the Fire Chief which could result in punitive action of that employee. The Association will make a good faith effort to minimize the response time to an employee's request for representation.
- 4.5 When it is necessary to conduct an Executive Board meeting on shift, the on duty chief shall give his/her full cooperation for company movement and short assignment of personnel to assure that Executive Board members on duty may attend the meeting. Executive Board meetings should not exceed two (2) per month in most circumstances.
- 4.6 The President and/or two officers of the Association will meet with the City Manager and Fire Chief every two months to foster communication.

**SECTION 5: UNION ACTIVITIES TIME OFF**

- 5.1 The Association will be entitled to up to four hundred ten (410) hours paid leave of absence each year to be granted collectively to employees who are designated representatives of the Berkeley Fire Fighters Association, subject to the approval of the Fire Chief or the Chief's designee, 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/her discretion approve additional Association requests. Time spent on such Association business will be recorded with the appropriate code on time sheets.
- 5.2 The City agrees to allow the Berkeley Fire Fighter Association's President or his/her authorized representative no more than four (4) hours off for the purpose of attending funeral services of active and retired Berkeley Fire Fighters and/or their spouses' funeral. Such time off is effective when the President or authorized representative is on duty at the time of the funeral.
- 5.3 At the request of the Association President or his/her designee, the Fire Chief will allow the use of an apparatus for line of duty funerals in the greater Bay Area (i.e., not to exceed 8 hours outside the City). The Fire Chief may also allow, upon request, the use of an apparatus for a retiree funeral. It is understood that the staffing of the apparatus for the line of duty funerals and/or retiree funeral will be by volunteers who will not be compensated.

**SECTION 6: PILOT PROJECTS**

During the term of this Understanding, the parties may mutually agree to discuss changes in working conditions and operational practices that may conflict with provisions of the Understanding and/or departmental operating procedures. Such discussions are not intended to conflict with Section 8 (Finality of Recommendations) of this Understanding. It is the intent of the parties to be able to mutually agree to try out these changes through "pilot projects" of up to one year's duration to determine how these changes work on a day-to-day basis. If such "pilot projects" are mutually agreed to by the parties, they will be implemented during the term of the Understanding. However, both parties to the Understanding reserve their respective rights under the terms and conditions of this Understanding. The parties also recognize that changes in working conditions which conflict with the Understanding and/or departmental operating procedures may trigger a duty to bargain. If such duty to bargain is triggered, the parties reserve their respective rights under Section 8 (Finality of Recommendations).



**SECTION 7: SEVERABILITY OF PROVISIONS**

This Memorandum of Understanding is subject to all current and future applicable federal and states laws and regulations, and all lawful rules, policies, and regulations of the City of Berkeley in effect at the time this MOU is adopted, except as expressly modified by this MOU. If any provision of this Memorandum of Understanding is determined to be in conflict or inconsistent with any laws, rules, and/or regulations or is otherwise held to be invalid or unenforceable, such provision may be suspended or superseded, and the remainder of this Memorandum of Understanding shall continue in full force and effect. If any provision is invalidated, the parties shall meet and confer in good faith regarding a replacement provision.

Should any City rule, regulation or policy conflict with the MOU, the MOU shall supersede.

**SECTION 8: FINALITY OF RECOMMENDATIONS**

The recommendations set forth in this Memorandum of Understanding are final. No change or modifications shall be offered, urged, or otherwise presented by the Berkeley Fire Fighters Association or the City Manager prior to the beginning of negotiations for the contract that will go into effect when this one has expired; provided however, that nothing herein shall prevent the parties to this Memorandum of Understanding from meeting and conferring and making modifications herein by mutual consent. No such amendments to this Memorandum of Understanding shall be effective until adopted by City Council and ratified by the Association.

This Memorandum of Understanding shall supersede all existing memoranda agreement between the City and the Association.

**SECTION 9: DURATION**

The term of this Memorandum of Understanding shall commence when the terms and conditions set forth herein have been adopted by the City Council but in no event shall this Memorandum of Understanding be effective prior to 0001 hours, July 1, 2020. This Memorandum of Understanding and all its rights, obligations, terms and provisions shall expire and otherwise be fully terminated at 2400 hours June 30, 2021, the last day of the last full pay period in June 2021.

## **ARTICLE 2 - SALARIES, HOURS OF WORK AND COMPENSATIONS ISSUES**

### **SECTION 10: SALARIES**

- 10.1 Salaries are set according to the classifications and salary ranges assigned to those classifications as listed in the attached Exhibit "A" to this MOU. In recognition of the City's anticipated revenue shortfall for FY 2021 resulting from the COVID-19 pandemic, the City proposes zero (0%) across the board wage increase for the term of this agreement. This is in order to aid the City's ability to continue routine services and minimize fiscal impacts for employees.
- 10.2 Fire Fighter Step Increases: Employees in the rank of Fire Fighter will be placed in the salary schedule reflected in Exhibit "A" according to the chart shown below based on the employee's anniversary date subject to the exception in Section 10.5 for extended unpaid leaves of absence. The time necessary to move from one salary step is expressed in months of service on the chart below:

| <b>Classification</b> | <b>Length of Service</b>                          | <b>Salary Step</b> |
|-----------------------|---------------------------------------------------|--------------------|
| Fire Fighter          | 0 to 6 months                                     | Step A             |
| Fire Fighter          | Beginning month 7 through completion of month 12  | Step B             |
|                       | Beginning month 13 through completion of month 18 | Step C             |
| Fire Fighter          | Beginning month 19 through completion of month 24 | Step D             |
| Fire Fighter          | Beginning month 25 through completion of month 36 | Step E             |
| Fire Fighter          | Beginning month 37 through completion of month 48 | Step F             |
| Fire Fighter          | Beginning month 49 through completion of month 60 | Step G             |
| Fire Fighter          | Beginning month 61 through completion of month 72 | Step H             |
| Fire Fighter          | Beginning month 73 and subsequent months          | Step I             |

- 10.2.1 All Other Step Increases: Employees in the rank of Fire Apparatus Operator, Fire Prevention Inspector, Deputy Fire Marshal, Fire Captain I/II, and Paramedic Supervisor I will be placed in the salary schedule reflected in Exhibit "A" according to the chart shown below based on the employee's anniversary date, subject to the exception in Section 10.5 for extended unpaid leaves of absence. The time necessary to move from one salary step is expressed in months of service on the chart below:

| Classifications                                                                                                        | Length of Service                                    | Salary Steps |
|------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|--------------|
| Fire Apparatus Operator, Fire Prevention Inspector, Deputy Fire Marshal, Fire Captain I/II, and Paramedic Supervisor I | 0 through completion of month 48                     | Step B       |
| Fire Apparatus Operator, Fire Prevention Inspector, Deputy Fire Marshal, Fire Captain I/II, and Paramedic Supervisor I | Beginning of month 49 through completion of month 60 | Step C       |
| Fire Apparatus Operator, Fire Prevention Inspector, Deputy Fire Marshal, Fire Captain I/II, and Paramedic Supervisor I | Beginning of month 61 through completion of month 72 | Step D       |
| Fire Apparatus Operator, Fire Prevention Inspector, Deputy Fire Marshal, Fire Captain I/II, and Paramedic Supervisor I | Beginning of month 73 and subsequent months          | Step E       |

10.2.2 An employee who promotes to any higher classification covered by this Memorandum of Understanding will be placed at the appropriate salary step based on length of service with the Berkeley Fire Department.

**10.3 Salary Placement and Entry – Lateral Incentive**

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" for the appropriate date of appointment. The minimum rate for the class shall apply to employees upon original appointment of the position, except in cases of lateral entry. For the purpose of this Section a "lateral entry appointment" shall be defined as a person who has completed the initial probationary period as a Fire Fighter or similar equivalent classification in a paid organized Fire Department, transfers from another agency, and completed two (2) years of full time continuous service in a paid organized Fire Department. Lateral entry appointment may be made for the classification of Fire Fighter, including Fire Fighter Paramedic, only. The Fire Chief may recommend to the Director of Human Resources and City Manager that a lateral entry appointment be made at a salary step or pay schedule above the entry level that is commensurate with the appointee's years of service as a sworn firefighter with a paid organized Fire Department.

10.4 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.

10.5 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 for employees assigned to a forty hour work week or two hundred eighty eight hours for employees assigned to a fifty six hour work week. If the employee

is off the payroll for one hundred sixty consecutive hours for employees assigned to a forty hour work week or two hundred eighty eight hours for employees assigned to a fifty six hour work week, the total amount of time off shall be made up before the employee shall be entitled to such pay increase, except that employees on approved parental leave or military leave are exempt from such requirement. Employees must receive an overall evaluation of "meets requirements" in order to advance to the next step in the salary range.

- 10.6 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 any employee occupying a position in a class for which the salary rate or range is reduced, shall continue to receive his/her present salary. Such salary shall be designated as "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 10.2.
- 10.7 Payment of salaries herein established shall be bi-weekly. Each pay period shall begin at 8:01 a.m. Sunday, up to and including 8:00 a.m. Sunday, 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.
- 10.7.1 The City has no plans to change the practice of paying employees their annual salary in equal amounts each pay period but if it should become unfeasible to continue this practice, the City will meet and confer with the Association regarding changes to the present practice.
- 10.7.1.1 For employees on a forty (40) hour week, the hourly rate shall be the quotient of the annual salary (12 times the monthly salary) divided by 2,080 hours carried to four (4) decimal places.
- 10.7.1.2 For employees on a fifty-six (56) hour week, the hourly rate shall be the quotient of the annual salary (12 times the monthly rate) divided by 2,912 hours carried to four (4) decimal places.
- 10.7.1.3 The FLSA work period is defined as twenty-four (24) days with an FLSA overtime threshold of 192 hours.

## 10.8 Matrix of Comparable Cities

The City and Association agree to compare and discuss the total compensation of the following agencies as part of the next MOU negotiations: City of Alameda, County of Alameda, County of Contra Costa, City of Daly City, City of Fremont, City of Hayward, Livermore-Pleasanton Fire Department, City of Oakland, City of Palo Alto, City of Richmond, City of Vallejo and City of San Mateo. The City

reserves the right to modify these survey agencies, in its discretion, no later than the first MOU negotiations meeting.

### **10.9 Emergency Medical Technicians**

All Unit B classifications are required to maintain current EMT certification as a condition of employment.

Effective January 4, 2015, the City will provide EMT pay differential of four percent (4%).

### **10.10 Hazardous Materials Response Team**

10.10.1 The City will provide Hazardous Materials Specialist training as needed to maintain a Hazardous Materials Response Team. Upon successful completion of the required Hazardous Materials Specialist Course, a Hazardous Materials Team member, who is regularly assigned, shall receive an additional differential of five percent (5%) to base pay. This Hazardous Materials Response Team 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.

10.10.2 This five percent (5%) Hazardous Materials Response Team member differential shall become effective the closest pay period following completion of the course. Employee is required to make a three (3) year commitment to the team. The duration of the assignment may be for up to three years, but the Fire Chief retains discretion to end the assignment at any time based on operational needs. However, the Hazardous Materials Team shall operate with no less than 12 members across three shifts, except the Chief shall have a reasonable time period to fill vacancies to comply with this requirement, and shall provide notice to BFFA when the team may temporarily have fewer than 12 and the estimated duration of time. The five percent (5%) differential will cease when Employee stops participating or is removed from the Team.

### **10.11 Water Rescue Swimmer Differential**

The City will pay a two and one-half percent (2.5%) of base pay differential to persons assigned to serve as part of the Water Rescue Swimmer Team. Initially, the Team will consist of persons serving as a member of the Team at the time the Council approves this MOU. At all times there will be a minimum of two (2) rescue swimmers assigned between the following companies: Engine 1, Medic 1, Engine 2, Truck 2, Engine 5, Truck 5, Medic 5, and Engine 6. The Fire Chief has the discretion to move personnel to accommodate this minimum staffing requirement.

Through attrition as persons retire, resign, decide not to continue to serve as a member of the team, or fail to maintain proper certification as described further in this Section, the size of the Team shall reduce down to fifteen (15) persons. These grandfathered employee Team members shall be entitled to serve a three (3) year term, assuming they maintain their certification as discussed in the next paragraph.

Employees shall be required to annually and timely pass a swim test administered by the City to be considered a certified Water Rescue Swimmer. Failure to do so shall result in no longer receiving differential pay. Employees will be allowed a second opportunity to get certified within thirty (30) days of failing to timely pass the annual swim test. Failure to do so will result in removal from the Team.

Employees not assigned to the Team who meet and maintain certification may receive the two and one-half percent (2.5%) differential pay when there are fewer than two (2) regularly assigned Team members working a shift, and shall receive this differential pay for the hours they are assigned to work temporarily as a substitute member of the Team. If there are two or more individuals eligible, priority will be given to eligible employees working at Stations 1 or 6, and then thereafter based on Department seniority.

Employees are required to make a three (3) year commitment to the Team. The duration of the assignment may be for up to three (3) years, but the Fire Chief retains discretion to end the assignment at any time based on operational needs, and rotation of someone "off of the team" shall not be deemed disciplinary or punitive or implicate any procedural rights.

#### **10.12 Shift Fire Prevention Inspector**

The Fire Chief may assign one person, regardless of rank, to function as a fire prevention inspector on each fire suppression shift. The duration of the assignment may be for up to three (3) years but the Fire Chief retains discretion to end the assignment at any time. The purpose and scope of the shift fire prevention inspector is to provide assistance with fire investigations, overcrowding issues, for clearance and event inspections, public relations, fire inspections, fire prevention presentations and other duties as may be assigned. Employees assigned as a fire prevention inspector on a fire suppression shift shall receive an additional differential of five percent (5%) to base pay. This Fire Prevention Inspector Premium will be reported to CalPERS as Fire Prevention Assignment Premium. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

10.13 All changes in pay rate will go into effect at the beginning of a pay period (see Section 10.7) and stay in effect until the last day of a pay period if they are a result of the following:

10.13.1 Application of a cost of living adjustment;

- 10.13.2 Step increases;
- 10.13.3 Retroactive adjustments;
- 10.13.4 Implementation of CalPERS options;
- 10.13.5 Change of employee's status from career to hourly or vice versa;
- 10.13.6 Promotion or demotion;

If the pay rate change is triggered by an event which occurs in the first half of the pay period, the change in pay rate will become effective on the first day of the following pay period. Similarly, the changed pay rate should cease to be in effect on the last day of the pay period during which the employee is no longer eligible if the triggering event occurs during the second half of the pay period; or if the triggering event occurs during the first half of the pay period, the changed pay rate would cease to be in effect on the last day of the preceding pay period.

- 10.14 For pay purposes of calculating annual pay, the City will utilize the IRS definition of "end of the year" which is the close of the last City pay period for which the payday falls within the calendar year. See Glossary for additional explanation.

### **10.15 Longevity Pay**

Prior to June 19, 2016, the City will provide employees completing twenty four (24) years of service in a classification represented by the Association a three percent (3%) differential beginning with their anniversary date that starts their twenty-fifth (25<sup>th</sup>) year of service, and this differential shall apply to all hours in a paid status. Effective June 19, 2016, this differential shall increase to five percent (5%). This Longevity Pay shall be reported to CalPERS as Longevity Pay Incentive Pay.

### **10.16 Career Development Incentive Program**

Effective the first full pay period in January 2019, the City agrees to pay the following hourly amounts from the first full pay period in January through the last full pay period in December for persons achieving the following levels of combined education, training, and longevity under the Career Development Incentive Program set forth in a Career Development General Order achieved in the prior calendar year:

- Level 1: \$0.085/hour
- Level II: \$0.17/hour
- Level III: \$0.26/hour
- Level IV: \$0.34/hour

These hourly amounts shall be increased by a factor of 1.4 for any full pay periods working a 40 hour per week assignment during the employee's year of eligibility. The specific criteria and applicable procedures for eligibility and payment are set forth in the Career Development General Order. Future changes to the criteria, timing and/or requirements under the Career Development Incentive Program and/or elimination of the Program are subject to applicable meet and confer.

## **SECTION 11: 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 Duty Chief of Division Manager. The Duty Chief or Division Manager shall notify the department 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 Deputy Chief. Under payments will be processed as soon as practicable.

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 Deputy Fire Chief. 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. The City and the Association 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 10 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 12: FIRE STAFF PREMIUM DIFFERENTIALS**

12.1 The Captain assigned by the Fire Chief to perform the duties in the Emergency Medical Services, Office of Emergency Services or Training Division shall receive ten percent (10%) premium pay over base salary. The employee appointed to the position of Deputy Fire Marshal classification shall receive a ten percent (10%) salary increase of the Captain II classification.



12.2 An employee assigned in writing by the Fire Chief or his/her designee and approved by the City Manager to a special assignment on a 40-hour week will receive a five percent (5%) Fire Staff Premium Differential above his/her base pay. If the special assignment exceeds one hundred twenty (120) calendar days, then the Fire Staff Premium Differential will be ten percent (10%) above his/her base salary retroactive to the first day of the special assignment. The Fire Staff Premium Differential is determined by the length of the special assignment and not to any specific employee. Employee shall not receive said differentials if Employee is assigned to a 40-hour week for training and/or for modified duty assignment.

12.2.1 When a recruit academy is held two (2) recruit training officers will be assigned.

### **SECTION 13: BILINGUAL PREMIUM PAY**

The Fire Chief may make a Bilingual Premium Pay Differential of two percent (2%) of 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.

The Fire Chief will accept applications from employees wishing to apply for a bilingual differential in the first quarter of each year, or within the first three (3) months of employment. Employees may be tested at the Fire Chief's discretion.

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.

### **SECTION 14: ACTING IN HIGHER CLASSIFICATION**

14.1 Pay for work in a higher classification shall commence after two (2) hours of work at a higher classification; however, pay for working in a higher classification shall encompass the total time worked in the higher classification. An employee, to receive such pay, must be permanent in the rank immediately below the higher

classification, with the only exception that Fire Fighters (in a permanent status) shall be allowed to "act" as a Fire Captain II.

- 14.1.1 Employees shall only be allowed to act in a higher classification if they are on the current promotional list for the position in which they are to act. If no qualified personnel on the current promotional list are available to act, Minimum Qualification Actors shall be allowed to act in a higher classification. Minimum Qualification Actors must meet all the required qualifications, education, and experience to be eligible to participate in the promotional exam process for the classification in which they are to act. Minimum Qualification Actors must also successfully complete a certification process for the classification in which they are to act, administered by the Division of Training, before they are allowed to act in the specified classification.
- 14.1.2 Only those individuals who are currently on an active promotion list or who have completed the minimum qualifications task book and have it on file with the City shall be eligible to work in a higher classification. The City shall set the duration a task book shall be valid and the remedial steps a member must take if the member fails an exam, which will be outlined in the "Task Book" General Order.
- 14.2 The temporary assignment to a higher classification referred to herein shall be made at the same salary step in the acting classification as is held in the permanent classification, including the Longevity Pay Plan Range level held in the permanent classification.
  - 14.2.1 For purposes of this section, there will be a distinction between short term and long term acting in a higher classification assignments. Short term acting in a higher classification assignments are those assignments that are expected to be up to but not exceed six weeks duration. Long term acting in a higher classification assignments are those assignments that are expected to be more than six weeks duration.
  - 14.2.2 For short term acting assignments, employees who are on the promotional list will be given priority consideration for acting at their assigned fire station or on their assigned apparatus when the vacancy occurs on their assigned shift. In the absence of any available actors on the promotional list for a given shift, Minimum Qualification Actors from that shift will be given priority consideration for acting at their assigned fire station or on their assigned apparatus.
  - 14.2.3 For long term acting in a higher classification assignments, employees who are on a promotional list or, in the absence of available persons on a promotional list, Minimum Qualification Actors may be assigned from

another shift or another station to cover the vacancy and to ensure equal distribution of command and company officers.

- 14.3 An employee assigned to work as a Higher Class Battalion Chief in the fire suppression assignment shall be paid at the Battalion Chief 56 hour per week rate of pay.
- 14.4 In the absence of a Chief Officer assigned as the Fire Marshal for two (2) or more consecutive calendar days, in recognition of responsibility for performing additional duties, the Deputy Fire Marshal shall be paid a differential of ten percent (10%) above the rate of Fire Captain II at the forty (40) hour per week rate of pay. This differential shall be paid from the first day of the absence.
- 14.5 In the absence of a Chief Officer assigned to the Division of Training for five (5) or more consecutive calendar days, in recognition of responsibility for performing additional duties, the staff officer shall be paid a differential of ten percent (10%) above the rate of Fire Captain II at the forty (40) hour per week rate of pay. This differential shall be paid from the first day of the absence.
- 14.6 In the absence of the individual assigned as the Deputy Fire Marshal for two (2) or more consecutive calendar days, in recognition of responsibility for performing additional duties, the Sworn Fire Inspector shall be paid a differential of five percent (5%) above the applicable Sworn Inspector's base salary at the forty (40) hour per week rate of pay. This differential shall be paid from the first day of the absence.
- 14.7 An employee will only be eligible for higher class pay when working.

## **SECTION 15: HOURS & DAYS OF WORK / ALTERNATE WORK SCHEDULE PROGRAM**

Hours and days of work shall be governed by rules established by the City Manager and the Department Head. The present work schedule shall be maintained during the term of this Memorandum of Understanding. In the 10/14 hour (day/night) overtime schedule, employees shall be paid for hours worked.

### **15.1 48/96 Work Schedule**

Suppression employees shall work the 48/96 schedule as their regular schedule.

### **15.2 48/96 Impacts**

If the Fire Chief determines the 48/96 schedule is causing negative impacts, such as, but not limited to, an increase of vehicle accidents, industrial injuries, sick leave usage, Alameda County EMS unusual occurrences reports, health and safety complaints, quality improvement or assurance issues, performance of duty

reprimands, or customer service complaints, the Union agrees to meet with the Fire Chief upon request to discuss concerns, if any, the Fire Chief might have in the future regarding the 48/96 schedule.

- 15.3 The City and the Association share the interest of ensuring responders are well rested and able to make sound decisions during emergency scenarios. Both parties recognize the need to evaluate the potential effects of fatigue secondary to consecutive work hours.

The City and the Association further agree that the Duty Chief shall have the authority to temporarily reassign a transport paramedic to a suppression company for relief purposes whenever the Duty Chief, a Company Officer, or a Paramedic Supervisor I, in his or her sole discretion, deems it necessary.

#### 15.4 Daylight Saving Time

15.4.1 **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 for the lost work hour.

15.4.2 **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 14 (Acting in Higher Class) of this MOU.

### SECTION 16: OVERTIME

- 16.1 Overtime for employees in Unit B covered by this Memorandum of Understanding shall be defined as that time which the employee is required to do work during his/her day off, off-shift, or other scheduled time off during the tour of duty.
- 16.2 The overtime rate shall be one and one-half (1½) times the straight time rate based upon regular monthly salary at the hourly rate to which the employee is entitled under this Memorandum of Understanding at the time he or she works the overtime.
- 16.3 An employee may request compensation for overtime by compensatory time off or by payment. The department head shall consider the employee's preference. Whether the employee shall be compensated for overtime by compensatory time

or by payment shall be at the sole discretion of the employee's department head.

- 16.4 For the purposes of this Memorandum of Understanding the term "Compensatory Time" shall mean the same as the term "Due 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 for persons assigned to a forty (40) hour week work schedule. Compensatory time shall not accumulate in excess of one hundred eight (108) overtime hours worked which is the equivalent of one hundred sixty two (162) hours of compensatory time for persons assigned to a fifty-six (56) hour week work schedule.

- 16.4.1 The conversion factor for employees accruing and using compensatory time is as shown below. The intent of the parties is to have the dollar value of the compensatory time 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.

16.4.1.1 Compensatory time 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 compensatory time accrued by the conversion factor of 0.7143.

16.4.1.2 Compensatory time 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 compensatory time accrued by the conversion factor of 1.4.

- 16.4.2 Overtime accumulation in excess of sixty (60) hours for an employee assigned to a forty (40) hour per week schedule or one hundred eight (108) hours for an employee assigned to a fifty six (56) hour per week schedule shall be paid as compensation.

- 16.5 In the event an employee resigns or is terminated, the employee shall be paid for all accrued compensatory time.

- 16.6 For the purpose of computing overtime, the workweek shall be defined as beginning at 8:01 a.m. Sunday morning and ending the following Sunday.

- 16.7 Employees assigned to a position working a regular forty (40) hour week schedule shall receive overtime compensation for all time worked in excess of forty (40) hours per week in that assignment at the applicable 40 hour per week overtime rate for this overtime as provided in Section 16.2. Employees assigned to a 40 hour per week schedule who perform overtime work in suppression shall be paid for this overtime at the applicable suppression overtime rate.

16.8 Overtime for activities (i.e., training, CERT classes, community meetings) not related to suppression staffing or emergency callbacks require the Deputy Fire Chief's approval in advance.

**16.9 Call-Back**

16.9.1 Employees who are called back to work by the department for normal staffing needs (i.e., during non-emergency times), shall be paid overtime compensation only for actual time worked, commencing upon reporting for duty.

16.9.2 **Emergency Call-Back** - an employee who is required to report to work for an emergency will be paid for travel time as well, in accordance with FLSA standards.

16.9.3 In any case of emergency call-back when an employee responds, the minimum time for which such overtime compensation shall be paid will be four (4) hours.

**16.10 Overtime Practices**

The Department will adhere to the overtime hiring procedures and policy as stated in the Overtime General Order.

**16.11 Holding Over After Shift Change**

16.11.1 At or before 8:00 a.m. on the day of shift termination, the Duty Chief or his/her representative shall notify any personnel who is to be held over to await arrival of replacement personnel. Any personnel not so notified is deemed to have been released at 8:00 a.m.

16.11.2 Any personnel so notified who are held over shall be compensated at the overtime rate (see Section 16.2) for any time held over beyond 8:00 a.m.

**SECTION 17: USE OF AUTOMOBILES**

The City Manager shall govern the use of City-owned automotive equipment and privately-owned automotive equipment by such rules and regulations as he/she may establish. Compensation shall be given in the form of a cash allowance in the amount established by the Internal Revenue Service.

**SECTION 18: COURT PAY**

An off-duty employee, who is subpoenaed to appear in court in cases in which the City is a party, or as a witness for criminal acts or civil torts that were witnessed on duty, shall be compensated at one and one-half (1½) times his or her regular straight-time rate for all hours the employee is so ordered to appear.

## **ARTICLE 3 - LEAVES**

### **SECTION 19: VACATION**

- 19.1 A vacation period for employees on a 56-hour week shall consist of three 24-hour shifts (See Glossary), effective July 1, 1970. 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.
- 19.1.1 For employees on the 48/96 schedule, a vacation period for employees on a 56-hour week shall consist of two 24-hour shifts (See Glossary).
- 19.1.2 The City agrees that the present practice of choosing vacation by seniority on each shift shall be continued. Annual vacation picks may be scheduled at any time between January 5 and the last day of February, at the discretion of the Fire Chief. It is understood that the City has the necessity to evenly allocate vacation time throughout the calendar year in order to meet staffing obligations and maintain a manageable overtime liability. Therefore, the City may, after consultation with the Association, but at its sole discretion, schedule vacations on a flexible basis. If assignment of vacations is necessary, the principle of seniority shall prevail insofar as possible.
- 19.1.3 A maximum of up to five (5) vacation slots per shift, shall be allowed for twenty-two (22) vacation weeks. The maximum of four (4) vacation slots per period, per shift shall be allowed for the remainder of the vacation year. Paramedic picks will be included in this number and shall be based on seniority. Up to four (4) paramedics will be allowed off at one time.
- 19.1.4 Not more than three (3) Officers shall be allowed off during a vacation period.
- 19.1.5 Except in cases of emergency declared by the Fire Chief, employees shall not be allowed to work while on vacation. If an employee works on a day when vacation or incremental time off was approved, the number of hours worked will be coded as straight time and the equivalent number of vacation time will be credited.
- 19.1.6 If an employee is allowed to cancel any part of his/her vacation tour or incremental time off, and the vacation period has been fully selected, that vacation or incremental period will be reopened for selection by other members in order of seniority. Fifty-six (56) hour suppression personnel shall not be allowed to cancel less than two (2) shifts of a vacation tour unless another vacation spot exists. If the entire tour or



shift is not selected, the tour or shift(s) shall be opened for incremental time selection. The Duty Chief must announce any cancellation by e-mail for a minimum period of one (1) tour, with the exception that if cancelled vacation notification is made less than twenty-one days in advance. In such case, the Duty Chief may allow selection of the cancelled vacation within one (1) shift.

- 19.1.7 **Incremental Time Off** - Incremental Time Off is considered time off using vacation, due time, or sick leave bonus. Incremental vacation shall be taken in increments of ten (10) hours (days) from 0800 hours to 1800 hours or fourteen (14) hours (nights) from 1800 hours to 0800 hours.
- 19.1.8 An employee placed on workers' compensation leave, modified duty, special assignment or sick leave to a forty (40) hour work week shall have his/her vacation tour or incremental time off opened up to the fifty six (56) hour suppression staff in order of seniority. This will be done as soon as it is reasonably determined the member will not be returning to a fifty six (56) hour work week and no later than 1000 hours of the shift prior to the employee's scheduled vacation tour or shift.

19.2 Effective March 1, 2009 the vacation accrual schedule is as follows:

| Years of Service                                                                                              | Vacation Accumulation |           |
|---------------------------------------------------------------------------------------------------------------|-----------------------|-----------|
|                                                                                                               | 56 Hours              | 40 Hours  |
| Through the first five (5) years of service (as provided in Sections 19.5, 19.5.1 and 19.6. below)            | 2 Vacation Periods    |           |
|                                                                                                               | 144 hours             | 80 hours  |
| Six (6) through eleven (11) years of service (as provided in Sections 19.5, 19.5.1 and 19.6. below)           | 3 Vacation Periods    |           |
|                                                                                                               | 216 hours             | 120 hours |
| Twelve (12) through eighteen (18) years of service (as provided in Sections 19.5, 19.5.1 and 19.6. below)     | 4 Vacation Periods    |           |
|                                                                                                               | 288 hours             | 160 hours |
| Nineteen (19) through twenty-four (24) years of service (as provided in Sections 19.5, 19.5.1 and 19.6 below) | 5 Vacation Periods    |           |
|                                                                                                               | 360 hours             | 200 hours |
| Twenty-five (25) and subsequent years of service as provided in Sections 19.5, 19.5.1 and 19.6 below).        | 6 Vacation Periods    |           |
|                                                                                                               | 432 hours             | 240 hours |

- 19.2.1 **Lateral Entry Vacation Accrual Rate at Time of Appointment:** Subject to the provisions of Section 19.1, an employee appointed on or after October 1, 2006 as a lateral entry appointment as described in the Section 10.3 of the Agreement, shall accrue and be eligible to take Vacation Leave commensurate with his or her years of experience as a paid sworn Fire Fighter, as defined in Section 19.2. However, such leave accrual shall be prospective. Vacation privileges associated with seniority from prior employment in another Fire Department as a Fire Fighter shall not apply in Berkeley.

19.3 Employees shall earn vacation leave according to the following schedule:

| <b>Hours of Vacation Leave Earned For Each Hour of Service</b> |                              |                      |
|----------------------------------------------------------------|------------------------------|----------------------|
| <b>Vacation Periods Earned Per Year</b>                        | <b>For Employees Working</b> |                      |
|                                                                | <b>56 Hours/Week</b>         | <b>40 Hours/Week</b> |
| 2                                                              | .0495                        | .0385                |
| 3                                                              | .0742                        | .0577                |
| 4                                                              | .0989                        | .0769                |
| 5                                                              | .1236                        | .0962                |
| 6                                                              | .1484                        | .1154                |

- 19.3.1 Each employee shall be entitled to take, during his/her first two (2) full years of City 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.
- 19.4 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 three (3), four (4), five (5) and six (6) vacation period rate.
- 19.4.1 Employees working on an intermittent or part-time basis who have worked half-time or more in the preceding twelve (12) months without termination 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.
- 19.4.2 For the purpose of computing length of service in determining eligibility for vacation at the three (3), four (4), five (5) or six (6) vacation period rate, time spent on extended military leave or parental leave shall be counted as time spent in the service of the City.
- 19.5 Employees can carry over from one vacation year (see Glossary) to the next, no more than eight (8) vacation periods of earned vacation.
- 19.6 Not later than November 1st of each year, the City will notify each affected employee whose earned vacation is projected to exceed eight (8) weeks by the end of the vacation year (see Glossary). By November 30th, those employees with projected excess vacation will submit to the Deputy Chief a proposal for use of that projected excess vacation prior to the end of the vacation year. An employee who has attained maximum accumulation may be required to take all 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 the Leave Requests General Order and this Memorandum of Understanding.

- 19.7 An employee who is anticipating retirement in the next vacation year will not be forced to use accumulated vacation time in the last year of employment. He/she may request to sell the vacation to the City and the City will honor that request, provided that 1) the employee has filed a CalPERS option form indicating that he/she is planning to retire, and 2) this requirement that the City buy the employee's vacation will be in effect for one (1) year maximum.
- 19.8 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 An 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 for employees assigned to a forty (40) hour work week or two hundred eighty eight (288) hours for employees assigned to a fifty six (56) hour work week shall be entitled to a full vacation. If such an employee is off the payroll for one hundred sixty (160) consecutive hours for employees assigned to a forty (40) hour work week or two hundred eighty eight (288) hours for employees assigned to a fifty six (56) hour work week, the employee's vacation shall be as provided in Sections 19.12, 19.13, 19.14, 19.15 or 19.16.
- 19.10 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 earned vacation periods 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 earned, as the case may be.
- 19.11 Upon termination, extended military leave, or other extended leave of absence without pay, if the employee's vacation balance is positive, such employee, or his or her estate, shall be paid for the excess of credits on the basis hereinafter set forth. If the vacation balance is negative, 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, deferred compensation, accrued floating holidays, holiday pay due, compensatory time due or sick leave, in the listed order of priority.
- 19.12 The basis for such payment by the City or for such reimbursement to the City shall

be as follows:

19.12.1 The employee's regular hourly salary, as defined in the Glossary at date of termination, extended military leave, or other extended leave of absence without pay, multiplied by the excess of vacation leave hours earned or vacation leave hours taken, as the case may be.

19.13 Upon retirement, termination or extended military leave, employees shall be paid off one hundred percent (100%) of all vacation which he or she has earned, banked, or held over.

19.14 Employees shall accrue vacation leave credits for only those hours in which the employee is on the payroll and receiving pay.

### **19.15 Vacation Buy Back**

Vacation buy back shall be done at the time of vacation picks, but prior to the vacation selection process. The buy back shall be done in order of seniority, by shift, similar to vacation selection. Employees have the option to sell some of their vacation back to the City at this time. Employees may sell in increments of one (1) week at a time during each round.

19.15.1 Employees may sell up to half ( $\frac{1}{2}$ ) of their earned vacation, including any vacation carry-over.

19.15.2 For purposes of computing earned vacation, time may be counted up to the end of the second paycheck in February of the current year. Employees will be paid only for vacation time actually earned up to the time of buy back payoff.

19.15.3 Only whole weeks shall be counted for vacation buy back. For example, seven (7) weeks, twenty - one (21) hours would count as seven (7) weeks of earned vacation.

19.15.4 The City will allow up to twenty (20) weeks of vacation buy back per shift for personnel assigned to fire suppression for a given vacation year. Once that number has been reached no further vacation buy back request shall be honored.

19.15.5 Employees will be paid in March for vacation sold back to the City at the beginning of the vacation year, but in no event sooner than the first pay period after the fiscal year's budget is approved.

19.15.6 The vacation buy back provision as provided for in this section applies only to Unit B Personnel assigned to fire suppression and medical response vehicles.

19.15.6.1 Unit B Personnel not assigned to fire suppression and medical response vehicles will be able to sell back vacation leave as provided in Section 19.15.1 and this sell back of vacation will not apply to the twenty (20) week limit set forth in Section 19.15.4 for personnel assigned to fire suppression.

19.15.6.2 The Fire Department, at its discretion, may allow incremental vacation to be taken on short notice, in excess of the maximum number of vacation spots selected, when in the opinion of the Fire Chief or his/her representative, there are extra personnel working who are able to provide relief, and, the employee's absence will have no adverse impact on any departmental, or employee training program or other activity which is scheduled.

19.16 The conversion factor for employees accruing and using vacation leave is as shown below. The intent of the parties is to have the dollar value of the vacation leave 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.

19.16.1 Vacation leave 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 accrued by the conversion factor of 0.7143.

19.16.2 Vacation leave 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.

## **SECTION 20: HOLIDAYS**

All employees in Representation Unit B shall be paid additional compensation for the holidays hereinafter enumerated at the straight time salary rate based upon their regular monthly salaries. Employees who are regularly scheduled to work forty (40) hours per week will receive eight (8) hours of holiday pay and those regularly scheduled to work fifty-six (56) hours will receive twelve (12) hours of holiday pay. The holidays to which this provision applies are:

- 20.1 New Year's Day
- 20.2 Martin Luther King, Jr. Birthday (3rd Monday in January)
- 20.3 Lincoln's Birthday
- 20.4 Washington's Birthday
- 20.5 \*International Women's Day - March 8 of each year (no time off is given for this

- holiday; only additional compensation is provided.)
- 20.6 Malcolm X's Birthday
  - 20.7 Memorial Day
  - 20.8 Independence Day
  - 20.9 Labor Day (observed on the first Monday in September)
  - 20.10 \*Admission Day (no time off is given for this holiday; only additional compensation is provided.)
  - 20.11 Indigenous People's Day (observed on the second Monday in October)
  - 20.12 Veterans' Day
  - 20.13 Thanksgiving Day
  - 20.14 The day after Thanksgiving Day
  - 20.15 Christmas Day
  - 20.16 Any other special holiday as declared by the City Manager

\*If, during the life of this contract, the City agrees to give International Women's Day as a holiday to other City Employees, in addition to the Holidays listed herein, one (1) additional floating holiday will be credited for the Fire Service.

20.17 If any other represented bargaining unit receives an additional holiday above fifteen (15) holidays, the City agrees to grant an additional holiday to the Berkeley Fire Fighters Association.

**20.18 Floating Holiday COVID Leave:** Due to the nature of bargaining unit work, backfill is required so the City will credit these floating holiday hours in the form of a stipend equal to forty (40) hours the first full pay period after Council adoption.

## **SECTION 21: SICK LEAVE**

- 21.1 An employee shall be entitled to take sick leave with full pay in case of sickness, disability or serious illness of that employee or within the immediate family of the employee in accordance with the provisions of Sections 21.2 to 21.7 inclusive.
- 21.2 Each employee shall be credited with one (1) sick leave day (see Glossary) with full pay for each month of service, provided that each employee shall be credited with two (2) sick leave days with full pay for each month of service during the seventeenth (17th) year of employment and thereafter.

For purposes of this Section 21 (Sick Leave), a month of service shall mean thirty (30) consecutive calendar days in the case of employees working on a full-time or part-time basis and shall mean one hundred seventy three (173) hours of work in the case of employees working in a forty (40) hour per week assignments or two hundred forty three (243) hours for a fifty six (56) hour per week employees on an intermittent basis. Provided that effective upon the implementation of necessary data processing and programming changes, actual accrual of sick leave will be

based upon those hours in which the employee was on the payroll and receiving pay.

- 21.3 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 half-time basis.
- 21.4 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.
- 21.5 Such sick leave as provided in Section 21.2 when not used shall be cumulative, but the accumulated, unused period of sick leave, beginning in 1990, shall not exceed the following schedule:

| <b>For 56-hour A Week Employees</b>             | <b>For 40-hour A Week Employees</b> |
|-------------------------------------------------|-------------------------------------|
| base - 1800 hrs.                                | base - 1200 hrs.                    |
| 1st year - 1944 hrs.                            | 1st year - 1296 hrs.                |
| 2nd year - 2088 hrs.                            | 2nd year - 1392 hrs.                |
| 3rd year - 2232 hrs.                            | 3rd year - 1488 hrs.                |
| 4th year - 2376 hrs.                            | 4th year - 1584 hrs.                |
| (and so on, as described in the next paragraph) |                                     |

The previously established maximum accumulation level of 1800 hours (1200 hours for 40-hour a week employees) may at the employee's option, be increased by up to 144 hours (96 hours for 40-hour a week employees) each year following the year when the employee reaches 1800 hours (1200 hours for 40-hour a week employees) level.

In each year following that 1800 hour (1200 hour for 40 hour a week employees) 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 their sick leave accumulated base by the 144 hours (96 hours for 40 hour a week employees) 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 144 hours (96 hours for 40 hour a week employees) 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 144 hours (96 hours for 40 hour a week employees) 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 provided in Section 21.2.

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.

- 21.6 All accumulated sick leave shall be canceled when an employee terminates or is terminated, except that all employees hired on or before June 30, 2014 that retire (non-disability) or voluntarily terminate with twenty (20) years of service shall be entitled to receive payment at retirement or termination of unused sick leave days, based on the following schedule:

| Number of Unused Sick Leave Days | Percentage Payout |
|----------------------------------|-------------------|
| 0 - 74 days                      | 38%               |
| 75 - 99 days                     | 41%               |
| 100 - 124 days                   | 44%               |
| 125 - 149 days                   | 47%               |
| 150 and over                     | 50%               |

This pay-out schedule shall also apply to any employee retiring on permanent disability arising out of and incurred in the course and scope of his/her employment with the City. Employees hired on or after July 1, 2014 shall not be eligible for payment of any unused sick leave days.

- 21.7 Sick leave shall not be considered as a privilege which an employee may use at his/her 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. Not more than twelve (12) sick leave days in any calendar year may be taken 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: child or dependent residing in the employee's household or spouse, domestic partner, son, daughter or parent.
- 21.8 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, and no other provision for payment for time off because of 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 In order to receive compensation while absent on sick leave, the employee shall notify the on-duty supervisor one (1) hour prior to the commencement of the employee's assigned shift. The reasons why an employee is off on sick leave is considered to be a matter of some privacy. Therefore, only the type of leave (sick leave or family sick leave,) shall be noted to the Station Officer, and recorded in station and dispatch logs.
- 21.10 The employee must inform the Duty Chief or Division Manager as to the nature of the illness. This is to be done via e-mail in a short format no later than two (2) hours after the employee reports for work. Records of such information will be kept confidential within the Fire Department office. The Duty Chief or Division Manager may use such information to initiate further action as circumstances or details warrant.
- 21.11 If an illness or injury is anticipated to continue for more than two (2) 24-hour shifts, it shall be reported immediately to the Duty Chief or Division Manager via telephone.
- 21.12 An employee who is granted a leave of absence without pay and who is off the payroll for less than two (2) pay periods shall receive earned sick leave credit. If an employee is off the payroll for two (2) or more successive pay periods, the employee shall not earn sick leave credit for each two (2) successive pay periods that he or she is off the payroll.
- 21.13 The City may establish a reasonable program for the control of abuse of sick leave and absenteeism, subject to Association review and comment.
- 21.14 Accumulated unused sick leave which has been canceled by reason of any employee's termination shall be credited back to such employee if he or she returns to City of Berkeley employment within two (2) years of such termination.
- 21.15 The City and Association agree that for every six (6) months of uninterrupted non-use of sick leave, a 40-hour per week employee will receive eight (8) hours of bonus time and a 56-hour per week employee will receive twelve (12) hours of sick leave bonus time. A Workers Compensation leave of absence from work pursuant to workers' compensation is counted as an absence from work in the same manner as sick leave for the purpose of this bonus, except for partial day absences due to a prescribed follow-up physical therapy or medical appointment (Payroll Code M0) for a Workers' Compensation claim which absences shall not disqualify an employee from the sick leave bonus described in this paragraph. Such bonus time can be used for any leave purpose covered by this Memorandum of Understanding and may, in addition, be used as emergency personal leave.

The Department shall track sick leave bonus time separately. Sick leave bonus time accrual will not exceed 300 hours plus the current calendar year accrual. At the end of the calendar year, excess sick leave bonus time will be converted to vacation leave and the rules regarding maximum vacation leave accrual will apply.

21.16 The use of sick leave bonus time for emergency personal reasons shall not interrupt the earning cycle of sick leave bonus as long as the time being requested is not for use as sick leave or family sick leave. Requests for emergency personal time off shall be directed through the Company Officer to the Duty Chief or Division Manager. Such leave time may be taken in one (1) hour increments; however, the Assistant Chief shall be advised of the expected time of return to work as soon as possible and in no case later than four (4) hours from the time reported off. Upon the return of the employee, the Duty Chief or Division Manager may require a written explanation of the circumstances.

21.17 The conversion factor for employees accruing and using sick leave or sick leave bonus time is as shown below. The intent of the parties is to have the dollar value of the sick leave or sick leave bonus time 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.

21.17.1 Sick leave or sick leave bonus time 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 sick leave or sick leave bonus time by the conversion factor of 0.7143.

21.17.2 Sick leave or sick leave bonus time 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 sick leave or sick leave bonus time accrued by the conversion factor of 1.4.

## **SECTION 22: WORKERS' COMPENSATION**

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.

## **SECTION 23: FUNERAL LEAVE**

23.1 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 48 hours for employees assigned to the fire suppression schedule and 40 hours for employees on a 40 hour per

week work schedule. 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, aunt, uncle, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and grandchildren or dependent residing within the household.

23.2 Leave of absence with pay, because of death in an employee's immediate family, is allowed solely for the purpose of attending funeral and memorial services, 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.

**23.3 Discretionary Approval:**

An employee may submit a request for additional time off as vacation or compensatory time to adjust to the death of a family member.

**SECTION 24: MILITARY & MARITIME LEAVE**

Military and Maritime Leave shall be governed by the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), regulations implementing USERRA and the California Military & Veteran's Code.

**SECTION 25: PARENTAL LEAVE**

25.1 A continuous leave of up to one (1) year will be granted to any employee with one (1) [2080 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 legal adoption of a child who is five (5) years or younger, providing that:

25.1.1 An employee wishing to exercise his/her rights under this provision must provide the City with at least thirty (30) day notice prior to the anticipated commencement date of the parental leave, and that one (1) 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.

25.1.2 The employee, at his or her option, may request that all or any portion of sick leave days (see Glossary) or vacation leave days (see Glossary) or other accumulated compensatory time 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 vacation during the leave. In the event both parents are employed by the City, nothing in Administrative Regulation 2.4 (Family Care Leave) shall prohibit both employees from taking simultaneous parental leave.

- 25.1.3 During approved parental leave, after all earned leaves are exhausted, the City agrees to maintain life and health insurance coverage for twelve (12) months subject to any regular participation requirement of the employee. Thereafter the City agrees to continue coverage for the employee at the employee's expense.
- 25.1.4 The foregoing leave shall be granted upon medical certification of pregnancy or the presentation of legal evidence of adoption.
- 25.1.5 Approved Parental Leaves shall not be deducted from the employee's seniority service date.
- 25.1.6 Parental leave may be taken intermittently upon advance mutual agreement between the employee and department director.

#### **SECTION 26: LEAVE OF ABSENCE WITHOUT PAY**

- 26.1 Upon the 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) leave days (see Glossary). No leave without pay shall be granted for more than fifteen (15) leave 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.
- 26.2 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.

#### **SECTION 27: JURY DUTY LEAVE**

- 27.1 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 jury service as defined in the Glossary. The employee shall keep any payment received for jury service, including mileage reimbursement, upon submittal of proof of jury service.
- 27.2 Employees who receive compensation for jury service during off-shift hours shall

not be required to assign such compensation to the City. Employees shall not lose pay for adhering to court established rules pertaining to jurors not working on days they perform jury duty. The City may require written instructions from the Court.

## **ARTICLE 4 - HEALTH AND WELFARE BENEFITS**

### **SECTION 28: MEDICAL, DENTAL & LIFE INSURANCE**

**28.1 Medical Insurance:** The City will maintain life and health insurance during parental leave, as provided in Section 25.1.3.

#### **28.2 Medical Cash in Lieu**

Effective January 1, 2014, the cash in lieu payment to employees who show proof of alternate coverage will be a flat dollar amount equal to the amount of the Kaiser employee only rate as of January 1, 2014 (\$560.72).

#### **28.3 Dental Coverage**

The City shall provide a dental care program for employees, spouses, domestic partners and dependents. The City shall pay dental coverage to 90% of the Bay Area Usual, Customary and Reasonable charges. Effective January 1, 2007, the maximum annual coverage will increase from \$2,500 to \$3,000 and the lifetime orthodontia limit will increase from \$2,500 to \$3,000.

**28.4** 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, a prorated portion of the health and dental insurance premiums.

#### **28.5 Life Insurance**

Effective with the beginning of the first month after Council approval of this Memorandum of Understanding, the City shall increase the term life insurance to \$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 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.

#### **28.6 Replacement Health Plan Meet and Confer:**

The Union agrees to meet with the City during the term of this MOU in a timely fashion following a City request, regarding whether the Union will agree to meet and confer regarding how the City can avoid potential 2015 Affordable Care Act (ACA) excise tax obligations and on a new and/or replacement health plan or plans and other methods to reduce the cost of health benefits.

### **SECTION 29: RETIREE MEDICAL COVERAGE**

29.1 Effective January 1, 2001, for employees who retire on or after July 1, 1997, the City will assist in the payment of medical insurance payments for the retiree and/or surviving spouse/domestic partner by making payment directly to the medical insurance provider. The maximum amount the City contributes toward the payment of medical premiums is described below and is based on the combination of the following factors:

- 29.1.1 the years of service of the employee at time of retirement
- 29.1.2 whether the employee is eligible to participate in Medicare
- 29.1.3 the annual increase of 4.5% on the amount the City will contribute toward the payment of the medical premium

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

| <b>Years of City Service to be Completed</b> | <b>Percentage Paid by City</b>                                                                       |
|----------------------------------------------|------------------------------------------------------------------------------------------------------|
| 10 years of service                          | City to pay 25% of either the Health Net Senior Advantage or Health Net Standard rate as applicable  |
| 15 years of service                          | City to pay 50% of either the Health Net Senior Advantage or Health Net Standard rate as applicable  |
| 20 years of service                          | City to pay 75% of either the Health Net Senior Advantage or Health Net Standard rate as applicable  |
| 25 years of service                          | City to pay 100% of either the Health Net Senior Advantage or Health Net Standard rate as applicable |

29.2 For employees who are not eligible for Medicare, the City will assist the retiree and/or surviving spouse or domestic partner in the payment of the medical insurance premium as follows:

- 29.2.1 Effective January 1, 2001, each month after the employee retires, the City will pay directly to the health care service provider an amount equal to the Health Net Standard premium rate which is \$387.47 for two party coverage for the retiree and spouse or domestic partner or \$194.41 for single party coverage. 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 or 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.
- 29.2.2 Effective each January 1 that follows, the base rates shall be increased by 4.5%. The employee or his/her surviving spouse or domestic partner shall pay the difference between the amount the City contributes toward payment of the premium and the actual premium cost.

29.3 For employees or retirees who reach age 65 and are eligible for Medicare, the City

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

- 29.3.1 Effective January 1, 2001, each month after the employee retires and reaches age 65, the City will pay directly to the health care service provider an amount equal to the Health Net Seniority Plus premium rate which is \$315.40 for two party coverage for the retiree and spouse or domestic partner or \$157.70 for single party coverage. 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 or 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.
- 29.3.2 Effective each January 1 that follows, the base rates shall be increased by 4.5%. The employee or his/her surviving spouse or domestic partner shall pay the difference between the amount the City contributes toward payment of the premium and the actual premium cost.
- 29.4 For the purposes of this section a "Retiree" is anyone who is vested in CalPERS, has reached the age of 50 for classic employees or age of 57 for new members as defined in Section 59 of this MOU, and has chosen to separate from the City. A retiree is also anyone, regardless of age, who receives a retirement benefit (disability or industrial disability) from CalPERS.
- 29.5 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. The City has no present intention, nor any proposal under consideration, to remove retirees from eligibility to participate in the City's group health and medical plan. Should such a proposal receive future consideration, the Association will be notified in advance and shall be afforded the opportunity to discuss such proposal.
- 29.6 Retiring employees may obtain other health care coverage at his or her own initiative. The retiring employee who selects other health care coverage must provide proof of alternate coverage at the time and in the form and manner required by the third party administrator. The third party administrator will pay up to the applicable amount set forth in this Section to the health care service provider.
- 29.7 For employees who retire on or after July 1, 2006 and have not reached the age of 65 and become eligible for Medicare, the City will assist in the payment of medical insurance payments for the retiree and/or surviving spouse/domestic partner until the death of both by making payment directly to the medical insurance provider. On July 1, 2006, the City will increase the amount the City contributes from \$242.26 per month (single party) and \$482.86 per month (two party) to



\$327.76 per month (single party) and \$653.86 per month (two party). Effective each January 1 that follows, the base rates shall be increased by 4.5%. The employee or his/her surviving spouse or domestic partner shall pay the difference between the amount the City contributes toward payment of the premium and the actual premium cost.

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

| Years of City Service to be Completed | Percentage Paid by City                                               |
|---------------------------------------|-----------------------------------------------------------------------|
| 10 years of service                   | City to pay 25% of the Kaiser single or two-party rate as applicable  |
| 15 years of service                   | City to pay 50% of the Kaiser single or two-party rate as applicable  |
| 20 years of service                   | City to pay 75% of the Kaiser single or two-party rate as applicable  |
| 25 years of service                   | City to pay 100% of the Kaiser single or two-party rate as applicable |

Minimum eligibility is 10 years of service with the City of Berkeley Fire Department.

29.8 The parties will meet and confer in good faith regarding the possibility of the City providing two party premium assistance reimbursement for retirees who are Medicare eligible and their spouse/domestic partner who are on two separate plans. The parties agree that the first meeting shall be no later than sixty (60) days following Council adoption of this MOU.

**SECTION 30: 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. Termination pay means pay due to an eligible career benefited employee from the City on account of termination of his/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 5 - TERMS AND CONDITIONS OF EMPLOYMENT**

### **SECTION 31: PROBATIONARY PERIOD**

- 31.1 Original appointments from employment lists for the classification of Fire Fighter/Fire Fighter Paramedic shall be tentative and subject to a probationary period within a period of two (2) years of actual service. Probationary employees who are granted parental leave or 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. Probationary employees who are granted military leaves of absence shall complete the balance upon their return to City service. No provision of this Section 31 (Probationary Period) shall be interpreted to preclude the City from establishing new classifications that may require probationary periods of varying lengths.

For probationary employees originally appointed to the class of Fire Fighter/Fire Fighter Paramedic, City of Berkeley Performance Appraisal Report shall be made at the completion of the Fire Academy, six (6) months after the Fire Academy, twelve (12) months after the Fire Academy, and prior to ten (10) days before the end of the probationary period.

Original and promotional appointments to classes of Fire Captain II, Fire Prevention Inspector, Deputy Fire Marshal, Paramedic Supervisor I, and Fire Apparatus Operator, shall be tentative and subject to a probationary period of one (1) year of actual service.

- 31.2 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.
- 31.3 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 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.

### **SECTION 32: PROMOTIONS/EXAMINATIONS & FILLING OF VACANCIES**

#### **32.1 Eligibility for Promotion**

- 32.1.1 Insofar as is practical 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.
- 32.1.2 To be eligible for promotion, an employee must have completed his/her probationary period at each level before they are allowed to participate in an examination for the next highest classification, with the sole exception that a Fire Fighter wishing to take the examination for the classification of Captain II shall not be required to hold the classification of Fire Apparatus Operator. The Fire Captain II classification specification will be modified to reflect this provision.
- 32.1.3 The experience related qualification requirements for Captain II must be attained with the Berkeley Fire Department.

**32.2 Development of Examinations**

Examinations will be developed with the assistance of qualified persons in the subject matter being tested. The job announcement for promotional examinations will be reviewed by Human Resources, the Fire Chief or his or her designee, and Association representatives.

**32.3 Scheduling & Announcing Examinations**

- 32.3.1 Regular tests shall be given for all ranks including entry level personnel. Testing for entry level personnel shall take place at least every three (3) years and will, to the extent feasible, be administered within the provisions of a contract that may be negotiated between the City of Berkeley and the Joint Apprenticeship Committee (JAC).
- 32.3.2 The City will make a good faith effort to meet the following test schedule and if deviation from the goals becomes necessary, the City will provide the Association with written reason or reasons for the deviation.

| TEST                   | CYCLE BEGINS             | QUARTER FOR TEST | INTERVAL BETWEEN TEST    |
|------------------------|--------------------------|------------------|--------------------------|
| Apparatus Operator     | Odd Years                | Second Quarter   | 2 years                  |
| Captain                | Even Years               | Third Quarter    | 2 years                  |
| Paramedic Supervisor I | Even Years               | First Quarter    | 2 years                  |
| Battalion Chief        | 2018 and then Even Years | First Quarter    | 2 Years starting in 2018 |
| Assistant Chief        | 2018 and                 | First Quarter    | 2 Years starting in 2018 |

|  |                    |  |  |
|--|--------------------|--|--|
|  | then Even<br>Years |  |  |
|--|--------------------|--|--|

32.3.3.1 The Fire Chief will make every reasonable attempt to send internal notice of a promotional examination by Department bulletin or via e-mail sent to all represented employees on the date the application period opens, which shall be no less than sixty (60) calendar days in advance of the written test date.

32.3.3.2 Promotional examination announcements shall include the following information: identification of all component parts to the exam; type of exam; (e.g., multiple choice, true/false); and on scoring methodology (See Glossary). A study list shall be included in each promotional examination announcement.

32.3.3.3 The Association and the City of Berkeley agree to form a Joint Apprenticeship Committee for the Fire Department. The Committee shall include at least two (2) members of the Association, and two (2) representatives from Fire Administration plus alternates as may be designated by each party.

**32.4 Accommodating Employees Taking Examinations**

The Fire Department will provide relief for employees taking examinations for promotion if they are scheduled for duty during the examination.

**32.5 Questions & Protests about Examinations**

All questions regarding the examination will be directed to the Human Resources Analyst in charge of recruitment.

32.5.1 After the conclusion of the written examination for promotional positions represented by the Association, a protest period will take place. During the protest period, a written test participant will be allowed an amount of time equal to the time allowed for the test to review the written examination and the test participant's individual answer sheet with incorrect responses marked.

32.5.2 A Written Question Protest Review Committee shall be convened at the conclusion of the protest period. The Written Question Protest Review Committee shall have access to the written test and the answer key. The purpose of the Written Question Protest Review Committee is to review the written protests and determine whether a test question should be discarded or the answer re-keyed.

32.5.3 There will, if the Association so desires, be a member of the Association

assigned by the Association Executive Committee on the Question Protest Review Committee as established by the Chief.

32.5.4 The Human Resources Department will provide the Fire Department with a list of the protested questions. The Fire Department will post a list of the numbers of the protests that are upheld and denied. Upon request, a representative of the Protest Committee will discuss the reasons for denial with the protesting employee.

32.5.5 The Human Resources Department, upon request of the employee, will check the accuracy of the scoring of a written examination in the presence of the employee.

### **32.6 Examination Results**

Each candidate in a formal written examination where scores are provided shall be given notice of his or her score. Each candidate shall be given notice of his or her score on each phase of the exam process. The final score used to establish the eligible list with category ranking shall be a standard test score that is calculated using only the test scores of those candidates who successfully complete all phases of the examination.

The Human Resources Department will provide the Fire Chief with a list of applicants, in alphabetical order, who successfully completed the examination process and are eligible for appointment. The Fire Chief will make this list available to supervisors who need this information in order to assign employees to work in a higher class and to Association Officers so that they can monitor the consistency of such appointments with the terms of this Memorandum of Understanding.

### **32.7 Selection**

32.7.1 Following the determination to fill vacancies and the certification of an eligibility list to the Fire Department, the selection by the Department will be made as soon as possible.

32.7.2 Promotional vacancies shall be filled within thirty (30) days when practicable after the vacancy is final, subject to the approval of the City Manager.

32.7.3 Employees shall be considered for promotion based on examination results, previous work performance, previous training and experience, merit, ability, seniority and other job-related criteria.

32.7.4 Where an eligible list exists, and the Fire Chief desires to interview persons on the eligible list for a vacancy, the interview shall be conducted by the Fire Chief or his/her designee with any sworn Chief

Officer or Fire Marshal. The City will arrange for consistent interview panels; i.e., the same individuals as interviewers for all candidates for the particular vacancies. The Association recognizes that the requirement for consistent panels may lead to unavoidable delays in filling positions.

- 32.7.5 When the City Manager makes an appointment on the recommendation of the Fire Chief after a department level interview, all members interviewed who are not successful at the Department level in being selected, shall be notified by the City Human Resources Department in writing that they were not selected. At the request of the employee, the Fire Chief or a Deputy Fire Chief will meet with the employee to discuss non-selection.

### **32.8 The Life Span of a List**

If a list includes two (2) or more eligible candidates on that list, the City will not allow that list to expire more than thirty (30) days before giving a new examination.

## **SECTION 33: TRANSFER BETWEEN SHIFTS**

- 33.1 The present administrative practices shall continue for assuring that the employees on each shift will, as a group, represent a broad range of seniority (i.e., that each shift will include some employees with high and some with low seniority ranking).

A shift balancing meeting will take place each year. The actual shift changes will take place after January 1st of each year. Employees will be notified of transfer of shift by February 1. Actual transfer dates will be completed prior to the implementation of the vacation year. Employees may submit requests for possible shift changes through the chain of command.

When a vacancy is created by a retirement or promotion, the Department shall announce the vacancy through an e-mail to all personnel covered by this MOU. Fire Personnel may submit letters of interest through channels to the Deputy Chief.

The Department may award the position based on seniority at the discretion of the Fire Chief. The Association recognizes that the Fire Chief retains full discretion to place personnel in positions based on the needs of the Department.

The Fire Chief or his or her designee still has the ability to transfer, at other times of the year, personnel based on the needs of the department.

### **33.2 Seniority**

- 33.2.1 The Fire Department shall establish and maintain two (2) seniority lists,

one (1) by total service in the Department and one (1) by time in classification, and they shall be brought up-to-date once a year prior to vacation picks and shall be immediately posted in all Fire stations, and the Fire Prevention Office. Any objections to the seniority lists, as posted, shall be reported to the Fire Chief in written form within ten (10) days.

- 33.2.2 Rank seniority shall be seriously considered in the selection of personnel in assigned fire stations (positions) providing that seniority assignments do not conflict with Department personnel needs, i.e. special qualities or skills assigned to a position.
- 33.2.3 Promotions: If two (2) or more employees have the same promotion date in rank, seniority in the promoted rank at the time of promotion shall be determined based on the selection order made by the Fire Chief.

**SECTION 34: PERFORMANCE EVALUATION**

The City will implement a program of annual performance evaluation. Such evaluation shall be conducted by the employee's immediate supervisor(s) 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.

## **ARTICLE 6 - GRIEVANCE AND APPEAL PROCEDURE**

### **SECTION 35: GRIEVANCE PROCEDURE**

35.1 A grievance is any dispute which involves the interpretation, application, claimed violation, or claimed noncompliance with the provisions of the Memorandum of Understanding between the City and the Association or 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 the City's employees covered by such Memorandum of 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 sole grievance mechanism applicable to employees covered by this Memorandum of Understanding. No matter shall be considered as a grievance under this Section unless it is presented within thirty (30) calendar days after the employee or the Association could reasonably have been aware of events on which the grievance is based. Failure to comply with the time lines of the Grievance Procedure by either party will constitute forfeiture of their position on the grievance. In the event of a forfeiture by the City, the City will comply with the request for resolution. However, the provisions of Section 35.8 (Suspension or Discharge) of this Memorandum of Understanding will apply in the event of forfeiture. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.

### **35.2 Grievances shall be processed in the following manner:**

35.2.1 **Step I: Informal Step:** Any employee who believes he or she has a grievance (and/or the employee's Association representative) shall discuss the employee's complaint with the Deputy Fire Chief. If the issue is not resolved within fifteen (15) calendar days, the employee (and/or the employee's Association representative) may elect to invoke the procedure hereinafter specified by filing a formal grievance.

35.2.2 **Step II: Fire Chief:** Any grievance that has not been resolved at Step I (Informal Step) may be referred to the Fire Chief (or his or her designee) by the grievant (and/or the employee's Association representative). Any such referral shall be in writing to the Fire Chief with a copy to the Human Resources Department, on a grievance form provided by the City (see Exhibit E), and approved by the Association. The written statement shall be a clear concise statement of the grievance, including specific provisions of this agreement and/or City ordinance, rule or regulation, and/or past practice alleged to have been violated, the circumstances involved in the decision rendered at Step I, and the specific remedy sought. Either party shall be entitled to a



personal conference upon request.

The Fire Chief shall communicate a decision to the grievant with a copy to the Association and to the Director of Human Resources in writing within ten (10) working days after receiving the grievance or ten (10) working days from the date of the personal conference, whichever is later, and such action will terminate Step II.

- 35.2.3 **Step III: City Manager:** In the event that the employee (or the employee's Association representative) is not satisfied with the decision at Step II, the employee (or the employee's Association representative) may appeal the decision in writing to the City Manager or his/her designee within ten (10) working days after the termination of Step II.

The written statement shall include a copy of the original grievance, the decision rendered at Step II, and a clear and concise statement of the reasons for the appeal. The grievant or the City Manager or his / her designee shall be entitled to a personal conference upon request within the time limits specified.

The City Manager or his/her designee shall communicate a decision within ten (10) working days after receiving the appeal or ten (10) working days from the date of the personal conference, whichever is later and such decision will terminate Step III.

- 35.2.4 **Step IV: Arbitration:** If the Association is not satisfied with the City Manager's response at Step III- the Association may require that the grievance be referred to an impartial arbitrator, who shall be designated by mutual agreement between the Association and the City Manager. The Association must notify the City Manager in writing within ten (10) working days of receipt of the City Manager's decision that they intend to move the grievance to arbitration.

The fees and expenses of the State Mediation and Conciliation Services arbitrator and the 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. The Association shall provide the City with half of the cost charged by State Mediation to provide the parties with an arbitrator list no later than 30 days following notification to the City Manager that the Association wishes to advance the grievance to arbitration. Failure to timely do so shall result in a waiver of the right to advance the grievance to arbitration.

**35.3 Suspensions or Discharge Arbitration Decisions**

Arbitrator decisions on matters properly before them which pertain to the suspension or discharge of an employee shall be final and binding upon both parties hereto to the extent permitted by the Charter of the City.

**35.4 Non-Disciplinary Arbitration Matters**

Those arbitration decisions on matters properly before them which do not pertain to suspension or discharge shall be in the form of recommendations to the City Manager, who may, within five (5) working 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 court reporter shall not be shared by the Association, and full payment thereof shall be the sole responsibility of the City.

**35.5 Written Reprimand**

Consistent with the Firefighter Bill of Rights Act, an employee 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/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.

Formal letters of reprimand concerning work rules or time and attendance shall be removed from an employee's official files upon request after 18 months provided the employee has maintained satisfactory performance. Letters of reprimand concerning all other subjects shall be removed from an employees' official personnel file upon request after 36 months provided the employee has maintained satisfactory performance.

**35.6 Equal Employment Opportunity (EEO) Program**

Any grievance which in any way affects implementation of the City's EEO program shall not be subject to arbitration. The decision as to whether or not implementation of the EEO program is in any way involved shall be made in the sole discretion of the City Manager. If, in the City Manager's judgment, any grievance involves the EEO program, the EEO & Diversity Officer shall notify the Association to that effect in writing within seven (7) days of the date upon which the grievance is received by the City Manager and, in such notification shall refer

to that section of the EEO 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 EEO & Diversity Officer on the basis of which he/she considers it appropriate to change his /her original determination.

- 35.7 No arbitrator shall entertain, hear, decide, or make recommendations on the dispute a) unless the Association seeks a determination, or b) if the dispute involves the issue of unit determination, or c) if the dispute involves a question of representation, or d) if the aggrieved employee is not in a classification within the unit represented by the Association.

### **35.8 Suspension or Discharge**

No grievance involving the suspension or discharge of an employee will be entertained unless it is filed in writing with the City Manager within fifteen (15) calendar days of the time at which the affected employee was notified by certified mail. If the City Manager, in pursuance of the procedures outlined in Section 35.2 above, resolves a grievance which involves suspension or discharge, he/she may order payment for lost time or reinstatement with or without payment for lost time.

### **35.9 Compensation Grievances**

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Fire Chief or his or her designated representative for payroll issues within 30 working days from the date when the employee may reasonably be expected to have learned of the alleged compensation violation. If such issues cannot be resolved by the Fire Chief (or in consultation with the Auditor), the Fire Chief will refer the matter to the Director of Human Resources within ten (10) working days of receipt of the grievance. The Director of Human Resources or his or her designee shall have 30 working days to research the issue and provide a written response to the Association and the affected employee. 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 whichever is later. 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 Memorandum of Understanding which has resulted from meet-and-confer process shall be considered as grievances. Any other matters of compensation shall be deemed withdrawn until the meet-and-confer process is next opened for discussion.

If the affected employee is not satisfied with the written decision of the Director of Human Resources or his or her designee, the affected employee will have ten (10) working days to appeal the decision in writing to the City Manager and the grievance will move to Step III of the Grievance Procedure as provided in Section 35.2.4.

35.10 No changes in the Memorandum of Understanding or interpretation thereof (except interpretation resulting from arbitration proceedings hereunder) will be recognized unless agreed to by the City Manager and the Association.

### **35.11 Probationary Employees**

- 35.11.1 Notwithstanding their probationary status, probationary employees have appeal rights for disciplinary actions where the employee's allegation is 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 alleging a violation of his/her rights under Title VII (42 U.S.C. Section 2000e, et. seq.) or the California Fair Employment Practices Act (California Labor Code Section 12900, et seq.) may be pursued only as provided in the City's Equal Employment Opportunity program, which shall be specifically amended to allow probationary employee rights of appeal under that program.
- 35.11.2 The grievance procedure is also available to probationary employees for matters other than those related to discharge, discipline, or other performance issues, where the claim is a City breach of agreed-upon wages, hours, working conditions, or discrimination based on Association activity.

### **35.12 Calendar Days**

All references in this Section 35 (Grievance Procedures) to days shall mean calendar day unless otherwise provided.

### **35.13 Association Right to File**

No provisions shall prevent the Association from filing and/or appealing grievances on behalf of the employees represented by the Association.

## **ARTICLE 7 - MISCELLANEOUS TERMS AND CONDITIONS**

### **SECTION 36: UNIFORM ALLOWANCE & DRESS UNIFORM REQUIREMENTS**

#### **36.1 Uniform Allowance**

- 36.1.1 Effective December 1, 2015, the uniform allowance will be increased from \$1,000.00 to \$1,100.00 and is to be paid annually by the first pay period in December thereafter. The entire uniform allowance will be paid to those employees who are on the payroll on December 1 of any year. However, the amount the City contributes toward the uniform allowance is subject to federal and state income tax withholding.
- 36.1.2 The City agrees to advance the sum of \$500.00 to new hires (\$550.00 if hired during or after the first full pay period in December 2015), which shall be used for uniform purchase and which shall then be repayable in two (2) equal yearly installments over the first two (2) years of employment, to be deducted by the City from the uniform allowance of the employee.
- 36.1.3 The uniform allowance shall be paid with a separate check. CalPERS will be deducted for all members in accordance with the provisions of Section 59 (Public Employees Retirement System). The check title shall be "Uniform Allowance". If the purpose of payment is other than uniform allowance then a letter of explanation shall accompany each annual payment.
- 36.1.4 The uniform allowance is for the purpose of purchase and maintenance of station uniforms, and other required or optional garments, as necessary, for the duration of this contract. The City shall continue to purchase turn out gear.

### **SECTION 37: SAFETY COMMITTEE**

- 37.1 The Assistant Fire Chief assigned to the Training and Safety Division shall be the designated safety officer for the department. The Safety Officer shall appoint a safety committee consisting of three (3) individuals on each shift (preferably one (1) complete company). The City's Occupational Safety Officer shall be a standing member of that Committee.
- 37.2 The safety committee shall meet on shift every two (2) months and shall review personal injury reports and reported safety deficiencies and perform follow-up investigations if necessary.

- 37.3 The purpose of the committee shall be to recommend changes based on the reviews or investigations to help avoid future accidents or injuries in the areas looked at.
- 37.4 The committee shall investigate possible short comings in equipment, methods, tactics, and procedures and report their findings to the safety officer who shall forward the committee findings to the Deputy Fire Chief through channels in writing.
- 37.5 The Training Chief shall determine the appropriate action needed to reduce the possibility of similar accidents happening in the future and shall inform the appropriate committee and employee(s) in writing of the actions taken. A copy of the committee findings will be included with the Training Chief's recommendations.

#### **SECTION 38: EDUCATION/ESTABLISHMENT OF AN ASSOCIATION SPONSORED EDUCATION FUND**

- 38.1 Funding for not less than five (5) Unit B employees to attend the National Fire Academy shall be provided each year. Personnel must be qualified by being in a position to make good use of the information learned for the benefit of the Fire Department, at the discretion of the Fire Chief.
- 38.2 Personnel desiring to attend the National Fire Academy shall submit requests to the Fire Chief no less than three (3) months prior to the beginning of the course. If less than three (3) months are available before the course notifications have been distributed, requests shall be submitted no more than one (1) week after distribution of course notification.
- 38.3 The Fire Chief will not restrict the number of departmental personnel attempting to attend National Fire Academy, Asilomar or other pertinent classes if such attendance involves no cost to the City. Attendance will be subject to the conditions imposed by the National Fire Academy, Asilomar, or other teaching institutions sponsoring the course of instruction. If in the event more personnel attempt to attend National Fire Academy, Asilomar, or other pertinent classes than there are classes available and the teaching institution sponsoring the course request the Fire Chief to limit the number of attendees, the Fire Chief will determine the personnel to attend, based on the needs of the fire service.
- 38.4 Educational funds shall be equally shared except in special circumstances to be determined at the discretion of the Fire Chief.

**38.5 Association Sponsored Education Fund**

On or around July 1<sup>st</sup> of each year, the City shall pay the Association an amount sufficient to fund the Education Fund to \$80,000. The Education Fund is to be used for educational purposes at the sole and exclusive discretion of the Association.

38.5.1 The Association shall manage the Education Fund for the purposes outlined above but shall provide reimbursement of paramedics for completion of CE classes required by the Alameda County EMS Agency.

38.5.2 Personnel attending classes are not eligible for overtime compensation. Reimbursement shall only be provided to members who are off duty.

38.5.3 Of the total amount, \$10,000 annually shall be allocated to support the education and development of firefighter recruits assigned to the Division of Training. These moneys shall be managed by the Division of Training.

In addition, if there is more than one Firefighter I academy that begins in the same fiscal year, the City shall provide to the Education Fund an additional \$10,000. The prior sentence shall be effective only following Council approval of this MOU and for the remainder of this 2017-2020 MOU, at the end of which the prior sentence will sunset and no longer be effective.

**SECTION 39: WELLNESS FITNESS INITIATIVE (WFI)**

39.1 The City and the Association are committed to maintaining a wellness program that provides represented employees information and resources that aid in maintaining health and wellness.

39.2 Part of this WFI may include a physical assessment (based on the City's specification as to scope of examination and examiner), diagnostics, education and referrals to other practitioners at a schedule to be determined by the Fire Chief or when required by MOU, Department policy and/or applicable law.

**SECTION 40: ASSIGNMENTS FOR TEMPORARILY DISABLED EMPLOYEES**

40.1 The City may accommodate, when feasible, employees covered by this Memorandum of Understanding who are on Workers' Compensation leave, and



such work assignments are to incorporate the following provisions:

- 40.1.1 The modified assignment shall be consistent with medical limitations as determined by the attending physician.
  - 40.1.2 The assignment shall be within the Fire Department, if feasible, or in other City departments if an assignment is not available in the Fire Department and shall be on the day shift (8:00 a.m. to 5:00 p.m., Monday through Friday). The assignment shall be consistent with the skills and abilities of the individual employee.
- 40.2 The City may accommodate an employee temporarily disabled with a non-industrial disability by providing a modified work assignment in that employee's classification. If modification of that position does not serve the best interests of the City, other classifications within the City may be considered, subject to the approval of the Director of Human Resources. 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. Compensation will be provided at the level of the classification in which the temporarily disabled employee is reassigned. The employee must meet standards of satisfactory performance for the duration of the work assignment. However, an employee who is temporarily transferred as a result of pregnancy to a less strenuous or hazardous position or to less strenuous or hazardous duties shall receive the equivalent rate of pay and benefits of the employee's regular position. The alternative position must be one for which the employee is qualified, and the position must better accommodate recurring periods of leave than the employee's regular job.
- 40.3 Nothing herein shall require the City Manager to approve modified work assignments nor shall give an employee the right to refuse an assignment which complies with medical restrictions. Such refusal may subject an employee to loss of benefits and/or disciplinary action.

#### **SECTION 41: RESIDENCY REQUIREMENT**

City accepts the deletion of Section 41: Residency Requirement contingent upon Council adoption and passing of the ballot measure.

#### **SECTION 42: MEAL PERIODS**

- 42.1 Meal periods will be interrupted as little as possible, and, with the exception of emergencies, any interruption will be limited to situations involving a substantial Department need.

- 42.2 Because each employee may be called upon to perform emergency services during the meal period, employees rarely leave the station during their scheduled meal periods. Meals are often organized at each station because employees are required to be available for emergency calls during meal periods. Because of this, employees are required to contribute financially to an organized meal, supervised at each individual station, at a charge equal to the value of each employee's portion of the meal, regardless of whether the employee chooses to eat the meal. The portion of each organized meal attributable to each employee is required to be contributed to an organized "kitty" fund, which will be deducted monthly by the Association. Employees shall be solely responsible for any financial or tax liability regarding this provision.

### **SECTION 43: STATION WORK ACTIVITIES**

- 43.1 Employees shall not be required to move office furniture and equipment from one station or headquarters to another.
- 43.2 Prior to any major work being done within the fire stations, the designated Captain will be informed as to the plans.

### **SECTION 44: MUTUAL RESPONSE AGREEMENTS**

Prior to entering into any new mutual response agreements, the City and the Association shall form a committee of two (2) representatives from the Association and two (2) from the City who shall meet and confer to discuss mutual aid response agreements which will provide for automatic, prearranged (as distinguished from existing emergency mutual aid agreement) mutual aid response from other jurisdictions.

### **SECTION 45: STAFFING AND UNITS IN OPERATION**

- 45.1 Except as specifically provided for herein, the normal staffing requirements shall provide that at all times there shall be on duty at least the staffing set forth in Exhibit D of the MOU.
- 45.2 The City retains the discretion to temporarily reduce staffing in the Division of Operations only upon the declaration of a "fiscal emergency" via a 2/3 vote of the City Council.
- 45.2.1 If the City Manager determines during the Fiscal Year that fund revenues have or will decline substantially below the estimate of fund revenues in the adopted Budget and/or expenditures have or will increase

substantially above the projected expenditures in the adopted Budget, the City Council may declare a “fiscal emergency” that shall thereupon cause the City of Berkeley and the Berkeley Fire Fighters Association to assemble in a meet and confer process regarding a temporary staffing reduction plan.

- 45.3 Prior to a policy change which will result in a temporary reduction in the number of employees assigned to the Division of Operations (see Sections 45.1 through 45.2) or a temporary change in staffing levels of suppression or transport units, as soon as is reasonably possible, the City will meet and confer about the matter with the Association.
- 45.4 As soon as possible following the end of the “fiscal emergency”, it is the intent of the City to restore the staffing of the fire department to the levels defined above.
- 45.5 The Association strenuously objects to any reduction, on the grounds of standards set forth by the National Fire Protection Association (#1500 and #1710), employee safety, and reduced firefighting efficiency, but understands that, in the City's view, fiscal constraints may dictate such a reduction. The Association accepts no responsibility for any increased exposure or liability to employees or the public resulting from any such reduction.
- 45.6 All reductions necessary to accomplish this staffing reduction shall be accomplished by attrition, and not by reduction in force or by layoffs.

See General Order - Apparatus Staffing Levels (Exhibit D).

- 45.7 In the event of sending an engine, truck or ambulance company outside the City for training, including CERT, or drills, for eight (8) or more hours, during a twenty-four (24) hour shift, causes the on duty assignment to fall below normal staffing (see Exhibit D); additional personnel will be hired or held over to maintain this minimum level of safety. Staffing can be accomplished by using extra on duty staffing and/or overtime. Overtime staffing can include the use of mandatory hiring but would not include emergency recall procedures.
- 45.8 Training or drill events held in the areas of East Bay Regional Parks District Tilden Park or Claremont Canyon Regional Preserve, Lawrence Berkeley National Laboratory or University of California Berkeley properties shall not be considered outside the city. The Duty Chief has the option of replacing companies based on the eight (8) hour requirement for planned events in these areas.
- 45.9 When unplanned events such as mutual aid responses or other emergencies, but not limited to, will cause an engine, truck or ambulance companies to be unavailable, out of service to the City of Berkeley and outside the city limits for more than eight (8) hours the Duty Chief shall have the option to replace the

companies. The decision to replace the companies will be based on various factors in no defined order.

- 45.9.1 Nature of the unplanned event?
- 45.9.2 Coverage available within the City of Berkeley and call activity?
- 45.9.3 When did the determination of exceeding the eight (8) hour requirement become apparent?
- 45.9.4 What is the estimated time before the company or companies will become available?
- 45.9.5 Time of day and length of shift remaining?
- 45.9.6 Availability of apparatus for staffing?
- 45.9.7 Availability of personnel for staffing?

45.10 Emergency recall can be used for staffing for unplanned events once other staffing options have been utilized and shall be done in consultation with management.

45.11 Nothing prevents the immediate use of emergency recall based on a local or regional emergency that requires extra staffing as quickly as possible.

#### **SECTION 46: DEPARTMENT TRAINING SCHEDULE**

Generally, there are two windows that companies will be expected to report for training. This does not preclude the Department from scheduling training in alternative configurations, during evening time and/or at night. The Department will avoid holding companies through a meal period whenever possible.

Morning Schedule: Companies shall arrive no later than 0845 hours and may be required to stay until 1200 hours.

Afternoon Schedule: Companies shall arrive no later than 1330 hours and may be required to stay until 1645 hours.

There shall be no "routine" hose drills in the rain except as needed for the fire academy or probationary testing. During winter months, the Division of Training shall schedule an alternative drill with each scheduled "routine or standard" hose drill. If rain occurs when a standard hose drill is scheduled, the alternative drill may be used instead. An effort will be made by the Division of Training to keep personnel and equipment dry during rainy weather.

#### **SECTION 47: FIRE APPARATUS**

47.1 All fire apparatus and equipment used in emergency operations, in need of repairs, will be repaired in a timely manner.

- 47.2 The City agrees, when purchasing fire apparatus in the future, development of the specifications will be conducted by the Apparatus Specification Committee in conjunction with the Chief Officer designated as the Apparatus Maintenance Officer, and will be forwarded to the Fire Chief for approval.

**SECTION 48: EQUIPMENT MAINTENANCE**

- 48.1 Electrical and natural gas appliances will be repaired as soon as possible by qualified outside repair persons.
- 48.2 Fire extinguishers of all types will be tested, refilled, and maintained by licensed contractors in the manner prescribed by state and federal law.
- 48.3 Hose repair will be done only by qualified personnel who have been properly instructed in the various types of couplings and types of hoses and in the proper operation of the mechanical hose repair equipment.
- 48.4 There will be a qualified mechanic from Equipment Maintenance or the Fire Department assigned to the testing, repair, and maintenance of all Fire Department vehicles. This assignment will be his/her first priority.
- 48.5 The washing, waxing, and cleaning of Assistant Chief - Fire Suppression vehicles shall not be assigned to personnel covered by this Memorandum of Understanding. Daily cleaning of windows and car interiors and the checking of the battery, oil, gas, water, and other safety and emergency equipment may be assigned.
- 48.6 Painting in the interior of the fire stations shall be considered a special project.

**SECTION 49: TRADES**

Procedures for trades are covered in the Trade Policy General Order.

**SECTION 50: EQUAL TREATMENT OF COMMITTEE MEMBERS**

Unit B members on any committee that is formed at the direction of the Fire Chief are entitled to equal treatment. A single standard will be used to determine the number of hours for which off-duty participants will receive time off, (due time) etc. for all committee members who participate equally. Payment of hours will be hour-for-hour pay or hour-for-hour due time in accordance with FLSA. All members shall have an opportunity if desired, to apply for committee membership.

**SECTION 51: TIME OF RECEIPT OF PAYCHECKS**

If the City utilizes a new computer and/or payroll system, it will extend "best efforts" to achieving, and treat as a very high priority the end that Fire Department employees have checks ready for pickup by 8 a.m. on the relevant Friday. Further, if the situation changes such that any City employees routinely receive their paychecks at or before 8 a.m. on paydays, all Fire Department employees shall receive their checks at or before that same time.

**SECTION 52: COURTESY**

The Fire Chief will add the following policy statement to the General Orders: When making routine visits to stations, chief officers and division captains shall make a reasonable effort to announce themselves and/or knock before entering the private areas (bathrooms, private areas within dormitories, private office areas) of fire stations.

**SECTION 53: PHYSICAL & PSYCHOLOGICAL EXAMINATIONS/MOP**

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/her duties. 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 forty-eight (48) hours of such an examination.

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/she shall advise the City of any functional limitations which relate to the employee's ability to perform his/her duties, if such information may be provided without revealing the cause of those limitations. 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.

Failure to report for a medical or psychiatric examination under this section may constitute grounds for discipline.

**SECTION 54: HAIR SAFETY STANDARDS**

54.1 There are many hair styles that are acceptable. So long as the person's hair is

kept in a neat, clean manner, the acceptability of the style will be judged by the following criteria:

- 54.1.1 Hair styles that preclude the proper wearing of SCBA are not permitted.
  - 54.1.2 Hair may be pinned or worn so as to minimize the potential of being caught in machinery or in any way become a safety hazard.
- 54.2 These standards have been developed to accommodate contemporary hair styles without jeopardizing the safety of Fire Fighters involved in the hazardous activities associated with the varied operational requirements of the modern fire service.

### **SECTION 55: NON-UNIFORMED FIRE PREVENTION INSPECTORS**

In the event any remaining uniform Inspectors vacate their Fire Prevention Inspector's position, the City may fill their position with non-uniformed personnel.

### **SECTION 56: HYDRANT TESTING, HOSE AND LADDER INSPECTIONS**

- 56.1 Hydrant inspections will be performed on an annual basis starting by April 15<sup>th</sup> and ending by June 30<sup>th</sup> of each year. Hydrant servicing and testing will occur on even numbered years during the annual inspection period.
- 56.2 The City will contract with an outside vendor to perform testing of fire hoses and ground ladders each year. Scheduling of this testing will be factored into the department training schedule.

### **SECTION 57: YMCA**

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.





## **ARTICLE 8 - PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

### **SECTION 59: CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

59.1 The City shall continue participating under the Safety Members Plan of the Public Employees' Retirement System (CalPERS).

#### **59.2 CalPERS Retirement Formula for "New Members"**

"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 57 retirement formula with highest three year average compensation as set forth in PEPRA.

#### **59.3 CalPERS Retirement Formula for Classic Employees**

Current employees and other employees who do not qualify as "New Members" under PEPRA shall continue to be entitled to the 3% at 50 retirement formula with single highest year compensation. In addition to the single highest year earnings formula, Legacy Employees' retirement benefit will continue to include all other benefits as were in effect as of November 28, 1996. The Plan will continue to require retirement at age sixty (60) as permitted by law.

#### **59.4 Optional Benefits**

For both Legacy Employees and New Members, the City's contract with CalPERS shall include the following optional benefits:

59.4.1 One-Year Final Compensation as provided in Section 20042 (July 22, 1976).

59.4.2 Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (March 1, 1973).

59.4.3 Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).

59.4.4 Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988).

59.4.5 1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (March 1, 1973).

59.4.6 Military Service Credit as Public Service as provided in Section 21024 (July 14, 2000).

59.4.7 Indexed Level 1959 Survivor Benefit as provided in Section 21574.5 (June 13, 2003).

**59.5 Legacy Employees' Pension Contribution**

On July 1, 1994, the City increased the base salary of employees in the amount of nine percent (9%). Effective January 1, 2015, Legacy employees will contribute an additional one percent (1%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis. The City and Association agree that, effective 1<sup>st</sup> pay period after Council approval of this MOU, employees will pay an additional one percent (1%) to the City's CalPERS employer contribution rate via automatic payroll deduction. Employees then assumed, and shall continue while the terms of this MOU are effective to assume, responsibility for payment of the normal employee retirement contribution to CalPERS. The City shall designate such payment as an Employer Pickup as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code. The employee contribution shall be made through automatic payroll deductions.

**59.6 New Members' Pension Contributions**

New Members hired on or after January 1, 2013 shall pay 50% of the normal share of cost required by PEPRA. Effective January 1, 2015, New Members shall also contribute an additional one percent (1%) of pensionable compensation (in addition to contributing 50% of the normal cost) towards the City's CalPERS employer contribution through automatic payroll deduction on a pre-tax basis. The City and Association agree that, effective 1<sup>st</sup> pay period after Council approval of this MOU, employees will pay an additional one percent (1%) to the City's CalPERS employer contribution rate via automatic payroll deduction.

## **ARTICLE 9 - LAYOFF PROCEDURE**

### **SECTION 60: LAYOFF PROCEDURE**

The layoff policy for the City of Berkeley is intended to provide the maximum employment protection to 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.

#### **60.1 Announcement of Layoff**

- 60.1.1 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 for more than thirty (30) 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 funds, the City Manager shall notify the Director of Human Resources of the intended action and the reason for layoff.
- 60.1.2 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 notify all department heads that such current and anticipated vacancies will be frozen until further notice in order to implement the provisions of Section 60.7.

#### **60.2 Seniority Service Date**

- 60.2.1 All service in the employ of the City shall be counted toward the establishment of the employee's 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 parental leave or 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 seniority service date. Time off as result of formal disciplinary action will be subtracted from the seniority service date.
- 60.2.2 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 parental leave or 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.

- 60.2.3 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 absence shall be included, and all time spent on unpaid leaves of absence in excess of two consecutive payroll periods shall be excluded with the exception of parental leave.
- 60.2.4 The Human Resources Department will maintain up-to-date and current seniority dates for all City employees holding probationary and permanent appointments.

### **60.3 Establishment of Seniority Lists**

- 60.3.1 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.
- 60.3.2 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 60.4 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.
- 60.3.3 Probationary or permanent employees 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.

- 60.3.4 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: If an employee has taken the one-year written probationary examination, the score on that examination will be used to break ties. If an employee has not taken that examination, then the written entrance examination and agility test scores shall be used to break ties; the written exam and the agility test will be equally considered.
- 60.3.5 Promotions: If two (2) or more employees have the same promotion date in rank, seniority in the promoted rank at the time of promotion shall be determined based on the selection order made by the Fire Chief.

#### **60.4 Employee Retreat Rights**

- 60.4.1 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.
- 60.4.2 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 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 basis. Retreat rights to the rank of permanent Fire Apparatus Operator will be available only to employees who have previously held this rank on a permanent or probationary basis. There shall be no retreat rights to appointed ranks or positions, i.e., Assistant Fire Marshal, Assistant Director of Training.
- 60.4.3 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.

- 60.4.4 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.

## 60.5 Employee Notification

- 60.5.1 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.
- 60.5.2 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.
- 60.5.3 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 days notification if targeted for release or 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 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 60.9 (Appeal Procedures).

## 60.6 Flexible Placement Program

- 60.6.1 In order to minimize the negative impact of a layoff, the City Manager will, as previously stated in Section 60.1 (Announcement of Layoff), 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.
- 60.6.2 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 have been identified and the provisions

under Section 60.4 (Employee Retreat Rights) 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 standard 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.

- 60.6.3 Assignments under the flexible placement program shall be limited to positions in the same or lesser salary range as the classification for which the employee is to be laid off.
- 60.6.4 Offers of 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 60.3 (Establishment of Seniority Lists). 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, including written acceptance of the offer.
- 60.6.5 If an employee fails to accept a bona fide written offer of an alternative job within five (5) 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 60.7 (Reemployment Lists).

## **60.7 Reemployment Lists**

- 60.7.1 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 60.4 Employee Retreat Rights).
- 60.7.2 A reemployment priority list shall remain in effect for three (3) years. Said list shall remain in effect indefinitely for employees who were retreated.
- 60.7.3 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.

- 60.7.4 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.
- 60.7.5 If a former employee fails to accept a bona fide written offer or 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 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.
- 60.7.6 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.
- 60.7.7 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 and working on a part-time basis, shall be paid in proportion to the time worked as described in their appointment.

#### **60.8 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".

#### **60.9 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 Section 35 (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.

**60.10 Audit**

- 60.10.1 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 60.7 (Reemployment Lists). In the event vacancies for which reemployment priority 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 must be transmitted to the City Manager and the City Council.
  
- 60.10.2 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 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.

**SIGNATURE PAGE**

Employee Representatives  
Berkeley Fire Fighters Association  
International Association of Fire Fighters  
Local 1227:

City of Berkeley:

\_\_\_\_\_  
Justin Ironside, President BFFA, Local  
1227

\_\_\_\_\_  
Dee Williams-Ridley, City Manager

\_\_\_\_\_  
Cal Mettler, BFFA, Local 1227

\_\_\_\_\_  
LaTanya Bellow, Chief Negotiator

\_\_\_\_\_  
James Geissinger, BFFA, Local 1227

\_\_\_\_\_  
David Brannigan, Fire Chief

\_\_\_\_\_  
Scott Hall, BFFA, Local 1227

\_\_\_\_\_  
Abe Roman, Assistant Fire Chief

\_\_\_\_\_  
Levon Thaxton, BFFA, Local 1227

\_\_\_\_\_  
Alicia Platt, Senior Human Resources  
Analyst

\_\_\_\_\_  
Jon Fischer, BFFA, Local 1227

**EXHIBIT A – Hourly**

| <b>Hourly Salary Schedule as of June 18, 2017</b> |               |               |               |               |               |
|---------------------------------------------------|---------------|---------------|---------------|---------------|---------------|
| <b>CLASSIFICATION TITLE</b>                       | <b>STEP A</b> | <b>STEP B</b> | <b>STEP C</b> | <b>STEP D</b> | <b>STEP E</b> |
| Fire Fighter                                      | \$28.8805     | \$29.5422     | \$30.2202     | \$30.2902     | \$31.9320     |
|                                                   | <b>STEP F</b> | <b>STEP G</b> | <b>STEP H</b> | <b>STEP I</b> |               |
|                                                   | \$32.9874     | \$34.0759     | \$35.2021     | \$36.3798     |               |
| <b>CLASSIFICATION TITLE</b>                       | <b>STEP A</b> | <b>STEP B</b> | <b>STEP C</b> | <b>STEP D</b> | <b>STEP E</b> |
| Fire Apparatus Operator                           |               | \$35.4703     | \$36.6461     | \$37.8546     | \$39.1014     |
| Fire Prevention Inspector                         |               | \$52.1543     | \$53.8845     | \$55.6609     | \$57.4983     |
| Deputy Fire Marshal                               |               | \$60.5704     | \$62.5673     | \$64.6363     | \$66.7657     |
| Fire Captain I                                    |               | \$42.5142     | \$43.9195     | \$45.3687     | \$46.8674     |
| Fire Captain II                                   |               | \$39.3308     | \$40.6277     | \$41.9720     | \$43.3552     |
| Paramedic Supervisor I                            |               | \$42.1529     | \$43.5421     | \$44.9860     | \$46.4626     |

| <b>Hourly Salary Schedule as of August 12, 2018 (Four Percent (4%) Wage Increase)</b> |               |               |               |               |               |
|---------------------------------------------------------------------------------------|---------------|---------------|---------------|---------------|---------------|
| <b>CLASSIFICATION TITLE</b>                                                           | <b>STEP A</b> | <b>STEP B</b> | <b>STEP C</b> | <b>STEP D</b> | <b>STEP E</b> |
| Fire Fighter                                                                          | \$30.0357     | \$30.7239     | \$31.4290     | \$32.1570     | \$33.2093     |
|                                                                                       | <b>STEP F</b> | <b>STEP G</b> | <b>STEP H</b> | <b>STEP I</b> |               |
|                                                                                       | \$34.3069     | \$35.4389     | \$36.6102     | \$37.8350     |               |
| <b>CLASSIFICATION TITLE</b>                                                           | <b>STEP A</b> | <b>STEP B</b> | <b>STEP C</b> | <b>STEP D</b> | <b>STEP E</b> |
| Fire Apparatus Operator                                                               |               | \$36.8891     | \$38.1119     | \$39.3688     | \$40.6655     |
| Fire Prevention Inspector                                                             |               | \$54.2405     | \$56.0399     | \$57.8873     | \$59.7982     |
| Deputy Fire Marshal                                                                   |               | \$62.9932     | \$65.0700     | \$67.2218     | \$69.4363     |
| Fire Captain I                                                                        |               | \$44.2148     | \$45.6763     | \$47.1834     | \$48.7421     |
| Fire Captain II                                                                       |               | \$40.9040     | \$42.2528     | \$43.6509     | \$45.0894     |
| Paramedic Supervisor I                                                                |               | \$43.8390     | \$45.2838     | \$46.7854     | \$48.3211     |

| <b>Hourly Salary Schedule as of July 14, 2019 (Two Percent (2%) Wage Increase)</b> |               |               |               |               |               |
|------------------------------------------------------------------------------------|---------------|---------------|---------------|---------------|---------------|
| <b>CLASSIFICATION TITLE</b>                                                        | <b>STEP A</b> | <b>STEP B</b> | <b>STEP C</b> | <b>STEP D</b> | <b>STEP E</b> |
| Fire Fighter                                                                       | \$30.6364     | \$31.3384     | \$32.0576     | \$32.8001     | \$33.8735     |
|                                                                                    | <b>STEP F</b> | <b>STEP G</b> | <b>STEP H</b> | <b>STEP I</b> |               |
|                                                                                    | \$34.9930     | \$36.1477     | \$37.3424     | \$38.5917     | \$34.9930     |
| <b>CLASSIFICATION TITLE</b>                                                        | <b>STEP A</b> | <b>STEP B</b> | <b>STEP C</b> | <b>STEP D</b> | <b>STEP E</b> |
| Fire Apparatus Operator                                                            |               | \$37.6269     | \$38.8742     | \$40.1562     | \$41.4788     |
| Fire Prevention Inspector                                                          |               | \$55.3253     | \$57.1607     | \$59.0451     | \$60.9942     |
| Deputy Fire Marshal                                                                |               | \$64.2531     | \$66.3714     | \$68.5662     | \$70.8251     |
| Fire Captain I                                                                     |               | \$45.0991     | \$46.5898     | \$48.1271     | \$49.7169     |
| Fire Captain II                                                                    |               | \$41.7221     | \$43.0979     | \$44.5239     | \$45.9912     |
| Paramedic Supervisor I                                                             |               | \$44.7158     | \$46.1895     | \$47.7211     | \$49.2875     |

| <b>Hourly Salary Schedule as of January 12, 2020 (Illustrated Purpose Only – Subject to the Provision of Section 10.1.2)</b> |               |               |               |               |               |
|------------------------------------------------------------------------------------------------------------------------------|---------------|---------------|---------------|---------------|---------------|
| <b>CLASSIFICATION TITLE</b>                                                                                                  | <b>STEP A</b> | <b>STEP B</b> | <b>STEP C</b> | <b>STEP D</b> | <b>STEP E</b> |
| Fire Fighter                                                                                                                 | \$30.6482     | \$31.3504     | \$32.0699     | \$32.8128     | \$33.8865     |
|                                                                                                                              | <b>STEP F</b> | <b>STEP G</b> | <b>STEP H</b> | <b>STEP I</b> |               |
|                                                                                                                              | \$35.0065     | \$36.1616     | \$37.3568     | \$38.6065     |               |
|                                                                                                                              |               |               |               |               |               |
| <b>CLASSIFICATION TITLE</b>                                                                                                  | <b>STEP A</b> | <b>STEP B</b> | <b>STEP C</b> | <b>STEP D</b> | <b>STEP E</b> |
| Fire Apparatus Operator                                                                                                      |               | \$37.6414     | \$38.8891     | \$40.1716     | \$41.4947     |
| Fire Prevention Inspector                                                                                                    |               | \$55.3466     | \$57.1827     | \$59.0678     | \$61.0177     |
| Deputy Fire Marshal                                                                                                          |               | \$64.2778     | \$66.3969     | \$68.5926     | \$70.8523     |
| Fire Captain I                                                                                                               |               | \$45.1164     | \$46.6077     | \$48.1456     | \$49.7361     |
| Fire Captain II                                                                                                              |               | \$41.7382     | \$43.1144     | \$44.5410     | \$46.0089     |
| Paramedic Supervisor I                                                                                                       |               | \$44.7330     | \$46.2072     | \$47.7395     | \$49.3065     |

## **EXHIBIT B – Glossary of Terms**

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

**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.

**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 or substantially the same employment conditions.

**COMPENSATORY TIME:** Shall mean paid time off the job which is earned and accrued by an employee in lieu of immediate cash payment for employment in excess of the statutory hours for which overtime is required by this Memorandum of Understanding or the Fair Labor Standards Act. For the purpose of this Memorandum of Understanding, the term “Due Time” shall mean the same as Compensatory Time.

**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.

**END OF YEAR:** For payroll-related purposes, the last day of the last pay period in December for which the payday occurs in December. For example, if the last pay day in December falls on Thursday, the 31st (because the following Friday, January 1st is a holiday), the corresponding pay period would end on December 26. The last day of the year for payroll-related purposes would be December 26. Similarly, if the last pay day of

the calendar year were December 28, the last day of the payroll year would be December 22.

**EXEMPT:** Appointment which is exempt from the competitive service, in accordance with Section 4.04.120 of City of Berkeley Personnel Ordinance, No. 6280- N.S.

**FRALS PARAMEDIC:** A paramedic with current certification who is assigned to an engine or truck company and is entitled to receive the full FRALS paramedic differential pay.

**FULL-TIME:** An assignment or combination of assignments which total forty (40) or fifty-six (56) 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.

**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.

**LEAVE DAY:** A leave day is used for computing earned leave and is equivalent to a 12-hour working day for a 56-hour per week employee, or is equivalent to an 8-hour working day for a 40-hour per week employee. Leave taken is computed as the actual hours used.

**MEMORANDUM OF UNDERSTANDING:** A binding contract, as provided for by the Meyers-Miliias-Brown Act, between the City of Berkeley and the Berkeley Fire Fighters Association specifying wages, hours and other terms and conditions of employment.

**MINIMUM QUALIFICATION ACTOR:** An employee allowed to act in a higher classification, when there are no qualified personnel on the current promotional list available, shall be known as a Minimum Qualification Actor. They must meet all the required qualifications, education, and experience to be eligible to participate in the promotional exam process for the classification in which they are to act. Minimum Qualification Actors must also successfully complete a certification process for the classification in which they are to act, administered by the Division of Training, before they are allowed to act in the specified classification.

**OFF THE UNIT:** An active paramedic who, on a given day, is assigned to suppression and is not working on an ambulance.

**ON THE UNIT:** An active paramedic who is actually assigned and is working on an ambulance.

**OPEN COMPETITIVE EXAMINATION:** An examination for a class (entry level or higher) in the competitive service in which participation is open to all qualified applicants.

**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 59.7 in this Memorandum of Understanding.

**REGULAR HOURLY SALARY:** The Regular Monthly Salary multiplied by twelve (12) months and divided by 2080 annual work hours for forty (40) hour per week employees. For fifty six (56) hour per week assignments, the Regular Monthly Salary is multiplied by twelve (12) and divided by 2912 annual work hours, except that time worked on the day shift is multiplied by a factor of 1.2 and time worked on the night shift is multiplied by a factor of 0.85714.

**REGULAR MONTHLY SALARY:** The base pay for a classification (as included in Exhibits "A" through "E" of this Memorandum of Understanding) and for paramedic assignments.

**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 31 (Probationary Period).

**REJECTION (PROBATION):** The separation of an employee from the service during or at 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.

**SCORING METHODOLOGY:** The relative weights of components of a specific examination. This information is to be included in the announcement of the opening of the application process. For example, the announcement would specify that in the scoring of applicants that the written examination shall contribute a maximum of x per cent of the total score and that an assessment center shall contribute a maximum of y per cent, with  $x + y = 100\%$ .

**SHIFT:** A set of continuous work hours. For 40-hour per week employees, a shift comprises eight (8) hours. For 56-hour per week employees, a shift comprises twenty-four (24) hours, except that the term "day shift" means ten (10) consecutive hours and "night shift" means fourteen (14) consecutive hours and "12-hour shift" is used for purposes of computing leave time and compensatory overtime (for purposes of this Memorandum of Understanding). The term "working shift" refers to a day or night shift for 56-hour employees or a regular shift for 40-hour employees. The term "assigned shift" refers to separate schedules in effect for 56 hour employees, such as A-shift", "B-Shift" and "C-Shift". For purposes of computing leave time and compensatory overtime (for purposes of this Memorandum of Understanding), an average twelve (12) hour shift is used.

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

**TOUR:** The basic work cycle; for example, the 56-hour employee's tour consists of nine consecutive days, during which time the employee is scheduled for 3 shifts on duty and 6 off duty

**TOUR (48/96):** The basic work cycle; for example, the 56-hour employee's tour consists of six consecutive days, during which time the employee is scheduled for 2 shifts on duty and 4 off duty.

**TRANSFER:** The movement of an 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.

**TRANSPORT PARAMEDIC:** A paramedic with current certification who is assigned to ambulance duty and is entitled to receive the full paramedic transport differential pay.

**VACATION YEAR:** A vacation year runs twelve months, (i.e. 26 payroll periods), starting and ending on a payroll period break.

**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 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.

**EXHIBIT C – Emergency Medical Services Programs**

I. PROGRAM ADMINISTRATION

A. The Fire Chief will be responsible for program administration.

II. GUIDING PRINCIPALS OF THE PROGRAM

A. Create and sustain Emergency Medical Service (EMS) programs that deliver the highest quality care to the Berkeley community.

B. Minimize personnel movement and support program adjustments that maintain a high level of morale.

III. PARAMEDIC PROGRAM – WORKING CONDITIONS

A. A paramedic shall not be assigned Fire Prevention inspection details while assigned to an ambulance.

B. A paramedic shall be responsible for the maintenance of their equipment and vehicle (i.e. cleanliness, minor servicing, and operational readiness).

C. A paramedic shall be responsible for maintenance of their own quarters and normal shift assignments. Station maintenance will be determined by the Station Commander and supervising Officer(s).

D. All paramedics will assist in EMS training.

E. A paramedic shall complete all EMS related paperwork in accordance with established Alameda County EMS and Berkeley Fire Department policies and procedures.

IV. LICENSURE & ACCREDITATION

A. Employees who function as paramedics and are permanently assigned as paramedics as a condition of employment will maintain a current State of California Paramedic License, current Alameda County accreditation, and current California Class C Driver’s License with firefighter endorsement or equivalent California Vehicle Code requirements to drive fire apparatus and ambulances.

B. During any period or lapse in which an individual does not possess required accreditation or licensure the individual shall not receive any paramedic differential pay.

## V. OPERATIONS

- A. The Department will seek to maintain sufficient paramedics for each shift. To maintain three (3) paramedic Transport units, seven (7) engine companies and two (2) truck companies with ALS capabilities a staff of 72 paramedics or 24 per shift is considered desirable (*emphasis added*).
1. To maintain four (4) paramedic Transport units, a staff of 42 paramedics or 14 per shift, assigned to permanent ambulance rotation is considered desirable (*emphasis added*).
  2. To maintain seven (7) engine companies and two (2) truck companies with FRALS capabilities, a staff of 36 FRALS paramedics or 12 per shift is considered desirable (*emphasis added*).
- B. Engines and Truck companies shall be staffed with a minimum of one (1) paramedic.
- C. Transport companies shall be staffed with two (2) paramedics.
- D. Additional advanced life support units placed in service for special events, or multi-casualty incidents may be staffed with a minimum of one (1) paramedic and one (1) EMT only to avoid mandatory and emergency hires.
- E. Each working day a paramedic who is assigned to rotate on the ambulance will be classified in one of the following ways:
1. ON – Employee is assigned to a transport unit.
  2. OFF – Employee may not be assigned to a transport unit.
  3. DUE ON – Employee may be assigned to a suppression or transport unit.
    - a. When a paramedic is “off the ambulance” the individual is required to serve as a paramedic on a suppression company unless assigned as a Higher class Captain (though the employee shall still receive the FRALS paramedic pay).
- F. Paramedics assigned to the ambulance will work a rotational schedule of a maximum of two tours on the ambulance and a minimum of one tour on fire apparatus.
1. By mutual agreement between the paramedic and the shift’s Duty Chief, a paramedic may voluntarily remain on the ambulance longer

than the rotational schedule described above for special needs such as to precept paramedic interns. However, such additional volunteer time on the ambulance will not be counted toward time off the ambulance as described in the rotational schedule above. The paramedic rotational schedule will always determine time off and on the ambulance.

- G. The City and BFFA will form a joint committee consisting of BFFA and City representatives that will explore possible changes to the City's service delivery model.

#### VI. TRANSFER TO SUPPRESSION

- A. Effective July 1, 2013, the department will no longer fill "firefighter" only assignments or assign individuals to an engine firefighter position.
- B. Any paramedic that was transferred to suppression as a firefighter prior to February 1, 2013 will be considered "legacy firefighters" and may be assigned to a transport ambulance not to exceed 24 hours per calendar quarter to meet department needs (mandatory hires do not count toward this hourly total). They shall not be placed in the rotation on the paramedic schedule.
- C. All Apparatus Operators assigned as paramedics may be assigned to a transport ambulance not to exceed 24 hours per calendar quarter to avoid mandatory hires or meet department needs. They shall not be assigned to the transport unit in a routine manner nor shall they be placed in regular rotation on the paramedic schedule.
- D. There shall be no more than six (6) Paramedic Supervisor I positions. In lieu of an available Paramedic Supervisor, a Supervisor shall be appointed and paid a Paramedic Supervisor I's rate (HCPS). An employee working as an HCPS will not be paid the 12.5% HCAT differential.

#### VII. TRADES

- A. **A paramedic shall be limited to trading with a paramedic so long as each employee possesses the minimum qualifications (as set by the department) to fulfill the responsibilities of the assignment.**

#### VIII. PARAMEDIC COMPENSATION

- A. Fire Officers shall not be eligible to act as a paramedic.
- B. Personnel who "transferred to suppression" as a firefighter prior to January

- 1, 2013 will continue to provide service as a FRALS paramedic until they retire or promote.
- C. The differential for being assigned as a paramedic by the department is 6.25% above base pay for that employee's rank.
1. This paramedic differential will be reported to CalPERS as Paramedic Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.
- D. Any employee assigned to work on the transport unit shall be paid a differential when assigned and works on an ambulance (Higher Class Ambulance Transport - HCAT) of 12.50% above base pay for that employee's rank.
1. For all time an employee is assigned to work a transport unit they shall receive both the base paramedic differential and the HCAT differential.
  2. Paramedic Supervisor Is are exempt from receiving the paramedic differential or HCAT pay.
  3. This HCAT differential will be reported to CalPERS as Higher Class Ambulance Transport Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.
- E. A permanent employee assigned as a transport or FRALS paramedic will be given an allowance of \$1,500 after submission of a renewed California paramedic license, completion of Alameda County EMS requirements, and submission of a Fire Department reaccreditation form. Paramedic Reaccreditation Form submission must occur within three (3) calendar months of the effective date on the California paramedic license.
- IX. PARAMEDIC FIELD TRAINING OFFICER (FTO)
- A. Any paramedic that is assigned by the Fire Chief as a Field Training Officer (FTO) for the purpose of evaluating and training probationary employees on a paramedic transport unit shall be compensated as FTOs at a rate of 5% above base pay for that employee's rank.
1. The Paramedic Supervisor I, in consultation with the EMS Chief &

EMS Captain shall recommend which employees will be assigned FTO duties.

2. FTO pay shall be provided for hours worked as an FTO on an ambulance.
3. FTO pay shall not be provided to Paramedic Supervisor I's when they are tasked with these evaluations as those responsibilities are part of the PSI job description.

X. PARAMEDIC SUPERVISOR I ADMINISTRATIVE TIME

To handle administrative duties and staff work that are challenging to complete while in service and running calls, a paramedic supervisor will be back-filled from 0800 – 1800 hours the first day of each calendar month.

XI. EMT CERTIFICATION IS A CONDITION OF CONTINUED EMPLOYMENT

- A. The Department will offer on-duty EMT recertification classes and online continuing education for the benefit of employees to meet the twenty-four hour requirement. The City of Berkeley will give sufficient notice for the scheduling of recertification classes or online continuing education. A limited number of make-up classes will be offered. The City of Berkeley will provide up to twelve (12) hours of make-up classes or online continuing education per shift for a total of 36 hours in each certification cycle. However, if an employee misses the available classes he/she will be responsible to obtain the training on his/her own time at his or her own cost. It is not the department's policy to pay for recertification classes taken while off-duty.
- B. In the event that EMT recertification requirements from the State and/or County are modified, the City of Berkeley and the Association agree to meet and confer on this issue.
- C. The City agrees to provide the required testing for EMT employees in each four-year cycle.

XII. CONDITIONS FOR WHICH PARTIES AGREE TO REOPEN AND MEET AND CONFER

- A. The parties agree to meet and confer if there is an increase or decrease in either Measure GG or the Paramedic Tax revenues (with the exception of the increase of Consumer Priced Index or Personal Income Growth rate increases).

- B. The City and Association hereby agree to reopen labor negotiations and to immediately begin to meet and confer specifically to address Exhibit C Sections III-X of this MOU if Berkeley voters fail to approve Gann limit reauthorization of the 2008 Measure GG.



## **EXHIBIT D – General Order – Apparatus Staffing Levels**

### **A. NORMAL STAFFING**

1. Normal in-service staffing for fire apparatus shall be as follows:

- a. Seven (7) Engine Companies: three personnel each.
- b. Two (2) Truck Companies: three personnel each.
- c. Four (4) Ambulance Units: two personnel each.

2. Truck Company Out of Service:

When a truck apparatus is placed out of service for mechanical reasons, and no reserve truck is available, the truck personnel will staff a reserve engine.

### **B. BELOW NORMAL STAFFING**

When fire companies are below strength in personnel, the following guidelines shall apply:

1. Two (2) Personnel:

- a. Fire units, Engine and Truck companies, with a minimum of two (2) persons on board shall be called a "Medical Unit".
  1. They shall take medical calls within district.
  2. They shall normally be Out-of-Service for fires.
    - i. Shall monitor radio and respond to fires if needed.
    - ii. Dispatch shall notify Asst. Chief when a unit is short of personnel.
    - iii. Dispatch shall indicate medical units when dispatching full assignments.

2. Less Than Two (2) Personnel:

- a. When fire units have less than two personnel, companies are placed out-of-service.

### **C. IMPLEMENTATION OF POLICY**

Deputy Chiefs may use discretion in exercising this policy, based upon realistic department needs for training, special assignments, fire patrols, UC Football coverage, or additional coverage during critical fire weather.

**EXHIBIT E – Grievance Forms**

STEP 1 - Informal Step

STEP 1.1 - Deputy Fire Chief Response

STEP 2 – Appeal to Fire Chief

STEP 2.1 – Fire Chief Response

STEP 2.2 – Director of Human Resources Response (Compensation)

STEP 3 – Appeal to City Manager

STEP 3.1 - City Manager Response

STEP 4 – Appeal to Arbitration



## BFFA Local 1227 – City of Berkeley Grievance Form

*(Days defined as Calendar Days, unless otherwise noted)*



### STEP 1 – Informal Step

**Important Notes (MOU Section 35.1):** A grievance is any dispute which involves the interpretation, application, claimed violation, or claimed noncompliance with the provisions of the Memorandum of Understanding between the City and the Association or any City ordinance, rule, regulation, or past practice which may have been or may hereafter be adopted by the City to govern personnel practices or working conditions of the City's employees covered by such Memorandum of Understanding, including any rule, regulation, or resolution which may be adopted by the City Council which results from the meet-and-confer process.

No matter shall be considered as a grievance under this Section unless it is presented within thirty (30) calendar days after the employee or the Association could reasonably have been aware of events on which the grievance is based. All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Fire Chief or his or her designated representative for payroll issues within 30 working days from the date when the employee may reasonably be expected to have learned of the alleged compensation violation. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.

Grievance Tracking  
No.: \_\_\_\_\_

Grievant First Name \_\_\_\_\_ Grievant Last Name \_\_\_\_\_ Date: \_\_\_\_\_

|            |             |                |             |              |                  |
|------------|-------------|----------------|-------------|--------------|------------------|
| Job Title: | Firefighter | Dept/Location: | Station One | E-Board Rep: | First, Last Name |
|------------|-------------|----------------|-------------|--------------|------------------|

Nature of Grievance *(Include specific provisions of the MOU, City ordinance, rule or regulation and/or past practice, and the circumstances involved):*

Relief Desired:

Grievant: \_\_\_\_\_ Rep./Steward: \_\_\_\_\_  
*Signature* *Signature*

Date Rec'd by Chief Officer: \_\_\_\_\_ Meeting Requested: Yes  No  Date meeting occurred: \_\_\_\_\_

Deputy Fire Chief: \_\_\_\_\_ Date: \_\_\_\_\_  
*Signature*

**Instructions:** The grievant should complete this form electronically and print it out. It should then be given to an Executive Board member who will submit it to the Deputy Fire Chief and obtain a signature confirming receipt. Return a copy of the signed form to your assigned 1227 Executive Board representative.



BFFA Local 1227 – City of Berkeley  
Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking  
No.:

Grievant First Name

Grievant Last Name

Date:

**STEP 1.1 – Deputy Fire Chief Response**

**Important Note:** Any employee who believes he or she has a grievance (and/or the employee's Association representative) shall discuss the employee's complaint with the Deputy Fire Chief. If the issue is not resolved within fifteen (15) calendar days, the employee (and/or the employee's Association representative) may elect to invoke the formal grievance procedure (Step II).

Deputy Fire Chief's Response (1227 must be in receipt of this response within 15-days of their initial receipt of this grievance):

Deputy Fire Chief:

Date:

Signature

Receipt of Return to 1227:

Rep/Steward:

Date  
Rec'd:

Signature

Rep/Steward:

First Name

Printed Name

**Response to Deputy Fire Chief (to be completed by 1227 Rep./Steward):**

Date:

Deputy Fire Chief's Response is:

Satisfactory:  Unsatisfactory:

Grievance is:

Appealed:  Withdrawn:

**Instructions:** The Deputy Fire Chief shall complete this page electronically, print and return to a 1227 Executive Board representative. The 1227 representative shall immediately notify the President, 1<sup>st</sup> Vice President, or the 2<sup>nd</sup> Vice President.



# BFFA Local 1227 – City of Berkeley Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking  
No.:

Grievant First Name

Grievant Last Name

Date:

## STEP 2 – Appeal to Fire Chief

**Important Notes:** The written statement shall be a clear concise statement of the grievance, including specific provisions of this agreement and/or City ordinance, rule or regulation, and/or past practice alleged to have been violated, the circumstances involved in the decision rendered at Step I, and the specific remedy sought. Either party shall be entitled to a personal conference upon request.

All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Fire Chief or his or her designated representative for payroll issues within 30 working days from the date when the employee may reasonably be expected to have learned of the alleged compensation violation. If such issues cannot be resolved by the Fire Chief (or in consultation with the Auditor), the Fire Chief will refer the matter to the Director of Human Resources within ten (10) working days of receipt of the grievance.

Reasons for the appeal:

Date Rec'd by  
Fire Chief:

Fire Chief:

Signature

Meeting  
Requested  
1227:

by Yes  No

Meeting  
Requested  
Fire Chief:

by Yes  No

Date meeting occurred:

**Instructions:** The grievant and their Executive Board representative shall complete this form electronically, print it out and submit it directly to the Fire Chief along with all previous forms (Step I Nature, Step I DC Response, and any addendum documents) within 10 working days of receiving the DC response.



# BFFA Local 1227 – City of Berkeley Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking  
No.:

Grievant First Name

Grievant Last Name

Date:

## STEP 2.1 – Fire Chief Response

**Important Notes:** The Fire Chief shall communicate a decision to the grievant with a copy to the Association and to the Director of Human Resources in writing within ten (10) working days after receiving the grievance or ten (10) working days from the date of the personal conference, whichever is later, and such action will terminate Step II.

Fire Chief's Response:

Fire Chief:

*Signature*

Date:

Receipt of Return to 1227:

Rep/Steward:

*Signature*

Date Rec'd:

**Response to Fire Chief (to be completed by 1227 Rep./Steward):**

Date:

Fire Chief's Response is:

Satisfactory:

Unsatisfactory:

Grievance is:

Appealed:

Withdrawn:

**Instructions:** The Fire Chief shall complete this page electronically, print and return to a 1227 Executive Board representative. The 1227 representative shall immediately notify the President, 1<sup>st</sup> Vice President, or the 2<sup>nd</sup> Vice President.



BFFA Local 1227 – City of Berkeley  
Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking  
No.:

Grievant First Name

Grievant Last Name

Date:

**STEP 2.2 – Director of Human Resources Response (Compensation)**

**Important Notes:** The Director of Human Resources or his or her designee shall have 30 working days to research the issue and provide a written response to the Association and the affected employee. 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 whichever is later.

If the affected employee is not satisfied with the written decision of the Director of Human Resources or his or her designee, the affected employee will have ten (10) working days to appeal the decision in writing to the City Manager and the grievance will move to Step III of the Grievance Procedure as provided in Section 35.2.4.

**Compensation** Yes:  No:   
**Matter:**

HR  
Representative: Enter Name

Date:

Signature

HR Response (required within 30-working days of receipt of grievance) received:

Receipt of Return to 1227:

Rep/Steward:

Date Rec'd:

Signature

**Response to Human Resources (to be completed by 1227 Rep./Steward):**

Human Resources Response is:

Satisfactory:  Unsatisfactory:

Grievance is:

Appealed:  Withdrawn:

Appeal deadline: 10-working days from receipt of HR response.



# BFFA Local 1227 – City of Berkeley Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking  
No.:

Grievant First Name

Grievant Last Name

Date:

## STEP 3 – Appeal to City Manager

**Important Notes:** In the event that the employee (or the employee’s Association representative) is not satisfied with the decision at Step II, the employee (or the employee’s Association representative) may appeal the decision in writing to the City Manager or his/her designee within ten (10) working days after the termination of Step II.

The grievant or the City Manager or his / her designee shall be entitled to a personal conference upon request within the time limits specified.

Reasons for the appeal:

Date Rec’d by  
City Manager:

City Manager  
(or designee):

Date:

*Signature*

Meeting Requested: Yes  No

Date meeting  
occurred:

**Instructions:** The grievant and their Executive Board representative shall complete this form electronically, print it out and submit it to the City Manager along with all previous forms (Step I Nature, Step I DC Response, and any addendum documents) within **10 working days** after the termination of Step II. Once a signature of receipt is obtained a copy of this form shall be made and returned to the assigned Executive Board representative.





# BFFA Local 1227 – City of Berkeley Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking  
No.:

Grievant First Name

Grievant Last Name

Date:

## STEP 3.1 – City Manager Response

**Important Notes:** The City Manager or his/her designee shall communicate a decision within ten (10) working days after receiving the appeal or ten (10) working days from the date of the personal conference, whichever is later and such decision will terminate Step III.

City Manager Response:

City Manager:

*Signature*

Date:

Return to 1227:

Rep/Steward:

*Signature*

Date Rec'd:

**Response to City Manager (to be completed by 1227 Rep./Steward):**

Date:

City Manager's Response is:

Satisfactory:

Unsatisfactory:

Grievance is:

Appealed:

Withdrawn:

Instructions: The City Manager (or his/her designee) shall complete this page electronically, print and return to a 1227 Executive Board representative. The 1227 representative shall immediately notify the President, 1<sup>st</sup> Vice President, or the 2<sup>nd</sup> Vice President.



BFFA Local 1227 – City of Berkeley  
Grievance Form

(Days defined as Calendar Days, unless otherwise noted)



Grievance Tracking  
No.:

Grievant First Name

Grievant Last Name

Date:

**STEP 4 – Appeal to Arbitration**

**Important Notes:** If the Association is not satisfied with the City Manager's response at Step III- the Association may require that the grievance be referred to an impartial arbitrator, who shall be designated by mutual agreement between the Association and the City Manager. The Association must notify the City Manager in writing within ten (10) working days of receipt of the City Manager's decision that they intend to move the grievance to arbitration.

**1227 Executive Board Arbitration Request:**

Date:

City Manager's Response was:

Satisfactory:  Unsatisfactory:

Association Requires Grievance to be Submitted to Arbitration:

Yes:  Withdrawn:

President:

Signature

1<sup>st</sup> Vice  
President:

Signature

2<sup>nd</sup> Vice  
President:

Signature

**Instructions:** The 1227 Executive Board shall complete this form electronically and submit it to the City Manager along with all previous forms (Step I Nature, Step I DC Response, and any addendum documents) with copies to the Director of Human Resources, the Fire Chief, the Union President, and the 1<sup>st</sup> Vice President. This must occur within ten (10) working days of receipt of the City Manager's decision that they intend to move the grievance to arbitration.

## **EXHIBIT F – Wellness/Fitness Program**

### **A. Participation**

1. The City and the Association realize the importance of establishing and maintaining an effective Wellness Fitness program. It is the intent of this program to effectively increase the overall health of the workforce, thereby reducing workers compensation claims and chronic illnesses caused by improper nutrition and poor exercise habits.
2. All uniformed members of the Berkeley Fire Department are encouraged to participate in the B.F.D. Wellness/Fitness Program.
3. All approved on-duty activities will be covered by Workers' Compensation. However, due to the potential for injury, competitive sports activities (tennis, volleyball, etc.) are strictly prohibited while on duty.
4. It shall be the responsibility of each member to participate daily (while on duty) in the program and to make every effort to maintain his/her physical fitness so as to be able to perform the duties of a Firefighter.
5. Daily scheduling of the program shall be the responsibility of each company officer.

### **B. Off-Duty Activities**

No off-duty conditioning activities can be covered by Workers' Compensation. All reference to off-duty activities are merely suggestions to be considered for physical fitness.

### **C. Funding**

1. On or around July 1<sup>st</sup> of each year, the City shall pay the Association an amount sufficient to replenish the Wellness Fitness Initiative (WFI) fund to \$30,000 for the next fiscal year. The WFI Fund expenditures shall be managed by the Association. WFI funds shall be used to maintain the WFI program through education and training of peer fitness trainers, for executing repairs to existing equipment, for reimbursement to members who are pursuing changes to their health and wellness through practitioners approved by the City's WFI (Section 39), and for the purchase or replacement of equipment necessary to maintain a safe and effective exercising environment.
2. The Association will contract with a third party vendor who will provide repair

services and scheduled maintenance for all exercise equipment. All claims for service will be made from the Association to the Department and will be acted upon in an expedient manner.

3. The Association may transmit equipment purchase order requests to the Department in order to take advantage of GSA pricing. The Department will act on said requests within fifteen (15) calendar days of receipt. The Association and the Department recognize there is a blackout period for all purchasing at the end of each fiscal year. The Association will be specific with make, model and suggested vendor.

## **EXHIBIT G – Hazardous Materials Response Team**

### **1. STAFFING**

- A. It is recognized that to be operational, the Hazardous Materials Response Team need not be staffed at the current level. It is understood that operational effectiveness may be reduced when current certified staffing levels are reduced. The Department shall make every effort to keep nine (9) personnel (3 on each shift) assigned to the team.
- B. Though the Berkeley Fire Fighters Association's position is that the Hazardous Materials Team staffing should remain at its current level of eighteen (18) with adequate funding for equipment and training, we recognize the City's managerial right to reduce staffing due to budget consideration.
- C. We propose that the Department pursue and develop a multi-agency response capability with adjacent municipalities. In addition all remaining team members should be trained to a specialist level.
- D. To reduce the team down to nine (9), the Fire Chief will consider recommendations by the Hazardous Materials Leader and the appropriate staff officers.

### **2. TEAM OPERATIONAL LEVELS**

- A. Guidelines for team operational levels shall be dictated by State regulations.
- B. To keep team staffed a maximum operational levels, the on-duty Battalion Chief shall have the discretion to change personnel assignments as needed. This includes personnel working overtime, trades, etc.
- C. Team members may be drawn from other stations if needed to respond to an incident. The on-duty Battalion Chief shall have this discretion should the need arise.

### **3. TRAINING**

- A. All Hazardous Materials Response training required for certification as Hazardous Materials Specialist must be completed by selected personnel in order to remain on the team. However, the specialist requirement will apply only to those members joining the team after the ratification of this agreement. Every effort will be made by the fire administration to upgrade the remaining team members to the specialist level by January 1, 1996.

- B. Team members may be required by City Fire Administration to assist in providing appropriate Hazardous Materials training to other Fire Department personnel. Team members providing training will possess the necessary credentials as required by current State and/or Federal standards for hazardous materials instructors.
- C. Staffing during training shall be in accordance with Section 45 (Staffing and Units in Operations) of the Memorandum of Understanding.

4. **CONDITIONS**

- A. Participation on the Hazardous Materials Response Team will not limit members ability to be eligible for higher class assignments, trades, overtime or vacation scheduling.
- B. The "HAZ-MAT" Team may be required to enforce those sections of the fire code relating to Hazardous Materials and Fire Prevention.

5. **COMPENSATION**

- A. After appointment to the HMRT employees will be compensated for attending hazardous materials training while off duty.
- B. The City will provide Hazardous Materials Specialist Training as needed to maintain a Hazardous Materials Response Team of up to four (4) per shift. Upon successful completion of the required Hazardous Materials Specialist Course, a Hazardous Materials team member, who is regularly assigned, shall receive an additional five percent (5%) to base pay. This Hazardous Materials Response Team 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.
- C. This 5% Hazardous Materials Response Team member differential shall become effective the closest pay period following completion of the course. To receive the above compensation, a three (3) year commitment to the team will be required.
- D. Employees not assigned to the Hazardous Materials Response Team who meet and maintain the Hazardous Materials Team Specialist Training requirements may receive a five percent (5%) higher classification Haz Mat Team differential when there are fewer than four (4) regularly assigned members absent from duty for the hours they are assigned to work temporarily as a substitute member of the Team. If there are two or more

individuals that have the Hazardous Materials Specialist Training, priority for this assignment will be given to a person assigned to Station 2, followed by department seniority.

- E. Hazardous Materials Response Team member who fails to complete the Hazardous Materials training will no longer receive the above mentioned compensation and shall be removed from the team.
- F. HMRT members will be assigned to Station 2. Any member who voluntarily changes assignments from Station 2 will be removed from the HMRT. If a member is moved from Station 2 due to departmental need, he/she will be removed from the HMRT.
- G. The Fire Chief reserves the right to reassign personnel from Station 2 in order to assign a HMRT member to Station 2 based on departmental need.







Office of the City Manager

04

CONSENT CALENDAR

November 10, 2020

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Scott Ferris, Director, Parks Recreation and Waterfront  
Subject: Lease for 5385 Cazadero Hwy, Cazadero, CA 95421 – Cazadero Performing Arts Camp (CPAC)

RECOMMENDATION

Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement and necessary amendments with Cazadero Performing Arts Camp, at 5385 Cazadero Hwy, Cazadero, CA 95421 for a term of twenty-five (25) years, with an option to renew for ten (10) years.

FISCAL IMPACTS OF RECOMMENDATION

Total rent will be \$45,000/year, escalating annually by CPI. Currently, CPAC rent is \$52,518/year, but they only pay \$10,000/year to the city. The rest is a rent credit to offset their capital and maintenance expense. The \$10,000 payment does not cover the City's out-of-pocket costs for taxes, staffing, routine tree maintenance and insurance. In the first 10 years of the lease, the tenant will complete an estimated \$800,000 in capital improvements, and will invest in the camp at similar levels thereafter; and they will complete tree maintenance work up to \$45,000 every 3 years. Currently, CPAC spends approximately \$60,000/year on capital improvements and \$0/year on tree maintenance. These increases will offset the City's out-of-pocket costs for taxes, staffing, routine tree maintenance and insurance.

Lastly, the tenant will offer at least \$10,000 in scholarship funding to Berkeley residents, and this funding will not exceed \$20,000 per calendar year unless it is financially feasible. These caps will increase annually based on CPI. This is to ensure that CPAC reaches more youth that come from economically disadvantaged backgrounds.

CURRENT SITUATION AND ITS EFFECTS

CPAC has been operating at the City-owned property at 5385 Cazadero Hwy, Cazadero, CA for the past 60 years. Their lease expires in February 2021 with no holdover provision. The City and CPAC have negotiated new lease terms that increase the rent, increase investment in the property, contribute financially to tree maintenance, and increase investment in scholarships. City staff reviewed these lease terms with the Council in closed session on July 28, 2020.

The lease term will be 25 years, with one 10-year option. The City and CPAC identified \$1.2m in high priority needs following facility condition and ADA assessment reports commissioned this year. CPAC has agreed to take on an estimated \$800,000 of this work over 10 years, which averages to \$80,000/year. The City will make best efforts over the next 5 years to complete the \$400,000 in needed improvements. If the City is unable to fund the improvements within 5 years, a rent reduction in years 6-10 of \$40,000/year, for a total of \$200,000 will be activated.

### BACKGROUND

The property at 5385 Cazadero Hwy, Cazadero, CA was acquired by the City in 1927. From the 1930s to the 1950s, the property was used much like Echo Lake Camp and Tuolumne Camp to offer Berkeley residents recreational and family camp opportunities. In 1959, Bob Lutt, Berkeley High Band Director, became the operator of the Camp, and started a music camp. The City maintained the facilities until 1978, when Prop 13 cut funding for recreation programs statewide, and the budget for the Camp was significantly stripped away. From 1979 through the 80s, the City leased the property to Camps Inc. During that period, the buildings significantly deteriorated.

In 1995, Berkeley-based non-profit Cazadero Performing Arts Camp (CPAC) negotiated the current 25-year lease agreement with the City. This transferred responsibility to the tenant to maintain and improve camp structures. Today the camp serves over 1,200 young musicians each year, ages 10-18, from across the Bay Area and beyond.

### ENVIRONMENTAL SUSTAINABILITY

This lease agreement with Cazadero Performing Arts Camp will enable the Camp to continue providing opportunities for Berkeley residents to engage in the natural environment.

### RATIONALE FOR RECOMMENDATION

If adopted, this Lease Agreement will keep a trusted tenant that has served the community for over 60 years and maintained the Camp in good condition. Cazadero has inspired generations of young musicians, growing into one of Northern California's most popular summer youth music camps.

### CONTACT PERSON

Scott Ferris, Director, Parks, Recreation and Waterfront, 981-6711  
Christina Erickson, Deputy Director, Parks, Recreation and Waterfront, 981-6703  
Denise Brown, Recreation Manager, Parks, Recreation and Waterfront, 981-6XXX

### Attachments:

- 1: Ordinance  
Exhibit A: Lease Agreement

ORDINANCE NO. -N.S.

LEASE AGREEMENT WITH CAZADERO PERFORMING ARTS CAMP FOR THE  
PROPERTY AT 5385 CAZADERO HWY, CAZADERO, CA 95421

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

Section 1.

The City Manager or designee is hereby authorized to execute a twenty five-year lease agreement with a ten-year option, including and any amendments necessary, with Cazadero Performing Arts Camp, for the property at 5385 Cazadero Hwy, Cazadero, CA 95421. Such lease shall be on substantially the same terms as set forth in Exhibit A.

Section 2.

The rent will be \$45,000/year, and increase annually based on CPI. Cazadero Performing Arts Camp will complete capital and ADA improvements to the property estimated at \$800,000 for the first 10 years, and will invest at similar levels in future years. Tenant will complete tree maintenance up to \$15,000/year. Tenant will also offer \$10,000-\$20,000 in scholarships. Revenue from this lease will be deposited into the Camps Fund, budget code 330-5995-363.30-01.

Section 3.

Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Exhibit

A: Lease Agreement

## LEASE

This AMENDED AND RESTATED LEASE (“Lease”) lease is made on [DATE] (“Effective Date”) between the CITY OF BERKELEY, a Charter City organized and existing under the laws of the State of California ("Landlord") and Cazadero Performing Arts Camp, Inc. ("Tenant"), a California non-profit organization, who agrees as follows:

This lease is made with reference to the following facts and objectives:

Recitals

A. Landlord is the owner of the real property at Cazadero Redwood Camp, Cazadero, California ("premises"), as further described in Exhibit 1, attached to and made a part of this lease.

B. Landlord and Tenant entered into a Lease dated March 1, 1996 (“Existing Lease”) for the entire premises, including the land, buildings, fixtures, improvements, equipment and personal property contained therein, for the purpose of conducting a performing arts camp and related activities.

C. The term of the Existing Lease was originally scheduled to expire on February 28, 2021.

D. Landlord and Tenant wish to enter into this Lease to amend and restate the Existing Lease for the purpose of continuing to conduct a performing arts camp and related activities.

E. Tenant acknowledges that the premises is a unique Berkeley facility and that Tenant has a responsibility to manage and promote its programs so that they benefit a broad cross-section of Berkeley residents. Towards that end, Tenant shall inform Berkeley residents about its performing arts programs and encourage Berkeley residents to participate in such programs, offer camperships to Berkeley children who require financial assistance to participate in such programs, and make an annual report to Landlord about such programs as well as about the condition of the premises, as set forth in Section 6 below.

F. Tenant is currently in possession of the premises and is fully informed as to the condition thereof. Tenant hereby accepts the premises in its present “AS IS” condition.

Now, therefore, in consideration of the mutual promises contained herein, and other good and valuable consideration received, Landlord and Tenant hereby mutually agree that the Existing Lease be amended and restated in its entirety as follows:

1. Term

The term of this lease commenced on March 1, 1996 and shall expire December 31, 2045. If Landlord decides not to renew this Lease, Landlord shall notify Tenant at least twenty-four (24) months prior to the expiration date of the Lease of its intentions to terminate this Lease. If

Landlord decides to lease the premises to a third party upon the expiration of this lease, Landlord shall immediately notify Tenant of any third party lease offers and Tenant shall have the first right of refusal to lease the premises from Landlord under substantially similar terms and conditions as those agreed to between Landlord and the third party. If Landlord decides not to terminate this lease, and provided Tenant is not in default, Tenant shall have an option to extend the term of this Lease for a period of ten (10) years by giving notice to Landlord at least eighteen (18) months prior to the expiration of the lease, but no earlier than twenty-four (24) months prior to expiration.

At the expiration or termination of this lease, Tenant agrees to quit and surrender possession of the premises to Landlord in good order and condition. Tenant shall not leave or allow to remain on the property any garbage, refuse, debris, or personal property. Tenant will pay Landlord any removal costs incurred by Landlord.

2. Rent

Tenant shall pay a yearly rent of forty-five thousand dollars (\$45,000) per year. Rent shall be due on or before March 1 of each year. Beginning on March 1, 2022, and annually thereafter, the yearly rent shall be increased by the percentage equal to the percentage that the Consumer Price Index (CPI) (as defined below) increased during the immediately preceding twelve (12) month period ending ninety (90) days prior to the date of adjustment. For purposes of this Lease, "CPI" means the United States Department of Labor, Bureau of Statistics Consumer Price Index for all Urban Consumers (CPI-U), and specifically that portion of the CPI-U relating to the San Francisco Area. At no time shall the CPI increase fall below zero. The CPI adjustment applies both to the initial term and any extension term.

3. Capital Improvements and Repairs

- a. During the first ten (10) years of the lease, Tenant shall complete property improvements as set forth in Table 1.
- b. The parties acknowledge that the cost estimates set forth in Table 1 do not constitute commitments to spend a certain amount of money, and that the actual costs may be higher or lower than the estimates.
- c. Landlord will make its best efforts to complete the property improvements set forth in Table 2. If the City is unable to fund the project on or before February 28, 2026, Tenant's rent shall be reduced by \$40,000 per year from March 1, 2026 through February 28, 2031 of the lease.
- d. In year ten (10) of the lease, Tenant and Landlord shall develop new schedules of property improvements and ADA work similar to the level of investment in the first ten (10) years, adjusted for inflation.
- e. Tenant shall not make any major alterations or improvements to the premises without the Landlord's prior written consent. Written approval from Landlord is required before work on any major plans can commence. "Major plans," for

purposes of this Lease, shall include any life safety improvements, work required to meet government standards (such as the Americans with Disabilities Act), and structural elements or projects exceeding \$20,000 in cost. All such alterations shall be made at Tenant's sole expense and the plans and specifications and a statement of the estimated cost of such work submitted to and approved by Landlord.

- f. Landlord and Tenant shall meet quarterly to discuss capital improvements and repairs. If Landlord and Tenant mutually agree that it is necessary to perform unanticipated or extraordinary capital improvements, or tree maintenance exceeding \$45,000 in cost over three years, in order to preserve the safety and welfare of the camp, Landlord and Tenant shall meet to identify the best strategy for completing and funding the work. Such improvements or maintenance may be performed by Landlord or by Tenant. In Landlord's sole discretion, Landlord may partially or fully reimburse Tenant for any costs incurred for such improvements or maintenance.
- g. Tenant is responsible for obtaining all plans, permits, and approvals which may be required in order to complete the capital improvements and repairs that it makes to the premises. Tenant shall submit copies of all such plans and permits to Landlord prior to commencing any such improvements or repairs. Landlord shall cooperate with Tenant in obtaining any of the foregoing approvals and/or permits.
- h. Tenant shall comply with all prevailing wage requirements of California Labor Code Sections 1720 et seq. to the extent such requirements are applicable to Tenant's work.
- i. Any capital improvements and repairs that Landlord approves, reimburses, or pays Tenant to complete, shall become part of the premises and shall be considered the property of Landlord.
- j. All alterations, improvements or additions that are now or in the future attached permanently to the premises shall be the property of Landlord and remain with the premises at the termination of this lease. Notwithstanding the foregoing, Landlord may elect, within thirty (30) days of the termination of the lease, to require Tenant, at its cost, to remove any alterations, improvements or additions Tenant has made to the premises, provided that such alterations, improvements or additions were not approved, paid for, or reimbursed by the Landlord during the term of this lease.
- k. Upon expiration of this lease, Tenant shall surrender the premises to Landlord with the premises' buildings, improvements, equipment, fixtures and personal property, in substantially the same, or better, condition as they were at the commencement of this lease, normal wear and tear excepted.

4. Maintenance. Security and Regulations

Tenant shall be responsible for maintaining the premises. Tenant shall be responsible for all expenses associated with the maintenance and operation of the premises to maintain the camp property in good condition. For the purposes of this section, "maintaining" the premises shall include: 1) all repairs which are not approved by Landlord, 2) replacement of non-fixed equipment and personal property, 3) repair to buildings and structures to keep the facilities in the condition the Tenant received the property, or better, normal wear and tear excepted, and 4) replacing any equipment or structures damaged due to misuse, vandalism or neglect. Tenant shall not otherwise be responsible for replacing major structures that can no longer be repaired. Such responsibilities shall include a year-round caretaker and a person with the required water treatment certification. Tenant shall comply with all Sonoma County health, safety and building regulations and any related inspection, certification and permits requirements. Tenant shall comply with all permit, sampling and reporting requirements for the Camp's water and pool systems and shall provide Landlord with copies of any such permits and reports.

5. Berkeley Outreach

a. Publicity and Recruitment

Tenant shall broadly advertise its programs to Berkeley residents, and widely publicize its campership application and policy. Tenant shall work closely in cooperation with regional agencies, including but not limited to the City of Berkeley, Berkeley schools, and local organizations, to identify and recruit scholarship applicants who are economically disadvantaged and/or have little or no prior experience with learning, playing, or performing music. Tenant shall make efforts to work with these agencies to recruit staff who are reflective of the diversity of the City of Berkeley.

b. Berkeley Scholarships.

Tenant shall offer fee waivers of at least 50% to Berkeley residents who qualify for financial aid based on meeting the definition of "very low income" or "extremely low income" established by the U.S. Department of Housing and Urban Development (HUD) for the Oakland-Fremont region. Tenant shall not deny Berkeley residents access to programs due to lack of funds. If a Berkeley resident qualifies for financial aid and affirms that the 50% fee waiver is not sufficient, Tenant shall offer higher levels of financial aid, up to a 100% full fee waiver to allow them to access camp programs.

Tenant shall offer a minimum of \$10,000 in scholarship funding to Berkeley residents each year, but shall not be required to exceed \$20,000 in scholarship funding annually. These minimum and maximum scholarship amounts shall be adjusted annually based on the CPI, calculated pursuant to Section 2 of this Lease.

Notwithstanding the above, scholarships shall be offered to participants subject to camp program eligibility and artistic requirements of the session(s) for which they are registered.

Scholarships provided will be recorded in annual reports to the City.

c. Berkeley Education Programs

Tenant shall provide at least one weekend or weeklong introduction to music session designed to introduce performing arts programs or music programs to Berkeley youth and/or families who have little or no exposure to music. Examples of such programming includes, but is not limited to, (1) the current JumpStart in Music program for Berkeley 5th graders, or (2) coordinating a cohort of Berkeley elementary school students at the youngest summer camp session. Participants in these programs shall be eligible for scholarships described in Section 5.b.

d. Priority Enrollment for Berkeley Residents

Tenant shall provide Berkeley residents with registration privileges which shall include deadline extensions and a reserved registration window each year, from the opening of registration through October 31, in which every qualified Berkeley applicant shall be admitted, subject to camp program eligibility and artistic requirements of the session(s) for which they are registered.

e. Berkeley groups

Groups whose primary office or place of business is located in Berkeley will receive a ten percent (10%) discount off the rental rates the Tenant regularly charges in subleases.

f. Annual Report

Tenant shall make an annual report to Landlord about its performing arts, campership, scholarship and education programs, and about the amount of participation in such programs by Berkeley children during the prior year. Tenant shall also make an annual report to Landlord about the condition of the premises and about Tenant's efforts to improve the condition of the premises during the prior year.

6. City Use of Camp

Landlord reserves the right to use the premises, at no cost, for up to five (5) days per year, provided the dates do not conflict with the Music Camp's programming or periods booked by existing sublessees. Landlord shall request use of the premises at least sixty (60) days in advance. If the requested date is unavailable, Tenant shall propose at least two alternative dates as close as possible to the requested date. Landlord shall compensate Tenant for any services it requires, such as catering or maintenance.

7. Anti-Discrimination

A. Non-Discrimination Against Persons With Disabilities

a. If Tenant provides any aid, service or benefit to others on the City's behalf, Tenant shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Tenant shall further observe and comply with all applicable federal, state, municipal and



local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the City.

b. If Tenant is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Tenant shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Tenant. All Tenant's activities must be in accordance with these laws, ordinances, codes and regulations, and Tenant shall be solely responsible for complying therewith.

c. Notwithstanding the above terms, Tenant shall be responsible for compliance under Title II of the Americans with Disabilities Act of 1990, and any amendments thereto ("ADA"), with respect to Tenant-performed capital improvement work and ADA work in Table 1 and in future schedules of improvements. ] Landlord shall be responsible for ADA compliance as to capital improvements in Table 2, any other City-performed capital improvements, and all other areas of compliance with respect to the facilities that is not otherwise expressly assigned to Tenant. If additional improvements or alterations must be conducted in addition to those already identified in current or future tables of improvements, Landlord and Tenant shall negotiate strategies for funding and completing such work pursuant to the process in Section 3.d.

B. City Non-Discrimination Ordinance

Tenant agrees to comply with the provisions of Berkeley Municipal Code Chapter 13.26, as amended from time to time, if applicable. In the performance of this lease, the Tenant agrees as follows:

a. The Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

b. The Tenant shall permit the Landlord access to records of employment advertisements, application forms, EEO-I forms, affirmative action plans and any other documents which, in the opinion of the Landlord, are necessary to monitor compliance with this non-discrimination provisions, and will, in addition, fill-out in a timely fashion, forms supplied by the Landlord to monitor these non-discrimination provisions.

C. Required Accessibility Disclosure

a. Landlord hereby advises Tenant that the premises and improvements have undergone an inspection by a Certified Access Specialist ("CAsp"), and it was determined that the premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code section 55.51 et seq.. To the best of Landlord's knowledge, there have been no modifications or alterations completed or commenced between the date of the inspection and the

effective date which have impacted the premises' compliance with accessibility standards. Landlord has provided, at least forty-eight (48) hours prior to execution of this Amended and Restated Lease, a copy of such CASp report to Tenant. Tenant agrees that information in the report shall remain confidential, except as necessary for Tenant to complete repairs and corrections of violations of construction-related accessibility standards.

b. Landlord shall have no responsibility to make any repairs or modifications to the premises in order to comply with accessibility standards, except as set forth in other provisions of this Lease, including Section 7.A.c..

8. Nuclear Free Berkeley

Tenant agrees to comply with Berkeley Municipal Code Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

9. Taxes and Assessments

a. Tenant recognizes and understands that this lease may create a possessory interest subject to assessment of utility, sales and user taxation, and that the Tenant will be responsible for the payment of said taxes levied by Sonoma County on such interest.

b. Landlord shall pay any taxes on the premises, including Sonoma County property taxes, which stem from its ownership of the premises.

10. Utilities

Tenant agrees to pay any and all charges without limitation for electricity, gas, heat, cooling, telephone, sewer use, water, refuse collection and other utilities used in the premises. Tenant shall arrange for refuse collection.

11. Indemnification.

Tenant shall indemnify, defend and hold Landlord, its officers, agents, volunteers and employees harmless from: 1) all claims of liability for any damage to property, or injury or death to any person occurring in, on, or about the premises; 2) all claims of liability arising out of Tenant's failure to perform any provision of this lease, or any act or omission by Tenant, its subtenants, agents, contractors, business invitees or employees; and 3) all damages, liabilities, fines, penalties, and any other consequences arising from any noncompliance or violation of any laws, ordinances, codes, or regulations, including but not limited to all applicable provisions of the Occupational Safety and Health Act of 1979 and the Americans with Disabilities Act of 1990. Except, however, that Landlord shall indemnify, defend and hold Tenant, its officers, agents, volunteers and employees harmless from all claims of liability for damage resulting from the acts or omissions of Landlord or its authorized representatives.

12. Insurance

a. Tenant at its cost shall maintain public liability and property damage insurance, covering property owned by Tenant (or for which Tenant is legally liable) located on the premises, with a single combined liability limit of two million dollars (\$2,000,000) including property damage limits of not less than two hundred thousand dollars (\$200,000), insuring against all liability of Tenant and its authorized representatives arising out of and in connection with Tenant's use or occupancy of the premises. All insurance shall name the City of Berkeley, its officers, agents, volunteers and employees as additional insured and shall be primary insurance as respects the City of Berkeley, its officers, agents, volunteers and employees. If the insurance referred to above is written on a Claims Made form, then following termination of this lease, coverage shall survive for a period of not less than five (5) years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this lease.

b. Tenant at its cost shall maintain on all its personal property, in or about the premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements. This coverage shall be considered primary, and the proceeds from any such policy shall be used by Tenant for the replacement of personal property.

c. If Tenant employs any person, it shall carry worker's compensation and employer's liability insurance and shall provide a certificate of insurance to the Landlord. The workers' compensation insurance shall: provide that the insurance carrier shall not cancel, terminate, or otherwise modify the terms and condition of said insurance except upon thirty (30) days prior written notice to the Landlord (ten (10) days in the case of cancellation due to non-payment of premium); provide for a waiver of any right of subrogation against Landlord to the extent permitted by law; and be approved as to form and sufficiency by Landlord.

d. Tenant certifies that the general liability policies under this lease are inclusive of and do not exclude coverage for sexual abuse and molestation.

e. Tenant shall forward all insurance documents to Parks Recreation & Waterfront Department, City of Berkeley, 2180 Milvia Street, Third Floor, Berkeley, California, 94704.

f. Tenant shall obtain "course of construction" insurance for any new, free-standing facility costing more than ten thousand dollars (\$10,000). Tenant shall notify Landlord when any said facility is ready for occupancy so that Landlord may add the facility to its property insurance program.

g. Tenant shall notify Landlord of construction plans and projected cost in advance of any improvements to existing facilities costing more than ten thousand dollars (\$10,000) so that the Landlord may insure each said facility for the value of total cost while improvements are in progress. For the purposes of this subsection, Landlord's insurance shall name Tenant as an additional insured.

### 13. Compliance with Law and Safety

a. Tenant shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the Tenant's activities, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, laws governing the use or disposal of hazardous waste or materials, and all applicable federal, state, municipal, and local safety regulations. All Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations, if applicable.

b. Tenant shall perform background checks on all employees and volunteers with regular or direct contact with minors. Such background checks shall include, at minimum, a criminal records check and a state and national sexual offender registry check. .

14. Assignment and Sublease

Neither party may assign this lease. Tenant may sublease the premises, in whole or in part, to individuals or organizations that are compatible with Tenant's performing arts programs, including, but not limited to Family Camp, Brazil Camp, and Berkeley High School. All subleases exceeding fifteen (15) calendar days must receive prior written consent from the City.

15. Timber and Mineral Rights; Tree Maintenance

Tenant covenants and agrees that this Lease shall not include any mineral or timber rights whatsoever.

Tenant agrees to pay a maximum of \$45,000 every three (3) years for required tree work. The City of Berkeley's Urban Forestry Unit shall determine the scope for any tree work, including but not limited to assessment, pruning, and if necessary, removal. Tenant is responsible for contracting to complete the work based on the City-provided scope. Tenant must use a city approved contractor and submit copies of any necessary permits to Landlord. If Landlord bears any direct cost for tree removal, revenue from timber sales may be used against the costs of tree maintenance, at Landlord's sole discretion. Nothing herein shall prevent Tenant from acting on an emergency basis to prune or trim any dead or dangerous timber that poses an immediate threat to safety.

16. Chemical Pesticide Rodenticide and Herbicide Use

Tenant's use of chemical pesticides, rodenticide and herbicides on the premises shall comply with City of Berkeley Pesticide Use Policy as it exists at the time of such use.

17. Inspection and Quiet Enjoyment

Subject to any legal requirements, Landlord's authorized representative shall have the right to enter the premises at all reasonable times and in a manner that does not unreasonably interfere with Tenant's use of the premises, upon a twenty-four hour notice for any of the following purposes: to determine whether the premises are in good condition and whether Tenant is complying with its obligations under the lease; to do any acts that may be necessary to protect Landlord's interest in the premises; or to perform Landlord' duties under this lease. Notwithstanding the foregoing,

Landlord shall not be required to provide prior notice to Tenant in the event of an emergency. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry on the premises as provided in this section, except damage resulting from the acts or omissions of Landlord or its authorized representatives.

18. Damage or Destruction

a. In the event the premises is damaged by fire, flood, earthquake or other casualty, Tenant may elect to: 1) terminate this lease without further obligation, 2) obtain a written commitment within thirty (30) days from Landlord to complete and pay for any repairs, or 3) perform the necessary repairs and obtain reimbursement from Landlord.

b. In the event the premises is damaged by fire, flood or other casualty, to the extent that the cost of the repairs equals or exceeds four times Tenant's yearly rent payment, Landlord may, upon thirty (30) days notice to Tenant, elect to terminate this lease and take possession of the premises. In the event of such termination by Landlord, the rent shall be pro-rated and Tenant's sole obligation shall be to surrender the premises to Landlord with the undamaged portions of the site in compliance with paragraph 4(f) of this lease. If Landlord does not so terminate this lease, Landlord shall promptly repair such damage, and rent shall be abated equitably to reflect the diminution of Tenant's ability to use the premises during the entire period from the damage to the completion of the repairs. Landlord acknowledges that a substantial portion of Tenant's use of the premises is during the summer months, and that repairs performed in the summer months may disproportionately affect Tenant's use of the premises; conversely, Tenant acknowledges that restrictions on Tenant's use of the premises during the winter months may have minimal effect on Tenant's use of the premises

19. Eminent Domain

If the whole or any portion of the premises is taken by any paramount public authority under the power of eminent domain, then the rights and obligations of the parties shall be determined as follows: If the premises are totally taken by condemnation, Tenant shall have the right to either terminate this lease or to continue in possession of the remainder of the premises under the terms of this lease. Such right to terminate must be exercised by notifying Landlord within thirty (30) days after possession of the part taken by eminent domain. If Tenant does not terminate this lease within the thirty (30) day period, this lease shall remain in full force and effect except that the fixed rent shall be reduced in the same proportion that the square footage of the premises taken bears to the square footage of the premises immediately before the taking. All damages awarded to Landlord for such taking shall belong to and be the property of Landlord; provided, however, that Landlord shall not be entitled to any portion of the award made for loss of business and of business installations or improvements made by Tenant in accordance with this lease or the value of Tenant's leasehold interest in the premises.

20. Default By Tenant

a. The occurrence of any of the following shall constitute a default by

Tenant:

1. Failure to pay rent when due, if the failure continues for 10 days after notice has been given to Tenant.

2. Intentional abandonment and vacation of the premises (failure to occupy the premises for fourteen (14) consecutive days shall be deemed an abandonment and vacation.

3. Failure to perform substantially any other material provision of this lease if the failure to perform is not cured within thirty (30) days after written notice has been given to Tenant. If the default cannot reasonably be cured within thirty (30) days, Tenant shall not be in default of this lease if Tenant commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default.

b. Notices given under this paragraph shall specify the alleged default and the applicable lease provisions, and shall demand that Tenant perform the provisions of this lease or pay the rent that is in arrears, as the case may be, within the applicable period of time, or quit the premises. No such notice shall be deemed a forfeiture or a termination of this lease unless Landlord so elects in the notice. The purpose of the notice requirements set forth in this section is to extend the notice requirements of the unlawful detainer statutes of California.

21. Landlord's Remedies

Landlord shall have the following remedies if Tenant commits a default. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law. Landlord can continue this lease in full force and effect, and the lease will continue in effect as long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect rent when due. No act by Landlord allowed by this paragraph shall terminate this lease unless Landlord notifies Tenant that Landlord elects to terminate this lease. After Tenant's default and for as long as Landlord does not terminate Tenant's right to possession of the premises, Tenant exclusively shall have the right to assign or sublet its interest in this lease if Tenant obtains Landlord's consent, but Tenant shall not be released from liability.

22. Waiver

No delay or omission in the exercise of any right or remedy shall impair the exercise of such right or remedy for any default or be construed as a waiver for subsequent default of the same or any other lease provision. The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved. Any waiver by Landlord or Tenant of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the lease.

No act or conduct of Landlord, including, without limitation, the acceptance of the keys to the premises, shall constitute an acceptance of the surrender of the premises by Tenant before the expiration of the term. Except when termination occurs pursuant to the terms of this lease, only a notice from Landlord to Tenant shall constitute acceptance of the surrender of the premises and accomplish a termination of the lease.

Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant.

23. Excusable Delays

If the performance of any act required of Landlord or Tenant is prevented or delayed by reason of strikes, lockouts, labor disputes, act of God, acts of the public enemy, fire, floods, epidemics, freight embargoes or other cause beyond the control of the party required to perform an act, the performance of such act shall be excused for the period of the delay and the period of the performance of such act shall be extended for thirty (30) days.

24. Breach and Termination

a. In the event of a material breach of this lease by Tenant, Landlord shall provide Tenant with notice specifically describing the breach and demanding correction. Tenant shall have thirty (30) days from the date that it receives notice of the breach to correct it. If Tenant then fails to correct the breach, Landlord may terminate this lease and take possession of the premises from Tenant without further obligation to Tenant.

b. In the event of a material breach of this lease by Landlord, Tenant shall provide Landlord with notice specifically describing the breach and demanding correction. Landlord shall have thirty (30) days from the date that it receives notice of the breach to correct it. If Landlord then fails to correct the breach, Tenant may terminate this lease and surrender possession of the premises to Landlord without further obligation to Landlord.

c. Tenant may terminate this lease at any time upon thirty (30) days' notice Landlord. Tenant's sole obligations, in the event of such termination, shall be to pay a cancellation fee of ten thousand dollars (\$ 10,000) and to surrender possession of the premises to Landlord in accordance with paragraph [3(j)] of this lease.

d. Landlord may terminate this lease upon thirty (30) days' notice to Lessee, if Tenant loses its non-profit status for any reason.

25. Notices

All notices required under this lease must be in writing and must be mailed, by pre-paid, certified U.S. mail, to the principal offices of the parties whose current addresses are set forth below. Notices are effective on the date received.

|                                                                                                                      |                                                                                                                |
|----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| <u>Landlord:</u><br>Parks Recreation &<br>Waterfront<br>City of Berkeley<br>2180 Milvia Street<br>Berkeley, CA 94704 | <u>Tenant:</u><br>Executive Director<br><br>Cazadero Performing Arts Camp<br>PO Box 7908<br>Berkeley, CA 94707 |
|----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|

26. Entire Agreement, Modification, Headings and Effective Date

This lease, including Attachments A and B, constitutes the entire agreement between the parties and supersedes any prior communication, correspondence or agreement between the Landlord and Tenant. This lease cannot be altered or otherwise modified except by a written amendment.

27. Terms Binding on Successors

All the terms, covenants and conditions of this lease shall inure to the benefit of and be binding upon the successors and assigns of the parties to this lease. The provisions of this section shall not be deemed as a waiver of any of the conditions against assignment set forth above.

28. Time of Essence

Time shall be of the essence of each provision of this lease.

29. Covenants and Conditions

Each term and each provision of this lease performable by Landlord and Tenant shall be construed to be both a covenant and condition.

30. Attorneys' Fees.

If either party commences an action against the other party arising out of or in connection with this lease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

31. Governing Law

The laws of the State of California shall govern this lease.

32. Consent of Parties

Whenever consent or approval of either party is required, that party shall not unreasonably withhold or delay such consent or approval.

33. Oppressive States



- a. In accordance with Resolution No. 59,853-N.S., Tenant certifies that it has no contractual relations with, and agrees during the term of this Lease to forego contractual relations to provide personal services to, the following entities:
  1. The governing regime in any Oppressive State.
  2. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
  3. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of this Lease) for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.
- b. For purposes of this Lease, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed oppressive states.
- c. Tenant's failure to comply with this section shall constitute a default of this Lease and Landlord may terminate this Lease pursuant to Section 20. In the event that Landlord terminates this Lease due to a default under this provision, Landlord may deem Tenant a non-responsible bidder for five (5) years from the date this Lease is terminated.

34. Berkeley Living Wage Ordinance (LWO)

- a. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Tenant employs six (6) or more part-time or full-time employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the term of this lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.
- b. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance (LWO). If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased Property. These records shall include the total number of hours worked, the number of hours spent providing service on the leased Property, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in Section 21 herein.

- c. If Tenant is subject to the LWO, Tenant shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject premises. Subtenants shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the leased Property.
- d. If Tenant fails to comply with the requirements of this the LWO and this lease, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Section 21.

In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

35. Berkeley Equal Benefits Ordinance

- a. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the term of this lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.
- b. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be a considered a default, subject to the provisions of Section 21 of this lease.
- c. If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Section 21.

In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach.

36. Sanctuary City Contracting

Tenant hereby agrees to comply with the provisions of the Sanctuary City Contracting Ordinance, B.M.C. Chapter 13.105. In accordance with this Chapter, Tenant agrees not to provide the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security with any Data Broker or Extreme Vetting Services as defined herein:

- a. "Data Broker" means either of the following:
  1. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies;
  2. The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- b. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting does not include:
  1. The City's computer-network health and performance tools;
  2. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity.

37. Conflict of Interest Prohibited

- a. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Tenant nor any employee, officer, director, partner or member of Tenant, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a committee or commission member of Landlord, who has directly or indirectly influenced the making of this Lease.
- b. In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 et seq.,) no person who is a director, officer, partner, trustee, employee or consultant of Tenant, or immediate family member of any of the preceding, shall make or participate in a decision made by Landlord or any of its boards, commissions or committees, if it is reasonable foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Tenant, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).
- c. Interpretation of this paragraph shall be governed by the definitions and provisions use in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, as amended from time to time.

38. Amended and Restated Lease; No Carry Forward of Rent Credits

This lease is only a modification and restatement of the Existing Lease. It does not serve as a termination of the Existing Lease. As such, the rights and obligations of each of Landlord and Tenant for the period prior to the Effective Date are set forth in the Existing Lease. On and after the Effective Date, those duties and obligations are modified prospectively in accordance with the terms of this Lease. Notwithstanding the above, Tenant agrees that any and all rent credits Tenant earned prior to the Effective Date are not carried forward upon execution of this lease. The City shall have no obligation to reimburse Tenant for credits earned prior to the effective date through a reduction of rent or otherwise.



IN WITNESS WHEREOF, Landlord and Tenant have executed this lease as of the date written on the first paragraph of this lease.

TENANT:  
Cazadero Performing Arts Camp

LANDLORD:  
City of Berkeley  
A California municipal corporation

By: Emily Wainacht  
Emily Wainacht  
Executive Director

By: \_\_\_\_\_  
Dee Williams Ridley  
City Manager

Approved as to form:

Registered by:

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

\_\_\_\_\_  
City Auditor

Attest:

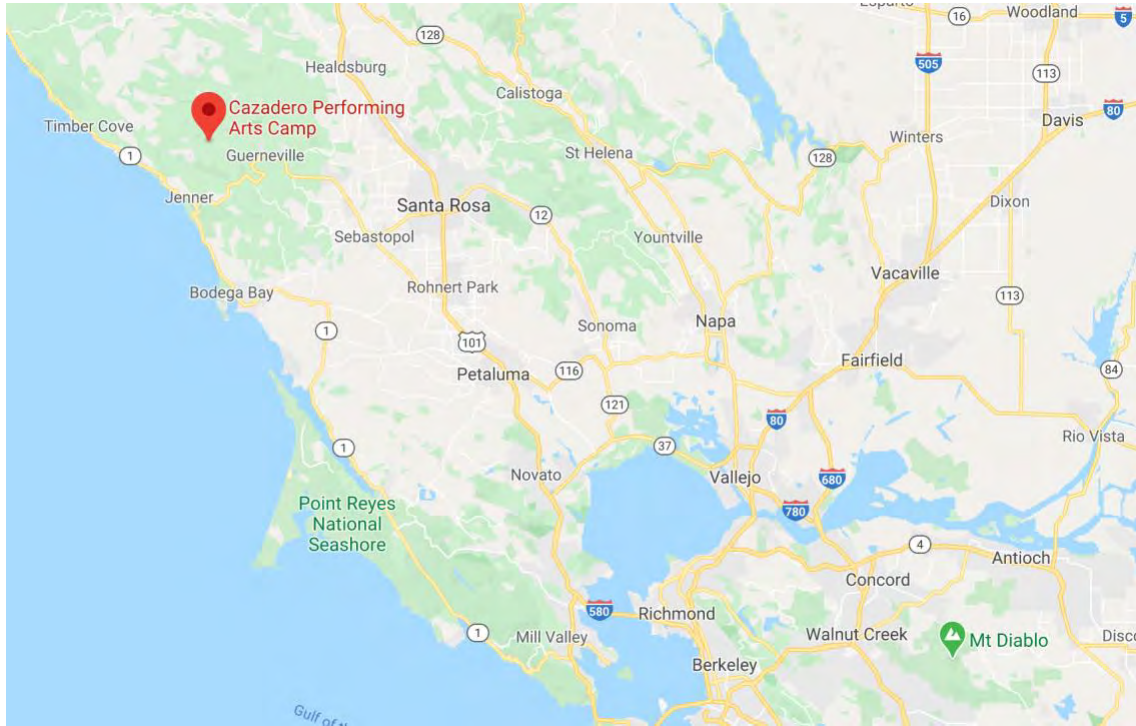
\_\_\_\_\_  
City Clerk

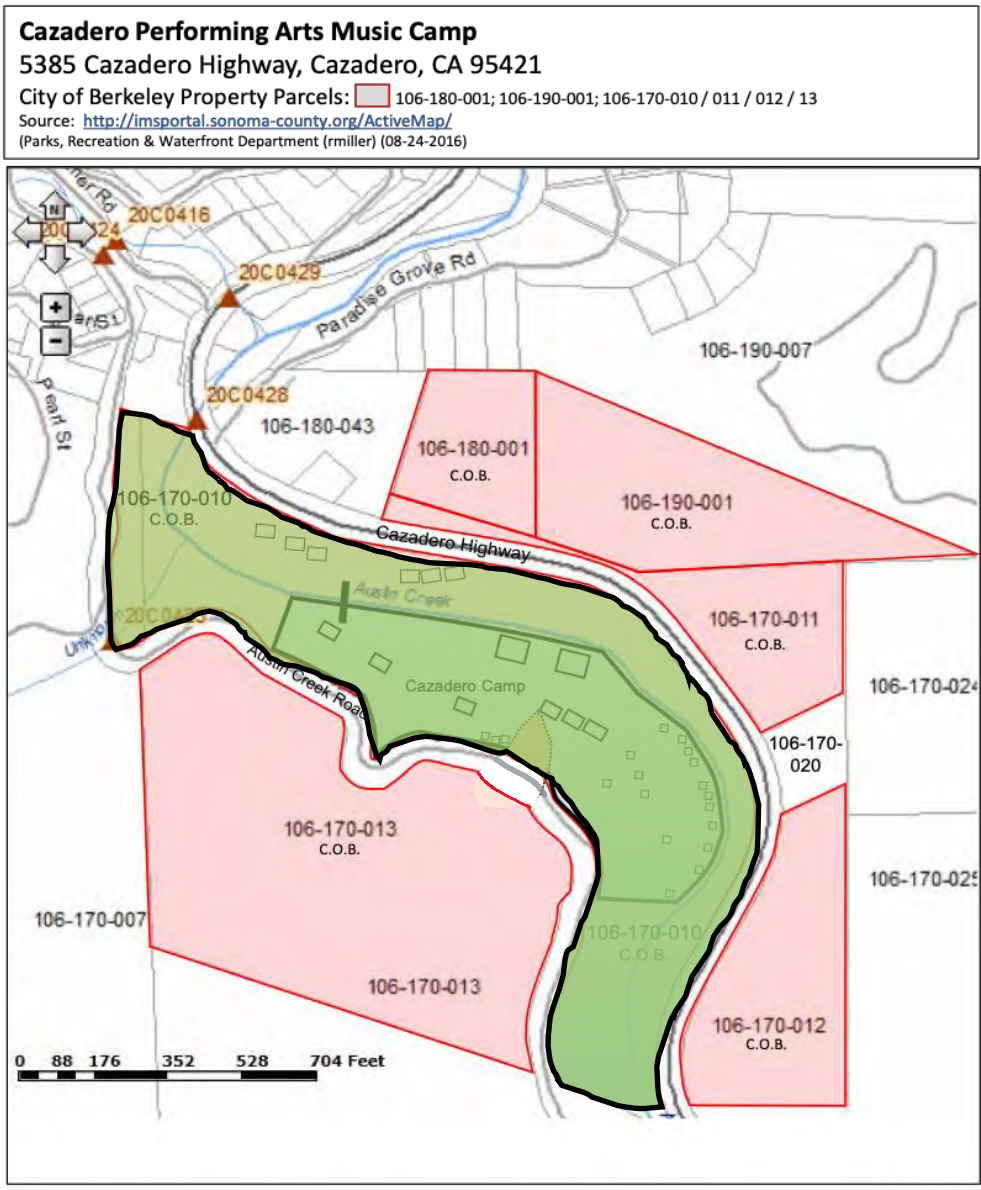
**TENANT INFORMATION**

Tax Identification No. 68-0350642  
Incorporated: Yes No  
Certified Woman Business Enterprise: Yes \_\_\_ No \_\_\_  
Certified Minority Business Enterprise: Yes \_\_\_ No \_\_\_  
Certified Disadvantaged Business Enterprise: Yes \_\_\_ No \_\_\_  
City Business License No. 012070, or Exempt pursuant to B.M.C. Section \_\_\_

### Exhibit 1: Property Description

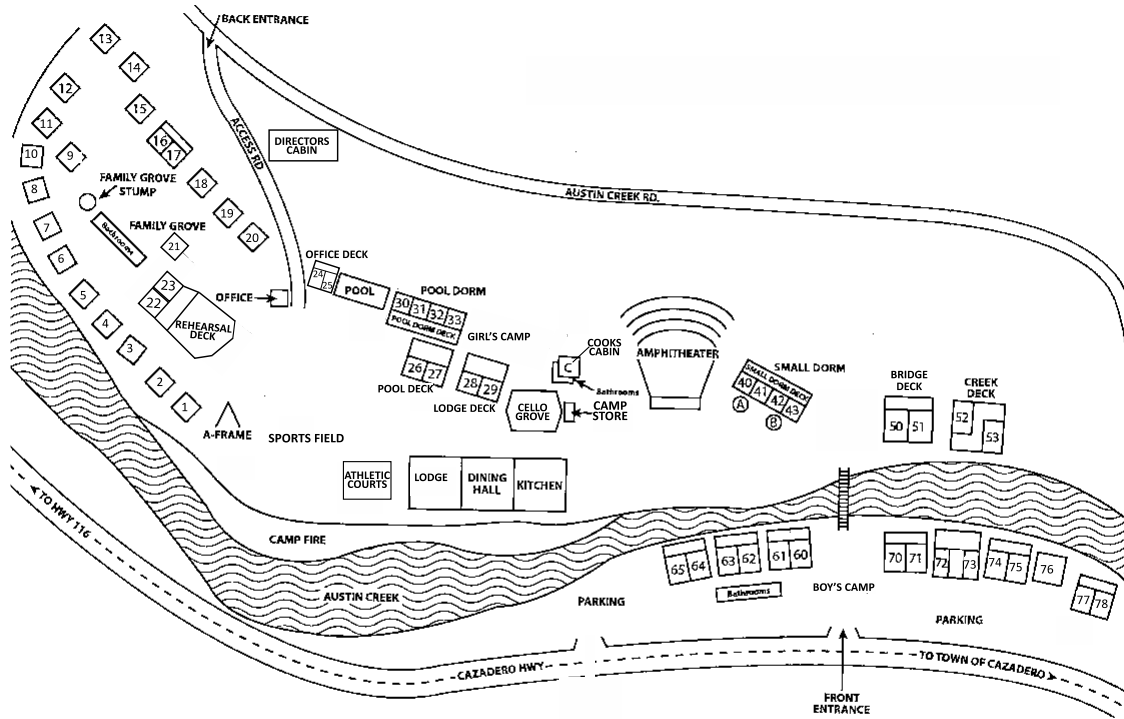
The leased property is 17.12 acres of City-owned parcel that is situated between frontages on Cazadero Highway and Austin Creek Road, an area encompassing Austin Creek and the adjacent, campground on both sides of the creek's right-of-way.





Note: Shaded green area indicates the leased premises (parcel 106-170-010)  
Shaded red area indicates other parcels owned by the City of Berkeley

# CAZADERO PERFORMING ARTS CAMP





## Exhibit 2: List of Improvements and ADA work

| CPAC Improvements and ADA Work (Table 1)                                                                                                 | Project Cost Estimates |
|------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| <b>A-Frame</b>                                                                                                                           |                        |
| Supply and install a new junction box and cover.                                                                                         | \$290.00               |
| <b>A-Frame ADA</b>                                                                                                                       |                        |
| Install room identification signage                                                                                                      | \$158.00               |
| Stairs- Affix compliant contrasting striping to the upper approach and each tread that is the correct width and distance from the nosing | \$1,000.00             |
| Provide accessible hardware on the door                                                                                                  | \$800.00               |
| Provide a compliant door lock for the door that does not require tight grasping, pinching, or twisting of the wrist to operate.          | \$310.00               |
| Provide accessible hardware on the door to First Aid building bedroom                                                                    | \$800.00               |
| Provide accessible hardware on the door to First Aid building restroom                                                                   | \$800.00               |
| Install room identification signage to First Aid building                                                                                | \$158.00               |
| Install room identification signage.                                                                                                     | \$158.00               |
| Post gender use signage on the center of the door at the required height.                                                                | \$158.00               |
| Wrap the supply lines around lavatory according to compliance.                                                                           | \$149.00               |
| Install a compliant privacy lock with occupancy indicator to the door.                                                                   | \$804.00               |
| <b>Amphitheater</b>                                                                                                                      |                        |
| Backstage- Replace the existing load center with a new load center.                                                                      | \$12,840.00            |
| Electrical-Replace the existing switchboard with a new switchboard.                                                                      | \$15,600.00            |
| Exterior- Replace the existing load center with a new load center.                                                                       | \$4,480.00             |
| Backstage- Replace the existing metered main switchboard with a new metered main switchboard.                                            | \$4,740.00             |
| <b>Amphitheater ADA</b>                                                                                                                  |                        |
| Provide accessible hardware on the door.                                                                                                 | \$800.00               |
| Provide accessible hardware on the door.                                                                                                 | \$800.00               |
| Install room identification signage.                                                                                                     | \$158.00               |
| Install room identification signage.                                                                                                     | \$158.00               |
| Install room identification signage.                                                                                                     | \$158.00               |
| Install room identification signage.                                                                                                     | \$158.00               |
| <b>Camp Office</b>                                                                                                                       |                        |
| Roofing- Remove and replace single-ply roofing.                                                                                          | \$8,060.00             |
| Electrical- Replace the existing interior lighting systems and associated wiring devices, switches and controls.                         | \$12,060.00            |
| <b>Camp Office ADA</b>                                                                                                                   |                        |
| Stairs-Provide a compliant means of vertical access.                                                                                     | \$4,816.00             |

| <b>CPAC Improvements and ADA Work (Table 1)</b>                                                                                                               | <b>Project Cost Estimates</b> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| Doors-Provide a compliant floor mat for the door                                                                                                              | \$126.00                      |
| Mount the door hardware at the recommended height.                                                                                                            | \$280.00                      |
| Provide accessible hardware on the door.                                                                                                                      | \$800.00                      |
| Install room identification signage.                                                                                                                          | \$158.00                      |
| <b>Cooks Cabin</b>                                                                                                                                            |                               |
| Restroom- Replace the existing load center with a new load center.                                                                                            | \$4,480.00                    |
| Restroom Sink-Provide equipment replacement and installation.                                                                                                 | \$1,420.00                    |
| Restroom Shower- Provide equipment replacement and installation.                                                                                              | \$4,720.00                    |
| Living Area Outlet Cover- Replace the damaged or missing outlet cover.                                                                                        | \$100.00                      |
| <b>Cooks Cabin ADA</b>                                                                                                                                        |                               |
| Stairs- Provide compliant handrails                                                                                                                           | \$1,528.00                    |
| Stairs-Affix compliant contrasting striping to the upper approach and each tread that is the correct width and distance from the nosing.                      | \$1,000.00                    |
| Stairs- Affix compliant contrasting striping to the upper approach and each tread that is the correct width and distance from the nosing.                     | \$1,000.00                    |
| Stairs- Replace the handrails on each side to provide a smooth and continuous gripping surface diameter within the required range.                            | \$2,320.00                    |
| Stairs- Provide handrails on the stairway at the required height                                                                                              | \$1,528.00                    |
| Provide accessible hardware on the door.                                                                                                                      | \$800.00                      |
| Install room identification signage.                                                                                                                          | \$158.00                      |
| Install second room identification signage.                                                                                                                   | \$158.00                      |
| Restroom-Install a compliant privacy lock with occupancy indicator to the door.                                                                               | \$804.00                      |
| Restroom- Install second compliant privacy lock with occupancy indicator to the door.                                                                         | \$804.00                      |
| Mount the coat hook at the recommended height.                                                                                                                | \$50.00                       |
| Restroom- Lower the mirror so the bottom edge of the reflective surface is no higher than recommended above the finished floor.                               | \$300.00                      |
| Restroom- Post gender use signage on the center of the door at the required height.                                                                           | \$158.00                      |
| Insulate or otherwise configure pipes under the lavatory to protect against contact. Make certain there are no sharp or abrasive surfaces under the lavatory. | \$149.00                      |
| Wrap the supply lines around lavatory according to compliance.                                                                                                | \$149.00                      |
| <b>Directors Cabin</b>                                                                                                                                        |                               |
| Rain Gutters- Repair, replace rain leaders/gutters.                                                                                                           | \$2,530.00                    |
| <b>Directors Cabin ADA</b>                                                                                                                                    |                               |

| <b>CPAC Improvements and ADA Work (Table 1)</b>                                                                                          | <b>Project Cost Estimates</b> |
|------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| Provide accessible hardware on the door.                                                                                                 | \$800.00                      |
| Provide a compliant floor mat for the door.                                                                                              | \$126.00                      |
| Kitchen entrance- Provide accessible hardware on the door.                                                                               | \$800.00                      |
| Provide a compliant door lock for the door that does not require tight grasping, pinching, or twisting of the wrist to operate.          | \$310.00                      |
| Restroom- Provide accessible hardware on the door.                                                                                       | \$800.00                      |
| There is no room identification signage to Director's Cabin                                                                              | \$158.00                      |
| There is no room identification signage to Director's Cabin Bedroom                                                                      | \$158.00                      |
| Install room identification signage to Director's Cabin Kitchen                                                                          | \$158.00                      |
| Install room identification signage to Director's Cabin Office                                                                           | \$316.00                      |
| <b>Dining Hall/Lodge</b>                                                                                                                 |                               |
| Rain Gutters- Repair, replace rain leaders/gutters.                                                                                      | \$70.00                       |
| Kitchen Interior Doors- Replace interior hollow metal door, frame and hardware.                                                          | \$19,020.00                   |
| Lodge Pedestrian Path- Remove weeds and regrade gravel/AB.                                                                               | \$1,200.00                    |
| Kitchen Exterior Wall- Remove and replace the existing plywood siding with new plywood siding. Prime and paint.                          | \$480.00                      |
| Heating/Cooling system- Provide equipment replacement and installation.                                                                  | \$18,310.00                   |
| <b>Dining Hall/Lodge ADA</b>                                                                                                             |                               |
| Path of travel-Ensure that the change in elevation is within the recommended value.                                                      | \$450.00                      |
| Stairs-Affix compliant contrasting striping to the upper approach and each tread that is the correct width and distance from the nosing. | \$1,000.00                    |
| Stairs-Provide compliant handrails.                                                                                                      | \$1,528.00                    |
| Dining hall main entrance-Provide accessible hardware on the door.                                                                       | \$800.00                      |
| Dining hall patio entrance-Provide accessible hardware on the door.                                                                      | \$800.00                      |
| Dining hall patio entrance 2-Provide accessible hardware on the door.                                                                    | \$800.00                      |
| Kitchen-Provide accessible hardware on the door.                                                                                         | \$800.00                      |
| Lodge entrance- Provide accessible hardware on the door.                                                                                 | \$800.00                      |
| Lodge patio entrance- Provide accessible hardware on the door.                                                                           | \$800.00                      |
| Dining hall lodge- Install room identification signage.                                                                                  | \$316.00                      |
| Dining main entrance- Install accessible room signage.                                                                                   | \$158.00                      |
| Dining patio entrance 1-Install room identification signage.                                                                             | \$158.00                      |
| Dining patio entrance 2-Install room identification signage.                                                                             | \$158.00                      |
| Kitchen-Install room identification signage.                                                                                             | \$316.00                      |
| Kitchen dishwashing-Install room identification signage.                                                                                 | \$316.00                      |
| Kitchen dish washing in Dining hall-Install room identification signage.                                                                 | \$158.00                      |
| Kitchen pantry-Install room identification signage.                                                                                      | \$158.00                      |

| <b>CPAC Improvements and ADA Work (Table 1)</b>                                                                                                                              | <b>Project Cost Estimates</b> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| Kitchen pantry entrance- Install room identification signage.                                                                                                                | \$158.00                      |
| Kitchen Service- Install room identification signage.                                                                                                                        | \$158.00                      |
| Lodge entrance- Install room identification signage.                                                                                                                         | \$158.00                      |
| Lodge patio entrance- Install room identification signage.                                                                                                                   | \$158.00                      |
| <b>Pool Dorm</b>                                                                                                                                                             |                               |
| Balcony Stair Landing- Replace the landing.                                                                                                                                  | \$46,910.00                   |
| Laundry Room Drainage- Provide new floor drain cover.                                                                                                                        | \$250.00                      |
| Women's Restroom Pedestrian Walkway- Replace walkway to remove hazard.                                                                                                       | \$630.00                      |
| Men & Women's Restroom Wall Finish- Remove and replace existing wood wall panels.                                                                                            | \$1,980.00                    |
| Pedestrian Walkway- Provide new handrail (stand-alone).                                                                                                                      | \$100.00                      |
| Laundry Lighting- Replace the recessed mounted downlight fixture with a new recessed mounted downlight fixture.                                                              | \$200.00                      |
| Men's Restroom Lighting-Replace the damaged light switch cover with a new light switch cover.                                                                                | \$580.00                      |
| Men's Restroom Lighting- Re-seat lamps properly in fixture housing.                                                                                                          | \$820.00                      |
| Deck Lighting- Replace existing GFCI receptacle with a new GFCI receptacle.                                                                                                  | \$50.00                       |
| Men & Women's Restroom Tile Work- Remove and replace the ceramic tile to match the existing.                                                                                 | \$1,000.00                    |
| <b>Pool Dorm ADA</b>                                                                                                                                                         |                               |
| Men's restroom-Provide recommended vertical clearance.                                                                                                                       | \$108.00                      |
| Deck-Provide compliant guardrails.                                                                                                                                           | \$1,088.00                    |
| Pool dorm next to room 32- Provide compliant guardrails.                                                                                                                     | \$1,088.00                    |
| Women's restroom- Affix compliant contrasting striping to the upper approach and each tread that is the correct width and distance from the nosing.                          | \$1,000.00                    |
| Women's restroom- Remount the handrails so they are not interrupted. Otherwise, replace the handrails with ones that provide a smooth, uninterrupted gripping surface.       | \$1,840.00                    |
| Women's restroom- Provide handrails on the stairway at the required height.                                                                                                  | \$1,528.00                    |
| 1st floor stairs next to women's restroom- Affix compliant contrasting striping to the upper approach and each tread that is the correct width and distance from the nosing. | \$1,000.00                    |
| 1st floor stairs- Provide compliant handrails on the stairway.                                                                                                               | \$1,528.00                    |
| Stairs next to men's restroom- Affix compliant contrasting striping to the upper approach and each tread that is the correct width and distance from the nosing.             | \$1,000.00                    |
| Stairs next to men's restroom- Provide accessible hardware on the door.                                                                                                      | \$800.00                      |
| Exterior of women's restroom- Provide accessible hardware on the door.                                                                                                       | \$800.00                      |

| <b>CPAC Improvements and ADA Work (Table 1)</b>                                                                                                                                             | <b>Project Cost Estimates</b> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| Second floor entrance- Provide accessible hardware on the door.                                                                                                                             | \$800.00                      |
| Room 30-Provide accessible hardware on the door.                                                                                                                                            | \$800.00                      |
| Room 31- Provide accessible hardware on the door.                                                                                                                                           | \$800.00                      |
| Room 32- Provide accessible hardware on the door.                                                                                                                                           | \$800.00                      |
| Laundry room- Install room identification signage.                                                                                                                                          | \$158.00                      |
| 2nd floor entrance- Install room identification signage.                                                                                                                                    | \$158.00                      |
| Room 30-Install room identification signage.                                                                                                                                                | \$158.00                      |
| Room 31- Install room identification signage.                                                                                                                                               | \$158.00                      |
| Room 32- Install room identification signage.                                                                                                                                               | \$158.00                      |
| Room 33- Install room identification signage.                                                                                                                                               | \$158.00                      |
| Provide an accessible handle mounted on the door of the compartment near the latch.                                                                                                         | \$250.00                      |
| Provide an automatic door closer, spring hinge, pull bar or accessible handle mounted on the inside of the compartment door to the compartment designated to be accessible in the restroom. | \$269.00                      |
| Men's restroom- Adjust the inside handle so that it is located near the latch.                                                                                                              | \$129.00                      |
| Women's restroom- Adjust the inside handle so that it is located near the latch.                                                                                                            | \$129.00                      |
| Post gender use signage on the center of the door at the required height.                                                                                                                   | \$158.00                      |
| Make sure that the supply lines are fully wrapped and insulated for the sink.                                                                                                               | \$149.00                      |
| Insulate or otherwise configure the water supply and drain pipes under the sink to protect against contact. Make certain there are no sharp or abrasive surfaces under the sink.            | \$149.00                      |
| <b>Pumphouse Building</b>                                                                                                                                                                   |                               |
| Wall Finishes- Clean, prepare, and paint the plywood paneling.                                                                                                                              | \$3,520.00                    |
| Roofing- Replace single-ply (modified bitumen) roofing.                                                                                                                                     | \$7,720.00                    |
| <b>Restrooms, Family Camp</b>                                                                                                                                                               |                               |
| Interior Doors, Men's Side- Replace interior door hardware.                                                                                                                                 | \$1,660.00                    |
| Roofing- Remove and replace built-up roofing.                                                                                                                                               | \$19,720.00                   |
| Pedestrian Walkways- Regrade gravel/AB to remove tripping hazard.                                                                                                                           | \$100.00                      |
| Urinal- Install new wall mounted trough style urinal.                                                                                                                                       | \$9,000.00                    |
| Shower Lighting- Replace the damaged light switch cover with a new light switch cover.                                                                                                      | \$390.00                      |
| Shower Ventilation- Provide equipment replacement and installation.                                                                                                                         | \$4,940.00                    |
| Showers- Provide equipment replacement and installation.                                                                                                                                    | \$38,440.00                   |
| Women's Restroom Lighting- Replace the damaged or missing outlet cover.                                                                                                                     | \$10.00                       |
| Women's Restroom Toilet- Remove toilet                                                                                                                                                      | \$0.00                        |
| Men's Restroom Laundry sink- Provide equipment replacement and installation.                                                                                                                | \$300.00                      |

| <b>CPAC Improvements and ADA Work (Table 1)</b>                                                                                                                                                                 | <b>Project Cost Estimates</b> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| Women's Restroom Laundry sink- Provide equipment replacement and installation.                                                                                                                                  | \$500.00                      |
| <b>Restroom, Family Camp ADA</b>                                                                                                                                                                                |                               |
| Install side extensions, modify, relocate, or lower the item so that the leading edge protrudes less than 4 inches from the wall, is less than 27 inches from the floor, or more than 80 inches from the floor. | \$640.00                      |
| Men's restroom-Provide a compliant floor mat for the door.                                                                                                                                                      | \$126.00                      |
| Shower-Provide a compliant floor mat for the door.                                                                                                                                                              | \$252.00                      |
| Shower- Provide a compliant door lock for the door that does not require tight grasping, pinching, or twisting of the wrist to operate.                                                                         | \$620.00                      |
| Shower room- Provide a compliant floor mat for the door.                                                                                                                                                        | \$252.00                      |
| Provide a compliant door lock for the door that does not require tight grasping, pinching, or twisting of the wrist to operate.                                                                                 | \$620.00                      |
| Shower room-Install room identification signage.                                                                                                                                                                | \$158.00                      |
| Laundry room- Install room identification signage.                                                                                                                                                              | \$474.00                      |
| Lower the urinal designated to be accessible in the restroom so that the rim height is not more than 17 inches above the finished floor.                                                                        | \$1,397.00                    |
| Shower room- Post gender use signage on the center of the door at the required height.                                                                                                                          | \$158.00                      |
| Men's restroom- Post gender use signage on the center of the door at the required height.                                                                                                                       | \$158.00                      |
| Women's restroom- Insulate or otherwise configure pipes under the lavatory to protect against contact. Make certain there are no sharp or abrasive surfaces under the lavatory.                                 | \$149.00                      |
| Wrap the supply lines around lavatory according to compliance.                                                                                                                                                  | \$149.00                      |
| Relocate the dispenser to the correct height.                                                                                                                                                                   | \$180.00                      |
| Restroom building- Insulate or Otherwise configure pipes under the sink to protect against contact. Make certain there are no sharp or abrasive surfaces under the sink.                                        | \$149.00                      |
| Make sure that the supply lines are fully wrapped and insulated for the sink.                                                                                                                                   | \$149.00                      |
| <b>Boys Camp Bathroom</b>                                                                                                                                                                                       |                               |
| Men's Restroom Interior Doors- Replace with new wood door.                                                                                                                                                      | \$12,320.00                   |
| Roof- Remove and replace wood roof framing and decking.                                                                                                                                                         | \$12,860.00                   |
| Shower- Provide equipment replacement and installation.                                                                                                                                                         | \$1,420.00                    |
| <b>Boys Camp Bathroom ADA</b>                                                                                                                                                                                   |                               |
| Laundry room- Provide a compliant door lock for the door that does not require tight grasping, pinching, or twisting of the wrist to operate.                                                                   | \$310.00                      |

| <b>CPAC Improvements and ADA Work (Table 1)</b>                                                                                           | <b>Project Cost Estimates</b> |
|-------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| Laundry room- Provide compliant accessible door hardware.                                                                                 | \$340.00                      |
| Laundry room- Mount the door hardware at the recommended height.                                                                          | \$280.00                      |
| Men's restroom- Install a panel or replace the door to provide a smooth, uninterrupted surface at the bottom of the door.                 | \$2,000.00                    |
| Men's restroom- Provide compliant accessible door hardware.                                                                               | \$340.00                      |
| Shower- Provide accessible hardware on the door.                                                                                          | \$800.00                      |
| Shower- Provide a compliant door lock for the door that does not require tight grasping, pinching, or twisting of the wrist to operate.   | \$1,550.00                    |
| laundry room- Install room identification signage.                                                                                        | \$158.00                      |
| Shower- Install room identification signage.                                                                                              | \$790.00                      |
| <b>Staff Dormitory</b>                                                                                                                    |                               |
| Women's Restroom Window- Replace interior aluminum window and glazing.                                                                    | \$0.00                        |
| Staff Restroom Window- Replace interior aluminum window and glazing.                                                                      | \$0.00                        |
| Wall Finishes- Clean, prepare, and paint the plywood paneling.                                                                            | \$40.00                       |
| Balcony Handrail- Provide new handrail (stand-alone).                                                                                     | \$1,210.00                    |
| Men's Restroom Showers- Provide equipment replacement and installation.                                                                   | \$9,700.00                    |
| Men's Restroom Ventilation- Provide equipment replacement and installation.                                                               | \$1,980.00                    |
| Men's Restroom Shower- Provide equipment replacement and installation.                                                                    | \$55,900.00                   |
| Lighting- Replace the existing interior lighting systems and associated wiring devices, switches and controls.                            | \$57,820.00                   |
| Lighting- Replace the damaged or missing outlet cover.                                                                                    | \$100.00                      |
| Water Heater- Provide equipment replacement and installation.                                                                             | \$0.00                        |
| Men's Restroom Sink- Provide equipment replacement and installation.                                                                      | \$0.00                        |
| Women's Restroom Sink- Provide equipment replacement and installation.                                                                    | \$0.00                        |
| <b>Staff Dormitory ADA</b>                                                                                                                |                               |
| Men's restroom- Provide recommended vertical clearance.                                                                                   | \$216.00                      |
| Women's restroom- Provide recommended vertical clearance.                                                                                 | \$108.00                      |
| Stairs- Affix compliant contrasting striping to the upper approach and each tread that is the correct width and distance from the nosing. | \$1,000.00                    |
| Stairs- Provide compliant handrails on the stairway.                                                                                      | \$1,528.00                    |
| Men's restroom- Provide accessible hardware on the door.                                                                                  | \$800.00                      |
| Music room- Provide a compliant floor mat for the door.                                                                                   | \$126.00                      |
| Music room- Provide accessible hardware on the door.                                                                                      | \$800.00                      |
| Men's restroom- Provide accessible hardware on the door.                                                                                  | \$800.00                      |
| Women's restroom- Provide accessible hardware on the door.                                                                                | \$800.00                      |
| Room 40, 41, 42, 43- Provide accessible hardware on the door.                                                                             | \$3,200.00                    |

| <b>CPAC Improvements and ADA Work (Table 1)</b>                                                                                                                                                               | <b>Project Cost Estimates</b> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| 2nd floor unisex restroom- Provide a compliant floor mat for the door.                                                                                                                                        | \$126.00                      |
| 2nd floor unisex restroom- Provide accessible hardware on the door.                                                                                                                                           | \$800.00                      |
| Music room- Install room identification signage.                                                                                                                                                              | \$158.00                      |
| Men's restroom- Install room identification signage.                                                                                                                                                          | \$158.00                      |
| Room 40, 41, 42, 43- Install room identification signage.                                                                                                                                                     | \$632.00                      |
| Men's restroom- Post gender use signage on the center of the door at the required height.                                                                                                                     | \$158.00                      |
| Men's restroom- Wrap the supply lines around lavatory according to compliance.                                                                                                                                | \$149.00                      |
| Men's restroom- Insulate or otherwise configure pipes under the lavatory to protect against contact. Make certain there are no sharp or abrasive surfaces under the lavatory.                                 | \$149.00                      |
| Women's restroom- Provide an automatic door closer, spring hinge, pull bar or accessible handle mounted on the inside of the compartment door to the compartment designated to be accessible in the restroom. | \$269.00                      |
| Women's restroom- Post gender use signage on the center of the door at the required height.                                                                                                                   | \$158.00                      |
| women's restroom- Wrap the supply lines around lavatory according to compliance.                                                                                                                              | \$149.00                      |
| Women's restroom- Insulate or otherwise configure pipes under the lavatory to protect against contact. Make certain there are no sharp or abrasive surfaces under the lavatory.                               | \$149.00                      |
| Unisex restroom- Install a compliant toilet paper dispenser.                                                                                                                                                  | \$277.00                      |
| Unisex restroom- Install a compliant privacy lock with occupancy indicator to the door.                                                                                                                       | \$804.00                      |
| <b>Footbridge</b>                                                                                                                                                                                             |                               |
| Suspension Footbridge Rails- Replace entire fence, including rails and posts.                                                                                                                                 | \$22,990.00                   |
| <b>Tents, Various</b>                                                                                                                                                                                         |                               |
| Tent 16/17- Replace wood steps (linear feet of nose).                                                                                                                                                         | \$9,400.00                    |
| Tent 18- Repair and replace wood columns. columns.                                                                                                                                                            | \$0.00                        |
| Tent 24/25- Replace raised access flooring.                                                                                                                                                                   | \$0.00                        |
| Tent 61- Install new handrails/guardrails.                                                                                                                                                                    | \$0.00                        |
| Tent 74/75- Replace wood steps (linear feet of nose).                                                                                                                                                         | \$0.00                        |
| Tent 6- Replace the existing receptacle with a GFCI receptacle.                                                                                                                                               | \$0.00                        |
| Tent 2 Electrical- Secure electrical conduit.                                                                                                                                                                 | \$0.00                        |
| Tent 19- Replace the existing receptacle with a GFCI receptacle.                                                                                                                                              | \$0.00                        |
| Tent 28/29- Replace the existing receptacle with a GFCI receptacle.                                                                                                                                           | \$0.00                        |
| Tent 50/51- Replace the existing receptacle with a GFCI receptacle.                                                                                                                                           | \$0.00                        |



| <b>CPAC Improvements and ADA Work (Table 1)</b>                                                                                                                                                                                                                                             | <b>Project Cost Estimates</b> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| Tent 50/51- Replace the existing receptacle with a GFCI receptacle.                                                                                                                                                                                                                         | \$0.00                        |
| Tent 74/75- Replace the existing receptacle with a GFCI receptacle.                                                                                                                                                                                                                         | \$0.00                        |
| Tent 64/65- Replace the existing receptacle with a GFCI receptacle.                                                                                                                                                                                                                         | \$0.00                        |
| Tent 62/63- Replace the existing receptacle with a GFCI receptacle.                                                                                                                                                                                                                         | \$0.00                        |
| Tent 70- Replace the existing receptacle with a GFCI receptacle.                                                                                                                                                                                                                            | \$0.00                        |
| Tent 78/79- Replace the existing receptacle with a GFCI receptacle.                                                                                                                                                                                                                         | \$0.00                        |
| Handrail- Provide new handrail                                                                                                                                                                                                                                                              | \$0.00                        |
| Floor Construction- Sand and applying wood deck finish.                                                                                                                                                                                                                                     | \$212,560.00                  |
| <b>Tents, Various ADA</b>                                                                                                                                                                                                                                                                   |                               |
| Ramp to camp deck- Provide compliant handrails on each side.                                                                                                                                                                                                                                | \$2,200.00                    |
| Ramp to camp deck- Install compliant edge protection on each side of the ramp run.                                                                                                                                                                                                          | \$470.00                      |
| Ramp to camp deck- Modify or replace the ramp so that it has a bottom landing.                                                                                                                                                                                                              | \$3,168.00                    |
| Ramp to Tent 28- Provide compliant handrails on each side.                                                                                                                                                                                                                                  | \$2,200.00                    |
| <b>Parking</b>                                                                                                                                                                                                                                                                              |                               |
| <b>Parking ADA</b>                                                                                                                                                                                                                                                                          |                               |
| Paint "NO PARKING" in 12 inch white letters.                                                                                                                                                                                                                                                | \$250.00                      |
| Outline the access aisle in blue color.                                                                                                                                                                                                                                                     | \$180.00                      |
| Left accessible space- Provide a \$250.00 fine sign at the parking space below the International Symbol of Accessibility.                                                                                                                                                                   | \$300.00                      |
| Re-stripe the accessible parking space.                                                                                                                                                                                                                                                     | \$350.00                      |
| Left accessible space- Provide a permanently posted reflectorized sign that includes an International Symbol of Accessibility symbol at the head of the parking space. The "van-accessible" parking space shall provide an additional sign marked "van-accessible" mounted below the sign.  | \$250.00                      |
| Right accessible space- Provide a \$250.00 fine sign at the parking space below the International Symbol of Accessibility.                                                                                                                                                                  | \$300.00                      |
| Right accessible space- Provide a permanently posted reflectorized sign that includes an International Symbol of Accessibility symbol at the head of the parking space. The "van-accessible" parking space shall provide an additional sign marked "van-accessible" mounted below the sign. | \$250.00                      |
| <b>Exterior Path of Travel</b>                                                                                                                                                                                                                                                              |                               |
| <b>Exterior Path of Travel ADA</b>                                                                                                                                                                                                                                                          |                               |
| Camp deck- Install edge protection on the walking surface at the required minimum height.                                                                                                                                                                                                   | \$1,088.00                    |
| Path from accessible spaces to dining hall- Ensure that the change in elevation is within the recommended value.                                                                                                                                                                            | \$300.00                      |
| Path from accessible spaces to dining hall- Provide detectable warnings.                                                                                                                                                                                                                    | \$190.00                      |

| <b>CPAC Improvements and ADA Work (Table 1)</b>                                                                                                                                                        | <b>Project Cost Estimates</b> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| Path next to pool dorm- Ensure that the change in elevation is within the recommended value.                                                                                                           | \$300.00                      |
| Path next to pool dorm- Provide a compliant path of travel.                                                                                                                                            | \$3,600.00                    |
| Path next to pool dorm- Widen the primary path of travel to provide the correct width.                                                                                                                 | \$3,500.00                    |
| Tent 60 & 61- Install edge protection on the walking surface at the required minimum height.                                                                                                           | \$1,088.00                    |
| Tent 62 & 63- Install edge protection on the walking surface at the required minimum height.                                                                                                           | \$1,088.00                    |
| Ramp to camp deck- Provide compliant handrails on each side.                                                                                                                                           | \$2,200.00                    |
| Ramp to camp deck- Install compliant edge protection on each side of the ramp run.                                                                                                                     | \$470.00                      |
| Ramp to camp deck- Modify or replace the ramp so that it has a bottom landing.                                                                                                                         | \$3,168.00                    |
| Ramp to tent 28- Provide compliant handrails on each side.                                                                                                                                             | \$2,200.00                    |
| Ramp to tent 28- Bevel the area or resurface the area to provide a smooth and level path of travel.                                                                                                    | \$1,840.00                    |
| Ramp to tent 28- Modify or replace the ramp so that it has a bottom landing.                                                                                                                           | \$3,168.00                    |
| Ramp to tent 29- Provide compliant handrails on each side.                                                                                                                                             | \$2,200.00                    |
| Ramp to tent 29- Modify or replace the ramp so that it has a bottom landing.                                                                                                                           | \$3,168.00                    |
| Ramp to tent 3- Provide compliant handrails on each side.                                                                                                                                              | \$2,200.00                    |
| Ramp to tent 52 & 53- Provide compliant handrails on each side.                                                                                                                                        | \$2,200.00                    |
| Ramp to tent 6- Provide compliant handrails on each side.                                                                                                                                              | \$2,200.00                    |
| Ramp to tent 6- Install compliant edge protection on each side of the ramp run.                                                                                                                        | \$470.00                      |
| Ramp to tent 6- Modify or replace the ramp so that it has a bottom landing.                                                                                                                            | \$3,168.00                    |
| Ramp to tent 62 & 63- Provide compliant handrails on each side.                                                                                                                                        | \$2,200.00                    |
| Ramp to tent 7- Provide compliant handrails on each side.                                                                                                                                              | \$2,200.00                    |
| Ramp to tent 70 & 71- Provide compliant handrails on each side.                                                                                                                                        | \$2,200.00                    |
| Ramp to tent 72 & 73- Modify or replace the handrails on the ramp to provide a gripping surface height within the required range above the ramp surface.                                               | \$3,918.00                    |
| Ramp to tent 72 & 73- Provide compliant handrails on each side.                                                                                                                                        | \$2,200.00                    |
| Ramp to tent 72 & 73- The handrails shall provide extensions that are parallel to the floor or ground surface extending beyond the top and bottom of the ramp and return smoothly to the post or wall. | \$2,400.00                    |
| Ramp to tent 72 & 73- Provide compliant handrails on each side.                                                                                                                                        | \$2,200.00                    |
| Ramp to tent 72 & 73- The handrails shall provide extensions that are parallel to the floor or ground surface extending beyond the top and bottom of the ramp and return smoothly to the post or wall. | \$2,400.00                    |

| <b>CPAC Improvements and ADA Work (Table 1)</b>                                                                                                                                                                                              | <b>Project Cost Estimates</b> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| Ramp to tent 72 & 73- The handrails shall provide extensions that are parallel to the floor or ground surface extending beyond the top and bottom of the ramp and return smoothly to the post or wall.                                       | \$2,400.00                    |
| Ramp to tent 72 & 73- Modify or replace the handrails on the ramp to provide a gripping surface height within the required range above the ramp surface.                                                                                     | \$3,918.00                    |
| Ramp to tent 8- Provide compliant handrails on each side.                                                                                                                                                                                    | \$2,200.00                    |
| Ramp to tent 8- Install compliant edge protection on each side of the ramp run.                                                                                                                                                              | \$470.00                      |
| Stairs next to Amphitheater- Affix detectable contrasting striping to each tread of the stairway that clearly contrasts in color from the tread and is at least 2 inches in width placed no more than 1 inch from the tread nose or landing. | \$944.00                      |
| Stairs to camp deck- Affix detectable contrasting striping to each tread of the stairway that clearly contrasts in color from the tread and is at least 2 inches in width placed no more than 1 inch from the tread nose or landing.         | \$944.00                      |
| Stairs to camp deck- Provide compliant handrails.                                                                                                                                                                                            | \$1,528.00                    |
| Amphitheater- Make sure that there is an ISA symbol at the companion seat.                                                                                                                                                                   | \$58.00                       |
| Amphitheater- Wheelchair seating areas should be marked with the International Symbol of Accessibility to reserve them for wheelchair users.                                                                                                 | \$50.00                       |
| Amphitheater- Wheelchair seating areas should be marked with the International Symbol of Accessibility to reserve them for wheelchair users.                                                                                                 | \$50.00                       |
| Amphitheater- Make sure that there is an ISA symbol at the companion seat.                                                                                                                                                                   | \$58.00                       |
| Pool- Provide compliant accessible means of access to the pool.                                                                                                                                                                              | \$4,500.00                    |
| Covered picnic area next to basketball court- Provide enough compliant Accessible Tables (At least 5% of the total Tables).                                                                                                                  | \$500.00                      |
| <b>Improvement Total</b>                                                                                                                                                                                                                     | <b>\$647,520.00</b>           |
| <b>ADA Total</b>                                                                                                                                                                                                                             | <b>\$168,323.00</b>           |
| <b>Grand Total</b>                                                                                                                                                                                                                           | <b>\$815,843.00</b>           |

**Note: CPAC is committed to completing these ADA projects within the first 10 years of the lease.**

| City Improvements (Table 2)                                                                                                | Project Cost Estimates |
|----------------------------------------------------------------------------------------------------------------------------|------------------------|
| <b>A-Frame</b>                                                                                                             |                        |
| Nurse's Office Exterior Wall- Remove and replace the existing plywood siding with new plywood siding. Prime and paint.     | \$480.00               |
| Fiberglass Shower- Provide equipment replacement and installation.                                                         | \$13,980.00            |
| Lighting-Replace the existing interior lighting systems and associated wiring devices, switches and controls.              | \$28,930.00            |
| Enlarge bathroom (ADA Compliant)                                                                                           | \$40,000.00            |
| <b>Dining Hall/Lodge</b>                                                                                                   |                        |
| Dining Hall Lighting- Replace the existing interior lighting systems and associated wiring devices, switches and controls. | \$266,320.00           |
| Dining Hall Roof                                                                                                           | \$55,000.00            |
| <b>Total</b>                                                                                                               | <b>\$404,710.00</b>    |

**Note: The City of Berkeley will make its best efforts to complete the property improvements set forth in Table 2.**



Office of the City Manager

05

CONSENT CALENDAR  
November 10, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jordan Klein, Interim Director, Department of Planning & Development  
 Subject: Referral Response: Including Climate Impacts in City Council Reports

RECOMMENDATION

Request that the City Manager update the templates and associated training materials to add “Climate Impacts” in the “Environmental Sustainability” section of reports to the City Council, and codify the changes in Appendix B in the next update to the Berkeley City Council Rules of Procedure. This recommendation is a partial response to a January 21, 2020 referral, sponsored by Councilmembers Davila and Bartlett, to require that all City Council items and staff reports include “climate impacts” in addition to environmental sustainability.

FISCAL IMPACTS OF RECOMMENDATION

There is no direct fiscal impact for this recommendation. Required tasks such as developing guidance documents and conducting staff training will be conducted with existing staff resources.

CURRENT SITUATION AND ITS EFFECTS

The addition of “Climate Impacts” to the current “Environmental Sustainability” section of City Council reports will enhance efforts began in 2014 to consider sustainability impacts in all city policies and actions. Expanding the section heading to “Environmental Sustainability and Climate Impacts” reflects the urgency of the climate crises and will create a greater focus on climate mitigation, adaptation, and resilience issues for Council consideration. Revision of the council report template requires updating council report writing guidance and training materials, as well as additional assistance to staff on how to analyze and document potential climate mitigation and adaptation impacts in City Council reports.

This recommendation builds on the momentum of the Climate Emergency Declaration, adopted by the City Council on June 12, 2018, to raise awareness of the urgency of climate change and ensure that City programs, policies and purchases are aligned with the City’s sustainability and climate action goals. Adding climate impacts advances the City’s Strategic Plan goal of being a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

## BACKGROUND

The inclusion of an Environmental Sustainability section in City Council reports went into effect on March 11, 2014. The intent of the new section was to integrate environmental sustainability considerations throughout City operations and raise awareness of City sustainability goals. The addition of the new section was implemented with the development of guidelines, instructional materials, staff training, and a six-month period of review of all City Council reports by staff in the Office of Energy & Sustainable Development. These guidelines and training are now integrated into the Council Report Writing Training provided to staff by the City Clerk's Office.

On January 21, 2020, City Council approved a referral, sponsored by Councilmembers Davila and Bartlett, to require that all City Council items and staff reports include "Climate Impacts" in addition to environmental sustainability.

At the July 21, 2020 City Council Special Session, staff recommended that Council refer to the Agenda and Rules Policy Committee a recommendation to revise the Council Rules of Procedures to update the Environmental Sustainability section of City Council items and staff reports with the addition of climate impacts and refer to the new section as "Environmental Sustainability and Climate Impacts."

On September 8, 2020 the City Council Agenda and Rules Committee unanimously approved a qualified positive recommendation to 1) request that the City Manager update the training materials and templates to include climate impacts in the Environmental Sustainability section of staff and council reports; and 2) codify the changes in Appendix B in the next update to the Council Rules of Procedures.

## ENVIRONMENTAL SUSTAINABILITY

Including climate impacts in the environmental sustainability section furthers the reach and goals of this section and raises awareness on the consequences of climate change. Its inclusion encourages staff and the City Council to consider how programs, policies, and purchases not only align with current sustainability policies but also how they may affect climate adaptation and community resilience.

## RATIONALE FOR RECOMMENDATION

Adding climate impacts to City Council reports emphasizes the understanding that climate change is already happening and is having direct impacts to natural and human systems while often exacerbating inequities in frontline communities.

## ALTERNATIVE ACTIONS CONSIDERED

Council could choose to not add an analysis of climate impacts to City Council reports.

## CONTACT PERSON

Billi Romain, Office of Energy and Sustainable Development Manager, Department of Planning and Development, 510-981-7432



Office of the City Manager

06

CONSENT CALENDAR

November 10, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Interim Director, Planning and Development

Subject: Acceptance of \$20,000 Grant for utility bill management software analysis

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to accept a \$20,000 grant award from the Energy Council through East Bay Energy Watch Partnership, to support staff analysis of online utility bill database management services.

FISCAL IMPACTS OF RECOMMENDATION

This grant will support a comparative analysis of utility bill and data management services by the Planning Department's Office of Energy and Sustainable Development, using existing staff resources. No other costs are associated with acceptance of this grant. Upon completion of this analysis, staff may request additional funds to support future procurement of a utility bill and data management service. Funds will be deposited and expensed from the One-Time Grant: No Capital Expenditures Fund. This grant will be included as part of the Second Amendment to the FY 2021 Annual Appropriations Ordinance

CURRENT SITUATION AND ITS EFFECTS

The goal of this project is to analyze solutions to improve access to the City's energy and water usage data, and streamline the accounts payable process for Pacific Gas & Electric and East Bay Municipal Utility District bills. City staff have been using a proprietary database, Utility Manager, since 1998 to track the City's water and energy use and costs. The Utility Manager database calculates usage and costs by municipal facility by taking individual meter data and mapping it to buildings, allowing trends to be monitored over time. This information is used to minimize waste and cost by identifying opportunities for energy and water efficiency and building electrification. Municipal water and energy use and progress towards meeting greenhouse gas reduction goals are reported to City Council as part of the annual Climate Action Report.

The current system for paying utility bills and managing water and energy data is inefficient, outdated and requires manual data entry into multiple systems, including the Utility Manager system and the City's financial management system, ERMA. Bills are currently sent as hard copies through the mail to different City departments and

converted by staff into PDFs, which must be processed for payment by distinct accounts. Staff collect, process and store more than 6,000 paper utility bills annually.

This grant will support staff analysis of options to modernize the process for managing bill data for water and energy use, as well as facilitate a process for electronic utility bill payment. The final task for this grant is to document findings, including a description of prospective database options as well as an analysis of costs and benefits, to be shared with departments throughout the City and with the partner cities in the East Bay Energy Watch Partnership.

#### BACKGROUND

Utility Manager, a proprietary database, has been used by staff to track energy and water costs and usage, in order to identify trends and opportunities for energy efficiency and electrification. This version of Utility Manager is licensed by the City and is an Access database, which is no longer supported by Microsoft. Furthermore, the system has reached limitations for the amount of data it can store and is becoming unstable. Since the utility data set goes back to the year 2000, the baseline for the City's Climate Action Plan, there is a risk of losing data critical to tracking progress on meeting our GHG emissions reduction goals.

#### ENVIRONMENTAL SUSTAINABILITY

The analysis will assist the City in improving utility bill data management, to minimize waste and greenhouse gas emissions from the water, natural gas, and electricity usage. It will also facilitate the ability of staff to report on progress on meeting the municipal emissions reduction goals of Berkeley's Climate Action Plan.

#### RATIONALE FOR RECOMMENDATION

Accepting this grant will support staff in analyzing options to modernize currently outdated processes and software technology, while not creating any commitment to implement recommendations.

#### ALTERNATIVE ACTIONS CONSIDERED

The grant could be forfeited, and the existing process could be continued until such time as the Access database no longer functions.

#### CONTACT PERSON

Billi Romain, Manager, Office of Energy and Sustainable Development, Planning and Development Department, 510-981-7432

Attachments:  
Resolution



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

EAST BAY ENERGY WATCH \$20,000 GRANT ACCEPTANCE

WHEREAS, on June 2, 2009, the Berkeley City Council adopted the Berkeley Climate Action Plan to reduce greenhouse gas emissions by 80% of Berkeley's 2000 emissions level; and

WHEREAS, on June 12, 2018 the Berkeley City Council declared a Climate Emergency and resolved to become a "Fossil Fuel-Free City"; and

WHEREAS, Berkeley was awarded a \$20,000 grant from East Bay Energy Watch Council on April 15, 2020 to support staff research to analyze options and costs online utility bill database management services; and

WHEREAS, tracking municipal energy consumption and greenhouse gas emissions is required as part of the Climate Action Plan; and

WHEREAS, the City of Berkeley has been a leader in the East Bay Energy Watch Partnership since its formation in 2000; and

WHEREAS, the East Bay Energy Watch Partnership is funded through ratepayer funds for the purpose of supporting local governments to advance energy efficiency through programs and education; and

WHEREAS, the City of Berkeley has maintained a database of municipal utility bill use and cost data for energy and water consumption since the year 2000 which now needs to be modernized to maintain data integrity; and

WHEREAS, the grant funds will support existing staff resources conduct an analysis of options for procurement of an energy data management and electronic bill payment system or service to measure, analyze, and manage municipal energy data use; and

WHEREAS, an analysis of prospective utility management services will provide valuable information that could increase water and energy efficiency and reduce the transaction costs of paying utility bills; and

WHEREAS, an electronic method of collecting utility bill data could reduce the environmental impact of collecting, processing and storing more than 6,000 paper utility bills annually, and provide faster access to historic records.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to accept a \$20,000 grant award from the Energy Council through East Bay Energy Watch Partnership to support research on online utility bill database management services.





Office of the City Manager

07

CONSENT CALENDAR

November 10, 2020

*(Continued from October 13, 2020)*

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Jordan Klein, Interim Director, Planning and Development Department  
Subject: Resumption of Fees at Oregon Park Senior Apartments

RECOMMENDATION

Authorize the City Manager to resume charging fees, including housing inspection service fees, at Oregon Park Senior Apartments (OPSA), located at 1425 Oregon Street, to increase the effectiveness of housing code enforcement.

SUMMARY

On March 14, 2017, City Council authorized a fee abeyance for OPSA until certain conditions were met, including conducting a financial audit, conducting an assessment of the structure and the facility needs and hiring a property manager. These conditions have not been met. In May 2017, Housing Code Enforcement received a complaint from a tenant at the property, inspected the unit and identified 21 violations of the housing code. As of September 1, 2020, OPSA has not corrected 17 of the violations including visible mold, wall damage, a kitchen sink drain leak, deteriorated plumbing fixtures, a roof leak and a severe tripping hazard on the exterior concrete entrance slab. The inability to charge housing inspection service fees since the abeyance was granted has hampered enforcement. By restoring the authority to charge inspection fees, the City will encourage the owner to correct the violations and restore basic habitability conditions for OPSA tenants.

FISCAL IMPACTS OF RECOMMENDATION

All owners of rental housing in the City of Berkeley are subject to fees for housing code enforcement inspections: \$400 for the first reinspection of any unit (only charged when violations are not corrected), \$600 for the second reinspection and \$800 for the third and any subsequent reinspections, which typically occur every 30 working days. Currently with fees in abeyance, the costs of City inspections are not being covered. If fees had not been held in abeyance, Housing Code Enforcement would have billed inspection service fees of \$15,000 for reinspections which occurred at the property between June 2017 and January 2020. These fees are not recoverable and will not be charged or collected. Inspection service fees will incur going forward. The indefinite abeyance also increases the risk that the City would become obligated to reimburse the unpaid inspection fees from General Fund revenues.

### CURRENT SITUATION AND ITS EFFECTS

OPSA is a 61-unit, resident-managed senior rental housing development in Southwest Berkeley. OPSA is legally organized as a non-profit organization, not as a limited equity or other type of housing cooperative. The property has private funding and is not regulated by any public agency. OPSA representatives reported that tenant incomes are restricted to 120% of median. Importantly, OPSA provides affordable housing for seniors in Berkeley, and many are low income people of color.

On March 14, 2017, the City Council held fines in abeyance for OPSA until certain conditions were met. These included OPSA conducting a financial audit, doing a full assessment of the building and facility needs, and hiring a property manager.

After the March 14, 2017 Council meeting, City staff met with the OPSA board at Oregon Park Senior Apartments to discuss the Council referral, answer questions and provide a personal contact. On May 31, 2017, staff from a law firm representing OPSA emailed the office of Councilmember Davila with a potential quote for a needs assessment. The email stated that OPSA's representatives would be meeting with a Certified Public Accountant that week, after other CPAs were unable to help. OPSA subsequently submitted a partial structural assessment and indicated that a fuller assessment would be completed and sent to the city. On July 21, 2020 the City sent a letter to the OPSA Board reminding them of the outstanding items, requesting that they be sent to the City and informing them that if they are not provided staff will request that City Council reinstate the fees for subsequent inspections. As of the drafting of this Council report, the City has not received further documentation to indicate compliance with Council's conditions from March 2017. The current situation is not incentivizing OPSA's Board to meet the conditions, since once completed the City would resume charging fees.

Housing Code Enforcement staff are concerned about tenant safety at the property currently due to longstanding violations in one of the units. In May 2017, the tenants of an apartment at Oregon Park Senior Apartments filed a complaint to Housing Code Enforcement, due to the unsafe conditions in their unit. On May 29, 2017, a Housing Inspector performed an initial inspection and identified 21 code violations, including visible mold, wall damage, a kitchen sink drain leak, deteriorated plumbing fixtures, a roof leak and a severe tripping hazard on the exterior concrete entrance slab. Between June 2017 and January 2020, the Housing Inspector performed 22 reinspections of the unit. Three violations have been corrected and 18 violations still need to be abated, more than three years after the initial inspection took place. The remaining violations most likely will require skilled workers to complete the remediation work, which includes exterior deck repairs, mold removal, wall patching repair, painting of the unit and floor repairs.

In addition to funding the cost of implementing the Residential Housing Safety Program, the inspection service fees motivate property owners to correct violations. Without that incentive, reinspections inconvenienced the tenants without further pressure for the

owner to make the needed repairs. The two elderly tenants pursued a civil lawsuit to try to get their unit repaired.

On August 27, 2020, a request for service was submitted by another tenant at 1425 Oregon Street complaining of mold, black fungus, a long-standing water pipe leak and the lack of a manager. A housing inspection took place on September 1, 2020 and confirmed there is a substantial leak from the sink/shower drain of a neighbor's unit. To correct this violation, OPSA will need to remove the damaged sheetrock, make the necessary repairs to stop the leak, and patch, paint and seal the bathroom walls.

With 21 cases at the property in the last ten years, involving multiple violations, Housing Code Enforcement does not believe these to be isolated instances. In 2017, OPSA filed a lien appeal related to \$9,240 in outstanding reinspection fees from pre-2017 code enforcement cases at the property, incurred prior to February 2017. This lien appeal request is still pending consideration.

#### BACKGROUND

At the March 14, 2017 Council meeting, Council reviewed the Housing Advisory Commission report "Support for Oregon Park Senior Apartments" and the City Manager "Companion Report: Support for Oregon Park Senior Apartments," (attached) and approved the fee abeyance with the following conditions:

1. Oregon Street Park Apartments will conduct a financial audit.
2. Oregon Street Park Apartments will conduct a full assessment of the structure of the building and the facility needs.
3. Oregon Street Park Apartments will hire a property manager to oversee the financials and the property.
4. The City will commit to holding the fines in abeyance until such time that conditions 1-3 are completed.

Since that time, OPSA has submitted a partial structural analysis.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### RATIONALE FOR RECOMMENDATION

The purpose of Housing Code Enforcement is to ensure that all Berkeley tenants have safe, decent living conditions that meet housing code standards. Holding these fees in abeyance for three years has not led to improvements in the living conditions at OPSA. Staff recommend the resumption of inspection fees with the goal of incentivizing property management to complete the required repairs.

Housing Code Enforcement followed all prescribed regulations for investigating, documenting and citing violations of the Berkeley Housing Code. Approval of the

recommended action will allow the Planning and Development Department to continue its effective practices for obtaining compliance with Housing Code.

ALTERNATIVE ACTIONS CONSIDERED

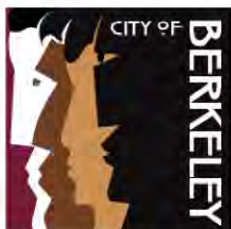
No alternative actions were considered.

CONTACT PERSON

Jenny McNulty, Resilient Buildings Program Manager, Planning, 981-7451

Attachment:

1: March 17, 2017 report to Council from Housing Advisory Commission, and staff companion report



Housing Advisory Commission

ACTION CALENDAR

February 28, 2017

*(Continued from January 24, 2017)*

To: Honorable Mayor and Members of the City Council  
 From: Housing Advisory Commission  
 Submitted by: Igor Tregub, Acting Chairperson, Housing Advisory Commission  
 Subject: Support for Oregon Park Senior Apartments

RECOMMENDATION

Direct staff to work with Oregon Park Senior Apartments to undertake a physical needs assessment and to consider assistance with financing to address any issues identified in the physical needs assessment, and to hold the fines in abeyance in the interim.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Residents from the Oregon Park Senior Apartments (OPSA) seek the City's assistance for emergency improvements to their facilities. They are requesting a low-interest loan to be repaid promptly.

The OPSA complex is 43 years old and now requires considerable repair. In particular, the sewer, roof and sidewalk must be repaired as soon as possible before recently imposed City fines OPSA and costs for maintenance increase. The HAC identified the performance of a physical needs assessment that would provide City staff with a satisfactory understanding of current needs as the most immediate priority. Following such an assessment City staff could evaluate those needs and make a recommendation such that the City Council would be able to consider financing options to address the repairs.

BACKGROUND

The OPSA is a non-profit 501(c)3. The City approved predevelopment funding for OPSA in 2005 and 2010 but the City and OPSA did not execute a loan either time. In 2014, disputes within the OPSA Board Directors contributed to serious financial problems. The situation devolved into a costly legal dispute that has hampered the OPSA's ability to make funding allocations from its budget to do necessary repairs for the sewer, roof, and sidewalk. With their legal problems now behind them, OPSA seeks to immediately make necessary repairs, but requires financial assistance.

Support for Oregon Park Senior Apartments

At the November 3, 2016 meeting of the Housing Advisory Commission, the following action was taken:

Action: M/S/C (Wolfe/ Soto-Vigil) to request that City Council direct staff to work with Oregon Park Senior Apartments to undertake a physical needs assessment and to consider assistance with financing to address any issues identified in the physical needs assessment, and to hold the fines in abeyance in the interim.

Vote: Ayes: Abramson, Aguilar-Canabal, Crandall, Darrow, Lee-Egan, Soto-Vigil, Tregub, and Wolfe. Noes: None. Abstain: None. Absent: Berg (excused) and Martinucci (excused).

#### ENVIRONMENTAL SUSTAINABILITY

There are no environmental implications identified for this recommendation.

#### RATIONALE FOR RECOMMENDATION

The OPISA's structure, as a cooperatively owned non-profit, makes it more difficult for the organization to secure funding from traditional sources. This facility and its cooperative members are a vital part of the Berkeley community, and an inquiry into the means by which the City may support them would be a low-cost and potentially highly beneficial approach to preserving our scarce affordable housing.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CITY MANAGER

See companion report.

#### CONTACT PERSON

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





Office of the City Manager

## ACTION CALENDAR

March 14, 2017

*(Continued from February 28, 2017)*

To: Honorable Mayor and Members of the City Council

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

Submitted by: Paul Buddenhagen, Director, Health, Housing & Community Services Department

Subject: Companion Report: Support for Oregon Park Senior Apartments

### RECOMMENDATION

Refer the Housing Advisory Commission's recommendation that staff work with Oregon Park Senior Apartments (OPSA) to the Council prioritization process so that the Council can evaluate this recommendation in the context of other recommendations for the use of Housing & Community Services staffing resources.

### FISCAL IMPACTS OF RECOMMENDATION

More information and analysis is required before the fiscal impacts of funding OPSA can be estimated.

### CURRENT SITUATION AND ITS EFFECTS

OPSA is a 61-unit, resident-managed senior rental housing development. OPSA representatives reported that tenant incomes are restricted to 120% of median. The property has private funding and is not regulated by any public agency. At the November Housing Advisory Commission (HAC) meeting, OPSA representatives indicated a need for \$349,000 for repairs related to multiple housing code enforcement cases and sewer lateral work, including at least \$78,000 for work that had already been completed. They presented conceptual projections of future rent scenarios to support loan repayment.

The City previously offered to fund predevelopment work in 2005 and 2010, but OPSA did not agree to the terms of City funding either time. City funds supported capacity building technical assistance for the board before the development went into receivership a few years ago.

In light of the extent and duration of housing code enforcement issues at OPSA, the organization's capacity to complete repairs and maintain the property should be evaluated before providing public funds. Based on the age of the property and the housing code issues that have already been identified, it is likely that Oregon Park Senior Apartments has more extensive capital needs that should be assessed before the City funds repairs to ensure the longevity of this housing.

Typically requests for housing development funding go through the Housing Trust Fund (HTF). OPSA may not meet the HTF Guideline's standards for tenant incomes, which require a significant percentage of units in a building to be rented to tenants with income below 60% AMI and some to tenants below 30% AMI. Otherwise, however, OPSA is similar to other projects that have been funded through the City's HTF.

### BACKGROUND

The City approved predevelopment funding for the property in 2005 and 2010 in response to housing code violations. In 2005, City staff worked with OPSA on a predevelopment loan agreement to pay for independent legal counsel. OPSA decided against signing the loan agreement. Board members expressed concerns to staff at that time regarding agreeing to City oversight and repaying the loan. In 2010, staff and OPSA were unable to come to an agreement regarding predevelopment loan terms for \$15,000 to pay for a physical needs assessment.

Considering prior experiences, the HAC's recommendation would require substantial staff time, and would include working on at least the following issues:

- Legal status and make-up of the organization, in order to be able to enter into a contract for public funds. In 2010, staff determined that OPSA was organized as a nonprofit organization, not a cooperative.
- Financial capacity of the organization, including examining reserves available for repairs, income and expenses, and terms of the existing debt.
- Organizational capacity and technical expertise to complete the proposed work. The HTF guidelines, as an example, require that applicants demonstrate a successful track record with similar projects either with current staff or through consultants. This 61-unit property is larger than many HTF-funded developments.
- A comprehensive physical needs assessment and a study of OPSA's replacement reserve needs (funds set aside annually to fund regular maintenance). Housing code compliance issues from 2005 to present are an indicator that the property probably has more physical needs than those identified for emergency repair. Since City housing funds typically come with 55 years of restrictions related to incomes, rents, and building quality standards, the comprehensive needs and assessment of OPSA's interest in moving forward given City restrictions, should be evaluated before the City commits development funding.
- Evaluating existing income and rent restrictions along with current rents. It is relatively common for tenant-managed housing to keep rents very low, which can result in too little rental income to operate the property, maintain it, and fund reserves for larger repairs. At the November HAC meeting, OPSA representatives reported that tenancy was restricted to households with incomes at or below 120% of Area Median Income (AMI), with an average tenant rent of

less than \$800 per month. Currently, affordable one-bedroom rents for households at 120% of AMI are \$2,340, around three times as much. Staff would need to work with OPSA on reviewing tenant incomes and rents for sustainability before committing development funds.

The City would need to evaluate the availability of funds for OPSA in the context of funds available in the Housing Trust Fund (HTF) and other proposed projects, including the Berkeley Way project which has been identified as a priority by Council. Measure U1 business license tax revenue will start being collected soon, and revenue from the Harold Way development depends on if and when the project proceeds.

The City's recent experience with Strawberry Creek Lodge (SCL) and William Byron Rumford Sr. Plaza (WBR) provide examples that may have parallels with OPSA. Although not a cooperative, SCL (150 units developed in 1962) was owned by the Strawberry Creek Lodge Foundation (SCLF), which exists solely to support that development and its residents. In 2008, SCLF applied to the City for \$126,500 for repairs through the City's Public Facilities RFP. In recognition of the scale of the needs, the project was referred to the City's Housing Trust Fund. Ultimately, SCLF partnered with Satellite Affordable Housing Associates, which was able to secure low income housing tax credits and completed more than \$12 million in rehabilitation with just \$820,000 in City funds.

In the case of WBR (43 units developed in 1990), South Berkeley Community Housing Development Corporation partnered with Resources for Community Development (RCD) for rehabilitation. RCD eventually concluded that it would not be feasible to use low income housing tax credits since tenant incomes were too high to qualify. The City provided more than \$4.6 million to support the rehab, including refinancing \$1.3 in outstanding City loans. These projects illustrate the scale of recent rehabilitation projects, and benefits of low income housing tax credits for projects that can qualify. If directed to work with OPSA, staff will recommend that the OPSA board reach out to tenant leaders at SCL and WBR to learn about their experiences.

#### ENVIRONMENTAL SUSTAINABILITY

There are no direct environmental effects associated with the content of this report.

#### RATIONALE FOR RECOMMENDATION

OPSA provides affordable housing for seniors, which are needed now more than ever. Housing code issues at OPSA evidence the need for more rehabilitation. Granting rehabilitation funds to this unrestricted property could assist with the current situation but would not address any underlying needs. Based on past experience, working with OPSA will require an investment of staff time and future funding, and should be evaluated alongside other housing priorities.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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



Office of the City Manager

08

CONSENT CALENDAR  
November 10, 2020

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Liam Garland, Director, Department of Public Works  
Subject: Purchase Order: Pape Machinery, Inc. for One (1) John Deere 310SL Backhoe Loader

RECOMMENDATION

Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcewell Contract No. 032119-JDC and authorizing the City Manager to execute a purchase order for one 2020 John Deere 310SL Backhoe Loader with Pape Machinery, Inc. in an amount not to exceed \$150,000.

FISCAL IMPACTS OF RECOMMENDATION

The purchase of one (1) John Deere 310SL Backhoe Loader will not exceed \$150,000 and includes CA tire fees, extended warranty and sales tax. Funding is available in the FY 2021 in the following funds:

|                            |                                    |          |
|----------------------------|------------------------------------|----------|
| Equipment Replacement Fund | 671-54-626-723-0000-000-473-664120 | \$87,778 |
| Zero Waste Fund            | 601-54-625-714-0000-000-474-664120 | \$62,222 |

CURRENT SITUATION AND ITS EFFECTS

This purchase will replace wheel loader #709 that was purchased in 1991 and has exceeded its useful life and no longer meets the operational needs of the Department. The Public Works Department Operations Divisions requires a vehicle to perform a variety of tasks, including street repairs and construction, asphalt and paving work, sidewalk repairs, encampment debris clean up, fire damage clean up, illegal dumping removal, and sewer repair projects.

This purchase supports the City’s Strategic Plan Goal of providing state-of-the-art, well-maintained infrastructure, amenities, and facilities. In addition, the 2020 Municipal Fleet Electrification Assessment<sup>1</sup> recognizes that cost-effective electric heavy duty vehicles in these classes are not available at this time.

<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/07\\_Jul/Documents/2020-07-28\\_Item\\_26\\_Referral\\_Response\\_\\_An\\_Action\\_Plan.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-28_Item_26_Referral_Response__An_Action_Plan.aspx)

## BACKGROUND

Throughout the year, the Department of Public Works purchases vehicles and equipment for the City's operating Departments that are paid through the Equipment Replacement fund which funds replacements as they reach the end of their useful life. If the purchase request exceeds \$25,000, the Department of Finance, General Services Division solicits or "piggybacks" off competitively bid contracts to ensure the City's departments receive the best pricing.

The City of Berkeley has been a no-cost member and participant of Sourcewell<sup>2</sup> (formerly National Joint Powers Alliance) (NJPA), a municipal contracting agency operating under the legislative authority of Minnesota Statue 123A.21. The original statute was revised in 1995 to allow government clients to better meet their specific needs through participation in a service cooperative, rather than paying higher costs associated with individual procurement. Sourcewell allows participating municipal agencies to leverage the benefits of cooperative purchasing and reduces procurement costs. Sourcewell serves all educational, government and non-profit agencies nationwide, and offers cooperative contracted products, equipment and service opportunities to government entities throughout the U.S.

All Sourcewell contracts have been competitively solicited nationwide. On January 31, 2019 Sourcewell released Request for Proposal No. 032119 for Heavy Construction Equipment with Related Accessories, Attachments, and Supplies. The solicitation was released for approximately fifty days and fifteen proposals were submitted and received. Upon proposal review the Sourcewell proposal evaluation committee selected John Deere Company as the best most responsive proposer to meet the specifications thusly awarding Contract No. 032119-JDC.

For all contracts Sourcewell charges an administrative fee based upon the percentage of the sale, and that fee is paid by the Contractor directly to Sourcewell. For this purchase the 0.5% fee will be paid by John Deere Company and will not be passed onto the City of Berkeley.

## ENVIRONMENTAL SUSTAINABILITY

The John Deere Backhoe is an off-road asset equipped with the highest rated compliance engine assembly available. Engine application will include a Tier 4 Final assembly, which meets the strictest EPA emissions requirement for off-highway diesel engines. It will be powered by 100% renewable diesel that meets 2018 EPA and California Air Resources Board (CARB) requirements. The combined applications will reduce greenhouse gas emissions by as much as 50-90% from the existing equipment.

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<sup>2</sup> <https://www.sourcewell-mn.gov/>

Purchase Order: Pape Machinery, Inc. for One (1)  
John Deere 310SL Backhoe Loader

CONSENT CALENDAR  
November 10, 2020

Fleet maintenance staff conducted research to ascertain whether an electric drivetrain version of this product is available. The research concluded that there are no fully electric drivetrains for this type of vehicle at this time.

RATIONALE FOR RECOMMENDATION

Equipment must be replaced on a reasonable schedule to ensure the Public Works Equipment operators can efficiently and effectively carry out their duties.

ALTERNATIVE ACTIONS CONSIDERED

None. Keeping equipment longer than its useful life results in higher maintenance costs and excessive downtime in order to keep it operating in a safe and serviceable manner.

CONTACT PERSON

Greg Ellington, Superintendent, Public Works Maintenance, (510) 981-6469

Attachment:

1: Resolution

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

PURCHASE ORDER: PAPE MACHINERY, INC. FOR ONE JOHN DEERE 310SL  
BACKHOE LOADER

WHEREAS, one (1) John Deere 310SL Backhoe Loader is needed by the Public Works Department Sewer and Streets Maintenance divisions to perform a variety of tasks including; street repairs and construction; asphalt and paving work; sidewalk repairs, encampment debris clean-up; fire damage clean-up, illegal dumping removal, and sewer repair projects; and

WHEREAS, equipment unit number 709 being replaced and has reached the end of its useful life; and

WHEREAS, equipment must be replaced on a reasonable schedule that allows equipment operators to efficiently and effectively carry out their work; and

WHEREAS, City Charter XI Section 67.2 allows the City to purchase goods without undergoing a competitive bid process if the City uses pricing obtained by another entity through a competitive process; and

WHEREAS, all Sourcewell contracts have been competitively solicited nationwide. On January 31, 2019 Sourcewell released Request for Proposal No. 032119 for Heavy Construction Equipment with Related Accessories, Attachments, and Supplies. The solicitation was released for approximately fifty days and fifteen proposals were submitted. Upon their review Sourcewell selected John Deere Company as the best most responsive proposer to meet the specifications thusly awarding Contract No. 032119-JDC; and

WHEREAS, Sourcewell Contract No. 032119-JDC satisfies the procurement requirement of the City of Berkeley; and

WHEREAS, the authorized John Deere Construction & Forestry Company dealer in the State of California, including the City of Berkeley is Pape Machinery, Inc. Pape Machinery, Inc. is trained to sell, lease and rent John Deere Company products and will provide parts, service and warranty repairs; and

WHEREAS, funds in the amount of \$150,000 are available in the FY 2021 Equipment Replacement fund (671) and Zero Waste Fund (601).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley City Manager is authorized to execute a purchase order for one (1) 2020 John Deere Company 310SL Backhoe Loader with Pape Machinery, Inc. in an amount not to exceed \$150,000.





Office of the City Manager

09

CONSENT CALENDAR  
November 10, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Liam Garland, Director, Department of Public Works  
 Subject: Purchase Order: Altec Industries, Inc. for One Aerial Bucket Truck

RECOMMENDATION

Adopt a Resolution satisfying requirements of City Charter Article XI Sections 67.2 allowing the City to participate in Sourcewell contract bid procedures, and authorizing the City Manager to execute a purchase order for one (1) aerial bucket truck with Altec Industries, Inc. in an amount not to exceed \$200,000.

FISCAL IMPACTS OF RECOMMENDATION

The purchase of one aerial bucket truck will not exceed \$200,000 and includes DMV fees, CA tire fees, delivery to City of Berkeley, training and sales tax. Funding for this purchase will be appropriated from the Equipment Replacement Fund Balance (671-54-626-723-0000-000-473-664120).

CURRENT SITUATION AND ITS EFFECTS

This purchase will replace aerial bucket truck equipment number #4700 that exceeded its useful life and will be replaced with a smaller vehicle allowing for more maneuverability around the City. The Public Works Department electrical staff requires this vehicle to perform maintenance and repairs to traffic signals, street lights, recreational lights, and high-bay building lighting systems. The new vehicle will be equipped with a telescopic aerial device which can be operated by the plug-in system that uses stored electrical energy.

This purchase supports the City's Strategic Plan Goal of providing state-of-the-art, well-maintained infrastructure, amenities, and facilities. In addition, the 2020 Municipal Fleet Electrification Assessment<sup>1</sup> recognizes that viable, cost-effective electric heavy duty vehicles in these classes are not available at this time.

This Purchase Order supports the City's Strategic Plan Goal of providing state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND


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<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/07\\_Jul/Documents/2020-07-28\\_Item\\_26\\_Referral\\_Response\\_\\_An\\_Action\\_Plan.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-28_Item_26_Referral_Response__An_Action_Plan.aspx)

Throughout the year, each City Department pays its proportionate share into the Equipment Replacement Fund, and those funds are utilized to replace equipment at the end of its useful life. If a vehicle purchase request exceeds \$25,000, the Department of Finance General Services Division solicits bids or “piggybacks” off competitively bid contracts to ensure City departments receive the best pricing.

The City of Berkeley has been a no-cost member of Sourcewell<sup>2</sup> (formerly National Joint Powers Alliance) a municipal contracting agency operating under the legislative authority of Minnesota Statute 123A.21. The original 1978 statute was revised in 1995 to allow government clients to better meet their specific needs through participation in a service cooperative, rather than paying the higher cost associated with individual procurement. Sourcewell allows participating municipal agencies to leverage the benefits of cooperative purchasing and reduces procurement costs. Sourcewell serves all educational, government, and non-profit agencies nationwide, and offers cooperatively contracted products, equipment and service opportunities to government entities throughout the U.S.

All Sourcewell contracts have been competitively solicited nationwide. On December 7, 2017 Sourcewell released Request for Proposal No. 012418 for Public Utility Equipment with Related Accessories and Supplies. The solicitation was released for approximately fifty days and fifteen proposals were submitted. Upon review Sourcewell selected Altec Industries, Inc. as the best most responsive proposer to meet the specifications thusly awarding Contract No. 012418-ALT.

#### ENVIRONMENTAL SUSTAINABILITY

The Aerial Bucket Truck is features the Jobsite Energy Management System (JEMS) unit. JEMS is an integrated plug-in system that uses stored electrical energy to power the aerial device, tools, and exportable power without running the engine, thus eliminating idle time at the job site, reduces fuel consumption, and decreases carbon footprint and tailpipe emissions. The hybrid system will work in combination with an engine application powered by 100% renewable diesel that meets 2018 EPA and California Air Resources Board (CARB) requirements.

Fleet maintenance staff conducted research to ascertain whether an electric drivetrain version of this product is available. The research concluded that there are no fully electric drivetrains for vehicles of this size available at this time and that the Altec vehicle with the Jobsite Energy Management System Unit is the best selection for the needs of the Department.

#### RATIONALE FOR RECOMMENDATION

Equipment must be replaced on a reasonable schedule to ensure the Public Works Equipment operators can efficiently and effectively carry out their duties. This purchase

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<sup>2</sup> <https://www.sourcewell-mn.gov>

Purchase Order: Altec Industries, Inc. for  
One Aerial Bucket Truck

CONSENT CALENDAR  
November 10, 2020

will allow the electricians to be fully equipped to perform the ongoing maintenance of traffic signals, street lights, and lighting in Parks. This will be one of three aerial bucket trucks assigned to the Electrical Division allowing for maximum efficiency of its staff.

ALTERNATIVE ACTIONS CONSIDERED

None. Keeping equipment longer than its useful life results in higher maintenance costs, excessive downtime in order to keep it operating in a safe and serviceable manner, and higher greenhouse gas emissions attributed to older vehicles.

CONTACT PERSON

Greg Ellington, Superintendent, Department of Public Works (510) 981-6469

Attachment:  
Resolution

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

PURCHASE ORDER: ALTEC INDUSTRIES, INC. FOR ONE AERIAL BUCKET TRUCK

WHEREAS, one new aerial bucket truck is needed by Public Works Department Staff to perform maintenance and repairs to traffic signals, street lights, recreational lights, and high bay building lighting systems; and

WHEREAS, equipment unit number 4700 being replaced has reached the end of its useful life; and

WHEREAS, equipment must be replaced on a reasonable schedule that allows equipment operators to efficiently and effectively carry out their work; and

WHEREAS, City Charter XI Section 67.2 allows the City to purchase goods without undergoing a competitive bid process if the City uses pricing obtained by another entity through a competitive bid process; and

WHEREAS, on December 7, 2017 Sourcewell released Request for Proposal No. 012418 for Public Utility Equipment with Related Accessories and Supplies. The solicitation was released for approximately fifty days and fifteen proposals were submitted. Upon review Altec Industries, Inc. was selected as the best most responsive proposer to meet the specifications, thusly awarding Contract No. 012418-ALT; and

WHEREAS, Sourcewell's contract bid procedures satisfy the procurement requirements of the City of Berkeley; and

WHEREAS, funds in the amount of \$200,000 will be appropriated in the First Amendment to the FY 2021 Annual Appropriations Ordinance in the FY2021 Equipment Replacement Fund (671).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a purchase order for one aerial bucket truck with Altec Industries, Inc. in an amount not to exceed \$200,000.



Office of the Mayor

10

CONSENT CALENDAR

November 10, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín (Author), Councilmember Davila (Co-Sponsor)

Subject: Berkeley Holiday Fund: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember including \$500 from Mayor Arreguin to the Berkeley Holiday Fund's annual campaign with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguin and any other Councilmembers who would like to contribute.

BACKGROUND

The Berkeley Holiday Fund has helped make the holiday season happier for hundreds of Berkeley's neediest residents for 107 years. An all-volunteer organization, the Berkeley Holiday Fund has been partnering with 29 Berkeley service agencies, such as the Center for Elder Independence, the YMCA, Berkeley Food and Housing Project, and the Berkeley Health Department. By keeping operating costs to a minimum, the Berkeley Holiday Fund ensures that all contributions go directly to help those who need it the most. Last year, they were able to bring a little cheer into the lives of over 1,000 Berkeley citizens distributing over \$85,000. This year, with the onset of COVID-19, they have expanded their Emergency Fund to offer cash assistance to families and individuals that their partner agencies have identified as suffering financial hardship due to COVID-19 and the Shelter in Place Orders.

The Mayor's office has actively participated in this program for over 25 years by providing application cards and first class postage to Berkeley Holiday Fund recipients. This year the Berkeley Holiday Fund anticipates distributing over 1,000 request forms. This item requests the City Council approve an expenditure, not to exceed \$500 of funds from the from the Mayor's office budget to cover reproduction costs and postage.

FINANCIAL IMPLICATIONS

No General Fund impact. \$500 is available from the Mayor's office budget discretionary account.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with adopting this recommendation.

Berkeley Holiday Fund 2020

CONSENT CALENDAR  
November 10, 2020

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: Resolution
- 2: Letter from Berkeley Holiday Fund

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

BERKELEY HOLIDAY FUND 2020

WHEREAS, the Berkeley Holiday Fund has been making small grants to Berkeley's neediest citizens for 107 years; and

WHEREAS, last year, the Berkeley Holiday Fund distributed about \$85,000 to over 1,000 Berkeley residents; and

WHEREAS, Berkeley Holiday Fund partners with 29 Berkeley service agencies including the Center for Elder Independence, the YMCA, Berkeley Food and Housing Project, and the Berkeley Health Department; and

WHEREAS, this year, the Berkeley Holiday Fund has expanded their Emergency Fund to offer cash assistance to families and individuals that their partner agencies have identified as suffering financial hardship due to COVID-19 and the Shelter in Place Orders; and

WHEREAS, the Berkeley Mayor's Office has supported the Berkeley Holiday Fund's efforts for over 25 years by reproducing request forms and providing first class postage costs; and; and

WHEREAS, Mayor Arreguin has surplus funds in his office expenditure account; and

WHEREAS, the Berkeley Holiday Fund seeks funds in the amount of \$500 to provide application cards and first class postage to Berkeley Holiday Fund recipients; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose of providing services to low income residents of the City of Berkeley.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to \$500 per office shall be granted to the Berkeley Holiday Fund for providing application cards and first class postage to Berkeley Holiday Fund recipients.



# BERKELEY HOLIDAY FUND

Post Office Box 9779 ♦ Berkeley, California 94709

www.BerkeleyHolidayFund.org

HONORARY CHAIRPERSON  
Jesse Arreguin, Mayor of Berkeley

September 21, 2020

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The Honorable Jesse Arreguin  
Mayor of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704

Dear Mayor Arreguin:

On behalf of the Board of the Berkeley Holiday Fund, I want to thank the Mayor's office for its continuing, generous support for the Fund's annual disbursement of holiday gifts to Berkeley's neediest citizens and to thank you personally for serving as the Honorary Chair Person of the Fund. For 107 years the Fund has solicited donations from the citizens of Berkeley and now partners with 29 local social service agencies to identify Berkeley citizens in need of help during the holidays.

SPONSORS  
Schuyler and Susie Bailey  
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Last year, with your help we were able to offer much needed cheer during the holiday season by sending checks totaling almost \$85,000 and to more than 1,000 individuals and families in Berkeley. This year due to the coronavirus crisis, we have expanded our Emergency Fund to offer cash assistance to families and individuals our partner agencies identify as suffering hardship due to Covid-19 or Shelter-In-Place orders.

We are requesting that you continue your longstanding support for our efforts. For at least the last twenty-five years the Mayor's office has provided assistance by funding our outreach to our partner agencies for referrals and by providing first class stamps to mail the checks to recipients. Since the Holiday Fund is an all volunteer organization, this much appreciated support reduces our costs and assures that the maximum amount goes to the recipients.

We are grateful for your support of the Berkeley Holiday Fund as our Honorary Chairman and the support of the City Council members as Sponsors.

This year we anticipate distributing over 1,000 cards to the agencies and needing first class postage for about 950 letters (this figure includes the 501(c) 3 letters we send to donors acknowledging their tax free contributions). While we fund every request we receive, the number of requests from agencies varies from year to year, and we only send one check to individuals or families recommended by multiple agencies.

Since this expenditure requires Council approval, we are formally requesting \$500 in support and are asking for your help in obtaining that approval.

In past years some council members have added funds from their office accounts. We deeply appreciate their support.

Thank you again for all of the support you have provided in the past to this truly unique Berkeley institution.

Regards,

Andrew T. Williams  
Co-Chairperson





Office of the Mayor

11

CONSENT CALENDAR  
November 10, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Four Way Stop Signs on Eighth Street at Carleton Street and Pardee Street

RECOMMENDATION

Refer to the City Manager a proposal to install stop signs at the intersections of Eighth Street and Carleton Street and Eighth Street and Pardee Street.

BACKGROUND

Traffic in West Berkeley has steadily increased over the years as more development takes place and as businesses and manufacturers thrive. On October 7<sup>th</sup>, the Mayor's Office participated in a Manufacturing Roundtable orchestrated by the Office of Economic Development as part of Manufacturing Week. At the meeting, businesses located in the light-industrial/mixed use residential neighborhood around Eighth Street at Carleton Street and Pardee Street raised safety concerns in regards to traffic. Specifically, the following issues were raised:

- Cars frequently speed through these intersections, especially at Carleton Street which has no painted crosswalk.
- Parked cars and trucks double parking cause visibility issues at these intersections, leading to near misses.
- There has been increased pedestrian traffic from both customers and businesses transporting goods between buildings.

Currently, these two intersections are two way stops, with traffic travelling on Eighth Street having the right of way. Out of the 22 intersections on Eighth Street, which runs from Jackson Street/Red Oak Avenue at University Village, Albany to Heinz Avenue near Berkeley Bowl West in Southwest Berkeley, the only intersection besides Carleton Street and Pardee Street not to have a stop sign or traffic light on Eight Street is Bataan Avenue, a small one-block residential road in Northwest Berkeley. Given that, drivers going down Carleton Street and Pardee Street may wrongly assume that those intersections at Eighth Street are a four-way stop, creating unsafe conditions.

In November 2019, the City Council approved the Transportation Commission's Stop Sign Warrant Policy as a way to determine when stop signs may be warranted to protect pedestrians, wheelchair users and/or bicyclists in the City of Berkeley (Attachment 1). This was in response to a referral from the Council in October 2017 which was created after two middle school students were injured after being hit by a car

at an intersection that did not meet the criteria for stop sign installations at the time. If such installations are warranted, this can help Berkeley meet its goals to improve traffic safety via our Pedestrian and Bike Plans and Vision Zero.

FINANCIAL IMPLICATIONS

Staff time and cost associated with the stop sign installation.

ENVIRONMENTAL SUSTAINABILITY

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: Policy Guidelines for Multiway Stop Applications





Department of Public Works  
Transportation Division

## **Policy Guidelines for Multiway Stop Applications**

### **INTRODUCTION:**

Multiway stop control (a.k.a. all-way stops) can be useful as a safety measure if certain traffic conditions exist. Safety concerns associated with multiway stops include pedestrians, bicyclists, and all road users expecting other road users to stop. Multiway stop control is used where the volume of traffic on the intersecting roads is approximately equal.

The City of Berkeley's policy guideline on multiway stop applications is based on the exact language from California Vehicle Code (CVC) <sup>1</sup> and the California Manual on Uniform Traffic Control Devices (MUTCD) <sup>2</sup>.

### **I. General Policy on Traffic Signs**

The California Vehicle Code (CVC) provides that "(a) Except as provided in Section 21374 [relating to directional signs for tourists] only those official traffic control devices that conform to the uniform standards and specifications promulgated by the Department of Transportation shall be placed upon a street or highway..." Hence, the City of Berkeley Public Works Department follows standard professional engineering practices as prescribed in the California Department of Transportation (Caltrans) Manual on Uniform Traffic Control Devices. The Manual has the following provisions, among others, that guide the City's policy and procedures for sign installation:

- A. Excessive use of signs should be avoided.
- B. Signs should be used where warranted by facts and field studies.
- C. No traffic sign or its support shall bear any message that is not essential to traffic control.
- D. Effective traffic control depends not only on appropriate application of devices, but on reasonable enforcement of regulations as well.

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<sup>1</sup> State of California Vehicle Code

<sup>2</sup> 2014 Manual on Uniform Traffic Control Devices, Rev. 4

- E. Data obtained from traffic engineering studies of physical and traffic related factors should be used in determining where signs are necessary.
- F. Care should be taken not to install too many signs. A conservative use of regulatory and warning signs is recommended as these signs, if used to excess, tend to lose their effectiveness.

## II. Legal Authority for Stop Sign Installation

The California Vehicle Code (CVC) includes the following excerpts regarding local authority on stop signs.

- A. *Local Authority, CVC §21351*: Local authorities in their respective jurisdictions shall place and maintain or cause to be placed and maintained such traffic signs, signals and other traffic control devices upon streets and highways as required hereunder, and may place and maintain or cause to be placed and maintained such appropriate signs, signals and other traffic control devices as may be authorized hereunder or as may be necessary properly to indicate and to carry out the provisions of this code or local traffic ordinances or to warn or guide traffic.
- B. *Stop Signs on Local Highways, CVC §21354*: ...a local authority may designate any highway under its jurisdiction as a through highway and may erect stop signs at entrances thereto or may designate any intersection under its exclusive jurisdiction as a stop intersection and erect stop signs at one or more entrances thereto.
- C. *Stop Signs, CVC §21355*: ...The Department of Transportation and local authorities in their respective jurisdictions may erect stop signs at any location so as to control traffic within an intersection.
- D. *Stop Requirements, CVC §22450(b)*. Notwithstanding any other provision of law, a local authority may adopt rules and regulations by ordinance or resolution providing for the placement of a stop sign at any location on a highway under its jurisdiction where the stop sign would enhance traffic safety.

## III. Specific Policy on Stop Signs

The California MUTCD provides the following general policies with respect to the installation of Stop signs, which the Public Works Department will uphold:

- A. Stop signs should not be used for speed control.
- B. Stop signs shall not be erected at any entrance to an intersection when such entrance is controlled by an official traffic control signal, nor at any railroad grade crossing which is controlled by automatic signals, gates, or other train-actuated

control devices except as provided in *CVC §21355, Stop Signs*. The conflicting commands of two types of control devices are confusing.

- C. Portable or part-time Stop signs shall not be used except for emergency purposes.

#### IV. Multiway Stop Installation Warrants

The California MUTCD recommends that the decision to install multiway stop control should be based on an engineering study. The Public Works Department will conduct or sponsor an engineering study to determine the appropriateness of multiway stop control based on the warrants described below.

The California MUTCD specifies that any of the following locations (or conditions) may warrant multiway stop sign installation:

- A. Where traffic control signals are warranted and urgently needed, the multiway stop may be an interim measure that can be installed quickly to control traffic while arrangements are being made for the signalization installations.
- B. An accident problem, as indicated by 5 or more reported accidents within a 12-month period of a type susceptible of correction by a multiway stop installation. Such accidents include right- and left-turn collisions as well as right-angle collisions.
- C. Minimum volumes:
  - 1. The total vehicular volume entering the intersection from all approaches must average at least 500 vehicles per hour for any 8 hours of an average day, and
  - 2. The combined vehicular and pedestrian volume from the minor street or highway must average at least 200 units per hour for the same 8 hours, with an average delay to minor-street vehicular traffic of at least 30 seconds per vehicle during the maximum hour, but
  - 3. When the 85<sup>th</sup>-percentile approach speed exceeds 64 km/hr (40 mph), the minimum vehicular volume warrant is 70 percent of the above requirements.

#### V. Special Conditions

Based on the optional criteria prescribed by the MUTCD, the Transportation Division may require an engineering study for special situations on a case-by-case basis. In special situations where the multiway stop warrants from Section IV are not satisfied, the Transportation Division may recommend the installation of multiway stop control to protect pedestrians, wheelchair users, and bicyclists for the following specific special conditions,

based on professional engineering judgment and as determined by the Transportation Manager:

- A. The need to control vehicle/pedestrian conflicts near locations that generate high pedestrian volumes, such as intersections adjacent to schools, commercial center or park.
- B. The need to control vehicle/bicyclist conflicts where a street that is designated as a bikeway in Berkeley's bicycle plan crosses a major street. Bikeways include all routes shown as part of the bikeway network in Figure 3.1: Existing Bikeway Network or in Figure 5.1: Low Stress Bikeway Network Vision in the Berkeley Bicycle Plan adopted on May 2, 2017.
- C. Locations where a road user, after stopping, cannot see conflicting traffic and is not able to safely negotiate the intersection unless conflicting cross traffic is also required to stop.

Four-way stop signs may be installed but will not necessarily be installed at intersections that meet these supplemental criteria. The Transportation Division should compare the effects of stop signs and alternate controls on all forms of transportation, including public transit buses which employ professional drivers, before deciding whether to install it. For example, to protect bicyclists, HAWK Beacons may be more appropriate than stop signs at intersections where bikeways cross major streets with transit or very high traffic volume, to minimize the disruption of traffic flow on those major streets. Likewise, to protect pedestrians, Rectangular Rapid Flashing Beacons (RRFBs) may be more appropriate than stop signs on major streets with transit or very high traffic volumes to minimize the disruption of traffic flow.

If stop signs are allowed under these new criteria, it is not necessary to meet state criteria. Analyses for stop signs in all locations in Berkeley should consider the benefits of proposed stop signs, including safety benefits, and this analysis should be made available to the public before the decision is made.







Rashi Kesarwani  
Councilmember District 1

CONSENT CALENDAR  
November 10, 2020

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author), Mayor Jesse Arreguin (co-sponsor)

SUBJECT: Authorize Installation of Security Cameras at Major Berkeley Arterial Streets Serving as Entry and Exit Points for the City and Request an Environmental Safety Assessment in High Crime Areas of the City

RECOMMENDATION

In order to deter would-be perpetrators of gun violence and apprehend those engaging in gun violence, adopt the following recommendations:

- Request that the City Manager install security cameras and increased lighting at appropriate arterial streets serving as entry into and exit out of the City of Berkeley in conjunction with prominently displayed signage;
- Refer to the City Manager to perform an environmental safety assessment of the high crime areas specifically in South and West Berkeley;
- Refer costs for security cameras and lighting to the mid-year budget process for FY 2020-21.

FISCAL IMPACT

Approximately \$500,000 to \$1 million for purchasing security cameras including camera storage and maintenance, as well as signage installation and increased lighting.

CURRENT SITUATION AND ITS EFFECTS

Following regional and national trends, the City of Berkeley is experiencing an uptick in shootings. According to Berkeleyside, Berkeley saw 20 shootings in 2018, 28 shootings in 2019, and 32 shootings so far in 2020 with more than two months remaining in the year.<sup>1</sup> Most recently, on Wed., Oct. 21, 17 shots were fired within 20 seconds on Prince

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<sup>1</sup> "Annual crime report sees shootings rise for the third straight year," Oct. 15, 2020, [https://www.berkeleyside.com/2020/10/15/2020-berkeley-crime-report-shootings-rise-use-of-force-stop-data?doing\\_wp\\_cron=1603673460.1734480857849121093750](https://www.berkeleyside.com/2020/10/15/2020-berkeley-crime-report-shootings-rise-use-of-force-stop-data?doing_wp_cron=1603673460.1734480857849121093750) (

## Authorize Installation of Security Cameras at Major Berkeley Arterial Streets

Street near Ellis Street, tragically killing 19-year-old Sereinat'e Henderson, who was pregnant and the mother of a 10-month-old son. In an online fundraiser for her family, Sereinat'e is described as a "vibrant young woman."

In addition to the tragic death of Sereinat'e Henderson, our community lost three others from fatal shootings in 2020; at least 10 others have been wounded.<sup>2</sup> Shootings often involve suspects who flee the area of the crime in their vehicles. Police investigating the crime rely on private security cameras owned by residents and/or businesses in order to obtain video evidence. Installing high-quality cameras at major arterials would ensure access to videos and allow investigators to check the videos for suspects fleeing the crime area in their vehicle. High-quality images of suspect vehicles would provide valuable investigative leads. Strategically placed cameras should be of sufficient quality to capture high resolution video. Cameras would not be equipped with Automated License Plate Readers (ALPR), and would not be monitored. The recordings would be an investigative resource which officers could access while investigating specific crimes and could assist in a reduction of crime. This would be an additional element of our Police Department's crime prevention strategies.

Estimated one-time costs to install cameras, signage and lighting are likely to range from \$75,000 to \$150,000 per intersection, plus \$40,000 annually for data, software and maintenance.

Key intersections entering and leaving Berkeley to be considered should include:

- 6<sup>th</sup>/University
- 7<sup>th</sup>/Ashby
- San Pablo Ave./Ashby
- Sacramento/Alcatraz
- Alcatraz/Adeline
- Ashby/Telegraph
- San Pablo Ave./Gilman
- Gilman/6<sup>th</sup>
- College/Alcatraz
- Ashby/Domingo
- Ashby/Claremont
- Solano/Colusa
- Marin/Colusa

Other possible intersections to consider within Berkeley:

- University/San Pablo

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<sup>2</sup> The 2020 Berkeley gunfire map, Updated Oct. 23, <https://www.berkeleyside.com/2020/10/03/2020-berkeley-gunfire-map>

Authorize Installation of Security Cameras at Major Berkeley Arterial Streets

- University/Shattuck
- University/Sacramento
- Sacramento/Ashby

Berkeley's Police Department has been conducting Crime Prevention Through Environmental Design (CPTED) assessments for neighborhoods throughout the City for years. Such assessments include recommendations such as: increased lighting, maintenance of properties, landscaping and signage that can be used to deter criminal behavior. The National Institute of Crime Prevention notes: "The proper design and effective use of the built environment can lead to a reduction in the fear and incidence of crime, and to an improvement in quality of life."

BACKGROUND

A 2011 report from The Urban Institute's Justice Policy Center notes that cameras can be an effective fiscally prudent tool for preventing crimes and supporting investigations; and installation and maintenance of security cameras is less costly than the associated costs with crimes that take place without them.

"Stationary security cameras affixed to City property or facilities" are not regulated under the Surveillance Technology Ordinance (See BMC Section 2.99.020.1.i). As a result, stationary camera installation at major thoroughfares would be exempt from the requirements of BMC Chapter 2.99.

ENVIRONMENTAL SUSTAINABILITY

This item has no impact on environmental sustainability.

CONTACT

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





Rashi Kesarwani  
Councilmember District 1

CONSENT CALENDAR  
November 10, 2020

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (author), Mayor Jesse Arreguin and Councilmember Cheryl Davila (co-sponsors)

SUBJECT: Budget Referral to Reinstate Partial Funding for the Gun Buyback Program Previously Authorized by City Council

RECOMMENDATION

Refer to the FY 2020-21 November Amendment to the Annual Appropriations Ordinance (AAO #1) \$40,000 to reinstate partial funding for the Gun Buyback Program—originally proposed by Councilmember Cheryl Davila and authorized by the City Council on Nov. 27, 2018.

FISCAL IMPACTS

Funding of \$40,000 would enable the City of Berkeley to: remove guns from households by providing cash or gift cards to owners of operational rifles and shotguns (value of approximately \$100) and to owners of operational handguns and assault weapons (value of approximately \$200); and cover staff time necessary to support a gun buyback program.

CURRENT SITUATION AND ITS EFFECTS

Gun violence in Berkeley is on the rise, following regional and national trends.<sup>1</sup> According to Berkeleyside, the City of Berkeley saw 20 shootings in 2018, 28 shootings in 2019, and 32 shootings so far in 2020 with more than two months remaining in the year.<sup>2</sup> As a result of this violence, our community has lost four individuals from fatal shootings and at least 10 others have been wounded. Prior to this year, the last fatal

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<sup>1</sup> “Shootings and Gun Deaths Continue To Rise At Alarming Rate In Large U.S. Cities,” Aug. 2, 2020, Forbes, <https://www.forbes.com/sites/tommybeer/2020/08/02/shootings-and-gun-deaths-continue-to-rise-at-alarming-rate-in-large-us-cities/#234142966f0f>.

<sup>2</sup> “Annual crime report sees shootings rise for the third straight year,” Oct. 15, 2020, Berkeleyside, [https://www.berkeleyside.com/2020/10/15/2020-berkeley-crime-report-shootings-rise-use-of-force-stop-data?doing\\_wp\\_cron=1603673460.1734480857849121093750](https://www.berkeleyside.com/2020/10/15/2020-berkeley-crime-report-shootings-rise-use-of-force-stop-data?doing_wp_cron=1603673460.1734480857849121093750).

Budget Referral to Reinstate Partial Funding for Gun Buyback Program

shooting occurred in 2016, when 22-year-old Alex Goodwin Jr. was killed outside his home near San Pablo Park.<sup>3</sup>

Gun buybacks are programs aimed at voluntarily decreasing the prevalence of firearms in a community by offering cash or gift cards in exchange for working guns. A meta-analysis from Dec. 2019 in *Current Trauma Reports* suggests that gun buybacks should be included in broader violence reduction strategies. “Buybacks in conjunction with other methods have been shown to be successful in reducing the number of firearms that could lead to injury and death,” the authors write.<sup>4</sup> Further, according to current academic research, gun buybacks “can influence public perception of how authorities are dealing with gun violence and serve as opportunities to educate communities about gun violence reduction strategies.”<sup>5</sup> A gun buyback program can be a piece of our communal effort to reimagine public safety.

BACKGROUND

Councilmember Cheryl Davila submitted the original referral to fund a gun buyback program to our Annual Appropriations Ordinance Process in Nov. 2018, which was approved on consent (see attachment A). An integral part of this initial Council item referenced a partnership between Berkeley Police Department and a non-profit, the Robby Poblete Foundation (RPF). Given that gun violence has been responsible for four deaths in the last ten months alone, this item recommends reinstating funding for a gun buyback program. According to the RPF website, 190 firearms were removed from the City of Richmond during a gun buyback event; and 900 were removed from San Francisco during a gun buyback held in June 2018.<sup>6</sup>

ENVIRONMENTAL SUSTAINABILITY

No direct impact on environmental sustainability.

CONTACT

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

Attachments:

- A: Item #22 “Budget Referral: Gun Buyback Program and Art of Peace Program

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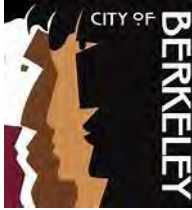
<sup>3</sup> The 2020 Berkeley gunfire map, Updated Oct. 23, Berkeleyside, <https://www.berkeleyside.com/2020/10/03/2020-berkeley-gunfire-map>.

<sup>4</sup> A Review of Gun Buybacks,” Nov. 1, 2019, Current Trauma Reports, <https://link.springer.com/article/10.1007/s40719-019-00180-8>.

<sup>5</sup> “Gun buybacks: What the research says,” Jan. 9, 2020, Harvard Kennedy School Shorenstein Center on Media, Politics and Public Policy, <https://journalistsresource.org/studies/gun-violence/gun-buybacks-what-the-research-says/>.

<sup>6</sup> RPF Gun Buyback Program, <http://robbypobletefoundation.org/rpf-gun-buyback-program/>.

Budget Referral to Reinstate Partial Funding for Gun Buyback Program



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
November 27, 2018

To: Honorable Mayor and Members of the City Council  
From: Councilmember Cheryl Davila  
Subject: Budget Referral: Gun Buyback and Art of Peace Program

RECOMMENDATION

AAO Budget Referral to the FY19 (2018/2019) November 2018 AAO Budget Process to set aside \$60,000 to frontload funds to bring the Robby Poblete Foundation Gun Buyback, Art of Peace and Work in Progress programs to Berkeley.

The Robby Poblete Foundation coordinates all aspects of the programs, including promotional materials, promotion on platforms and local calendars, press releases, press conferences and media contacts, coordinating the buyback with the police department, purchasing and release of gift cards, breaking down the guns free of charge (if desired), recruiting artists, coordinating the artist competition and selection process, coordinating the Art of Peace unveiling and event, and connecting youth and families with apprenticeships, job training and placement programs.

The Robby Poblete Foundation will also partner with the City of Berkeley to reach out to foundations, local businesses and individual donors to cover the costs of the program, including the gift cards. All efforts will be made to fundraise and refund the full \$60,000.

The City of Berkeley needs to provide the following:

- **Police time** to coordinate the gun buyback with the Foundation, the day-of to accept, record and check firearms to ensure that none of those accepted are stolen and to staff the event to ensure safety, as well as transport and storage of guns until they are shipped for breakdown.
- **Front-loading the \$60,000** to cover an estimated 400 firearms at \$100 and \$200 per a buyback. This estimate is based on Berkeley's centrality, timing since the last buyback in the area and recent buyback programs. Any funds not used will be returned to the City. If additional funds are needed, the Foundation covers the cost and works to apply for additional funds. We do not want to turn guns away.
- **Participation:** promoting programs and events, identifying businesses for the Foundation to approach, recruiting and selecting artists, and participating in public and media events.



### FISCAL IMPACTS OF RECOMMENDATION

\$60,000 for a contract with a community youth provider. Staff time creating and reviewing RFP applications, and creating and monitoring the contract.

### BACKGROUND

The Robby Poblete Foundation is a registered 501©(3) nonprofit organization whose mission is to reduce gun violence by collecting unwanted firearms through gun buybacks, and transform them into instruments of hope and opportunity through art and vocational skills programs.

Pati Navalta started the program after she lost her son to gun violence four-years ago. From this tragedy she started the Foundation to stop gun violence and is supporting work across the Bay Area, and Los Angeles and Georgia in replicating the program. The gun buyback program has been implemented in Richmond, Vallejo, San Francisco and Oakland.

The program has collected over 1,000 firearms, including handguns, rifles and assault weapons. In addition, they have collected boxes of stars, rocket launchers and knives. By providing gift cards from local businesses, they are getting firearms off of the streets while supporting the local economy. The gun buyback events include free gun locks, too.

The guns are then broken down and given back to the community to create public art. A design competition is promoted and community artists submit proposals that are reviewed by a community panel. Selected artists use the broken down gun parts and shells to create Art of Peace. The art work is then unveiled during a community event and visited by schools and programs to raise awareness toward violence prevention. Young people who are interested can then participate in the Work in Progress program that works with 5 apprenticeship programs to train young people including their family members, including people who are formerly incarcerated and homeless, in a trade and then place them in employment with life and job coaching support.

Councilmember Davila's office, the Berkeley Police Department and City Manager's office attended a presentation from the Robby Poblete Foundation, and all shared interest in and support for all three programs for Berkeley.

### ENVIRONMENTAL SUSTAINABILITY

The program not only removes guns from the street and community that can be used to harm, but creates public awareness about how communities can participate in gun violence prevention. It creates a culture of hope and possibility to counter the despair and culture of violence that leads to gun-related deaths and injuries.

### CONTACT PERSON

Councilmember Cheryl Davila 510.981.7120

### ATTACHMENTS

- Robby Poblete Foundation overview PowerPoint



Robby Poblete Foundation

*Transforming unwanted firearms into instruments of hope and opportunity*

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## Overview

# Who We Are

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The Robby Poblete Foundation is a registered 501©(3) nonprofit organization whose mission is to reduce gun violence by collecting unwanted firearms through gun buybacks, and transform them into instruments of hope and opportunity through art and vocational skills programs.

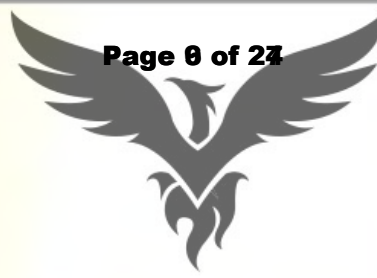


# Our Programs

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- **Annual Gun Buyback:** Prevent unwanted firearms from falling into the wrong hands by holding gun buybacks
- **Art of Peace:** Transform unwanted firearms into instruments of hope and opportunity
- **Work In Progress:** Work with local unions, businesses and county office of education and correctional facilities to raise awareness about opportunities in skilled trades, provide introductory training programs, and help with apprenticeships, certifications and job placement. Focused on youth, young adults and ex offenders.





Robby Poblete Foundation



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# Gun Buyback

# Gun Buyback

AUGUST 26, 2017 // SOLANO COUNTY FAIRGROUNDS

## BUYBACK OUR FUTURE

### 2017 SOLANO COUNTY GUN BUYBACK

**TURN IN GUNS FOR VISA PREPAID CARDS OR GIFT CARDS, NO QUESTIONS ASKED**  
 Please transport your firearms unloaded and in the trunk of your vehicle  
 Up to \$100 in Visa prepaid cards or gift cards for each rifle, shotgun and handgun  
 Up to \$200 in Visa prepaid cards or gift cards for each assault weapon, as classified in the State of CA

THIS EVENT IS BEING PRESENTED BY:



**THE ERIC REYES**  
FOUNDATION

A registered 501(c)(3) nonprofit organization  
Federal Tax ID: 81-3558166



**Robby Poblete Foundation**

A registered 501(c)(3) nonprofit organization  
Federal Tax ID: 83-0740632

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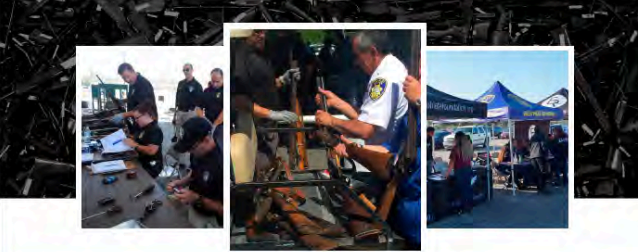
Senator Bill Dodd - Assembly Member Timothy Grayson - Solano County District Attorney's Office - Solano County Supervisor Eric Hanson  
 Solano County Arts Council - Major Solano Construction & Building Trades Council - Vallejo City Councilwoman Rocanna Vander-Aalge  
 Vallejo Mayor Bob Sampayan - Toyota - Neighborhood Riding - Club Side - Tacos Jalisco - Dos De Oros - Beer's Bridal

\*Funds are limited. We reserve the right to limit the amount of cash an individual can receive, regardless of the amount of firearms surrendered.

180 firearms:  
 66 handguns  
 111 rifles  
 3 assault  
 weapons

SOLANO COUNTY

## GUN BUYBACK 2018





**EXPOSITION HALL, SOLANO COUNTY FAIRGROUNDS, VALLEJO**  
**SATURDAY, NOVEMBER 3, 2018 // 9 AM - 2 PM**

**Turn in guns for gift cards. No questions asked.**  
 Please transport your firearms unloaded and in the trunk of your vehicle  
**Up to \$100** in gift cards for each rifle and shotgun  
**Up to \$200** in gift cards for each handgun and assault weapon, as classified by the State of CA

Ammunition and other weapons, such as throwing stars, butterfly knives, switchblades, brass knuckles, will be accepted; however no gift cards will be given for these items.


This event is being presented by:





**ROBBY POBLETE FOUNDATION**

A registered 501(c)(3) nonprofit organization  
Federal Tax ID: 82-0740602



**THE ERIC REYES**  
FOUNDATION

A registered 501(c)(3) nonprofit organization  
Federal Tax ID: 81-3558166

\*Funds are limited. We reserve the right to limit the amount of gift cards an individual can receive, regardless of the amount of firearms surrendered.

115 firearms:  
 44 long guns  
 70 handguns  
 1 assault  
 weapon



# Gun Buyback

## 2017 RICHMOND GUN BUYBACK

Turn in guns for gift cards. No questions asked.

Please ensure all firearms are unloaded and kept in the trunk of your car before coming to the gun buyback.

### Up to \$100

in Visa prepaid cards or gift cards for each rifle, shotgun and handgun

### Up to \$200

in Visa prepaid cards or gift cards for each assault weapon, as classified in the State of CA

\* Funds are limited. We reserve the right to limit the amount of cash an individual can receive, regardless of the amount of firearms surrendered.

SUNDAY, DECEMBER 17, 2017  
10 AM - 2 PM

450 CIVIC CENTER PLAZA  
RICHMOND, CA

This event is being presented by:



Robby Poblete Foundation  
robbypobletefoundation.org



48 firearms:  
14 rifles  
6 shotguns  
15 semi-auto  
pistols  
13 revolvers

## 2018 RICHMOND GUN BUYBACK

TURN IN GUNS FOR GIFT CARDS  
NO QUESTIONS ASKED

### UP TO \$100

in gift cards for each rifle, shotgun and handgun

### UP TO \$200

in Visa prepaid cards or gift cards for each assault weapon,  
as classified in the State of CA

\* Funds are limited. We reserve the right to limit the amount of cash an individual can receive, regardless of the amount of firearms surrendered.

\* PLEASE TRANSPORT YOUR FIREARMS UNLOADED AND IN THE TRUNK OF YOUR VEHICLE.

SATURDAY  
AUGUST 18, 2018  
10 AM - 2 PM

450 CIVIC CENTER PLAZA  
RICHMOND, CA

This event is being presented by:



Robby Poblete Foundation  
robbypobletefoundation.org



51 firearms:  
13 shotguns  
7 pistols  
8 assault  
weapons  
10 rifles  
13 revolvers



# Gun Buyback



Robby Poblete Foundation



187 firearms

**FUTURE SUCCESSORS & AMERICORPS VISTA PRESENT**  
*5th Annual Gun Buyback*



**Date:** August 4, 2018  
**Time:** 9am - 11am  
**Location:** Antioch Baptist Church  
 1454 Florence Street Augusta, GA 30901



Proudly sponsored by  
 the Robby  
 Poblete Foundation

**Turn in your useless UNLOADED firearms  
 in an empty shoebox  
 \$50 giftcard for every firearm turned in  
 No questions asked**



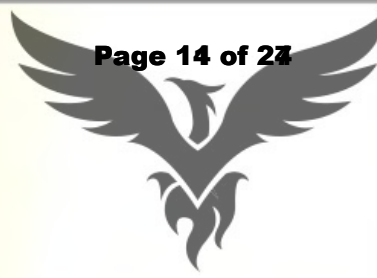

<https://futuresuccessors.org/>





# Solano County Gun Buyback





Robby Poblete Foundation

- *Transforming unwanted firearms into instruments of hope and opportunity*
- 



# Process



Robby Poblete Foundation



- Founded: February 2017      - Planning meeting: April 27      - Call for Entry: June      - Gun Buyback, August 26, 2017



- Gun materials: October 1      Artist pick-up: January 2018      Art of Peace unveiling: May 11, 2018



# Art of Peace Commissioned Art



Robby's Arc, John Ton



Blue Heron, Joel Stockdill



Simorgh, Keyvan Shovir



# Art of Peace Commissioned Art



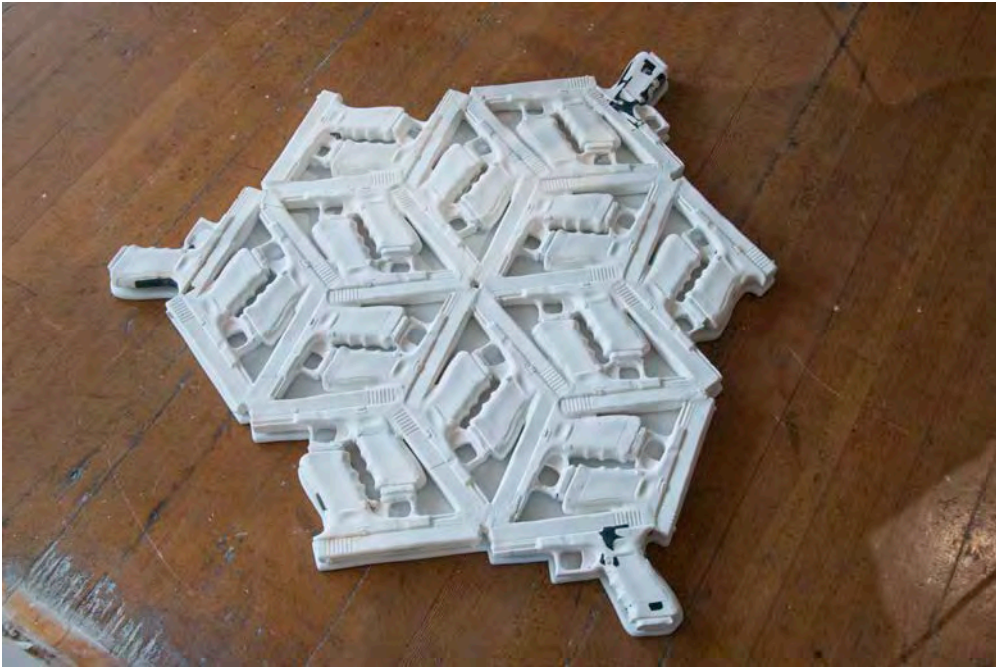
Boarapillar, Karen Lewis



Home, Sweet Home, Tsungwei Moo



# Art of Peace Commissioned Art



Floor Mandala, Matthew Mosher



Memorial Pillar, Kaytea Petro



# Art of Peace Commissioned Art



Wave of Violence, Jean Cherie



# Art of Peace: Scale

---

## Bay Area (Secured):

- ✓ Vallejo
- ✓ Alameda County (Oakland)
- ✓ Richmond (Contra Costa County)
- ✓ San Francisco

## Requests from:

- Los Angeles
- Atlanta, Augusta, Georgia





# Art of Peace: Alameda



# Media Coverage

**San Francisco Chronicle**


LOCAL ELECTION 2018 US & WORLD OPINION SPORTS BIZ+TECH A&E FOOD LIFESTYLE VAULT: ARCHIVE PODCASTS INVESTIGATIONS IN-DEPTH

PsPrint - Up to 60% off - Quality Printing For 25 Years  
Get Consistent Quality Every Time. Official Site. Regular 60% Sales. [psprint.com/Discounts](http://psprint.com/Discounts)

**STYLE**

## How a mother turned the death of her son to an art-filled mission of peace

Carolyne Zinko | May 10, 2018 | updated: May 10, 2018 8:30 p.m.



1 of 2  
Pati Navalta holds a piece of art created by her son Robby when he was 12, at her home in Fairfield. To turn her anguish of losing her 23-year-old son Robby Poblete to gun violence, she created the Robby ...  
Photo: Michael Maroz / The Chronicle

**Most Popular**

- Black firefighter on inspection duty in Oakland hills gets videotaped, reported to police
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# San Francisco Chronicle

**The Mercury News**

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NEWS LOCAL SPORTS BUSINESS ENTERTAINMENT OBITUARIES THE CANNIFORNIAN

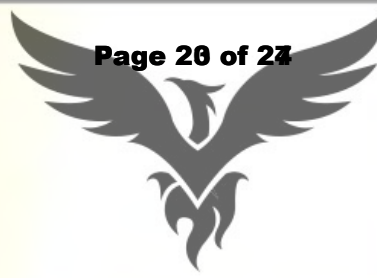
TRENDING: Red Hen vs. Sarah Sanders #PermitPatty Pride parades Jimmy Fallon & Trump BET Awards NASCAR trickery

**NORTHERN CALIFORNIA'S LARGEST HUNTING & FISHING STORE**  
GUNS + FISHING & OTHER STUFF  
Dublin 8705 Arroyo Plaza Rd. Dublin, CA 94568 (925) 828-4267

News > California News

## Dismantled guns, bullets secured for Bay Area 'Art of Peace'



Robby Poblete Foundation



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# Work In Progress

# Apprenticeship Bus Tour



September 29, 2017: 150 students, 5 apprenticeship centers in county



# Work In Progress



Women In Trades, Solano County, Feb. 9, 2018

Hands-On Career Fair, Solano County, April 20, 2018

Women In Trades, Contra Costa County, October 19, 2018



# Work In Progress: Scholarships



Apprenticeships and training programs

\$20,000+ in scholarships - to date

Outreach

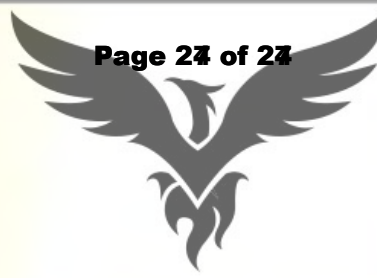


TRADESWOMEN, INC.



WORKFORCE DEVELOPMENT BOARD OF SOLANO COUNTY





Robby Poblete Foundation

*For more information, please go to [robbypobletefoundation.org](http://robbypobletefoundation.org) or email [info@robbypobletefoundation.org](mailto:info@robbypobletefoundation.org)*

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**Thank you**







Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR

November 10, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

**Subject: Open Pathways (including laundry services), West Campus Pool and Martin Luther King Jr. Pool (King pool) to implement the City of Berkeley Shower Program at these locations and provide the ability for our community to shower during the COVID 19 pandemic.**

~~Subject: Open West Campus Pool and Martin Luther King Jr. Pool (King pool) to implement the City of Berkeley Shower Program at these locations, and provide the ability for our community to shower during the COVID 19 Pandemic.~~

RECOMMENDATION

**Direct the City Manager to open the Pathways (including laundry services), West Campus Pool and Martin Luther King Jr. Middle School (King pool) Pool to implement the City of Berkeley Shower Program at these locations. Opening these locations will provide the ability for our community to shower during the COVID 19 Pandemic, a humane action required during this crisis.**

~~Direct the City Manager to open the West Campus Pool and Martin Luther King Jr. Middle School (King pool) Pool to implement the City of Berkeley Shower Program at these locations. Opening the West Campus Pool and Martin Luther King Jr. Middle School (King pool) pool will provide the ability for our community to shower during the COVID 19 Pandemic, a humane action required during this crisis.~~

POLICY COMMITTEE RECOMMENDATION

On October 8, 2020, the Budget & Finance Committee took action M/S/C (Arreguin/Droste) to send the item to Council with a qualified positive recommendation acknowledging that the City Manager is already implementing a shower program and to thank the City Manager for initiating this program and to encourage its continued operation during the COVID emergency. Vote: All Ayes.

## FINANCIAL IMPLICATIONS

To operate a year-round shower program that duplicates the program at the Willard Pool would cost to establish a shower program would be approximately \$270,100 plus for the two locations.

~~To operate a year-round shower program that duplicates the program at the Willard Pool would cost to establish a shower program would be approximately \$270,100 for both locations..~~

## BACKGROUND

Berkeley, now impacted by the COVID19 pandemic crisis, a housing affordability crisis, and a homelessness crisis. COVID 19 requires one to have good personal hygiene and washing one's hands multiple times during the day for 20+ seconds, wiping surfaces, and enhanced cleanliness. Currently, there are no shower programs in West or South Berkeley where there are high concentrations of our curbside communities who do not have access to showers. The contract with Project WeHope / Dignity on Wheels that provides homeless individual access to clean showers, laundry service and bathroom facilities is pending. Therefore, Project WeHope / Dignity on Wheels is not available at this time. We are in a pandemic which requires ways for our community to be cleaner to prevent further community spread transmissions.

~~The Coronavirus or COVID 19 pandemic requires cleanliness, washing our hands, often for twenty seconds or longer, washing our face, etc. Currently, there is no shower program in West or South Berkeley where there are high concentrations of our curbside communities who do not have access to showers. The contract with Project WeHope / Dignity on Wheels that provides homeless individual access to clean showers, laundry service and bathroom facilities is pending. Therefore, Project WeHope / Dignity on Wheels is not available at this time. We are in a pandemic which requires ways for our community to be cleaner to prevent further community transmissions.~~

The Willard Shower program is operated by the Parks, Recreation and Waterfront Department (PRW) at the Willard Recreation Administration office, 2701 Telegraph Avenue. The Telegraph location is not convenient for the curbside community in West and South Berkeley. Pathways, West Campus Pool and the Martin Luther King Jr. Middle School pool will enable the curbside community in West and South Berkeley access to showers closer to their location.

~~The Willard Shower program is operated by the Parks, Recreation and Waterfront Department (PRW) at the Willard Recreation Administration office, 2701 Telegraph Avenue. The Telegraph location is not convenient for the curbside community in West and South Berkeley. West Campus Pool and the Martin Luther King Jr. Middle School pool will enable the curbside community in West and South Berkeley access to showers closer to their location.~~

Pathways should open their showers and laundry facilities to be utilized, as well during the COVID 19 pandemic.

In January 2018, the City Council considered Council Item<sup>14</sup>. "Open the West Campus Pool All Year Round and Start the Shower Program at the West Campus Pool". Months later, the City Manager provided a response <sup>2</sup> to the City Council in June 2018, where it identified the cost to establish a shower program similar to the Willard Shower Program at West Campus pool. The COVID 19 Pandemic is upon us we must

do all that we can to mitigate the dire consequences. We need to ensure that the shower program is also accessible and equitable to all residents.

~~In January 2018, the City Council considered Council Item <sup>1</sup>"Open the West Campus Pool All Year Round and Start the Shower Program at the West Campus Pool". Months later, the City Manager provided a response <sup>2</sup>to the City Council in June 2018, where it identified the cost to establish a shower program similar to the Willard Shower Program at West Campus pool. The COVID 19 Pandemic is upon us we must do all that we can to mitigate the dire consequences. We need to ensure that the shower program is also accessible and equitable to all residents.~~

#### ENVIRONMENTAL SUSTAINABILITY

Access to the West Campus pool and Martin Luther King Jr. Middle School Pool is an important part of a healthy living lifestyle for the residents in West, South and all of Berkeley.

#### REFERENCES

1. Open the West Campus Pool All Year Round and Start the Shower Program at the West Campus Pool
2. [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_General/Shower%20Referral%20Response%20061218.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Shower%20Referral%20Response%20061218.pdf)

#### CONTACT PERSON

Cheryl Davila  
Councilmember District 2  
510.981.7120  
cdavila@cityofberkeley.info

#### ATTACHMENTS:

1. Resolution

#### CONTACT PERSON

Cheryl Davila  
Councilmember District 2  
510.981.7120, cdavila@cityofberkeley.info

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

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BERKELEY DIRECTING THE CITY MANAGER TO OPEN PATHWAYS (INCLUDING LAUNDRY SERVICES), WEST CAMPUS POOL AND MARTIN LUTHER KING JR. POOL (KING POOL) TO IMPLEMENT THE CITY OF BERKELEY SHOWER PROGRAM AT THESE LOCATIONS, AND PROVIDE THE ABILITY FOR OUR COMMUNITY TO SHOWER DURING THE COVID 19 PANDEMIC, A HUMANE ACTION REQUIRED DURING THIS CRISIS.

~~A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BERKELEY DIRECTING THE CITY MANAGER TO OPEN THE WEST CAMPUS POOL AND MARTIN LUTHER KING JR. MIDDLE SCHOOL POOL TO IMPLEMENT THE CITY OF BERKELEY SHOWER PROGRAM AT THESE LOCATIONS, AND PROVIDING THE ABILITY FOR OUR COMMUNITY TO SHOWER DURING THE COVID 19 PANDEMIC, A HUMANE ACTION REQUIRED DURING THIS CRISIS.~~

WHEREAS, Berkeley, now impacted by the COVID19 pandemic crisis, a housing affordability crisis, and a homelessness crisis; and

WHEREAS, the Coronavirus or COVID 19 pandemic requires cleanliness, washing our hands, often for twenty seconds or longer, washing our face, etc.; and

~~WHEREAS, The Coronavirus or COVID 19 pandemic requires cleanliness, washing our hands, often for twenty seconds or longer, washing our face, etc., and~~

WHEREAS, there is no shower program in West or South Berkeley where there are high concentrations of our curbside communities who do not have access to showers; and

~~WHEREAS, There is no shower program in West or South Berkeley where there are high concentrations of our curbside communities who do not have access to showers and,~~

WHEREAS, The Telegraph location is not convenient for the curbside community in West and South Berkeley. West Campus Pool and the Martin Luther King Jr. Middle School pool will enable the curbside community in West and South Berkeley access to showers closer to their location; and

~~WHEREAS, The Telegraph location is not convenient for the curbside community in West and South Berkeley. West Campus Pool and the Martin Luther King Jr. Middle School pool will enable the curbside community in West and South Berkeley access to showers closer to their location, and,~~

WHEREAS, In January 2018, the City Council considered Council Item: "Open the West Campus Pool All Year Round and Start the Shower Program at the West Campus Pool".

WHEREAS, The COVID 19 Pandemic is upon us we must do all that we can to mitigate the dire consequences. We need to ensure that the shower program is also accessible and equitable to all residents; and

~~WHEREAS, The COVID 19 Pandemic is upon us we must do all that we can to mitigate the dire consequences. We need to ensure that the shower program is also accessible and equitable to all residents.~~

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley, hereby directs the City Manager to open the Pathways, West Campus Pool and Martin Luther King Jr. Middle School (King pool) Pool to implement the City of Berkeley Shower Program at these locations. Opening these locations will provide the ability for our community to shower during the COVID 19 Pandemic, a humane action required during this crisis.

~~NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley, hereby directs the City Manager to open the West Campus Pool and Martin Luther King Jr Middle School (King pool) Pool to implement the City of Berkeley Shower Program at these locations. Opening the West Campus Pool and Martin Luther King Jr. Middle School (King Pool) pool will the ability for our community to shower during the COVID 19 Pandemic, a humane action required during this crisis.~~



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR

April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Open West Campus Pool and Martin Luther King Jr. Pool (King pool) to implement the City of Berkeley Shower Program at these locations, and provide the ability for our community to shower during the COVID 19 Pandemic.

RECOMMENDATION

Direct the City Manager to open the West Campus Pool and Martin Luther King Jr. Middle School (King pool) Pool to implement the City of Berkeley Shower Program at these locations. Opening the West Campus Pool and Martin Luther King Jr. Middle School (King pool) pool will provide the ability for our community to shower during the COVID 19 Pandemic, a humane action required during this crisis.

FINANCIAL IMPLICATIONS

To operate a year-round shower program that duplicates the program at the Willard Pool would cost to establish a shower program would be approximately \$270,100 for both locations..

BACKGROUND

The Coronavirus or COVID 19 pandemic requires cleanliness, washing our hands, often for twenty seconds or longer, washing our face, etc. Currently, there is no shower program in West or South Berkeley where there are high concentrations of our curbside communities who do not have access to showers. The contract with Project WeHope / Dignity on Wheels that provides homeless individual access to clean showers, laundry service and bathroom facilities is pending. Therefore, Project WeHope / Dignity on Wheels is not available at this time. We are in a pandemic which requires ways for our community to be cleaner to prevent further community transmissions.

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In January 2018, the City Council considered Council Item<sup>-1</sup>: “Open the West Campus Pool All Year Round and Start the Shower Program at the West Campus Pool”. Months later, the City Manager provided a response <sup>2</sup> to the City Council in June 2018, where it identified the cost to establish a shower program similar to the Willard Shower Program at West Campus pool. The COVID 19 Pandemic is upon us we must do all that we can to mitigate the dire consequences. We need to ensure that the shower program is also accessible and equitable to all residents.

ENVIRONMENTAL SUSTAINABILITY

Access to the West Campus pool and Martin Luther King Jr. Middle School Pool is an important part of a healthy living lifestyle for the residents in West, South and all of Berkeley.

REFERENCES

1. Open the West Campus Pool All Year Round and Start the Shower Program at the West Campus Pool
2. [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3 -  
\\_General/Shower%20Referral%20Response%20061218.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Shower%20Referral%20Response%20061218.pdf)

CONTACT PERSON

Cheryl Davila  
Councilmember District 2  
510.981.7120  
cdavila@cityofberkeley.info

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

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BERKELEY DIRECTING THE CITY MANAGER TO OPEN THE WEST CAMPUS POOL AND MARTIN LUTHER KING JR. MIDDLE SCHOOL POOL TO IMPLEMENT THE CITY OF BERKELEY SHOWER PROGRAM AT THESE LOCATIONS, AND PROVIDING THE ABILITY FOR OUR COMMUNITY TO

**Page 8 of 8**  
SHOWER DURING THE COVID 19 PANDEMIC, A HUMANE ACTION REQUIRED DURING THIS CRISIS.

WHEREAS, The Coronavirus or COVID 19 pandemic requires cleanliness, washing our hands, often for twenty seconds or longer, washing our face, etc., and

WHEREAS, There is no shower program in West or South Berkeley where there are high concentrations of our curbside communities who do not have access to showers and,

WHEREAS, The Telegraph location is not convenient for the curbside community in West and South Berkeley. West Campus Pool and the Martin Luther King Jr. Middle School pool will enable the curbside community in West and South Berkeley access to showers closer to their location, and,.

WHEREAS, In January 2018, the City Council considered Council Item: "Open the West Campus Pool All Year Round and Start the Shower Program at the West Campus Pool".

WHEREAS, The COVID 19 Pandemic is upon us we must do all that we can to mitigate the dire consequences. We need to ensure that the shower program is also accessible and equitable to all residents.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley, hereby directs the City Manager to open the West Campus Pool and Martin Luther King Jr Middle School (King pool) Pool to implement the City of Berkeley Shower Program at these locations. Opening the West Campus Pool and Martin Luther King Jr. Middle School (King Pool) pool will the ability for our community to shower during the COVID 19 Pandemic, a humane action required during this crisis.





Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
November 10, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Harrison  
Subject: Refer to the City Manager the design of a companion Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements to low-income residents

RECOMMENDATION

Refer to the City Manager the design of a Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements to low-income residents as a companion to the Council referral to expand the Seismic Transfer Tax Rebate Program to include efficiency and electrification retrofit measures.

POLICY COMMITTEE RECOMMENDATION

On October 7, 2020, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Harrison/Robinson) to move recommendation two to the City Council with a positive recommendation. The item was continued to the next meeting. Vote: All Ayes

BACKGROUND

On November 27, 2018, City Council adopted a referral sponsored by Councilmembers Harrison and Davila to expand the existing Seismic Transfer Tax Rebate Program to include qualifying electrification, energy efficiency and water conservation retrofits. Staff recently proposed delaying amendments to the ordinance expanding the scope of the program due to budgetary uncertainty. The item is currently under review by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee. Staff's item also included a proposed referral to the City Manager to design a companion Resilient Homes Equity Pilot Program that would eventually provide funding for home retrofit improvements to low-income residents.

The Facilities, Infrastructure, Transportation, Environment & Sustainability Committee continued the item at the October 7, 2020 meeting to further consult stakeholders and review the ordinance, however in recognition of the outreach-intensive nature and lead

Refer to the City Manager the design of a companion Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements to low-income residents

CONSENT CALENDAR  
November 10, 2020

time of designing a Resilient Homes Equity Pilot Program, the Committee acted to expeditiously advance the referral as a separate item to Council.

Council approval of the referral will ensure that staff will be able to design the Resilient Homes Equity Pilot Program in coordination with the proposed amendment to the Transfer Tax ordinance. Staff have indicated that they can begin to design the program in collaboration with community partners with existing staff resources; adoption of this referral does not commit the Council to expending additional funds.

### **Staff Proposal for Resilient Homes Equity Pilot Program**

Communities of color and low-income communities are not only most impacted by financial disparities, they are also the frontline communities most impacted by climate change and other disasters. The City of Berkeley values equity and strives to be a leader in developing creative approaches for addressing the affordability and housing crises the City faces, leading to displacement of people of color and low-income community members. The City also has ambitious goals to combat climate change and to become a more resilient City. Further, in the referral, Council urged staff to consider “the framework for a just and equitable transition” as laid out in the Climate Emergency.<sup>1</sup> These goals can all be aligned together to achieve multiple benefits in a new Resilient Homes Equity Pilot Program proposed by City staff.

An equity analysis of the impacts of the Transfer Tax Rebate Program considers who benefits, who is burdened and who is excluded. A transfer tax rebate program only benefits Berkeley residents who can afford to purchase a home, currently selling for an average of \$1.27 million.<sup>2</sup> Low-income residents often live in older homes that are most in need of home improvements for safety, health, comfort, efficiency, and resilience. Attachment 1 is an Equity White Paper written by Noel Simpkin, a UC Berkeley Masters of Planning graduate student. This paper applies an equity lens to the Seismic Retrofit Refund Program and recommends developing an equity pilot program that targets Berkeley’s underserved residents.

A concurrent Resilient Homes Equity Pilot Program would provide direct funding to low-income residents to improve their homes as a parallel program to the proposed expanded Resilience Transfer Tax Rebate, for home improvements. This equity pilot program would aim to provide a valuable benefit to low-income residents, long-term homeowners with limited incomes, and renters, who are not able to access the existing

---

<sup>1</sup> City of Berkeley, November 27, 2018 Council Referral: [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/11\\_Nov/Documents/Item\\_24\\_Rev\\_Harrison.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/11_Nov/Documents/Item_24_Rev_Harrison.aspx)

<sup>2</sup> Zillow, “Berkeley Home Prices & Values”: <https://www.zillow.com/berkeley-ca/home-values/>. Last accessed 3/5/2020.

Refer to the City Manager the design of a companion Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements to low-income residents

CONSENT CALENDAR  
November 10, 2020

Seismic or future Resilience Transfer Tax Rebate Program. This program could support homeowners' ability to remain in their homes, improve occupant health and increase resilience in an aging building stock. An equity pilot program would create a replicable example of how City programs can operationalize equity in residential buildings and assure equitable distribution of City resources. This program, once developed and approved, may provide additional funding and/or free resources for homeowners and leverage work in existing programs that benefit low income residents and homeowners. Staff would design the program in collaboration with community stakeholders to ensure that it will meet the needs of frontline communities such as low-income communities, communities of color, and those most affected by the impacts of climate change. If approved by Council, staff will begin to:

1. Design the program in collaboration with community stakeholders;
2. Develop a detailed budget;
3. Identify potential funding sources for the program;
4. Determine necessary staffing for program administration and implementation;
5. Prepare an implementation strategy including timelines; and
6. Return to Council for approval of the budget and implementation of the program.

This equity pilot program concept was discussed with and received support from the Berkeley Energy Commission, Disaster & Fire Safety Commission, and other stakeholders.

#### ENVIRONMENTAL SUSTAINABILITY

Developing a Resilient Homes Equity Pilot Program would extend the City's sustainability efforts further by providing these benefits to more buildings, serving a broader and more diverse set of Berkeley residents than would otherwise have access to the Resilience Transfer Tax Rebate Program.

#### FISCAL IMPACTS OF RECOMMENDATION

Staff time will be necessary to design the Resilient Homes Equity Pilot Program. Staff will seek additional resources to support engagement and co-creation of an equity program in partnership with representatives from low-income communities.

#### CONTACT PERSON

Councilmember Kate Harrison  
510-981-7140

#### ATTACHMENTS

Refer to the City Manager the design of a companion Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements to low-income residents

CONSENT CALENDAR  
November 10, 2020

1. Staff Report
2. Equity White Paper, "Resilience for All: Applying an Equity Lens to Berkeley's Seismic Transfer Tax Rebate Program"



Office of the City Manager

**02**

CONSENT CALENDAR  
July 21, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Timothy Burroughs, Director, Department of Planning & Development

Subject: Referral Response: Ordinance Amending Berkeley Municipal Code Chapter 7.52, Reducing Tax Imposed for Qualifying Electrification, Energy Efficiency and Water Conservation Retrofits

RECOMMENDATION

1. Delay adoption of the first reading of an ordinance amending the Berkeley Municipal Code (BMC) Chapter 7.52 to expand the Seismic Transfer Tax Rebate Program to include qualifying sustainability and resilience measures, and any associated budget requests, until FYE 2022 when more information on budget due to COVID-19 response and recovery is available; and
2. Refer to the City Manager the design of a companion Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements to low-income residents.

SUMMARY

On November 27, 2018, City Council adopted a referral sponsored by Councilmembers Harrison and Davila to expand the existing Seismic Transfer Tax Rebate Program to include qualifying electrification, energy efficiency and water conservation retrofits.<sup>1</sup> The Seismic Transfer Tax Rebate Program provides refunds for voluntary seismic upgrades to residential properties. Up to one-third of the base 1.5% transfer tax rate may be refunded, on a dollar-for-dollar basis, for voluntary seismic upgrades to residential property. Applicants have up to one year from the record of transfer to complete all seismic retrofit work, then apply for the rebate. The ordinance allows this deadline to be extended for good cause for up to one additional year.

This report and proposed actions are the result of in-depth analysis and input from stakeholders, including the Energy Commission and Disaster & Fire Safety Commission. The recommendations for updating the Transfer Tax Rebate program have General Fund budget implications for the City. Given challenges and uncertainties from COVID-19 response and recovery, staff now recommend that adoption of these

<sup>1</sup> See November 27, 2018 Council Referral:

[https://www.cityofberkeley.info/Clerk/City\\_Council/2018/11\\_Nov/Documents/Item\\_24\\_Rev\\_Harrison.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/11_Nov/Documents/Item_24_Rev_Harrison.aspx)

proposed changes be delayed. Staff will return to Council in one year, when more information on future budget constraints is available. Should Council approve the program changes in the future, staff would develop Administrative Regulations to define the qualifying measures and rebate application process.

The current Transfer Tax Rebate Program only benefits Berkeley residents who can afford to purchase a home in Berkeley, while low-income residents who often live in older homes most in need of improvements are excluded from this resource. Given that COVID-19 is exacerbating vulnerabilities of low income homeowners and renters, staff proposes development of a Resilient Homes Equity Pilot Program now, to complement a proposed future update to the Transfer Tax Rebate program.

#### FISCAL IMPACTS OF RECOMMENDATION

##### *Resilience Transfer Tax Rebate Program*

The current proposal of delaying program changes for one year has no fiscal impacts.

If these program changes are adopted in the future, there would be budget impacts. The current Seismic Transfer Tax Rebate Program reserves one-third of the base 1.5% transfer tax amount to be rebated from the General Fund. Based on residential property sales from 2014 to 2019, the average annual total net residential Transfer Tax (1.5%) was nearly \$14 million,<sup>2</sup> and the eligible rebate amount was approximately \$4.6 million. Funds not spent on rebates have remained in the General Fund.

As of the FY2018-2019 adopted budget, up to \$12.5 million of the net Transfer Tax amount goes to the General Fund, including the one-third subset which can be rebated to homeowners as part of the Seismic Transfer Tax Rebate Program. Anything received by the City exceeding \$12.5 million is to be used for Capital Improvement Projects.<sup>3</sup>

See Table 1 below for average transfers of residential, commercial, and mixed-use properties from 2014-2019.

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<sup>2</sup> This amount does not include the additional 1.0% of Transfer Tax funds that is dedicated for Measure P.

<sup>3</sup> City of Berkeley, Fiscal Years 2018 & 2019 Adopted Biennial Budget:  
<https://www.cityofberkeley.info/uploadedFiles/Manager/Budget/FY%202018-2019%20Adopted%20Budget%20Book.pdf>

Table 1 – 2014-2019 Residential, Commercial + Mixed Use Property Transfers<sup>4</sup>

| Fiscal Year:             | # Residential Transfers | Total Residential 1.5% Transfer Tax Amount | Eligible Residential Rebate Amount | # Commercial + Mixed Use Transfers | Commercial + Mixed Use Transfer Tax Amount (\$) | Potential Eligible Commercial + Mixed Use Rebate Amount | Total Potential Residential + Commercial + Mixed Use Rebate (\$) |
|--------------------------|-------------------------|--------------------------------------------|------------------------------------|------------------------------------|-------------------------------------------------|---------------------------------------------------------|------------------------------------------------------------------|
| 2014                     | 945                     | \$ 12,334,024                              | \$ 4,111,341                       | 69                                 | \$ 1,579,799                                    | \$ 526,600                                              | \$ 4,637,941                                                     |
| 2015                     | 886                     | \$ 12,474,066                              | \$ 4,158,022                       | 71                                 | \$ 3,093,733                                    | \$ 1,031,244                                            | \$ 5,189,267                                                     |
| 2016                     | 874                     | \$ 13,516,064                              | \$ 4,505,355                       | 64                                 | \$ 3,303,230                                    | \$ 1,101,077                                            | \$ 5,606,431                                                     |
| 2017                     | 710                     | \$ 13,410,320                              | \$ 4,470,107                       | 61                                 | \$ 3,002,048                                    | \$ 1,000,683                                            | \$ 5,470,789                                                     |
| 2018                     | 793                     | \$ 14,511,819                              | \$ 4,837,273                       | 79                                 | \$ 3,705,287                                    | \$ 1,235,096                                            | \$ 6,072,368                                                     |
| 2019                     | 863                     | \$ 17,577,210                              | \$ 5,859,070                       | 53                                 | \$ 2,519,843                                    | \$ 839,948                                              | \$ 6,699,018                                                     |
| <b>Average 2014-2019</b> | <b>845.17</b>           | <b>\$ 13,970,584</b>                       | <b>\$ 4,656,861</b>                | <b>66.17</b>                       | <b>\$ 2,867,323</b>                             | <b>\$ 955,774</b>                                       | <b>\$ 5,612,636</b>                                              |

### Resilient Homes Equity Pilot Program

Staff would design the program with existing capacity and return to Council with a full budget request, implementation strategy, and timelines.

### CURRENT SITUATION AND ITS EFFECTS

On November 27, 2018, the City Council adopted a referral, sponsored by Councilmembers Harrison and Davila, to expand the existing Seismic Transfer Tax Rebate Program for qualifying electrification, energy efficiency and water conservation retrofits. The referral was intended to increase use of the program to advance the community's greenhouse gas reductions, address the urgency of the Climate Emergency Declaration, and increase the community's resilience. The referral asked staff to evaluate options for additional qualifying measures, evaluate how the program expansion should interact with the existing seismic program, and consider the framework for a just and equitable transition as set out in the Climate Emergency Declaration.

In response to the referral, staff conducted outreach over many months with staff from multiple City departments, the Energy Commission, the Disaster and Fire Safety Commission, as well as several technical experts and stakeholders. As developed through those efforts, staff developed proposed changes to amend BMC Chapter 7.52 to:

1. Add qualifying measures for the expanded Resilience Transfer Tax Rebate Program to include electrification, sustainability and resilience measures that require a building permit, in addition to the seismic measures already included in the program;
2. Expand the program to apply to all residential, commercial, and mixed-use buildings at time of property transfer, augmenting the current program which applies to only residential or mixed-use buildings with two or more dwelling units; and

<sup>4</sup> From City of Berkeley Finance Department.

3. Expand the deadline of the program so applicants have two years to apply for the rebate plus the opportunity to apply for a one-year extension, instead of the current program's one year deadline with a one-year extension.

Staff is recommending delaying approval of these changes, which would have potentially significant impacts to the General Fund. Staff will return next year and make another recommendation based on the budget situation at that time. If these changes are approved, staff would develop Administrative Regulations including qualifying measures, an implementation strategy, and timelines. In order to develop and administer the proposed changes, the next recommendation would include additional staff capacity to support the increased application review and processing.

### ***Proposal for Resilient Homes Equity Pilot Program***

Communities of color and low-income communities are not only most impacted by financial disparities, they are also the frontline communities most impacted by climate change and other disasters. The City of Berkeley values equity and strives to be a leader in developing creative approaches for addressing the affordability and housing crises the City faces, leading to displacement of people of color and low-income community members. The City also has ambitious goals to combat climate change and to become a more resilient City. Further, in the referral, Council urged staff to consider “the framework for a just and equitable transition” as laid out in the Climate Emergency.<sup>5</sup> These goals can all be aligned together to achieve multiple benefits in a new Resilient Homes Equity Pilot Program proposed by City staff.

An equity analysis of the impacts of the Transfer Tax Rebate Program considers who benefits, who is burdened and who is excluded. A transfer tax rebate program only benefits Berkeley residents who can afford to purchase a home, currently selling for an average of \$1.27 million<sup>6</sup>. Low-income residents often live in older homes that are most in need of home improvements for safety, health, comfort, efficiency, and resilience. Attachment 2 is an Equity White Paper written by Noel Simpkin, a UC Berkeley Masters of Planning graduate student. This paper applies an equity lens to the Seismic Retrofit Refund Program and recommends developing an equity pilot program that targets Berkeley's underserved residents.

A concurrent Resilient Homes Equity Pilot Program would provide direct funding to low-income residents to improve their homes as a parallel program to the proposed expanded Resilience Transfer Tax Rebate, for home improvements. This equity pilot program would aim to provide a valuable benefit to low-income residents, long-term homeowners with limited incomes, and renters, who are not able to access the existing

<sup>5</sup> City of Berkeley, November 27, 2018 Council Referral:

[https://www.cityofberkeley.info/Clerk/City\\_Council/2018/11\\_Nov/Documents/Item\\_24\\_Rev\\_Harrison.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/11_Nov/Documents/Item_24_Rev_Harrison.aspx)

<sup>6</sup> Zillow, “Berkeley Home Prices & Values”: <https://www.zillow.com/berkeley-ca/home-values/>. Last accessed 3/5/2020.



Seismic or future Resilience Transfer Tax Rebate Program. This program could support homeowners' ability to remain in their homes, improve occupant health and increase resilience in an aging building stock. An equity pilot program would create a replicable example of how City programs can operationalize equity in residential buildings and assure equitable distribution of City resources.

This program, once developed and approved, may provide additional funding and/or free resources for homeowners and leverage work in existing programs that benefit low income residents and homeowners. Staff would design the program in collaboration with community stakeholders to ensure that it will meet the needs of frontline communities such as low-income communities, communities of color, and those most affected by the impacts of climate change. If approved by Council, staff will:

1. Design the program in collaboration with community stakeholders;
2. Develop a detailed budget;
3. Identify potential funding sources for the program;
4. Determine necessary staffing for program administration and implementation;
5. Prepare an implementation strategy including timelines; and
6. Return to Council for approval of the budget and implementation of the program.

This equity pilot program concept was discussed with and received support from the Berkeley Energy Commission, Disaster & Fire Safety Commission, and other stakeholders.

### ***Related Initiatives***

Staff is concurrently advancing other programs and initiatives which may be directly impacted by an expansion of the Resilience Transfer Tax Rebate Program:

- *Building Energy Savings Ordinance (BESO)*<sup>7</sup>: The BESO program has just completed its evaluation, and will be updated to better align with the City's priorities of building electrification and resilience. The proposed update to BESO would prioritize electrification and provide recommendations at time of listing that would align with the transfer tax rebate eligible measures. This change, along with possible future mandatory requirements, has the potential to increase Transfer Tax Rebate Program participation.
- *Existing Building Electrification Strategy*: In April 24, 2018, Council requested the development of "policies to incentivize energy efficiency and electrification, in support of Climate Action Plan (CAP) goals" and referred \$50,000 to the budget process to fund the Existing Building Efficiency Strategy. Staff is working with a team of experts to identify how Berkeley can electrify its existing buildings as soon as

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<sup>7</sup> BESO requires building owners and homeowners to complete and publicly report comprehensive energy assessments to uncover energy saving opportunities. More information at: <https://www.cityofberkeley.info/BESO/>.

possible. This report will include equitable strategies, policies, and programs that will help Berkeley achieve its goal of becoming a fossil fuel-free City, and will include specific building measures that can be supported by the proposed Resilience Transfer Tax Rebate Program and Resilient Homes Equity Pilot Project.

- *Automatic Gas Shutoff Valve Referral:* Another Council referral asked the Disaster & Fire Safety Commission to consider an ordinance amending BMC 19.34.040 to expand requirements for automatic natural gas shut-off valves or excess flow valves. The referral would expand use of such devices in multifamily, condominium and commercial buildings undergoing renovations, and in all existing buildings prior to execution of a contract for sale or close of escrow. It also asks the Commission to consider other triggers as appropriate. Installation of an automatic gas shutoff valve has been included as a qualifying measure under the proposed Resilience Transfer Tax Rebate Program.

Amending the BMC to update the Resilience Transfer Tax Rebate Program as proposed and approving the development of a Resilient Homes Equity Pilot Project would advance the City Strategic Plan goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment. It also advances the following goals:

- Create affordable housing and housing support service for our most vulnerable community members.
- Create a resilient, safe, connected, and prepared city.
- Champion and demonstrate social and racial equity.

## BACKGROUND

### ***Existing Seismic Transfer Tax Rebate Program***

In 1991 the City created the Seismic Retrofit Refund Program which provides refunds for voluntary seismic upgrades to residential properties. Up to one-third of the base 1.5% transfer tax rate may be refunded on a dollar-for-dollar basis, for all expenses incurred on or after October 17, 1989 for voluntary seismic upgrades to residential property. This program applies to structures that are used exclusively for residential purposes, or any mixed-use structures that contains two or more dwelling units. Applicants have up to one year from the recordation of transfer to complete all seismic retrofit work, then apply for the rebate. The ordinance allows this deadline to be extended for good cause for up to one additional year.

Since July 2002, the City has distributed over \$12 million to homeowners through the Seismic Transfer Tax Rebate Program, which reduces the real estate transfer tax to

building owners who perform seismic safety work.<sup>8</sup> As shown in the table below, between 2014-2019 an average of 13% of homeowners took advantage of the program.

Table 2 - Seismic Transfer Tax Rebates, 2014-2019

| Fiscal Year:             | # Residential Transfers | Total # Seismic Transfer Tax Rebates | Total Seismic Rebate Amount Spent (\$) | Eligible Residential Rebate Amount | % Seismic Rebate Uptake (#) | % Seismic Rebate Amount Spent | Total Residential 1.5% Transfer Tax Amount |
|--------------------------|-------------------------|--------------------------------------|----------------------------------------|------------------------------------|-----------------------------|-------------------------------|--------------------------------------------|
| 2014                     | 945                     | 171                                  | \$ 823,352                             | \$ 4,111,341                       | 18%                         | 20%                           | \$ 12,334,024                              |
| 2015                     | 886                     | 140                                  | \$ 781,447                             | \$ 4,158,022                       | 16%                         | 19%                           | \$ 12,474,066                              |
| 2016                     | 874                     | 142                                  | \$ 826,994                             | \$ 4,505,355                       | 16%                         | 18%                           | \$ 13,516,064                              |
| 2017                     | 710                     | 77                                   | \$ 518,058                             | \$ 4,470,107                       | 11%                         | 12%                           | \$ 13,410,320                              |
| 2018                     | 793                     | 94                                   | \$ 676,042                             | \$ 4,837,273                       | 12%                         | 14%                           | \$ 14,511,819                              |
| 2019                     | 863                     | 63                                   | \$ 427,581                             | \$ 5,859,070                       | 7%                          | 7%                            | \$ 17,577,210                              |
| <b>Average 2014-2019</b> | <b>845.17</b>           | <b>114.5</b>                         | <b>\$ 675,579</b>                      | <b>\$ 4,656,861</b>                | <b>13%</b>                  | <b>15%</b>                    | <b>\$ 13,970,584</b>                       |

**ENVIRONMENTAL SUSTAINABILITY**

Amending the Resilience Transfer Tax Rebate Program would advance the City’s ambitious climate action goals, by incentivizing energy efficiency, electrification, and other resilience improvements in Berkeley’s buildings.

Developing a Resilient Homes Equity Pilot Program would extend the City’s sustainability efforts further by providing these benefits to more buildings, serving a broader and more diverse set of Berkeley residents than would otherwise have access to the Resilience Transfer Tax Rebate Program.

**RATIONALE FOR RECOMMENDATION**

Given the need to address COVID-19 response and recovery, and the associated budgetary impacts, staff recommends that Council delay approving the proposed changes to the B.M.C. Chapter 7.52. Staff will return next year for Council to consider approval at that time.

In the future, expanding the current Transfer Tax Rebate Program would encourage and incentivize sustainability and resilience upgrades in homes.

Developing the Resilient Homes Equity Pilot Program is aligned with the City’s Strategic Plan Goal to champion and demonstrate social and racial equity, and is aligned with the City’s Resilience Strategy goal to advance racial equity. This program would aim to serve as an anti-displacement strategy for low-income homeowners as well as to incorporate equity into existing City policies. This could serve as a pilot equity pilot program that could be replicated and scaled.

<sup>8</sup> City of Berkeley 2019 Local Hazard Mitigation Plan, Summary-11: [https://www.cityofberkeley.info/uploadedFiles/Fire/Level\\_3\\_-\\_General/City%20of%20Berkeley%202019%20LHMP%20-%20FINAL%2012-10-19%20-%20REDUCED%20SIZE.pdf](https://www.cityofberkeley.info/uploadedFiles/Fire/Level_3_-_General/City%20of%20Berkeley%202019%20LHMP%20-%20FINAL%2012-10-19%20-%20REDUCED%20SIZE.pdf)

ALTERNATIVE ACTIONS CONSIDERED

Rather than delaying approval of this proposal, Council could consider adopting the proposed changes to the BMC Chapter 7.52 at this time. This would provide a benefit to home buyers sooner, but would have ongoing budget impacts.

Whenever Council does consider adopting the proposed changes to the BMC Chapter 7.52, other potential alternative actions for this proposal include:

- **Qualifying Measures:** Council could consider expanding the qualifying measures to include work that does not require a building permit. This would provide additional options and flexibility to the building owner, but would require design, development, and implementation of a new process to validate the measures, plus additional ongoing staff resources, because it would be staff time-intensive to verify completion of qualifying work.
- **Building Types:**
  - Council could continue to limit the program to residential and mixed-use buildings with two or more dwelling units. This approach would not generate as significant greenhouse gas emissions reductions, electrification, or resilience improvements in buildings.
  - Council could consider including industrial building types, for which sufficient information was not available for analysis in this report.
- **Application Deadline:** Council could keep the current program timeline as is, at one year plus a one year extension, or it could further extend timelines to provide even greater flexibility to applicants.

**Resilient Homes Equity Pilot Program:** Council could reject the proposal for a Resilient Homes Equity Pilot Program. Eliminating this program would mean no new benefits would be provided to low income residents, and would have no financial impact on the current budget.

CONTACT PERSON

Billi Romain, Sustainability Manager, Office of Energy and Sustainable Development, Planning & Development Department, 510-981-7432.  
Katie Van Dyke, Climate Action Program Manager, 510-981-7403.

## Attachments:

1. Draft Ordinance language to expand existing Seismic Transfer Tax Rebate Program for possible future action
2. Equity White Paper
3. Potential list of qualifying measures for consideration in Administrative Regulations
4. Original Referral Report from November 27, 2018

ORDINANCE NO. XXXX-N.S.

AMENDMENTS TO THE BERKELEY MUNICIPAL CODE TO EXPAND THE  
TRANSFER TAX REBATE PROGRAM FOR RESILIENCE MEASURES

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

Section 1. That Berkeley Municipal Code Chapter 7.52.060 is amended to read as follows:

**7.52.060 Exceptions.**

K. 1. Up to one-third of the tax imposed by this chapter shall be reduced, on a dollar for dollar basis, for all expenses incurred on or after October 17, 1989 to perform a "resilience seismically retrofit" ~~on either~~ any structure which is used ~~exclusively~~ for residential, mixed-use, or commercial purposes, ~~or any mixed use structure which contains two or more dwelling units.~~

2. The term "resilience seismically retrofit" within the meaning of this chapter means any of the following:

- a. That work which is needed and directly related to make the structure capable of withstanding lateral loads equivalent to the force levels defined by Chapter 23 of the 1976 Uniform Building Code;
- b. Replacement or repair of foundations; replacement or repair of rotted mud sills; bracing of basement or pony walls; bolting of mud sills to standard foundations; installation of shear walls; anchoring of water heaters; and/or securing of chimneys, stacks or water heaters;
- c. Corrective work on buildings which fit the criteria in subsection K.1, which are listed on the City of Berkeley inventory of potentially

hazardous, unreinforced masonry buildings when such work is necessary to meet City standards or requirements applicable to such buildings;

d. Any other work found by the building official to substantially increase the capability of those structures, specified in subsection K.1, to withstand destruction or damage in the event of an earthquake.

e. Any other work as defined in the list of qualifying measures for the Resilience Transfer Tax Rebate Program Administrative Regulations, including but not limited to measures that provide the following types of benefits: safety, health, electrification, efficiency, or other resilience measures.

3. The work to perform resilience seismically retrofits on structures as provided herein shall be completed either prior to the transfer of property or as provided in subsection K.4.

4. If the work to perform resilience seismically retrofits on the structures provided for herein is to be performed after the transfer of property which is subject to the tax imposed by this chapter, upon completion of such work and certification by the building official as to the amount of the expenses of such work the City Manager or his/her designee may refund such expenses not to exceed one-third of the base 1.5% transfer tax imposed to the parties to the sale in accordance with the terms of such sale. Any remaining tax shall be retained by the City.

5. From the date of the recordation of the transfer document, the applicant shall have one two years to complete all seismic-resilience retrofit work and submit a resilience seismic-retrofit verification application to ~~the codes and inspection division of~~ the City of Berkeley. If the work is not completed at the end of one two years, that portion which has been completed may be credited to the applicant upon submission of a resilience seismic-retrofit

verification application and substantiating documentation, as required by the ~~codes and inspections division of the~~ City of Berkeley, showing the dollar amount of work completed up to that date. All other monies remaining in escrow will be returned to the City of Berkeley upon written request by the Finance Department.

6. Within the ~~one~~two-year period established by paragraph 5, an applicant may request, and the City Manager may approve, an extension of up to one year. The City Manager or his/her designee may grant such an extension only for good cause. The decision of the City Manager or his/her designee shall be entirely within his or her discretion and shall be final.

a. "Good cause" includes (i) the inability of the applicant, after a prompt and diligent search to find and retain the services of an architect, engineer, contractor or other service provider whose services are necessary for the ~~seismic-resilience~~ retrofit work; (ii) unforeseen and unforeseeable circumstances such as a significant change in the scope of the ~~seismic-resilience~~ retrofit work due to circumstances in the field which could not reasonably have been known earlier; and (iii) serious illness or other extraordinary and unforeseeable circumstances that prevented the timely commencement or completion of the ~~seismic-resilience~~ retrofit work.

b. "Good cause" does not include (i) ignorance of the applicable City ordinances or regulations concerning the ~~seismic-resilience~~ retrofit rebate provided in this chapter or state or local laws relating to the standards with which ~~seismic-resilience~~ retrofit work must comply; or (ii) any delays which were within the control or responsibility of the applicant. (Ord. 6971-NS § 1, 2007: Ord. 6741-NS § 1, 2003: Ord 6539-NS § 1, 2000: Ord. 6262-NS § 1, 1994: Ord. 6146-NS §§ 1, 2, 1992: Ord. 6072-NS § 2, 1991: Ord. 6069-NS § 1, 1991: Ord. 5061-NS § 5, 1978)

# RESILIENCE FOR ALL

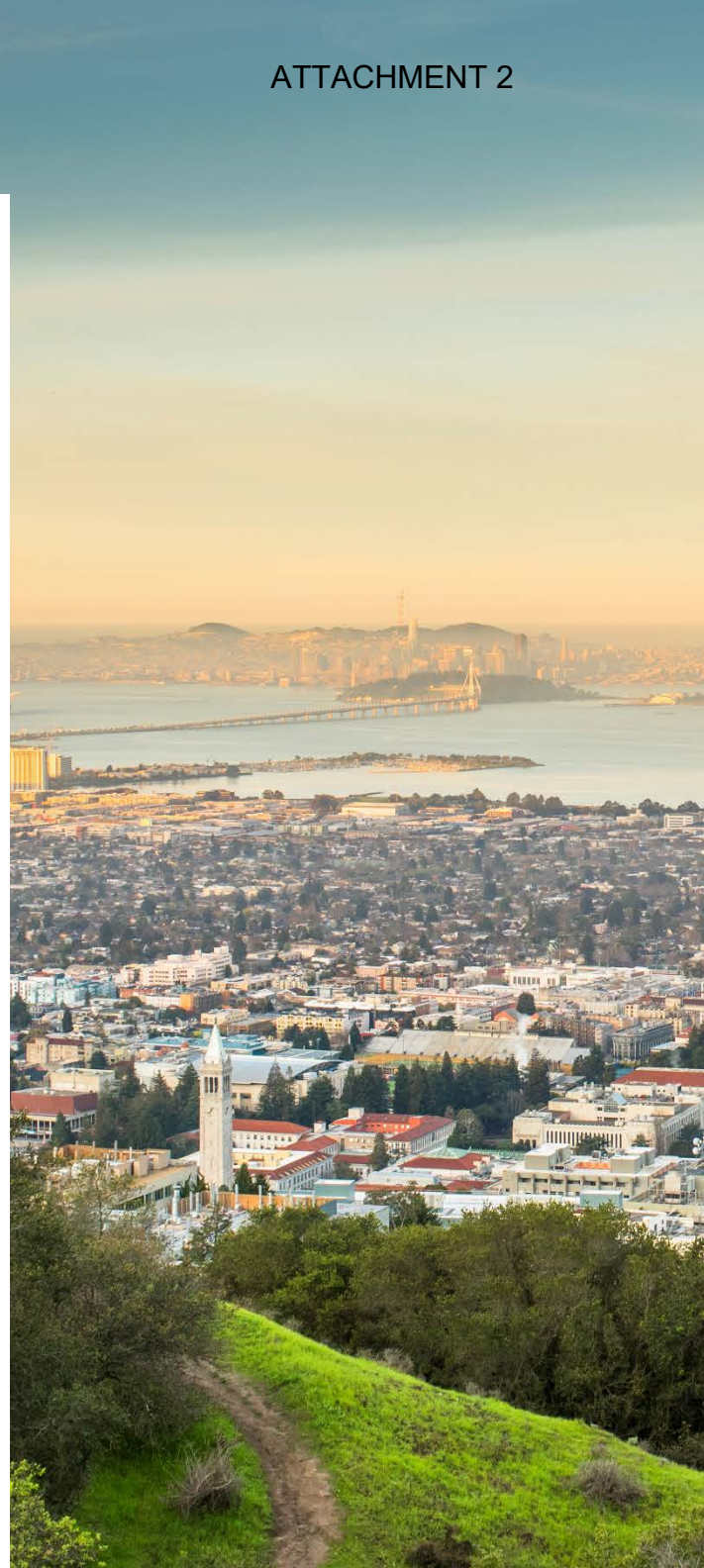
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## Applying an Equity Lens to Berkeley's Seismic Transfer Tax Rebate Program

MARCH 2020

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NOEL SIMPKIN  
MASTER OF CITY PLANNING, CLASS OF 2020  
UNIVERSITY OF CALIFORNIA, BERKELEY





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# I. Executive Summary

The City of Berkeley (City) has long had a reputation for tolerance and inclusiveness, and yet social and racial inequity remains a significant challenge.<sup>1</sup> In its 2018-2019 Strategic Plan, the City identified a goal to “champion and demonstrate social and racial equity” and has prioritized integrating equity considerations throughout City operations and services.<sup>2</sup> To support this work, the City developed a Racial Equity Lens Toolkit (Toolkit) to assess city policies, plans, programs, and budgets in order to identify biases and help ensure equitable access to opportunities for all community members. Incorporating equity is particularly important in City programs aimed at increasing resilience for two reasons: without careful and deliberate planning, resilience strategies can actually exacerbate inequalities,<sup>3</sup> and true resilience can only be achieved when physical challenges as well as social challenges are addressed.<sup>4</sup>

The City’s current Seismic Transfer Tax Rebate Program (Program) offers an example of a resilience strategy that addresses physical vulnerabilities but fails to advance social and racial equity. The current Program allows a portion of the City’s transfer tax to be refunded to residential property owners for seismic upgrades, thus incentivizing homeowners who recently purchased a home to make important safety improvements. However when analyzing the Program through an equity lens it becomes clear that the Program is not reaching underserved members of the community, despite the fact that low-income and minority communities are more vulnerable to natural disasters and the impacts of climate change.<sup>5</sup> The current median sale price for a single-family home in Berkeley is over \$1.2 million, which suggests that many recent homebuyers in Berkeley are economically advantaged.<sup>6</sup> In addition, 75 percent of the City’s homeowners are white, and income disparities in the region demonstrate the challenge people of color face to purchase a home in Berkeley.<sup>7</sup>

In 2018, Berkeley City Council declared a Climate Emergency and established a goal of becoming a Fossil Fuel Free city. That same year, Council passed a referral to the City Manager and Office of Energy and Sustainable Development to expand the existing Seismic Transfer Tax Rebate Program in an effort to accelerate the transition toward more sustainable buildings. The referral identified the need for expanding the Program in order to reduce greenhouse gas (GHG) emissions, address the urgency of the Climate Emergency Declaration, and increase the City’s resilience. In response, staff is providing recommendations to Council to expand the Program to include specific sustainability and resilience upgrades, as well as to establish a Resilient Homes Equity Pilot Program (Equity Pilot) that would provide similar home-improvement benefits to frontline communities. A new, equity-centered program that parallels the existing Program can help the City more quickly achieve its Fossil Fuel Free

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<sup>1</sup> *City of Berkeley Resilience Strategy 2016*

<sup>2</sup> *City of Berkeley Strategic Plan 2018*

<sup>3</sup> *Anguelovski 2016*

<sup>4</sup> *100 Resilient Cities 2019*

<sup>5</sup> *City of Berkeley Resilience Strategy 2016*

<sup>6</sup> *Zillow 2020*

<sup>7</sup> *ACS 2017 5-Year Estimates; Table DP05, Universe: Total Population; and Table B25003H, Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.*

goal, while benefitting low-income residents, long-term homeowners with limited incomes, and renters, who are not able to access the current Program.

This paper analyzes the current Seismic Transfer Tax Rebate Program through an equity lens, and aims to demonstrate the need for a more inclusive approach to increasing Berkeley’s resilience. In addition, it recommends Berkeley City Council take the following actions to build both physical and social resilience:

1. Approve the development of a Resilient Homes Equity Pilot Program that leverages the City’s Racial Equity Lens Toolkit in collaboration with community organizations and stakeholders.
2. Confirm a commitment to dedicate additional future funding to implement the Equity Pilot, with the exact annual amount to be determined during the program design phase.

An Equity Pilot offers many potential benefits, including: increased safety, improved health outcomes, reduction in GHG emissions, and it enables a Just Transition. It is also an opportunity to operationalize the City’s Toolkit, and learnings can inform how other City programs and policies can incorporate equity and assure equitable distribution of City resources. Through the Equity Pilot, the City will be better positioned to achieve its goals of demonstrating social equity and becoming Fossil Fuel Free, while building a safer, healthier, more sustainable, and more resilient community.

## II. Introduction

The City’s Resilience Strategy, released in 2016, prioritizes both physical and social resilience: through a combination of long-term goals and short-term actions, the strategy aims to build the capacity of residents, institutions, and businesses to manage physical challenges, such as earthquakes and sea level rise, as well as social challenges, including racial inequity.<sup>8</sup> The City reaffirmed this holistic approach more recently in its 2018-2019 Strategic Plan, which articulates a goal to “create a resilient, safe, connected and prepared city” as well as a “responsibility to advance social and racial equity.”<sup>9</sup> In order to make progress in these areas, City policies and programs must be designed to enable *all* residents to participate in, contribute to, and benefit from building Berkeley’s resilience – especially historically underserved residents. There is an opportunity to make meaningful progress toward achieving these goals while prioritizing those most in need by examining the City’s Seismic Transfer Tax Rebate Program, historically referred to as the Seismic Retrofit Rebate Program, through an equity lens. The current Program allows a portion of the City’s transfer tax to be refunded to residential property owners for seismic upgrades. This program incentivizes homeowners who recently purchased a home to make important safety improvements and creates a more resilient housing stock. However, because the median price to purchase a home in Berkeley is currently over \$1.2 million,<sup>10</sup> the Program is primarily supporting higher-income households and fails to reach low-income or long-term members of the community.

<sup>8</sup> City of Berkeley Resilience Strategy 2016

<sup>9</sup> City of Berkeley Strategic Plan 2018

<sup>10</sup> Zillow 2020

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***“We have a responsibility to advance social and racial equity.”***

*- City of Berkeley 2018-2019 Strategic Plan*

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In November 2018 Berkeley City Council passed a referral to the City Manager and the Office of Energy and Sustainable Development to expand the existing Program to include subsidies beyond seismic retrofit and potentially include qualifying electrification, energy efficiency, and water conservation retrofits. In addition, Council urged staff to consider “the framework for a just and equitable transition” as laid out in the Climate Emergency.<sup>11</sup> In response, staff has conducted an analysis with stakeholder input.<sup>12</sup> and is providing recommendations to Council to expand the Program to include specific sustainability and resilience upgrades, as well as to establish a Resilient Homes Equity Pilot Program that would provide similar home-improvement benefits to frontline communities. An Equity Pilot, that parallels the existing Program, can improve physical resilience and advance equity by enabling underserved residents to improve their physical environments – making them safer, more comfortable, more sustainable, and less susceptible to disasters and climate change (more on potential impact in Section VII). The following sections describe how an Equity Pilot aims to address the impacts of harmful racist policies that favor high-income, white homeowners while furthering the City’s goals of resilience and equity.

### III. Equity Principles & Frameworks

Income inequality and health disparities are unfortunate realities in Berkeley: white families earn roughly three times more than African American families, and African American residents experience higher rates of hospitalization due to high blood pressure, stroke, asthma, and diabetes compared to other groups.<sup>13</sup> Improving these and other outcomes requires the City and its partners to address the “underlying social, economic, and environmental inequities that perpetuate them.”<sup>14</sup> However, addressing these inequities is rarely simple or straightforward and without intentional, strategic planning even well-intentioned efforts can reinforce injustices. When discussing equity principles and frameworks, it’s important to first define what is meant by “equity”. Equity is focused on giving communities what they need to thrive, while equality is about treating everyone the same (see Figure 1).

Equity frameworks are a valuable tool for governments, community development practitioners, and others to design and evaluate equitable policies and programs. By identifying who will benefit from or be burdened by decisions and potential unintended consequences of an intervention, equity frameworks help decision-makers mitigate negative effects and implement solutions that emphasize *equity* instead of *equality*.<sup>15</sup> In addition, it’s important to clearly identify the ‘who’ when assessing

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<sup>11</sup> City of Berkeley Short-Term Referral Item 24, Nov. 27, 2018

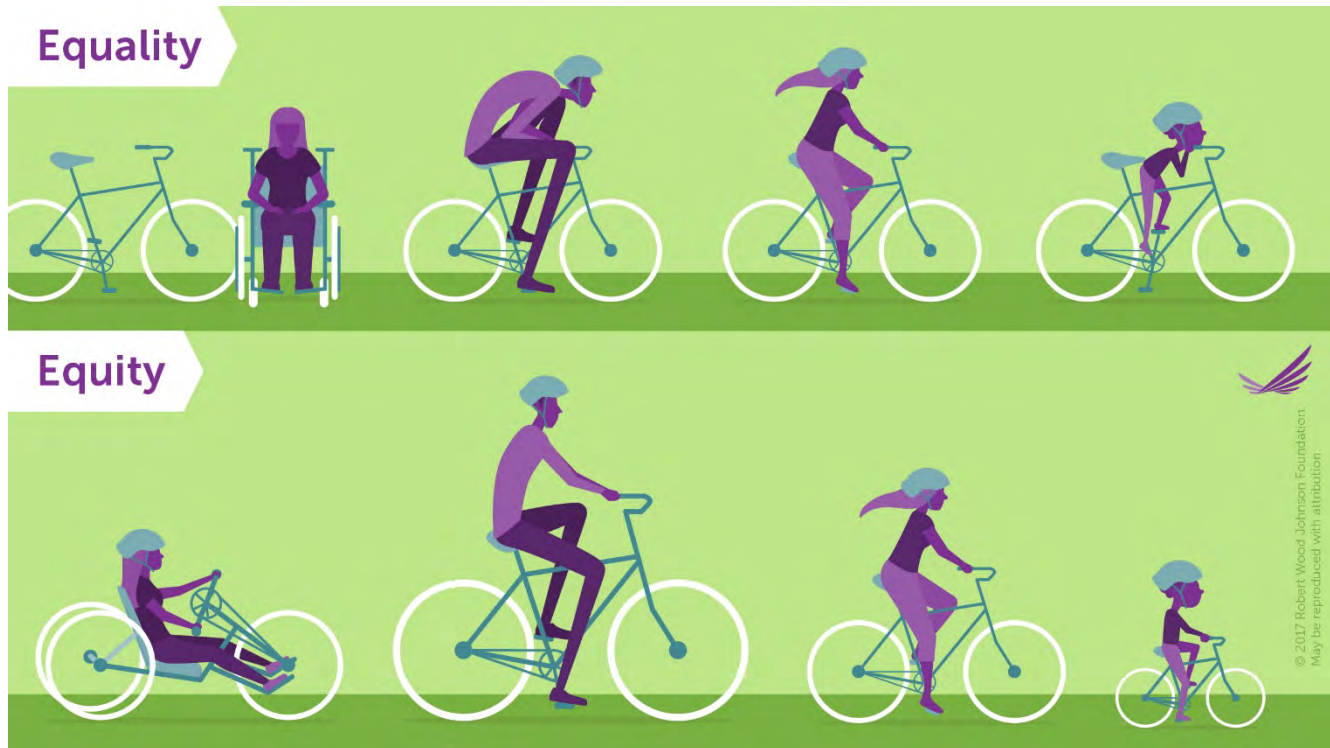
<sup>12</sup> Including the Energy Commission, Disaster & Fire Safety Commission, as well as other internal and external stakeholders

<sup>13</sup> City of Berkeley Health Status Report 2018

<sup>14</sup> *Ibid.*

<sup>15</sup> GARE 2016

Figure 1: Equity is focused on giving communities what they need to thrive, while equality is about treating everyone the same



Source: Robert Wood Johnson Foundation 2017

who may benefit or be burdened by interventions, and use the appropriate language to describe this group. There are a variety of terms that can describe potential target groups, such as frontline, underserved, vulnerable, low-income, and marginalized. These terms are often used interchangeably in development programs, despite the fact that they each have different definitions. According to The Greenlining Institute, “in conversations about social equity, terms such as underserved, vulnerable, low-income, disadvantaged, or environmental justice community are often interchanged but can potentially have different meaning depending the context.”<sup>16</sup> As a result, it’s important when designing an equitable program to clearly identify and define the target communities it aims to impact. In addition to providing clarity on specific target populations, terms are important because words can “promote compassion, empowerment, inclusiveness and equity.”<sup>17</sup> For example, the term ‘vulnerable’ can describe a population group that is socioeconomically disadvantaged, but it can also be a term that communities choose not to identify with because it can feel disempowering. For the purposes of this paper, the terms ‘underserved’ and ‘frontline’ are used interchangeably, and refers to “communities that are already facing environmental, health and socioeconomic inequities, and that are disproportionately impacted by climate change” as well as disasters..<sup>18</sup>

The following is a set of equity frameworks the City has engaged with and/or implemented in various planning processes and projects in recent years. In addition, principles from each framework presented

<sup>16</sup> The Greenlining Institute 2019

<sup>17</sup> National Collaborating Centre for Determinants of Health 2013

<sup>18</sup> The Greenlining Institute 2019

below have helped to inform this analysis of the current Seismic Transfer Tax Rebate Program through an equity lens, and may be further leveraged in the development of the Equity Pilot.

### 1 | Community-Driven Engagement

Engaging communities is a critical part of developing equitable programs, however in order to be effective involving community members must be done in an authentic, strategic manner. Staff may use the following Continuum of Community Engagement as a way to strengthen its approach to creating a collaborative planning process (see Figure 2). Developed by the Urban Sustainability Directors Network, this continuum demonstrates increasing levels of engagement and partnership from left to right. The USC Program for Environmental and Regional Equity as well as The Greenlining Institute – organizations committed to racial and economic justice – advocate for program development that creates “authentic partnerships that center the perspectives of vulnerable communities, support community-based participation and power, and result in shared decision-making”.<sup>19</sup> The California Public Utilities Commission (CPUC) recently leveraged principles of joint decision-making in its San Joaquin Valley Disadvantaged Communities Pilot Project, which brings clean, affordable energy options to frontline communities. The project aims to empower communities who rely on propane or wood-burning appliances for heating and cooking to choose an energy solution that worked best for

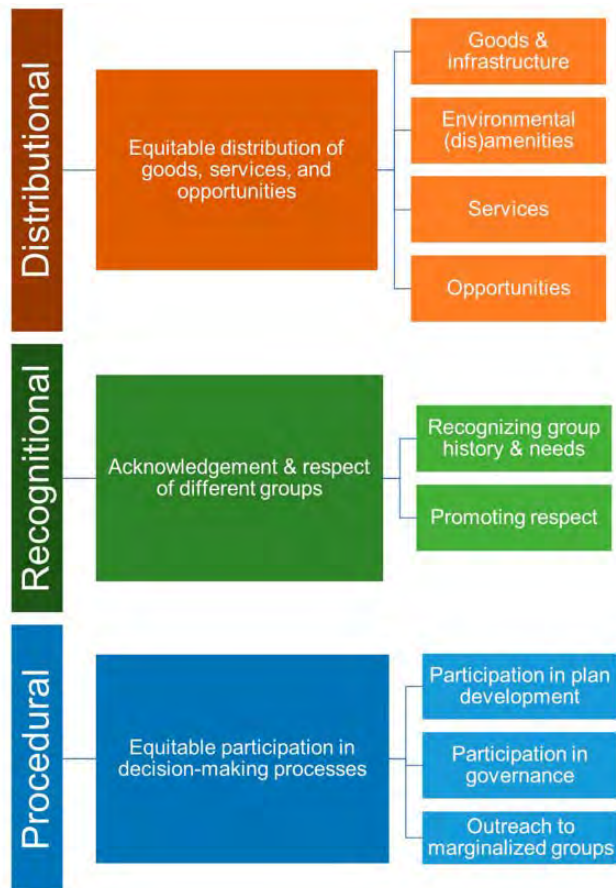
Figure 2: Continuum of Community Engagement

| Inform                                                                                                                                           | Consult                                                                                                                                                    | Involve                                                                                                                                                                         | Shared Leadership                                                                                                                                        | Community-Driven                                                                                                                                                               |
|--------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Local government initiates an effort, coordinates with departments, and uses a variety of channels to inform the community to take action        | Local government gathers information from the community to inform local government-led interventions                                                       | Local government engages community members to shape government priorities and plans                                                                                             | Community and local government share in decision-making to co-create solutions together                                                                  | Community initiates and directs strategy and action with participation and technical assistance from local government                                                          |
| Characteristics of Engagement                                                                                                                    |                                                                                                                                                            |                                                                                                                                                                                 |                                                                                                                                                          |                                                                                                                                                                                |
| - Primarily one-way channel of communication<br>- One interaction<br>- Term-limited to project<br>- Addresses immediate need of local government | - Primarily one-way channel of communication<br>- One to multiple interactions<br>- Short to medium-term<br>- Shapes and informs local government programs | - Two-way channel of communication<br>- Multiple interactions<br>- Medium to long-term<br>- Advancement of solutions to complex problems                                        | - Two-way channel of communication<br>- Multiple interactions<br>- Medium to long-term<br>- Advancement of solutions to complex problems                 | - Two-way channel of communication<br>- Multiple interactions<br>- Medium to long-term<br>- Advancement of solutions to complex problems                                       |
| Strategies                                                                                                                                       |                                                                                                                                                            |                                                                                                                                                                                 |                                                                                                                                                          |                                                                                                                                                                                |
| Media releases, brochures, pamphlets, outreach to population groups, translated information, new and social media                                | Focus groups, interviews, community surveys, public hearings, public comment periods                                                                       | Forums, advisory boards, stakeholder involvement, coalitions, policy development and advocacy, including legislative briefings, and testimony, workshops, community-wide events | Co-led community meetings, advisory boards, coalitions, and partnerships, policy development and advocacy, including legislative briefings and testimony | Community-led planning efforts, community-hosted forums, collaborative partnerships, coalitions, policy development and advocacy including legislative briefings and testimony |

Source: Urban Sustainability Directors Network 2017 (Adapted from King County, Washington and IAP2)

<sup>19</sup> The Greenlining Institute 2019

Figure 3: Tripartite approach to equity in resilience planning



Source: Meerow et al. 2019

32 cities selected by the Rockefeller Foundation to participate in 100 Resilient Cities (100RC), an initiative aimed at building community resilience to face social, economic, and physical challenges.<sup>23</sup> Last year, researchers at Arizona State University and the University of Toronto released a study analyzing the goals, priorities, and strategies of the 100RC initiative, and developed a tripartite framework of equity that includes distributional, recognitional, and procedural dimensions (see Figure 3). In their analysis, researchers found that many cities that participated in the 100RC program emphasized the distributional aspect of equity, but focused less on the recognitional and procedural dimensions. They go on to advocate for resilience strategies that “explicitly consider resilience for whom, while at the same time promoting the equitable distribution of social and material goods, meaningful participation and engagement in decision-making processes, and acknowledgment of social, cultural, and political differences.”<sup>24</sup>

them. Ten out of the 11 pilot communities will receive cleaner energy through electrification, and one community will implement a joint gas and electrification approach.<sup>20</sup> This project demonstrates “community members can decide the best ways to overcome the challenges they see”<sup>21</sup> and serves as a model for community decision-making.

## 2 | Targeted Universalism

Targeted Universalism, a framework developed by the Othering & Belonging Institute at UC Berkeley, promotes establishing a universal goal with corresponding, specific strategies that target different groups to achieve that goal. This approach focuses on advancing all people toward the same goal through diverse implementation strategies that account for how different groups “are situated within structures, culture, and across geographies.”<sup>22</sup> The City is incorporating a Targeted Universalism approach in its Pathway to Clean Energy Buildings work to ensure that proposed programs and policies benefit all communities.

## 3 | Tripartite Approach to Equity

In 2014 the City of Berkeley was one of the first

<sup>20</sup> The Greenlining Institute 2019

<sup>21</sup> Ibid.

<sup>22</sup> Powell et al. 2019

<sup>23</sup> City of Berkeley Agenda Item 1, June 6 2015

<sup>24</sup> Meerow et al. 2019

#### 4 | GARE Racial Equity Toolkit

The GARE (Government Alliance on Race & Equity), a national network of governments working to achieve racial equity, developed the Racial Equity Toolkit in 2015. The toolkit presents a multi-layered approach to integrating racial equity into city decisions and processes, and is incorporated into the City of Berkeley’s Resilience Strategy as well as the 2018-2019 Strategic Plan. As described in the toolkit, when “racial equity is not explicitly brought into operations and decision-making, racial inequities are likely to be perpetuated.”<sup>25</sup> Questions in the toolkit, such as – Who will benefit from or be burdened by your proposal? What are your strategies for advancing racial equity or mitigating unintended consequences? – help decision-makers place racial equity at the center of every strategy and make more thoughtful, informed decisions.

#### 5 | City of Berkeley Racial Equity Lens Toolkit

As part of its Adeline Corridor Specific Plan process, the City of Berkeley developed its own Racial Equity Lens Toolkit to assess city policies, plans, programs, and budgets in order to identify biases and help ensure equitable access to opportunities for all community members. This Toolkit, which was adapted from the City of Madison’s racial equity work and builds on principles outlined in the GARE toolkit, was created not only to inform work on the Adeline Corridor, but to enable City staff to integrate equity considerations into all operations and services. Through a series of questions, the Toolkit is designed to help users think about the interaction between race and place, and design successful neighborhood change efforts with a focus on underserved populations.<sup>26</sup> A few of the guiding questions include:

- How can our approaches to increasing affordable housing, health, wealth, and equitable development become more effective – particularly for the most racially, socially, and economically vulnerable?
- How do we know if we are being successful without ensuring that success is measured through an equity lens?
- How do we get neighborhood transformation right?

The Toolkit offers a number of tactics to help users get neighborhood transformation right, such as engaging communities in the design and development process, building the capacity of local community members, and analyzing data not only to understand the story that it tells but also to consider what stories may be missing. The Toolkit also provides guidance on how to determine the appropriate language for target communities by working toward mutually agreed upon language that is both clear and works to reduce power imbalances.

Developing a Resilient Homes Equity Pilot Program as a parallel program to the City’s Seismic Transfer Tax Rebate Program presents a perfect opportunity to operationalize this Toolkit and use the tactics, as well as other equity principles mentioned above, to enable a more equity-centered approach to increasing the City’s resilience. Furthermore, this approach can serve as a valuable example of how to

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<sup>25</sup> GARE 2016

<sup>26</sup> City of Berkeley Racial Equity Lens Toolkit 2019 (adapted from City of Madison, Race Forward)



incorporate equity into a City program, and learnings can help the City scale use of the Toolkit to other activities and operations – enabling the City to further its goal of championing social and racial equity.

## IV. Berkeley’s Seismic Transfer Tax Rebate Program

In response to the 1989 Loma Prieta earthquake, the City took multiple steps to improve the seismic safety of buildings. One of those measures included the Seismic Transfer Tax Rebate Program, which allows up to 1/3 of the base 1.5 percent City Transfer Tax to be refunded on a dollar-for-dollar basis for voluntary seismic upgrades to residential property within one year of purchase.<sup>27</sup> Examples of qualifying seismic retrofits include: work to repair or replace substandard foundations, securing chimneys, and anchoring existing water heaters. The Program has been extremely successful at increasing seismic safety, and has contributed to roughly 75 percent of Berkeley’s homes becoming more seismically safe over a 20-year period.<sup>28</sup> Since July 2002, more than 3,000 rebates have been processed resulting in over \$12 million to property owners.<sup>29</sup> With fewer homes needing seismic retrofits, the Program has seen a decline in program participation in recent years (see Figure 3). Between 2014 and 2019, the number of rebates decreased by 63 percent. As a result of this trend, as well as a desire to make progress on the City’s broader goals around electrification and GHG emission reduction targets, Council is considering expansion of the Program to include rebates for other sustainability-related improvements.

Figure 4: Seismic Transfer Tax Rebate

| Fiscal Year       | # Residential Transfers | Total # Seismic Transfer Tax Rebates | Total Seismic Rebate Amount Spent (\$) | Eligible Residential Rebate Amount | % Seismic Rebate Uptake (#) | % Seismic Rebate Amount Spent |
|-------------------|-------------------------|--------------------------------------|----------------------------------------|------------------------------------|-----------------------------|-------------------------------|
| 2014              | 945                     | 171                                  | \$823,352                              | \$4,111,341                        | 18%                         | 20%                           |
| 2015              | 886                     | 140                                  | \$781,447                              | \$4,158,022                        | 16%                         | 19%                           |
| 2016              | 874                     | 142                                  | \$826,993                              | \$4,505,354                        | 16%                         | 18%                           |
| 2017              | 710                     | 77                                   | \$518,057                              | \$4,470,106                        | 11%                         | 12%                           |
| 2018              | 793                     | 94                                   | \$676,042                              | \$4,837,272                        | 12%                         | 14%                           |
| 2019              | 863                     | 63                                   | \$427,581                              | \$5,859,070                        | 7%                          | 7%                            |
| Average 2014–2019 | 845                     | 114                                  | \$675,579                              | \$4,656,861                        | 13%                         | 15%                           |

Source: City of Berkeley Finance Department

## V. Applying an Equity Lens to the Seismic Transfer Tax Rebate Program

Expanding the Program to include specific sustainability upgrades is a strong strategy to increase program participation and to accelerate progress toward the City’s broader resilience and sustainability goals. However, the Program only benefits those who can afford to purchase a home in Berkeley.

<sup>27</sup> The Program applies to structures that are used exclusively for residential purposes, or any mixed-use structure that contains two or more dwelling units.

<sup>28</sup> Bohland et al. 2018

<sup>29</sup> City of Berkeley Local Hazard Mitigation Plan 2019

When assessing the Program in the context of the City’s Racial Equity Lens Toolkit, it becomes clear that the Program has failed on a number of fronts:

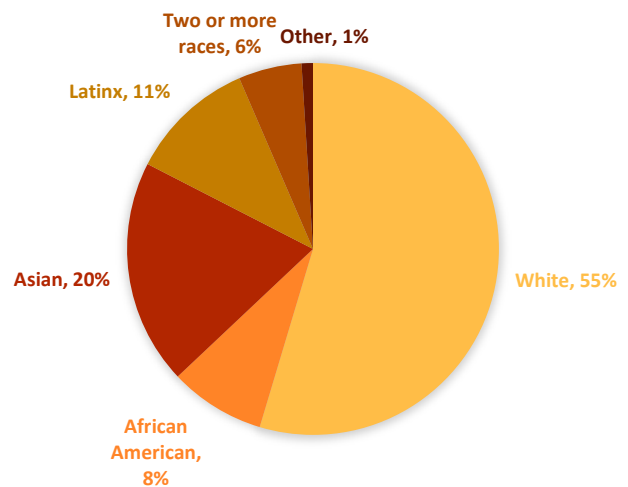
- Success is not measured through an equity lens: Program metrics focus on number of rebates and total funding issued, and data related to race/ethnicity, age, ability, gender, or other social factors are unavailable.
- It does not consider how access to the rebate may be limited for certain groups: barriers likely prevent individuals in certain racial/ethnic or socioeconomic groups from benefitting from this program, as it primarily benefits homeowners.<sup>30</sup>

Although Program data is limited, current homeownership trends and other information related to income, segregation, and displacement helps to illustrate how the current Program excludes frontline communities. Exclusion not only keeps resilience out of reach for these communities, but it perpetuates social and racial inequality in the City.

### 1 | Current Homeownership

The City is nearly equally split among homeowners and renters, with homeowners representing 46 percent of the population.<sup>31</sup> Homeownership rates are not distributed evenly, however, among Berkeley residents: while white residents make up 55 percent of Berkeley’s population they represent 75 percent of the City’s homeowners (see Figure 5 and 6).<sup>32</sup> The current median sale price for a single-family home in Berkeley is over \$1.2 million, which requires an annual household income of approximately \$200,000.<sup>33</sup> Income disparities in the region demonstrate one barrier people of color face to purchase a home in Berkeley (see Figure 7). In addition, since the rebate is only available for one year after purchasing a property, long-time Berkeley homeowners do not qualify for the Program. These residents may struggle to find the capital needed to make home improvements – making them more susceptible to unsafe living conditions and/or displacement.

Figure 5: There are significantly more white homeowners in Berkeley compared to any other racial group



Source: ACS 2017 5-Year Estimates; Table DP05, Universe: Total Population, N=120,179

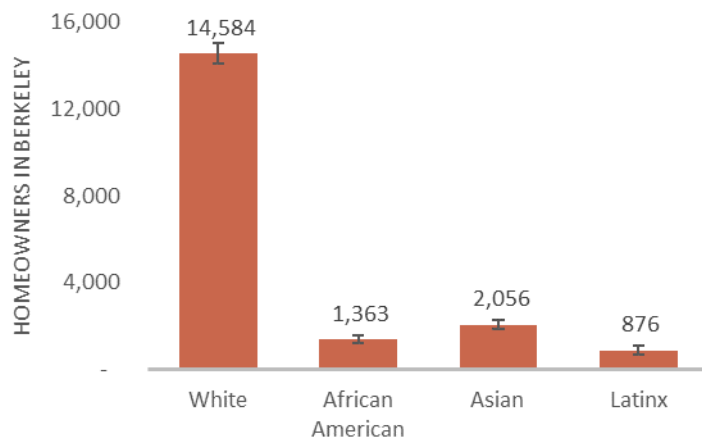
<sup>30</sup> Buyers of multifamily properties are eligible for the rebate, which in some situations may benefit low-income renters; however, the rebate is primarily used by single-family residential properties.

<sup>31</sup> American Community Survey (ACS) 2017 5-Year Estimates; Table B25033; Universe: Total Population in Occupied Housing Units; N = 107,408

<sup>32</sup> ACS 2017 5-Year Estimates; Table DP05, Universe: Total Population; and Table B25003H, Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.

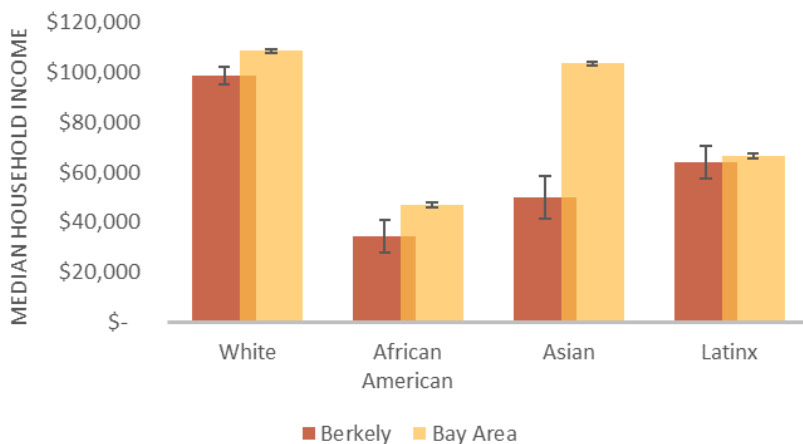
<sup>33</sup> Data from Zillow 2019, expects 20 percent down payment.

**Figure 6: There are significantly more white homeowners in Berkeley compared to any other racial group**



Source: ACS 2017 5-Year Estimates; Tables B25003B, B25003D, B25003H, B25003I; Universe: Occupied housing units; Note: Figure 4 does not include the race & ethnicity categories for American Indian & Alaska Native, Native Hawaiian and Other Pacific Islander, Some Other Race, or Two or More Races; Margins of Error expressed at 90 percent confidence level

**Figure 7: On average, white households in Berkeley make almost three times more than African American households**



Source: ACS 2017 5-Year Estimates; Tables B19013B, B19013D, B19013H, B19013I; Universe: Households; Note: 'Bay Area' consists of San Francisco, Alameda, Marin, Contra Costa, and San Mateo counties; Margins of Error expressed at 90 percent confidence level

## 2 | Segregation and Displacement

Institutional and structural racism has and continues to contribute to unequal outcomes, not only in homeownership and income, as described above, but also in terms of segregation and displacement. These issues are interrelated, and a result of racist and discriminatory practices such as slavery, Jim Crow laws, racially restrictive covenants, and redlining. Although these policies have been banned, they have resulted in severe and lasting impacts on communities of color.

The history of redlining is particularly important for understanding how segregation and displacement affect the Berkeley community still today, and helps shed light on how programs aimed at recent homebuyers – such as the Seismic Transfer Tax Rebate Program – support racial exclusion. The Home Owners' Loan Corporation (HOLC), a federal agency

created in 1933 as part of President Roosevelt's New Deal legislation, was designed to provide relief for homeowners that were in default or at risk of foreclosure by refinancing mortgages; indeed, it successfully refinanced over one million mortgages, saving 80 percent of homes for the original owner.<sup>34</sup>

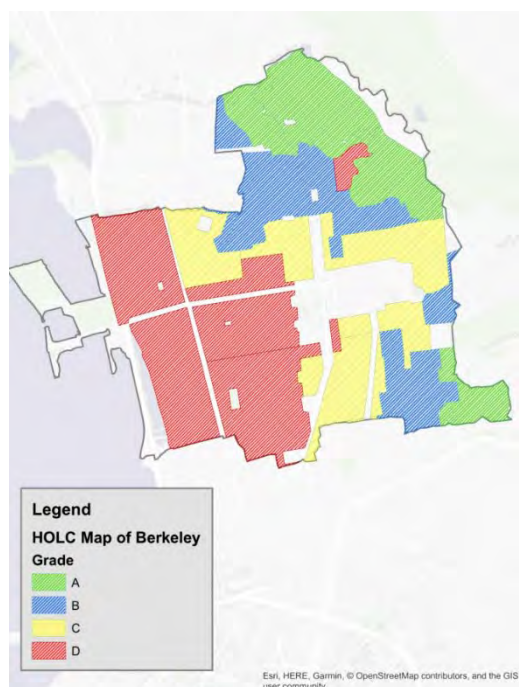
<sup>34</sup> TIME 1951

**Figure 8: A 1937 San Francisco “residential security map” created by the Home Owners’ Loan Corporation**



Source: Green 2016

**Figure 9: Redlining in Berkeley**



Source: Barber 2018

However, access to these government-backed, low-interest mortgages was not equal.<sup>35</sup> HOLC developed and relied on ‘residential security maps’ to evaluate mortgage lending risk in large American cities. Neighborhoods were classified as Best (green), Desirable (blue), Declining (yellow), or Hazardous (red) based on criteria such as: age and condition of housing stock, as well as economic class, employment status, and racial and ethnic composition of residents.<sup>36</sup> Potential borrowers in neighborhoods classified as Hazardous were often “redlined,” or denied access to credit based on the location of their property in minority or economically disadvantaged neighborhoods. As a result of limited access to traditional loans, many potential borrowers in these neighborhoods could not purchase property or fell victim to high-interest loans or other discriminatory practices. Because access to credit is a critical part of economic inclusion and purchasing a home can lead to building wealth within families over generations, we can see a lasting effect of redlining through racial disparities in poverty. On a national level, the median net worth of white families is nearly 10 times the size of black families, and nearly 1 in 5 black families have zero or negative net worth – twice the rate of white families.<sup>37</sup> In Berkeley today, “the proportion of families living in poverty is 8 times higher among African American families, 5 times higher among Latin[x] families, and 3 times higher among Asian families, compared to White families.”<sup>38</sup>

Although redlining was prohibited under the Fair Housing Act of 1968, its enduring effect is still evident across the US, including in Berkeley – not only in poverty rates, homeownership, and income, but also in segregation and displacement. According to the Urban Displacement Project, 83 percent of today’s

<sup>35</sup> Mitchell & Franco 2018

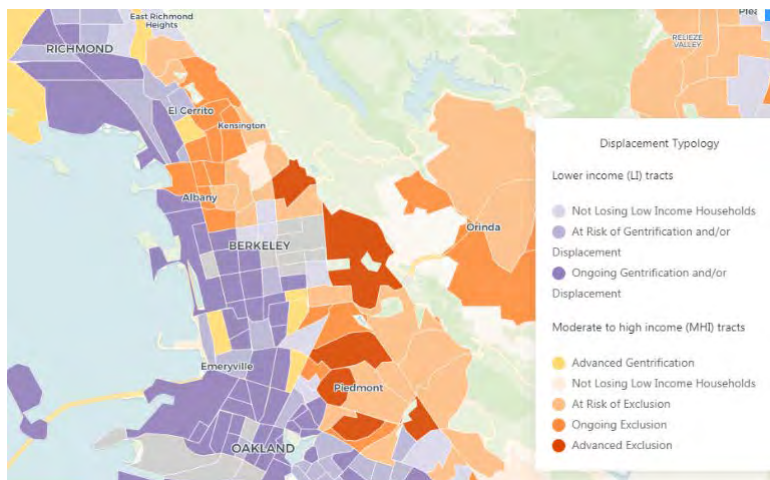
<sup>36</sup> Ibid.

<sup>37</sup> Jan 2017

<sup>38</sup> City of Berkeley Health Status Report 2018

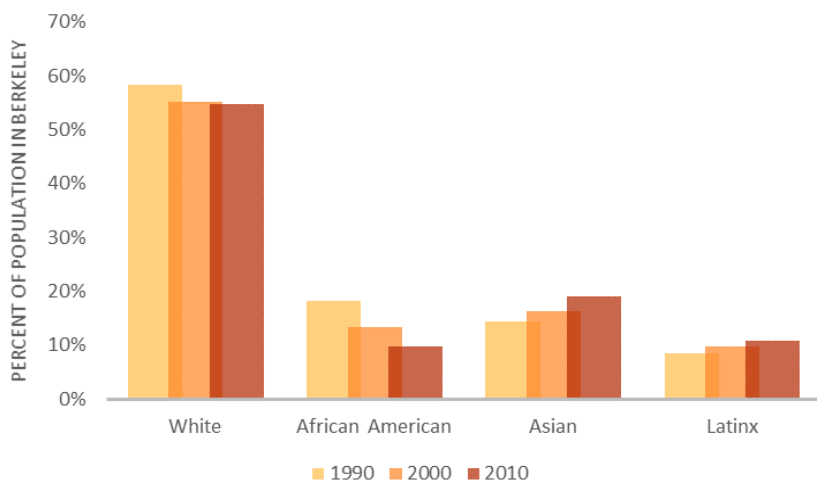
gentrifying areas in the East Bay were rated as hazardous (red) or declining (yellow) by HOLC, and 75 percent of today’s exclusionary areas were rated as best (green) or desirable (blue).<sup>39</sup> Redlining led to racial and economic segregation in cities, and South and West Berkeley – historically redlined communities – still contain more of Berkeley’s low-income communities and communities of color.<sup>40</sup> In addition, as the cost of living increases along with increased urbanization, these communities are also facing the greatest risk of gentrification and displacement (see Figure 10). As a result, Berkeley is losing its communities of color and low-income communities. For example, the African American population across Berkeley fell from 13.3 percent in 2000 to 9.7 percent in 2010 (see Figure 11). The change is even more pronounced in South and West Berkeley: between 2000 and 2017 the number of African American residents declined by 40 percent (see Figure 12). This trend is not only impacting the diversity of Berkeley, but also highlights the continual disenfranchisement of people of color.

Figure 10: Formerly redlined communities are experiencing higher rates of gentrification and displacement



Source: Urban Displacement Project

Figure 11: Berkeley is losing its African American population

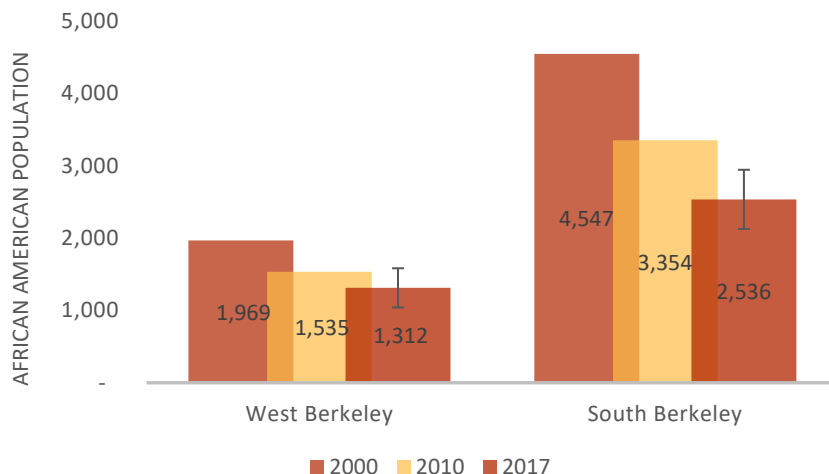


Source: Decennial Census 1990, 2000, 2010; Table DP-1 and Table P004; Universe: Total Population; Note: 1990 N=102,724, 2000 N=102,743, and 2010 N=112,580

<sup>39</sup> Urban Displacement Project

<sup>40</sup> City of Berkeley Agenda Item 22, April 30 2019

**Figure 12: West Berkeley and South Berkeley have experienced the highest rate of decline in the African American population**



Source: Decennial Census 2000 & 2010; Table DP-1; and ACS 2017 5-Year Estimates; Table B03002; Universe: Total Population; Note: Margins of Error expressed at 90 percent confidence level. Census tracts for West Berkeley include 4220, 4221, 4232, and South Berkeley include 4232, 4235, 4239.01, 4240.01

## VI. Recommendations

The City of Berkeley has committed to creating institutional change on racial equity,<sup>41</sup> and the Resilient Homes Equity Pilot Program is a perfect opportunity for the City to further its commitment. The City has already invested in creating a Racial Equity Lens Toolkit, which can be used to guide program expansion in a manner that reduces racial disparities and increases social resilience. As a result, this paper recommends Berkeley City Council take the following actions to build both physical and social resilience:

- 1. Approve the development of a Resilient Homes Equity Pilot Program that leverages the City’s Racial Equity Lens Toolkit in collaboration with community organizations and stakeholders.**
- 2. Confirm a commitment to dedicate additional future funding to implement the Equity Pilot, with the exact annual amount to be determined during the program design phase.**

If these requests are approved by Council, staff will work with community-based organizations to determine a target group for the Equity Pilot and co-create it with community members. Using the City Toolkit as a guide, staff should also focus on creating an evaluation framework for the Equity Pilot that measures success through an equity lens, including program metrics that reflect data related to race/ethnicity, age, ability, gender, or other social factors when available.

<sup>41</sup> City of Berkeley Resilience Strategy 2016

At a high level, the Equity Pilot may enable underserved households to make seismic, sustainability, electrification and resilience upgrades through subsidies or other mechanisms leading to safer, healthier, and more sustainable living environments. More research is required to determine the most appropriate mechanism, but rebates (like the existing Program structure) will likely not be an effective method for low-income groups because they require households to have cash upfront to make costly improvements. More work is also required to determine the Pilot's specific target group. The Seismic Transfer Tax Rebate Program, as it is currently designed, reinforces economic inequality by benefitting recent homebuyers who are already economically advantaged.<sup>42</sup> To enable more equitable outcomes, the Equity Pilot should focus on reaching frontline communities, including communities of color, low-income communities, and long-term homeowners with limited incomes. More specifically, the Equity Pilot may target benefitting renters, residents with disabilities or elderly residents, and others who are not able to access the Seismic Transfer Tax Rebate Program.

### Potential Target Groups

One group the Pilot may target is renters. Renters are generally less secure financially<sup>43</sup> and more vulnerable to displacement,<sup>44</sup> and could benefit greatly from home improvements that they (or their landlords) could otherwise not afford. In California, 70 percent of low-income households are renters and 47 percent live in multifamily housing.<sup>45</sup> In Berkeley, 83 percent of households earning less than \$50,000 in annual income are renters.<sup>46</sup> Focusing on renters may also mean impacting more communities of color: 67 percent of Berkeley's African American households are renters<sup>47</sup> and 74 percent of Latinx households are renters.<sup>48</sup>

Other potential target groups for the Pilot include priority populations that are homeowners, such as differently abled residents, seniors, and communities of color. Differently abled homeowners have more complex energy reliability needs, and often need more support preparing for and after a disaster. Because senior homeowners often have fixed incomes, they may struggle with housing maintenance costs.<sup>49</sup> Additionally, research shows that seniors may be more vulnerable to displacement.<sup>50</sup> With the number of residents 65-years and older expected to more than double by 2030 in Berkeley,<sup>51</sup> the need for services or additional support may also increase. Another important trend is the change in Berkeley's diversity: between 2000 and 2010 the largest change to Berkeley's ethnic diversity was the decline in its African American population.<sup>52</sup> – and this trend has continued in recent years. Instituting

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<sup>42</sup> Recent buyers in Berkeley can be considered economically advantaged because they have the resources and capital to purchase a property in a highly-competitive housing market. However, we recognize there is a range of home prices in the City, and not all buyers can afford a million-dollar home. We believe the Program offers real value for buyers in the lower range of home prices and who may not have the disposable income to spend on important safety or sustainability upgrades.

<sup>43</sup> Scally 2018

<sup>44</sup> Florida 2017

<sup>45</sup> Scavo 2016

<sup>46</sup> ACS 2017 5-Year Estimates; Table B25118; Universe: Occupied Housing Units

<sup>47</sup> ACS 2017 5-Year Estimates; Table B25003B; Universe: Occupied housing units with a householder who is Black or African American alone

<sup>48</sup> ACS 2017 5-Year Estimates; Table B25003I; Universe: Occupied housing units with a householder who is Hispanic or Latino

<sup>49</sup> City of Berkeley Housing Element 2015

<sup>50</sup> Nyden et al. 2006

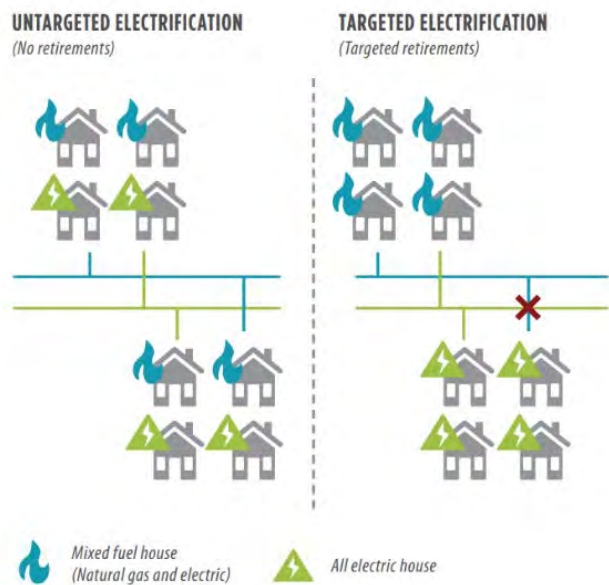
<sup>51</sup> Age-Friendly Berkeley Action Plan 2018

<sup>52</sup> City of Berkeley Housing Element 2015

additional anti-displacement measures, such as a Resilient Homes Equity Pilot, can slow this trend and enable more long-term members of the community to stay in their homes. Enabling homeowners to make important repairs is an effective strategy for preventing displacement.<sup>53, 54</sup>

Another way staff may choose to focus the Pilot is based on location of existing natural gas infrastructure. Targeting a group of underserved households that rely on the same segment of the gas distribution system, and helping them transition to all-electric, could lead to that entire gas line segment becoming decommissioned (see Figure 13). Strategic decommissioning of gas lines can help the overall system maintain sufficient pressure and reliable service, and may even lead to savings on maintenance costs.<sup>55</sup> Electrification of these homes would also provide health and safety benefits to the residents, as discussed in more detail below.

Figure 13: Approaches to neighborhood-level electrification



Source: Gridworks 2019

## VII. Potential Impact

An equity-centered Pilot offers several potential benefits for Berkeley residents. As previously mentioned, the Equity Pilot is a great opportunity to operationalize the City's existing Equity Toolkit – and can provide valuable learnings for how to integrate the Toolkit across other City programs. In addition, while the specifics of the Pilot need to be developed in partnership with community members and various stakeholders, several high-level impacts can be inferred based on a preliminary understanding of what the Pilot might include. Enabling underserved residents to improve their living space not only benefits them as individuals, but the community as a whole can benefit from a safer, healthier, more sustainable, and more inclusive environment.

### 1 | Increased Safety

It is estimated that in the event of a major earthquake over 600 housing units in Berkeley would be destroyed and 20,000 would be damaged, with low-income housing units experiencing the highest rate of damage.<sup>56</sup> Extending the Program to low-income residents (or landlords with low-income tenants) can enable them to make the necessary seismic improvements to better protect themselves and their homes during an earthquake. Improving the stability of buildings to withstand a major earthquake not

<sup>53</sup> The Housing Development Consortium of Seattle-King County 2019

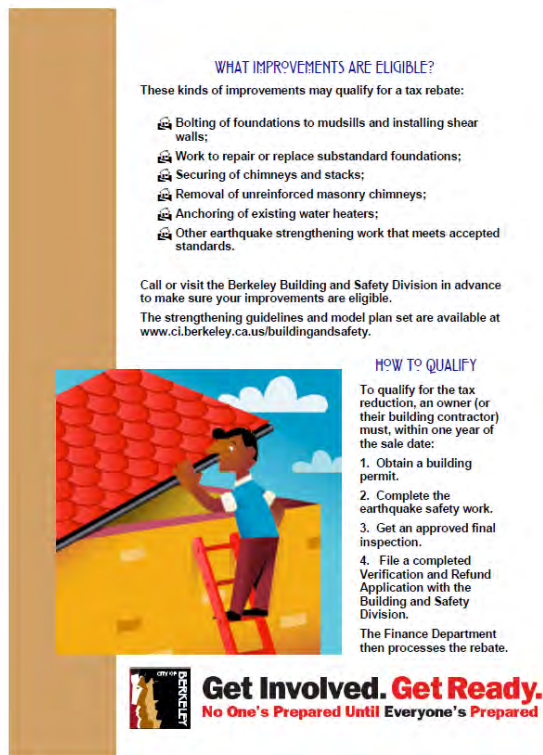
<sup>54</sup> Alameda County 2018 The Housing Development Consortium of Seattle-King County 2019

<sup>55</sup> Gridworks 2019

<sup>56</sup> City of Berkeley Resilience Strategy 2016



Figure 14: Berkeley Seismic Transfer Tax Rebate Program Flier



Source: City of Berkeley

quality, which can have dramatic effects on health.<sup>61</sup> Gas stoves release nitrogen dioxide and other particulates while burning, and prolonged exposure to these can lead to asthma or other respiratory illnesses – especially among children and seniors.<sup>62</sup> One study found that children living in a home with a gas stove have a 42 percent increased risk of asthma and have a 24 percent increased risk of asthma over their lifetime.<sup>63</sup> Electric stoves do not emit particulates and, since electric stoves do not rely on combustion, there is also no risk of carbon monoxide poisoning. In addition, the risk of carbon monoxide poisoning can be reduced by replacing gas furnaces with electric heat pumps. According to the Center for Disease Control (CDC), approximately 50,000 people in the U.S. visit the emergency room each year as a result of accidental carbon monoxide poisoning and at least 430 people die from accidental exposure.<sup>64</sup> Electric heat pumps, which provide both heating and cooling, can also provide critical temperature control during heat waves. In 2017, 14 people died in the Bay Area as a result of extreme heat.<sup>65</sup> It is predicted that by 2100, Berkeley will have 6-10 additional heat waves each year,

only reduces an individual’s risk of displacement, loss of property or loss of life, but better positions the city as a whole to recover more rapidly after an earthquake.<sup>57</sup> The Berkeley Seismic Transfer Tax Rebate Program flier says it best: “Get Involved. Get Ready. No One’s Prepared Until Everyone’s Prepared” (see Figure 14).

Offering qualifying electrification upgrades as part of the Equity Pilot can also significantly reduce the risk of gas leaks following an earthquake. Gas leaks in general pose a safety risk, as can be seen in the Porter Ranch incident.<sup>58</sup> and San Bruno gas explosion,<sup>59</sup> thus lessening the City’s reliance on natural gas can improve public safety. In addition, because repairing electric infrastructure post-disaster can happen faster than repairing gas lines, increasing electrification can position the city to recover more quickly post-disaster.<sup>60</sup>

## 2 | Improved Health Outcomes

Many aspects of the physical environment can directly affect people’s health. Enabling more households to switch to electric appliances can improve indoor air

<sup>57</sup> FEMA 2016

<sup>58</sup> Siders 2016

<sup>59</sup> Bowe et al. 2015

<sup>60</sup> City of Berkeley Adopt an Ordinance, Item 21, July 9, 2019

<sup>61</sup> Barron 2017

<sup>62</sup> The Greenlining Institute 2019

<sup>63</sup> Lin et al. 2013

<sup>64</sup> CDC 2020

<sup>65</sup> Peterson 2018

which will disproportionately impact seniors, children under five, and low-income community members.<sup>66</sup> As heat waves grow more frequent and more severe due to climate change, enabling low-income and underserved communities to access clean cooling technology can be an important public health strategy.<sup>67</sup>

By prioritizing communities of color, the Equity Pilot can also contribute to reducing health disparities. People of color in Berkeley are more likely than white people to experience a wide variety of health problems throughout their lives and die prematurely.<sup>68</sup> Asthma hospitalization rates for African American children under five is 10 times higher than the rate among white children, and for Latinx children it is 2.8 times higher.<sup>69</sup> A key piece to improving health outcomes is ensuring access to environments that support health,<sup>70</sup> and a program that enables low-income and communities of color to improve their living environment and have access to clean technology can support better health and lead to better health outcomes.

### 3 | Reduction in GHG Emissions

Berkeley has been a longtime leader in climate change mitigation. In 2006, Berkeley voters overwhelmingly endorsed a ballot measure to reduce the community's GHG emissions by 80 percent below 2000 levels by 2050,<sup>71</sup> and three years later the City adopted a Climate Action Plan that included a vision to achieve zero net energy consumption for all new and existing buildings by 2050.<sup>72</sup> In 2018, the City Council declared a Climate Emergency and established a goal of becoming a Fossil Fuel Free City. That same year, Berkeley Mayor Jesse Arreguin set a goal to reach 100 percent renewable electricity by 2035 and achieve net-zero carbon emissions by the year 2050. Because energy use in homes and commercial buildings is the second largest contributor of greenhouse gases in Berkeley (making up almost 40 percent of overall GHG emissions),<sup>73</sup> electrification of buildings is essential to reducing emissions and energy usage. Roughly 72 percent of Berkeley residents rely on gas for heating their homes, thus strategies aimed at accelerating the electrification of buildings could contribute significantly to the City's goal of achieving Fossil Fuel Free status (see Figure 15).

The City has made progress toward these goals and is leading the state and nation in pursuing stricter green building standards through the adoption of a natural gas ban in new residential buildings as well as through stretch and reach codes (codes beyond the minimum imposed by the state).<sup>74</sup> However, more action is needed if the City intends to meet its goals.<sup>75</sup> Council has identified building retrofits as a key strategy, and recommended staff consider offering financial incentives to subsidize the transition toward sustainable buildings, including expanding the existing transfer tax subsidy.<sup>76</sup> The Equity Pilot

<sup>66</sup> *City of Berkeley Local Hazard Mitigation Plan 2014*

<sup>67</sup> *E3 2019*

<sup>68</sup> *City of Berkeley Health Status Report 2018*

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> *City of Berkeley Electric Mobility Roadmap 2019*

<sup>72</sup> *Arreguin 2018*

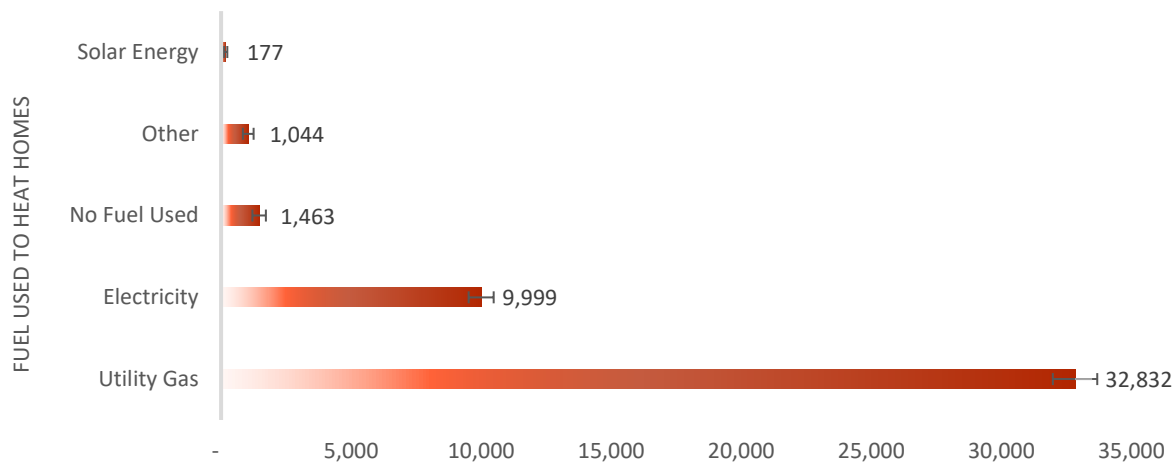
<sup>73</sup> *City of Berkeley Pathway to Clean Energy Building Report RFP March 20, 2019*

<sup>74</sup> *City of Berkeley Short-Term Referral Item 24, Nov. 27, 2018*

<sup>75</sup> *According to the 2016 GHG emissions inventory, the City has achieved 15 percent reductions below 2000 levels.*

<sup>76</sup> *City of Berkeley Short-Term Referral Item 24, Nov. 27, 2018*

Figure 15: Roughly 72 percent of Berkeley households rely on natural gas for heating



Source: ACS 2017 5-Year Estimates; Table B25040; Universe: Occupied Housing Units;  
 Note: Margins of Error expressed at 90 percent confidence level

builds on this strategy of encouraging fuel switching to clean energy, and helps prevent low-income households from being left behind. All residents, regardless of their income or whether they own or rent their home, should have the opportunity to benefit from clean energy and contribute to Berkeley’s climate action goals.

#### 4 | Enables a Just Transition

Accelerating progress towards the City’s Fossil Fuel Free goal is an important part of Berkeley’s fight against climate change; however, efforts to achieve this goal must be carried out in a manner that reduces (not perpetuates) harmful inequalities. Council urged staff to consider “the framework for a just and equitable transition,” and the Equity Pilot helps to enable a just transition. More specifically, it can address three critical elements:

- Transitioning buildings away from fossil fuels to cleaner electricity is a key strategy for Berkeley; however, high upfront costs can make this transition difficult for low-income homeowners. For example, electrical panel upgrades range between \$2,000-\$4,000.<sup>77</sup> and heat pump water heaters are currently more expensive than traditional gas water heaters. Subsidies or similar mechanisms can help households cover the higher upfront cost of such technologies, enabling households to benefit from cleaner, more efficient appliances.
- As more buildings transition away from natural gas, the cost of gas will inevitably rise: the gas distribution system is expensive to maintain, and as the number of ratepayers decreases the costs will be distributed across fewer ratepayers – leading to higher bills for those who are still using it.<sup>78</sup> The cost today for natural gas is roughly \$1.50 per therm, and estimates place the cost as high as \$19 per therm by 2050.<sup>79</sup> The last customers relying on the gas system could experience unreasonably high rates; and these customers “may well be those among us who

<sup>77</sup> E3 2019

<sup>78</sup> Gridworks 2019

<sup>79</sup> Ibid.

are least able to afford high rates and least able to finance the new appliances needed to convert to electricity.”<sup>80</sup> It is therefore critical to develop strategies that enable more low-income communities to transition to all-electric and not be left to pay for an expensive, aging gas system. The City is in the process of developing an Existing Building Electrification Strategy, which will identify and assess the potential pathways to phasing out fossil fuels across all existing buildings in Berkeley as soon as possible and will incorporate an emphasis on a just transition.

- Because many low-income households are renters, strategies must consider how to incentivize landlords to invest in clean technology in a way that does not lead to higher rents (and prevents the cost of upgrades being passed through to tenants). Furthermore, tenants should benefit from the bill savings of more energy efficient appliances.

## VIII. Conclusion

Berkeley’s Seismic Transfer Tax Rebate Program has no doubt contributed to making the City more resilient to earthquakes and expanding the Program to include sustainability and energy efficiency upgrades will further build the City’s resilience to natural disasters and climate change. However, the current Program fails to reach underserved members of the community despite the fact that low-income and minority communities are more vulnerable to natural disasters and the impacts of climate change.<sup>81</sup> Exclusion not only keeps resilience out of reach for frontline communities, but it perpetuates social and racial inequality in the City. Establishing a new, equity-centered program that incorporates key strategies from the City’s Racial Equity Lens Toolkit can enable all residents to contribute to and benefit from building Berkeley’s resilience – especially those most in need and historically underserved. With Council’s support, a Resilient Homes Equity Pilot Program can help the City further its commitment to social and racial equity and secure its position as a leader in climate change, while also building a safer, healthier, more inclusive and more resilient community.

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***A Resilient Homes Equity Pilot can help Berkeley further its commitment to social and racial equity and secure its position as a leader in climate change, while also building a safer, healthier, more inclusive and more resilient community.***

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<sup>80</sup> *Gridworks 2019*

<sup>81</sup> *City of Berkeley Resilience Strategy 2016*

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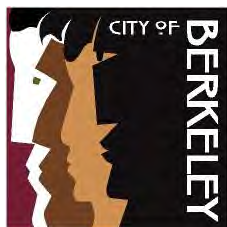
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Kate Harrison  
Councilmember, District 4

## **REVISED AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** November 27, 2018

**Item Number:** 24

**Item Description:** Short-Term Referral to City Manager and Office of Energy and Sustainable Development to Draft Ordinance Amending Berkeley Municipal Code Chapter 7.52, Reducing Tax Imposed for Qualifying Electrification, Energy Efficiency and Water Conservation Retrofits

**Submitted by:** Councilmember Harrison

Added Councilmember Hahn as a cosponsor.





Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
November 27, 2018

To: Honorable Mayor and Members of the City Council

From: Councilmembers Harrison, ~~and Davila~~ and Hahn

Subject: Short-Term Referral to City Manager and Office of Energy and Sustainable Development to Draft Ordinance Amending Berkeley Municipal Code Chapter 7.52, Reducing Tax Imposed for Qualifying Electrification, Energy Efficiency and Water Conservation Retrofits

RECOMMENDATION

Short-term referral to the City Manager and the Office of Energy and Sustainable Development to draft an ordinance amending Berkeley Municipal Code (BMC) Chapter 7.52, reducing tax imposed for qualifying electrification, energy efficiency, and water conservation retrofits.

BACKGROUND

The City of Berkeley faces climate change and water usage emergencies. A recent UN Intergovernmental Panel on Climate Change report highlighted the immediacy of the climate emergency, suggesting that in order to keep warming under 1.5 degrees Celsius, carbon emissions would need to be cut 45% by 2030.<sup>1</sup> Though California is no longer in extreme drought, Berkeley is still categorized as abnormally dry, almost 50% of the state is in moderate drought or worse, and we can expect to face major droughts in the future.<sup>2</sup>

The City is already leading the state and nation in pursuing stricter green building standards through the adoption of stretch and reach codes (codes beyond the minimum imposed by the state) favoring sustainable buildings and time of sale energy audits, but progress is still hindered by a significant lack of financial incentives to encourage the replacing and phasing-out of energy inefficient, carbon and water-intensive infrastructure in new and existing buildings. For example, even though electric heat pump water heaters can prevent significant carbon emissions and save money on heating bills, the relatively higher purchase and installation costs associated with heat pumps as compared to gas-fired heaters remains a major disincentive.

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<sup>1</sup> IPCC Press Release, Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C approved by Governments, 8 October 2018, [http://www.ipcc.ch/pdf/session48/pr\\_181008\\_P48\\_spm\\_en.pdf](http://www.ipcc.ch/pdf/session48/pr_181008_P48_spm_en.pdf)

<sup>2</sup> National Integrated Drought Information System, Drought in California, <https://www.drought.gov/drought/states/california>.

The City has identified building retrofits as a key part of reducing emissions and energy and water usage. To achieve the ambitious sustainability goals set by the Council, the City cannot rely solely upon the market, state, federal and utility level incentives. It would do well to explore offering significant financial incentives to subsidize the transition towards sustainable building, including expanding the existing transfer tax subsidy for seismic retrofits to include qualifying sustainability retrofits.

Following the devastating 1989 Loma Prieta earthquake, the Council passed Ordinance 6072-NS in 1991 to reduce up to one-third of the transfer tax imposed on property owners who seismically retrofit any structure which is used exclusively for residential purposes, or any mixed use structure which contains two or more dwelling units. In passing the ordinance, forward-looking leaders acted independently of the state and federal government to subsidize critical building improvements in anticipation of relatively infrequent but exceedingly devastating earthquake emergencies. The seismic retrofit subsidy program offers a model for accelerating opportunities to address the major emergencies of our time.

This referral asks the City Manager and Office of Energy & Sustainable Development (OESD) to develop amendments to BMC Chapter 7.52 that expand the existing seismic retrofit subsidy in order to include appropriate reductions in transfer tax imposed on sales of property for qualifying electrification, energy efficiency, and water conservation retrofits. According to a 2018 City Manager report, 737 Berkeley residences were transferred in 2017.<sup>3</sup>

In drafting the ordinance, staff should consider existing City sustainability goals such as the 2009 Berkeley Climate Action Plan, and the framework for a just and equitable transition as set out in the Climate Emergency Declaration. Staff should tailor the subsidy to be commensurate with the emergency at hand and should design it to result in quantifiable reductions in emissions as well as energy and water waste.

OESD staff recently issued a request for proposals (RFP) for expert analysis identifying a set of measureable policies and programs to transition Berkeley's building stock to efficient and 100% clean energy.<sup>4</sup> The resulting analysis report should help inform staff in determining which types of greenhouse gas reduction measures transfer tax reductions could fund. Additionally, within the context of the City's sustainability goals

<sup>3</sup> Placing a Measure on the November 6, 2018 Ballot to Increase the Transfer Tax on Property Sales to Pay for General Municipal Services Including Funding Homeless Services, City Manager, July 31, 2018, [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/07\\_Jul/Documents/2018-07-31\\_Item\\_05\\_Placing\\_a\\_Measure\\_on\\_the\\_November\\_6.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/07_Jul/Documents/2018-07-31_Item_05_Placing_a_Measure_on_the_November_6.aspx)

<sup>4</sup> Request for Proposals (RFP) Specification No. 19-11256-C for Pathway to Clean Energy Buildings Report: Existing Building Program Evaluation and Recommendations, OESD, October, 10, 2018, [https://www.cityofberkeley.info/uploadedFiles/Finance/Level\\_3\\_-\\_General/19-11256-C%20-%20RFP%20Pathway%20to%20Clean%20Energy%20Building%20Report\\_rev%201017.pdf](https://www.cityofberkeley.info/uploadedFiles/Finance/Level_3_-_General/19-11256-C%20-%20RFP%20Pathway%20to%20Clean%20Energy%20Building%20Report_rev%201017.pdf).

and the RFP analysis, staff should specifically consider developing and codifying definitions of qualifying improvements, including but not limited to:

- Electric service panel upgrades for the purpose of transitioning to electric appliances
- Transitioning home appliances to efficient electric versions, e.g. replacing gas burning appliances and systems such as fossil fuel HVACs, cooktops and ovens, washers and dryers, and water heaters.
- Solar or other clean energy generation installations
- Electric vehicle charging stations
- Building weatherization upgrades in coordination with the Building Energy Saving Ordinance (BESO)
- Graywater recapture systems
- Water efficient fixtures and irrigation systems

The seismic retrofit program was limited to residential and mixed use buildings, but staff should consider the appropriateness and effectiveness of extending the subsidy program to commercial and/or industrial properties for the purpose of achieving city-wide sustainability goals. It should also review whether the existing requirement for completing seismic retrofits following property transfers is appropriate for the sustainability retrofits outlined in this referral.

Finally, staff should attempt to estimate the carbon, electrical, and water savings that are likely to result from adoption of their proposal, and determine whether alternatives exist which, at a similar cost the city, would result in greater reductions.

This referral is compatible with OESD's 2017 Climate Action Report update suggesting that the Council take bold steps to meet Berkeley's 2050 emission reduction goals. The report highlighted the urgency of identifying resources for incentivizing electrification measures, building efficiency, generation of renewable electricity, and transitioning buildings and vehicles away from fossil fuel.<sup>5</sup>

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<sup>5</sup> Berkeley Climate Action Plan Update, Office of Energy and Sustainable Development, December 7, 2017, [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/2017-12-07%20WS%20Item%2001%20Climate%20Action%20Plan%20Update.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/2017-12-07%20WS%20Item%2001%20Climate%20Action%20Plan%20Update.pdf)

Short-Term Referral to City Manager and Office of Energy and Sustainable Development to Draft Ordinance Amending Berkeley Municipal Code Chapter 7.52, Reducing Tax Imposed for Qualifying Electrification, Energy Efficiency and Water Conservation Retrofits

CONSENT CALENDAR  
November 27, 2018

**FINANCIAL IMPLICATIONS**

Possible reduction in tax revenue, the magnitude of which is dependent on which retrofits are found to be qualifying.

**ENVIRONMENTAL SUSTAINABILITY**

Incentivizing electrification, energy efficiency, and water savings is directly in line with the City's climate and environmental goals.

**CONTACT PERSON**

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

**Attachments:**

1. BMC Section 7.52.060

**7.52.060 Exceptions.**

A. Any tax imposed pursuant to this chapter shall not apply to any instrument in writing given to secure a debt.

B. Any deed, instrument or writing to which the United States, or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, is a party shall be exempt from any tax imposed pursuant to this chapter when the exempt agency is acquiring title.

C. Any tax imposed pursuant to this chapter shall not apply to the making, delivery, or filing of conveyances to make effective any plan of reorganization or adjustment:

1. Confirmed under the Federal Bankruptcy Act, as amended;
2. Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in subdivision (m) of Section 205 of Title 11 of the United States Code, as amended;
3. Approved in an equity receivership proceeding in a court involving a corporation, as defined in subdivision (3) of Section 506 of Title 11 of the United States Code, as amended; or
4. Whereby a mere change in identity, form or place of organization is effected.

Subdivisions 1 to 4, inclusive, of this section shall only apply if the making, delivering or filing of instruments of transfer of conveyance occurs within five years from the date of such confirmation, approval or change.

D. Any tax imposed pursuant to this chapter shall not apply to the making or delivering of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954; but only if:

1. The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;
2. Such order specifies the property which is ordered to be conveyed;
3. Such conveyance is made in obedience to such order.

E.

1. In the case of any realty held by a partnership, no levy shall be imposed pursuant to this chapter by reason of any transfer of an interest in a partnership or otherwise, if:
  - a. Such partnership (or another partnership) is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1954; and
  - b. Such continuing partnership continues to hold the realty concerned.
2. If there is a termination of any partnership within the meaning of Section 708 of the Internal Revenue Code of 1954, for purposes of this chapter, such partnership shall be treated as having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership at the time of such termination.
3. Not more than one tax shall be imposed pursuant to this chapter by reason of a termination described in subdivision 2, and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of such termination.

F.

1. Any tax imposed pursuant to this chapter shall not apply to any transfer of property from one spouse or domestic partner to the other in order to create a joint tenancy or tenancy in common of their common residence.
2. Any tax imposed pursuant to this chapter shall not apply to any transfer of property from one spouse to the other in accordance with the terms of a decree of dissolution or in fulfillment of a property settlement incident thereto; provided, however, that such property was acquired by the husband and wife or husband or wife prior to the final decree of dissolution. Any tax imposed pursuant to this chapter also shall not apply to any transfer from one domestic partner, as that term is used in the City of Berkeley's policy establishing domestic partnership registration, to another, where (1) prior to such transfer an affidavit of domestic partnership has been filed with the City Clerk pursuant to Section IV of the City of Berkeley's policy establishing domestic partnership registration; (2) subsequent to the filing of such affidavit of domestic partnership, either or both domestic partner(s) files a statement of termination with the City Clerk pursuant to Section V of the domestic partnership policy; (3) such transfer of real property is made pursuant to a written agreement between the domestic partners upon the termination of their domestic partnership; and (4) the real property was acquired by either or both domestic partner(s) prior to the filing of the statement of termination.

G. Any tax imposed pursuant to this chapter shall not apply to transfers, conveyance, lease or sub-lease without consideration which confirm or correct a deed previously recorded or filed.

H. Any tax imposed pursuant to this chapter shall not apply to transfers recorded prior to the effective date of the ordinance codified in this chapter.

I. The tax imposed pursuant to this chapter shall not apply with respect to any deed, instrument, or writing to a beneficiary or mortgagee, which is taken from the mortgagor or trustor as a result of or in lieu of foreclosure; provided, that such tax shall apply to the extent that the consideration exceeds the unpaid debt, including accrued interest and cost foreclosure. Consideration, unpaid debt amount and identification of grantee as beneficiary or mortgagee shall be noted on said deed, instrument or writing or stated in an affidavit or declaration under penalty of perjury for tax purposes.

J. Reserved.

K.

1. Up to one-third of the tax imposed by this chapter shall be reduced, on a dollar for dollar basis, for all expenses incurred on or after October 17, 1989 to "seismically retrofit" either any structure which is used exclusively for residential purposes, or any mixed use structure which contains two or more dwelling units.

2. The term "seismically retrofit" within the meaning of this chapter means any of the following:

a. That work which is needed and directly related to make the structure capable of withstanding lateral loads equivalent to the force levels defined by Chapter 23 of the 1976 Uniform Building Code;

b. Replacement or repair of foundations; replacement or repair of rotted mud sills; bracing of basement or pony walls; bolting of mud sills to standard foundations; installation of shear walls; anchoring of water heaters; and/or securing of chimneys, stacks or water heaters;

c. Corrective work on buildings which fit the criteria in subsection K.1, which are listed on the City of Berkeley inventory of potentially hazardous, unreinforced masonry buildings when such work is necessary to meet City standards or requirements applicable to such buildings;

d. Any other work found by the building official to substantially increase the capability of those structures, specified in subsection K.1, to withstand destruction or damage in the event of an earthquake.

3. The work to seismically retrofit structures as provided herein shall be completed either prior to the transfer of property or as provided in subsection K.4.

4. If the work to seismically retrofit the structures provided for herein is to be performed after the transfer of property which is subject to the tax imposed by this chapter, upon completion of such work and certification by the building official as to the amount of the expenses of such work the City Manager or his/her designee may refund such expenses not to exceed one-third of the tax imposed to the parties to the sale in accordance with the terms of such sale. Any remaining tax shall be retained by the City.

5. From the date of the recordation of the transfer document, the applicant shall have one year to complete all seismic retrofit work and submit a seismic retrofit verification application to the codes and inspection division of the City of Berkeley. If the work is not completed at the end of one year, that portion which has been completed may be credited to the applicant upon submission of a seismic retrofit verification application and substantiating documentation, as required by the codes and inspections division of the City of Berkeley, showing the dollar amount of work completed up to that date. All other monies remaining in escrow will be returned to the City of Berkeley upon written request by the Finance Department.

6. Within the one-year period established by paragraph 5, an applicant may request, and the City Manager may approve, an extension of up to one year. The City Manager or his/her designee may grant such an extension only for good cause. The decision of the City Manager or his/her designee shall be entirely within his or her discretion and shall be final.

a. "Good cause" includes (i) the inability of the applicant, after a prompt and diligent search to find and retain the services of an architect, engineer, contractor or other service provider whose services are necessary for the seismic retrofit work; (ii) unforeseen and unforeseeable circumstances such as a significant change in the scope of the seismic retrofit work due to circumstances in the field which could not reasonably have been known earlier; and (iii) serious illness or other extraordinary and unforeseeable circumstances that prevented the timely commencement or completion of the seismic retrofit work.

b. "Good cause" does not include (i) ignorance of the applicable City ordinances or regulations concerning the seismic retrofit rebate provided in this chapter or state or local laws relating to the standards with which seismic retrofit work must comply; or (ii) any delays which were within the control or responsibility of the applicant.





Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
November 10, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Wengraf  
Subject: Budget Referral -\$20,000 radar speed feedback sign for Wildcat Canyon Road

RECOMMENDATION

Referral to the City Manager for a solar powered radar speed feedback sign to be installed on Wildcat Canyon Road at the cost of \$20,000 to be considered during the Mid-Year Budget Process.

FINANCIAL IMPLICATIONS

\$20,000

BACKGROUND

Drag Racing and speeding have increased along Wildcat Canyon Road. Wildcat Canyon Road is a narrow curvy road that runs from Berkeley through Tilden Park. Racing and speeding in the High Hazard Fire Zone is very dangerous as one spark can set off a wildfire during certain weather conditions. Speeding vehicles create danger to the drivers, the pedestrians walking the road, bicyclists cycling the terrain, and it is a significant risk during wildfire season.

On October 21, 2020 Councilmember Wengraf along with Farid Javandel, Director of Transportation, BPD Officer McDougall and Sgt. Rodrigues, and EBRPPD Lieutenant Phulps and Captain Brede, met with Wildcat Canyon neighbors to discuss the situation and create an action plan. Mr. Javandel confirmed the high rates of speed of vehicles racing. EBRP police also confirmed the problem.

Mr. Javandel recommended a solar powered speed feedback sign for the area, in addition to the installation of speed limit signs in a few strategic locations.

A solar powered radar speed feedback sign for Wildcat Canyon Road is a critical piece of a multipronged strategy to reduce the wildfire threat in our Wildland Urban Interface and improve safety for pedestrians and bicyclists.

ENVIRONMENTAL SUSTAINABILITY

Prevention of wildfire is crucial to achieving our climate action goals.

CONTACT PERSON

Councilmember Wengraf                      Council District 6                      510-981-7160





Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
November 10, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Wengraf  
Subject: Consider Fire Safety Options for Fire Pit at Codornices Park

RECOMMENDATION

Referral to the Parks & Waterfront Commission to consider safety options regarding the future of the fire pit at Codornices Park. Please consider 1) Complete removal of fire pit or 2) Manufacture of a cover that can be secured and locked.

FINANCIAL IMPLICATIONS

Staff time to remove the fire pit. Unknown financial implications to design, craft and install the cover.

BACKGROUND

Codornices Park, situated in the High Hazard Fire Zone on Euclid Avenue in the North-East Berkeley Hills, has a playground, basketball courts, an open field and a forest of dawn redwood trees. The 12 foot by 12 foot fire pit, tucked away behind the meadow in the secluded, wooded area of Codornices Park, sits under the canopy of the trees. It has been a matter of concern for neighbors who fear a fire can easily start if users are careless and irresponsible. With climate change and the number of red flag days increasing, options for the fire pit and how and if it can be safely used should be considered.

The large fire pit, is difficult to monitor because it is situated behind the meadow and not visible from Euclid Avenue. Over the years, our office has received numerous calls of concern about the potential danger it presents.

ENVIRONMENTAL SUSTAINABILITY

This item supports the City's environmental sustainability goals. Fire prevention is critical for environmental sustainability.

CONTACT PERSON

Councilmember Wengraf                      Council District 6                      510-981-7160



# **COVID-19** *Berkeley's Response to Residents Experiencing Homelessness*

October 26, 2020



Policy Committee: Health, Life Enrichment, Equity & Community

# Agenda



- ❖ Getting people housed:
  - ❖ Safer Ground Hotels
  - ❖ Safer Ground Voucher Program
  - ❖ Berkeley Respite Program
  - ❖ Permanent Housing Solutions
- ❖ Serving people who are unhoused:
  - ❖ COVID-19 Prevention in Shelter
  - ❖ Outreach

# Getting People Housed



# Safer Ground Hotel Program

- › Quality Inn (41 units) and Roadway Inn (29 units)
  - Provides non-congregate temporary housing to eligible unhoused households
  - Households must be 65 or older or have a CDC qualifying documented underlying medical condition
  - Both hotels are at 100% capacity

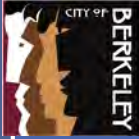




# Safer Ground

## Voucher Program

- Allows eligible households and their service provider(s) to apply for financial resources to pay for stays in non-congregate housing (typically a hotel)
- Stays can last up to 90 days



# Berkeley Respite Program

- › Safe housing for homeless individuals who meet CDC criteria:
  - 65 years and older, or
  - Qualified and documented underlying medical condition
- › Participants are identified by outreach teams in Berkeley
- › Three locations:
  - 701 Harrison Street – 10 RVs
  - 1281 University Avenue – 8 RVs
  - 1654 5th Street – 4-bedroom house
- › BFHP is the operator and provides:
  - 3 meals per day, wellness checks, and housing navigation (linkage to health care and support with collecting documents for housing)
- › Additional resources include nursing services and mental health supports
- › The contract has been extended through December 31, 2021 and to add rapid rehousing resources to support exits to permanent housing.



# Bridge from Safer Ground and Respite to Permanent Housing

## Emergency Solutions Grant COVID-19 Funding (ESG-CV) – Rapid Rehousing Assistance

- › \$2.1 million for Rapid Re-housing for up to 88 Berkeley clients in the North County Safer Ground Hotels
  - Abode to provide landlord liaison services and rental assistance
  - County will pay for housing navigation and housing retention services
- › \$491,095 for Rapid Rehousing for households in the Berkeley Respite Program
  - BFHP will provide housing search and retention services.



## Getting folks housed:

- ❖ Safer Ground and Respite Program
  - ❖ 97 households, 111 people
  - ❖ 3% families
- ❖ Seven households have utilized the voucher program.
- ❖ Two households have exited to permanent housing destinations.
- ❖ 12 Households have been matched to permanent supportive housing and are searching for housing.
- ❖ 18 households have been matched to Rapid Rehousing.

# Serving People Who Are Unhoused



## Prevention in Emergency Shelter

- › Berkeley shelters now open 24 hours per day
  - Providing three meals a day to limit exposure
  - Distributing Personal Protective Equipment
  - Increased cleaning and disinfection schedule
  - Allowing hazard pay for staff
- › The Public Health Officer has:
  - Toured shelters to determine new reduced census to comply with 6' distancing requirements
  - Established a COVID response plan for shelter to report presumed or positive cases.

# Coordinated Outreach in Berkeley



## Community Partners:

- ❖ Homeless Outreach and Treatment Team (HOTT)
- ❖ City of Berkeley Neighborhood Services
- ❖ Life Long Medical Care Street Medicine Team (LLMC)
- ❖ Bay Area Community Services (BACS)
- ❖ University of California, Berkeley (Cal)
- ❖ Downtown Berkeley Association (DBA)
- ❖ Berkeley Community Resource Center (BCRC)
- ❖ Berkeley Outreach Coalition



# Outreach Services Provided

- ❖ *Between April and October 23<sup>rd</sup> more than*
  - › *7,800 bags of food*
  - › *9,900 warm meals*
  - › *8,000 bottles of water*
  
- ❖ COVID education and more than 4,400 individual hand sanitizer and 7,000 face coverings
  
- ❖ Approximately 85 Tents, 15 Solar Chargers; and first aid kits
  
- ❖ More than 100 referrals to Safer Ground and Berkeley Respite Sites





## Outreach Services Provided

- ❖ More than 150 Coordinated Entry System Assessments
- ❖ HOTT was accompanied by a COB Public Health Nurse who provided 40 COVID tests in the field.
- ❖ Housing Navigation to support housing referrals
- ❖ Linkage to Service Providers and benefits



## City Services Provided

- ❖ Increased the # of porta-potties by 20 and handwashing stations by 22
- ❖ Expanded shower and laundry program
- ❖ Activated a Clean Air Center and a Cooling Center at Old City Hall

**Thank you.**

**Josh Jacobs, Homeless Services Coordinator**  
**[jjacobs@cityofberkeley.info](mailto:jjacobs@cityofberkeley.info)**

**Questions / Committee Discussion**





Office of the City Manager

19

ACTION CALENDAR

November 10, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Andrew Greenwood, Chief of Police  
Savita Chaudhary, Director of Information Technology  
David White, Deputy City Manager

Subject: Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code

RECOMMENDATION

Adopt a Resolution accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance (“Ordinance”). The purpose of the Ordinance is to provide transparency surrounding the use of surveillance technology, as defined by Section 2.99.020 in the Ordinance, and to ensure that decisions surrounding the acquisition and use of surveillance technology consider the impacts that such technology may have on civil rights and civil liberties. Further, the Ordinance requires that the City evaluate all costs associated with the acquisition of surveillance technology and regularly report on their use.

The Ordinance imposes various reporting requirements on the City Manager and staff. The purpose of this staff report and attached resolution is to satisfy the annual reporting requirement as outlined in Section 2.99.070. Attached to this staff report are Surveillance Technology Reports for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project.

BACKGROUND

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance. Section 2.99.070 of the Ordinance requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November.

For each of the four technologies, the Surveillance Technology Reports were prepared to satisfy the specific, section-by-section requirements of the Ordinance, and are attached to this report.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

City Council is being asked to adopt the attached resolution for the City to be in compliance with the Ordinance.

ALTERNATIVE ACTIONS CONSIDERED

City Council could decide not to adopt the resolution.

CONTACT PERSON

Savita Chaudhary, Director of Information Technology (510) 981-6541  
Andrew Greenwood, Chief of Police, (510) 981-7017  
David White, Deputy City Manager, (510) 981-7012

ATTACHMENTS

1. Proposed Resolution
2. Body Worn Cameras  
Surveillance Technology Report: Body Worn Cameras
3. Global Positioning System Tracking Devices  
Surveillance Technology Report
4. Automated License Plate Readers  
Surveillance Technology Report: Automated License Plate Readers
5. Street Level Imagery Project  
Surveillance Technology Report: Street Level Imagery Project

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

A RESOLUTION ACCEPTING THE SURVEILLANCE TECHNOLOGY REPORT FOR  
AUTOMATIC LICENSE PLATE READERS, GPS TRACKERS, BODY WORN  
CAMERAS, AND THE STREET LEVEL IMAGERY PROJECT

WHEREAS, on March 27, 2018, the City Council adopted Ordinance 7,592-N.S., which is known as the Surveillance Technology Use and Community Safety Ordinance (“Ordinance”); and

WHEREAS, Section 2.99.070 of the Ordinance requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November; and

WHEREAS, the Surveillance Technology Reports satisfy the requirements of the Ordinance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley:

Section 1. The City Council hereby accepts the Surveillance Technology Reports for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project.



**Surveillance Technology Report: Body Worn Cameras**

**October 1, 2019 – Sept. 30, 2020**

| <p>Description</p>           | <p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Body Worn Cameras are used to capture video recordings of contacts between department personnel and the public, to provide an objective record of these events. These recording are used in support of criminal prosecutions, to limit civil liability, increase transparency and enhance professionalism and accountability in the delivery of police services to the community.</p> <p>Body Worn Camera (BWC) files are shared with the Alameda County District Attorney’s office in support of prosecution for crime, and may be shared with other law enforcement agencies to support criminal investigations.</p> <p style="text-align: center;">Summary of Body Worn Camera Videos Uploaded<br/>Oct. 1, 2019 to Sept. 30, 2020</p> <table style="margin-left: auto; margin-right: auto;"> <tr> <td>Total Number of Videos</td> <td style="text-align: right;">68,489</td> </tr> <tr> <td>Total Hours of Videos</td> <td style="text-align: right;">18,729</td> </tr> <tr> <td>Total GB of Videos</td> <td style="text-align: right;">35,795</td> </tr> </table> <p style="text-align: center;">Summary of All Evidence Created<br/>Oct. 1, 2019 to Sept. 30, 2019</p> <table style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th><u>Type</u></th> <th><u>Count of files</u></th> <th><u>Size (in Mb)</u></th> <th><u>GBs Storage</u></th> </tr> </thead> <tbody> <tr> <td>Audio</td> <td style="text-align: right;">821</td> <td style="text-align: right;">9,842</td> <td style="text-align: right;">98</td> </tr> <tr> <td>Document</td> <td style="text-align: right;">318</td> <td style="text-align: right;">15</td> <td style="text-align: right;">0.14</td> </tr> <tr> <td>Image</td> <td style="text-align: right;">64,563</td> <td style="text-align: right;">293,306</td> <td style="text-align: right;">293</td> </tr> <tr> <td>Other</td> <td style="text-align: right;">1,711</td> <td style="text-align: right;">122,370</td> <td style="text-align: right;">1,224</td> </tr> <tr> <td>Videos*</td> <td style="text-align: right;">73,570</td> <td style="text-align: right;">36,984,303</td> <td style="text-align: right;">369,843</td> </tr> <tr> <td>Grand Totals</td> <td style="text-align: right;">140,983</td> <td style="text-align: right;">37,409,835</td> <td style="text-align: right;">374,098</td> </tr> </tbody> </table> <p>* Includes all uploaded BWC videos <i>and</i> all other videos booked into the evidence management system. Other videos include iPhone videos uploaded, security camera video, copies of BWC videos (for redaction, etc.), and any other videos.</p> | Total Number of Videos | 68,489             | Total Hours of Videos | 18,729 | Total GB of Videos | 35,795 | <u>Type</u> | <u>Count of files</u> | <u>Size (in Mb)</u> | <u>GBs Storage</u> | Audio | 821 | 9,842 | 98 | Document | 318 | 15 | 0.14 | Image | 64,563 | 293,306 | 293 | Other | 1,711 | 122,370 | 1,224 | Videos* | 73,570 | 36,984,303 | 369,843 | Grand Totals | 140,983 | 37,409,835 | 374,098 |
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| Total Number of Videos       | 68,489                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                        |                    |                       |        |                    |        |             |                       |                     |                    |       |     |       |    |          |     |    |      |       |        |         |     |       |       |         |       |         |        |            |         |              |         |            |         |
| Total Hours of Videos        | 18,729                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                        |                    |                       |        |                    |        |             |                       |                     |                    |       |     |       |    |          |     |    |      |       |        |         |     |       |       |         |       |         |        |            |         |              |         |            |         |
| Total GB of Videos           | 35,795                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                        |                    |                       |        |                    |        |             |                       |                     |                    |       |     |       |    |          |     |    |      |       |        |         |     |       |       |         |       |         |        |            |         |              |         |            |         |
| <u>Type</u>                  | <u>Count of files</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <u>Size (in Mb)</u>    | <u>GBs Storage</u> |                       |        |                    |        |             |                       |                     |                    |       |     |       |    |          |     |    |      |       |        |         |     |       |       |         |       |         |        |            |         |              |         |            |         |
| Audio                        | 821                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 9,842                  | 98                 |                       |        |                    |        |             |                       |                     |                    |       |     |       |    |          |     |    |      |       |        |         |     |       |       |         |       |         |        |            |         |              |         |            |         |
| Document                     | 318                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 15                     | 0.14               |                       |        |                    |        |             |                       |                     |                    |       |     |       |    |          |     |    |      |       |        |         |     |       |       |         |       |         |        |            |         |              |         |            |         |
| Image                        | 64,563                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 293,306                | 293                |                       |        |                    |        |             |                       |                     |                    |       |     |       |    |          |     |    |      |       |        |         |     |       |       |         |       |         |        |            |         |              |         |            |         |
| Other                        | 1,711                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 122,370                | 1,224              |                       |        |                    |        |             |                       |                     |                    |       |     |       |    |          |     |    |      |       |        |         |     |       |       |         |       |         |        |            |         |              |         |            |         |
| Videos*                      | 73,570                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 36,984,303             | 369,843            |                       |        |                    |        |             |                       |                     |                    |       |     |       |    |          |     |    |      |       |        |         |     |       |       |         |       |         |        |            |         |              |         |            |         |
| Grand Totals                 | 140,983                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 37,409,835             | 374,098            |                       |        |                    |        |             |                       |                     |                    |       |     |       |    |          |     |    |      |       |        |         |     |       |       |         |       |         |        |            |         |              |         |            |         |
| <p>Geographic Deployment</p> | <p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>Body Worn Cameras are worn by all BPD uniformed officers city-wide at all times; BWCs are not deployed based on geographic considerations.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                        |                    |                       |        |                    |        |             |                       |                     |                    |       |     |       |    |          |     |    |      |       |        |         |     |       |       |         |       |         |        |            |         |              |         |            |         |
| <p>Complaints</p>            | <p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There have been no complaints about the deployment and use of Body Worn Cameras.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                        |                    |                       |        |                    |        |             |                       |                     |                    |       |     |       |    |          |     |    |      |       |        |         |     |       |       |         |       |         |        |            |         |              |         |            |         |

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| Audits and Violations | <p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>File meta-data are routinely reviewed by our BWC manager, to ensure required meta-data fields are completed. There have been no complaints with regards to violations of the Surveillance Use Policy.</p>                                                                                                                                                                                    |
| Data Breaches         | <p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There have been no known data breaches or other unauthorized access to BWC data.</p>                                                                                                                                                                                                                                      |
| Effectiveness         | <p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>Body Worn Cameras have proven effective in supporting criminal prosecutions, as video footage is available for all criminal prosecutions.</p> <p>Body Worn Cameras have been effective for training purposes, as footage can be reviewed in incident de-briefs.</p> <p>Body Worn Cameras have been extremely effective in support of Internal Affairs investigations and Use of Force Review.</p>                                  |
| Costs                 | <p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual cost for the Body Worn Cameras, including cameras, replacement cameras, software, and Axon's secure digital evidence management system is approx. \$204,000 per year over a five-year, \$1,218,000 contract. The systems cost for the 19 month period of this initial report was \$385,700.</p> <p>There is one full-time employee assigned to the BWC program, an Applications Programmer Analyst II, at a cost of \$168,940 per year, including benefits.</p> |

## Surveillance Technology Report: Global Positioning System Tracking Devices

**October 1, 2019 – Sept. 30, 2020**

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| Description           | <p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Global Positioning System Trackers are used to track the movements of vehicles, bicycles, other items, and/or individuals.</p> <p>For the date range of 10-01-19 through 09-30-20 the Global Positioning System (GPS) “Electronic Stake Out” (ESO) devices were deployed on “bait” bicycles 52 times, resulting in 34 arrests, 4 eluded capture, 1 person was detained and not arrested, and in 13 deployments the bicycle was not stolen. This program was suspended in mid-March due to the COVID-19 pandemic.</p> <p>GPS “Slap-N-Track” (SNT) devices were used in three separate investigations during this reporting period:</p> <ul style="list-style-type: none"> <li>(1) An investigation of an individual for Sexual Exploitation, Child Pornography, and Distribution of Child Pornography. This suspect currently has a Federal warrant.</li> <li>(2) An investigation of a serial kidnap rape suspect. The suspect was arrested and charged.</li> <li>(3) An investigation into multiple suspects involved in a “Rolex” robbery series that involved the cities of Berkeley, Piedmont, and Orinda. Two devices were used on two different suspect vehicles during this investigation. Four suspects from the above cases were arrested and charged for their involvement in these robberies.</li> </ul> <p>Data may be shared with the District Attorney’s Office for use as evidence to aid in prosecution, in accordance with laws governing evidence; other law enforcement personnel as a part of an active criminal investigation; and other third parties, pursuant to a court order.</p> |
| Geographic Deployment | <p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>GPS ESO-equipped bikes were deployed primarily in commercial districts across the city where bikes are frequently stolen.</p> <p>GPS SNT devices are deployed with judicial pre-approval, based on suspect location, rather than geographical consideration.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Complaints            | <p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

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|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                       | There were no complaints made regarding GPS Trackers.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Audits and Violations | <p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>There were no audits and no known violations relating to GPS Trackers.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Data Breaches         | <p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There were no known data breaches relating to GPS Trackers.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Effectiveness         | <p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>GPS Trackers continue to be very effective in apprehending bicycle thieves, many of whom are repeat offenders who've committed not only bike thefts, but other crimes as well, such as burglaries, auto burglaries, and vehicle thefts. SNT trackers are effective in that they provide invaluable information on suspect vehicle location during the investigation of complex cases where suspects may be moving around the Bay Area and beyond.</p> <p>GPS Trackers greatly reduce costs associated with surveillance operations. A bike may be left for days. Surveillance operations generally involve four or more officers for the entire duration of an operation. A moving surveillance is extremely resource-intensive, requiring multiple officers in multiple vehicles for extended periods of time. Using both types of GPS trackers eliminates the need for officers' immediate presence until officers are ready to apprehend the suspect(s).</p> <p>The program was suspended in mid-March due to the COVID-19 pandemic. This program will likely resume once the pre-COVID bail schedule is re-established.</p> |
| Costs                 | <p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual cost for the GPS Trackers' data service is \$1,920. Further information regarding costs is contained in Policy 1301a, the Surveillance Acquisition Report.</p> <p>There are staff time costs associated with preparing and placing SNT trackers. The investigator must prepare a search warrant and obtain a judge's approval, and a small number of officers must place the tracker on the suspect's car. The total number of hours is a fraction of the time it would take to do a full surveillance operation involving numerous officers.</p> <p>There are staff time costs associated with preparing ESO trackers and placing ESO tracker-equipped bikes for bait bike operations. These are on the order of two-four hours per operation. The total number of hours is extremely small, given the large number of operations, and resulting arrests.</p>                                                                                                                                                                                                                                                                                               |

**Surveillance Technology Report: Automated License Plate Readers**

**October 1, 2019 – Sept. 30, 2020**

|                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Description</p> | <p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Automated License Plate Readers (ALPRs) are used by Parking Enforcement Bureau vehicles for time zone parking and scofflaw enforcement. The City’s Transportation Division uses anonymized information for purposes of supporting the City’s Go Berkeley parking management program. ALPR use replaced the practice of physically “chalking” tires, which is no longer allowed by the courts.</p> <p style="text-align: center;"><b>Summary of ALPR Time Zone Enforcement Data</b></p> <p style="text-align: center;">Read Data<br/>There were an average of 12,059 “Reads” per working day<br/>(Based on one month’s data: 9/1/20/-9/30/20)</p> <p style="text-align: center;">Hit Data<br/>There were 44,068 “Hits”<br/>14, 945 “Enforced Hits” resulted in citation issuance.<br/>2,569 “Not Enforced” valid, enforceable hits resulted in no citation issued, based on PEO discretion.<br/>26,554 Hits were not acted upon for a variety to reasons including but not limited to:</p> <ol style="list-style-type: none"> <li>1) Customer comes out to move a vehicle. PEO’s are directed not to issue that citation.</li> <li>2) Officer gets to the dashboard and sees a permit not visible from a previous location.</li> <li>3) Officer does a vehicle evaluation and confirms that the vehicle moved from the hit location (e.g. across the street within GPS range).</li> <li>4) Stolen car.</li> <li>5) Similar Plates.</li> <li>6) 600-700 GIG cars- 100 revel scooters.</li> <li>7) Officers leave their LPR “on” collecting time zone enforcement data, but leave the area being enforced to drive to another location on another assignment, such as a traffic post at a collision scene. These hits are not enforced.</li> </ol> <p>Genetec is the vendor for the ALPR Time Zone enforcement system. A “read” indicates the ALPR system successfully read a license plate. A “hit” indicates the ALPR system detected a possible violation, which prompts the Parking Enforcement Officer to further assess the vehicle. In many cases, hits are “rejected” or “not enforced” because the Parking Enforcement Officer determines the vehicle has an appropriate placard or permit, or there is other information which precludes citation.</p> |
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|                       | <p style="text-align: center;"><b>Summary of ALPR Booting Scofflaw Enforcement Data</b></p> <p style="text-align: center;">0 vehicles booted from 10/1/19-9/23/20.</p> <p>The Berkeley Police Department no longer maintains the ALPR Booting Scofflaw Enforcement Program. The contract to provide this service became cost prohibitive and the city opted not to renew the contract with the vendor. The city returned to having each PEO working a beat again become responsible for recognizing when a license plate has accumulated five or more unpaid parking tickets.</p> <p>All BPD ALPR data may only be shared with other law enforcement or prosecutorial agencies for official law enforcement purposes, or as otherwise permitted by law. All ALPR data is subject to the provisions of BPD Policy 415 - Immigration Law, and therefore may not be shared with federal immigration enforcement officials.</p> |
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| Geographic Deployment | <p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>Only Parking Enforcement Vehicles are equipped with ALPRs. ALPRs are deployed based on areas where there are parking time restrictions. ALPRs are not deployed based on geographic considerations not related to parking and scofflaw enforcement.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Complaints            | <p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There have been no complaints about to the deployment and use of Automated License Plate Readers.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Audits and Violations | <p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>There have been no complaints of violations of the ALPR Surveillance Use Policy.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Data Breaches         | <p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There have been no known data breaches or other unauthorized access to Automated License Plate Reader data.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Effectiveness         | <p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>ALPRs have proven effective in parking enforcement for time zone enforcement; the prior utilization of manually chalking car tires for time zone enforcement has been disallowed by court decision.</p> <p>ALPRs have proven effective in supporting enforcement upon vehicles which have five or more unpaid citations. The ALPR's ability to read and check license plates while being driven greatly increases efficiency, allowing an operator to cover larger areas more quickly without having to stop except to confirm a hit.</p>                                                                                                                                                                                                                                |
| Costs                 | <p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

The annual system maintenance cost for Genetec is \$47,000. This cost is borne by the Transportation Division, which also purchased the ALPR units used in Time Zone Enforcement.

Two new Genetec ALPR units were purchased during the period covered by this report. The two new units were purchased in order to equip the final two parking vehicles that did not have ALPR units attached to them.

Genetec ALPR units are installed on 23 Parking Enforcement vehicles. Parking Enforcement personnel perform a variety of parking enforcement activities, and are not limited solely to time zone enforcement. Therefore, personnel costs specifically attributable to time zone enforcement are not tracked.

## Surveillance Technology Report: Street Level Imagery Project

|                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Description</b></p>           | <p><b>A description of all non-privileged and non-confidential information about the use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report will include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</b></p> <p>Street level imagery will be utilized exclusively by authorized City staff for infrastructure asset management and planning activities. The street level imagery of City infrastructure assets in the Public Right of Way that is provided to the City will not consist of information that is capable of being associated with any individual or group.</p> <p>The project has not started, and the contract is still in progress.</p> |
| <p><b>Geographic Deployment</b></p> | <p><b>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</b></p> <p>Street level imagery will be collected by driving through the entire community over a defined period of time. It will be accessible to the City through a proprietary third-party application, Street Smart™.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p><b>Complaints</b></p>            | <p><b>A summary of each complaint, if any, received by the City about the Surveillance Technology.</b></p> <p>No complaints received. The project has not started, and the contract is still in progress.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <p><b>Audits and Violations</b></p> | <p><b>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</b></p> <p>There have been no complaints with regards to violations of the Surveillance Use Policy.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p><b>Data Breaches</b></p>         | <p><b>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</b></p> <p>There have been no known data breaches or other unauthorized access to Cyclomedia Street Level Imagery data.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |



|                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Effectiveness</b></p> | <p><b>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</b></p> <p>Staff considered hiring contractors to use GPS in the field to create and update the infrastructure asset GIS data. This method is costly and time consuming. Cyclomedia’s unique and patented processing techniques allow positionally-accurate GIS data to be collected in a cost-effective way and over a shorter period of time than a “boots on the ground” GPS field survey.</p> <p>The Imagery will be used to extract the following Citywide Infrastructure assets to create accurate and current Geographic Information Systems (GIS) data inventories:</p> <ul style="list-style-type: none"> <li>• Bus pads / stops</li> <li>• Maintenance Access Holes</li> <li>• Pavement Striping</li> <li>• Curb paint color</li> <li>• Parking meters</li> <li>• Pedestrian Signal</li> <li>• Pavement marking</li> <li>• Storm drains</li> <li>• Signs</li> <li>• Street trees</li> <li>• Traffic lights</li> </ul> <p>The street level imagery that is captured will also be used to:</p> <p>Create a street sign GIS layer with condition assessment to support compliance with the Manual on Uniform Traffic Control Devices Code and provide an accurate inventory of City signs. The existing sign inventory is contained in a spreadsheet that does not have accurate location data.</p> <p>Create a curb color layer with condition assessment to indicate where there are red, yellow, blue, white and green colors. This is critical to support Public Safety.</p> <p>Create pavement striping and paint symbol layers to support Transportation Planning and Vision Zero.</p> <p><b><u>Benefits Projected:</u></b></p> <p>Street level imagery will be integrated into the City’s work order and asset management system for planning activities and to document repair and maintenance.</p> <p>Planners can use the street level imagery provided to the City to take measurements remotely, such as sidewalk width and public right of way impacts at proposed development locations.</p> <p>City staff can use the street level imagery to plan the location of road markings for pedestrian crossings, bike lanes or other striping.</p> <p>City staff can remotely take accurate measurements of infrastructure assets to adequately plan for repair and replacement.</p> |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                       | <p>City staff can use the street level imagery to enhance community engagement. The street level imagery can be used to identify and depict the impact of development such as an intersection restriping plan in order to article before and after conditions.</p> <p>The project has not started, and the contract is still in progress.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                            |                                                                              |                                                                              |       |   |          |          |                                    |   |                                            |           |                                    |   |                                 |          |                                                                              |   |                                            |         |                                                                              |                       |  |                  |  |  |  |  |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|------------------------------------------------------------------------------|------------------------------------------------------------------------------|-------|---|----------|----------|------------------------------------|---|--------------------------------------------|-----------|------------------------------------|---|---------------------------------|----------|------------------------------------------------------------------------------|---|--------------------------------------------|---------|------------------------------------------------------------------------------|-----------------------|--|------------------|--|--|--|--|
| <b>Costs</b>          | <p><b>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</b></p> <p>The total cost of the system is \$232,401 and is itemized below.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                            |                                                                              |                                                                              |       |   |          |          |                                    |   |                                            |           |                                    |   |                                 |          |                                                                              |   |                                            |         |                                                                              |                       |  |                  |  |  |  |  |
|                       | <table border="1"> <thead> <tr> <th data-bbox="370 604 467 674">Year No.</th> <th data-bbox="467 604 776 674">Description</th> <th data-bbox="776 604 914 674">Cost</th> <th data-bbox="914 604 1469 674">Notes</th> </tr> </thead> <tbody> <tr> <td data-bbox="370 674 467 716">1</td> <td data-bbox="467 674 776 716">Licenses</td> <td data-bbox="776 674 914 716">\$48,000</td> <td data-bbox="914 674 1469 716">Resolution No: 69,482-N.S. 30JUN20</td> </tr> <tr> <td data-bbox="370 716 467 785">1</td> <td data-bbox="467 716 776 785">Professional Services for asset extraction</td> <td data-bbox="776 716 914 785">\$139,401</td> <td data-bbox="914 716 1469 785">Resolution No: 69,482-N.S. 30JUN20</td> </tr> <tr> <td data-bbox="370 785 467 854">2</td> <td data-bbox="467 785 776 854">Licenses and Support – One-Time</td> <td data-bbox="776 785 914 854">\$45,000</td> <td data-bbox="914 785 1469 854">Pending Council approval after imagery and data extraction work is completed</td> </tr> <tr> <td data-bbox="370 854 467 924">3</td> <td data-bbox="467 854 776 924">License and Support – Ongoing Annual Costs</td> <td data-bbox="776 854 914 924">\$3,000</td> <td data-bbox="914 854 1469 924">Pending Council approval after imagery and data extraction work is completed</td> </tr> <tr> <td colspan="2" data-bbox="370 924 776 972" style="text-align: center;"><b>Total Year 1-3</b></td> <td data-bbox="776 924 914 972" style="text-align: center;"><b>\$235,401</b></td> <td data-bbox="914 924 1469 972"></td> </tr> </tbody> </table> | Year No.                                   | Description                                                                  | Cost                                                                         | Notes | 1 | Licenses | \$48,000 | Resolution No: 69,482-N.S. 30JUN20 | 1 | Professional Services for asset extraction | \$139,401 | Resolution No: 69,482-N.S. 30JUN20 | 2 | Licenses and Support – One-Time | \$45,000 | Pending Council approval after imagery and data extraction work is completed | 3 | License and Support – Ongoing Annual Costs | \$3,000 | Pending Council approval after imagery and data extraction work is completed | <b>Total Year 1-3</b> |  | <b>\$235,401</b> |  |  |  |  |
|                       | Year No.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Description                                | Cost                                                                         | Notes                                                                        |       |   |          |          |                                    |   |                                            |           |                                    |   |                                 |          |                                                                              |   |                                            |         |                                                                              |                       |  |                  |  |  |  |  |
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|                       | 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Professional Services for asset extraction | \$139,401                                                                    | Resolution No: 69,482-N.S. 30JUN20                                           |       |   |          |          |                                    |   |                                            |           |                                    |   |                                 |          |                                                                              |   |                                            |         |                                                                              |                       |  |                  |  |  |  |  |
|                       | 2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Licenses and Support – One-Time            | \$45,000                                                                     | Pending Council approval after imagery and data extraction work is completed |       |   |          |          |                                    |   |                                            |           |                                    |   |                                 |          |                                                                              |   |                                            |         |                                                                              |                       |  |                  |  |  |  |  |
| 3                     | License and Support – Ongoing Annual Costs                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$3,000                                    | Pending Council approval after imagery and data extraction work is completed |                                                                              |       |   |          |          |                                    |   |                                            |           |                                    |   |                                 |          |                                                                              |   |                                            |         |                                                                              |                       |  |                  |  |  |  |  |
| <b>Total Year 1-3</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>\$235,401</b>                           |                                                                              |                                                                              |       |   |          |          |                                    |   |                                            |           |                                    |   |                                 |          |                                                                              |   |                                            |         |                                                                              |                       |  |                  |  |  |  |  |
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Office of the City Manager

ACTION CALENDAR  
November 10, 2020  
(Continued from October 27, 2020)

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Annual Commission Attendance and Meeting Frequency Report

RECOMMENDATION

Review and accept the annual Commission Attendance and Meeting Frequency Report.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Each of the City's 38 commissions that were active during the reporting period submitted an annual attendance report covering the period of September 1, 2019 through August 31, 2020. The reports provide meeting-level information on number and frequency of meetings, meeting cancellations, commissioners in attendance, length of meetings, number of speakers, and members of the public present. The reports also reflect the number of vacant positions on the commission as of August 31, 2020.

Due to the Shelter-in-Place order necessitated by the COVID-19 pandemic, most commissions ceased or greatly scaled back their activities in March, meeting only if they had time-sensitive, legally-mandated business to complete, and all meetings subsequent to the March health order have been held virtually.

On March 17, 2020 the City Council adopted Resolution No. 69,331-N.S. ratifying the City Manager's policy limiting the meetings of city legislative bodies in order to maintain staff resources to address the pandemic. The provisions of that resolution are still in effect. On October 13, 2020, the Agenda & Rules Committee took action to endorse the City Manager's policy to allow commissions to meet up to two times only for the purpose of developing their 2021 work plan and to address any COVID-related referrals from the City Council. Due to these actions, the ongoing meeting frequency for commissions will be adjusted as the pandemic conditions allow. For this reason, staff is not presenting a fixed 2021 meeting frequency schedule to Council for approval at this time.

Commissions are divided into four categories (A, B, C, and D) depending on the permitted frequency of meetings. Based on the information provided in the 2020 annual attendance

reports, the majority of commissions were meeting on a regular and frequent basis up until the COVID-19 restrictions. The meeting activity for the reporting period of September 2019 through August 2020 has been broken down by category and is described below.

### Category A

Contains eleven commissions that meet on their own schedule. Most of these commissions resumed meeting virtually after the initial Shelter-in-Place in order to meet their legal obligations.

| <b>Commission</b>                                               | <b>Cancellations due to COVID-19</b> | <b>Cancellations due to other reasons</b> |
|-----------------------------------------------------------------|--------------------------------------|-------------------------------------------|
| Board of Library Trustees                                       | 1                                    |                                           |
| Design Review Committee                                         | 2                                    | 1 - no agenda items                       |
| Fair Campaign Practices Commission                              | 1                                    | 1 - by order of the chair                 |
| Housing Advisory Commission                                     | 4                                    |                                           |
| Joint Subcommittee for the Implementation of State Housing Laws | 1                                    |                                           |
| Landmarks Preservation Commission                               | 2                                    |                                           |
| Open Government Commission                                      | 1                                    | 1 - by order of the chair                 |
| Personnel Board                                                 | 3                                    |                                           |
| Planning Commission                                             | 4                                    | 1 - technical issues                      |
| Police Review Commission                                        | 2                                    | 1 - public safety power shutoff           |
| Zoning Adjustments Board                                        | 4                                    | 1 - no agenda items                       |

### Category B

Contains twenty-one commissions that hold a maximum of ten meetings each per year. Prior to the March Shelter-in-Place order, these twenty-one commissions were meeting regularly during the reporting period.

| <b>Commission</b>                          | <b>Cancellations due to COVID-19</b> | <b>Cancellations due to other reasons</b> |
|--------------------------------------------|--------------------------------------|-------------------------------------------|
| Cannabis Commission                        | 4                                    |                                           |
| Children, Youth, and Recreation Commission | 5                                    |                                           |
| Civic Arts Commission                      | 5                                    |                                           |

| <b>Commission</b>                                 | <b>Cancellations due to COVID-19</b> | <b>Cancellations due to other reasons</b> |
|---------------------------------------------------|--------------------------------------|-------------------------------------------|
| Commission on Aging                               | 5                                    |                                           |
| Commission on Disability                          | 4                                    |                                           |
| Commission on Labor                               | 3                                    |                                           |
| Commission on the Status of Women                 | 5                                    | 1 - no quorum                             |
| Community Environmental Advisory Commission       | 1                                    |                                           |
| Community Health Commission                       | 5                                    |                                           |
| Disaster and Fire Safety Commission               | 3                                    |                                           |
| Energy Commission                                 | 5                                    |                                           |
| Homeless Commission                               | 4                                    |                                           |
| Homeless Services Panel of Experts                | 2                                    |                                           |
| Human Welfare and Community Action Commission     | 5                                    |                                           |
| Measure O Bond Oversight Committee                | 3                                    |                                           |
| Mental Health Commission                          | 5                                    |                                           |
| Parks and Waterfront Commission                   | 3                                    |                                           |
| Peace and Justice Commission                      | 4                                    |                                           |
| Public Works Commission                           | 3                                    |                                           |
| Sugar-Sweetened Beverage Product Panel of Experts | 5                                    |                                           |
| Transportation Commission                         | 5                                    |                                           |
| Youth Commission                                  | 3                                    | 1 - no quorum                             |
| Zero Waste Commission                             | 5                                    |                                           |

Category C

Contains three commissions. These commissions may meet as necessary to fulfill their legal obligations. Of the commissions in this category, none cancelled any scheduled meetings during this period.

Category D

Currently contains one commission that meets up to six times per year. The Animal Care Commission cancelled three meetings due to COVID-19.

### BACKGROUND

On June 14, 2005, the City Council discussed the reduction of commission meetings as a cost-savings measure. Council adopted a proposal which created three categories of commission meeting schedules, a process for requesting Council approval of any extra meetings, direction to commission secretaries to submit an information report whenever a commission cancels two consecutive meetings for lack of quorum, and an annual attendance report. Council adopted Resolution No. 63,949–N.S. on January 15, 2008, which updated the commission meeting frequency schedule to include a fourth category of meeting frequency. On December 11, 2018, Council adopted Resolution No. 68,705–N.S., which changed the reporting period from November through October to September through August to allow commissions sufficient time to set their schedules for the following year. Most recently, on October 15, 2019, Council adopted Resolution No. 69,127–N.S., which set the 2020 commission meeting frequency schedule.

### ENVIRONMENTAL SUSTAINABILITY

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

### RATIONALE FOR RECOMMENDATION

The annual commission attendance report informs the Council of commission activity and allows for comparison with the meeting frequency schedule. The annual attendance report documents increased demand on, or under-utilization of commissions which may inform Council decisions related to the meeting frequency of commissions.

### CONTACT PERSON

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

### Attachments:

- 1: 2020 Annual Commission Attendance Reports
- 2: 2020 Approved Leaves of Absence by Commission Report



# Page 6 of 43 2020 Annual Commission Attendance Report

Reporting Period: September 1, 2019 through August 31, 2020

|                                                           |
|-----------------------------------------------------------|
| Vacant seats: <u>    0    </u><br>(as of August 31, 2020) |
|-----------------------------------------------------------|

**Commission:**     Board of Library Trustees    

**Commission Secretary:**     Elliot Warren    

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/15/19                |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 2/1/20                 | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason  | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|---------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/4/2019               |                                       | 5 of 5                | 4              | 2               | 1 hr. 18 min.  |
| 10/2/2019              |                                       | 3 of 5                | 6              | 0               | 1 hr. 13 min.  |
| 11/13/2019             |                                       | 5 of 5                | 6              | 1               | 2 hrs. 7 min.  |
| 12/4/2019              |                                       | 5 of 5                | 10             | 2               | 1 hr. 39 min.  |
| 1/15/2020              |                                       | 5 of 5                | 6              | 1               | 2 hrs. 7 min.  |
| 2/5/2020               |                                       | 4 of 5                | 6              | 2               | 1 hr. 18 min.  |
| 3/4/2020               |                                       | 5 of 5                | 3              | 0               | 1 hr. 39 min.  |
| 3/14/2020              |                                       | 5 of 5                | 3              | 1               | 44 min.        |
| 4/1/2020               | Cancelled – COVID-19 Shelter in Place |                       |                |                 |                |
| 5/6/2020               |                                       | 5 of 5                | Unknown        | 0               | 1 hr. 38 min.  |
| 6/3/2020               |                                       | 5 of 5                | Unknown        | 0               | 1 hr. 55 min.  |
| 6/4/2020               |                                       | 5 of 5                | 1              | 1               | 3 hrs. 10 min. |
| 6/24/2020              |                                       | 5 of 5                | 0              | 0               | 1 hr. 30 min.  |
| 7/1/2020               |                                       | 5 of 5                | 2              | 1               | 1 hr. 40 min.  |
| 7/21/2020              |                                       | 5 of 5                | 3              | 0               | 3 hrs.         |
| 7/30/2020              |                                       | 5 of 5                | 0              | 0               | 5 hrs. 55 min. |
| 8/5/2020               |                                       | 5 of 5                | 3              | 1               | 2 hrs.         |
| 8/12/2020              |                                       | 5 of 5                | 8              | 2               | 36 min.        |
|                        |                                       |                       |                |                 |                |
|                        |                                       |                       |                |                 |                |
|                        |                                       |                       |                |                 |                |















# Page 13 of 43 2020 Annual Commission Attendance Report

Reporting Period: September 1, 2019 through August 31, 2020

Vacant seats: 4  
(as of August 31, 2020)

**Commission:** Children, Youth and Recreation Commission

**Commission Secretary:** Stephanie Chu

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/15/19                |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 2/1/20                 | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/16/19                |                                      | 6 of 7                | NA             | NA              | NA             |
| 10/28/19               |                                      | 6 of 7                | NA             | NA              | 1 hr 3 min     |
| 11/018/19              |                                      | 5 of 6                |                |                 | 1 hr 40 min    |
| 1/27/20                |                                      | 4 of 5                | NA             | NA              | NA             |
| 2/24/20                |                                      | NA                    | NA             | NA              | NA             |
| 3/23/20                | Yes, COVID                           |                       |                |                 |                |
| 4/24/20                | Yes, COVID                           |                       |                |                 |                |
| 5/11/20                | Yes, COVID                           |                       |                |                 |                |
| 6/22/20                | Yes, COVID                           |                       |                |                 |                |
| 8/24/20                | Yes, COVID                           |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |
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|                        |                                      |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |

# 2020 Annual Commission Attendance Report

Reporting Period: September 1, 2019 through August 31, 2020

|                                                           |
|-----------------------------------------------------------|
| Vacant seats: <u>    1    </u><br>(as of August 31, 2020) |
|-----------------------------------------------------------|

**Commission:**     Design Review Committee    

**Commission Secretary:**     Anne Burns    

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/19/19                |                                      | 6 of 7                | 19             | 8               | 2.75 hrs       |
| 10/17/19               |                                      | 5 of 7                | 18             | 6               | 2.7 hrs        |
| 11/21/19               |                                      | 7 of 7                | 12             | 6               | 3.5 hrs        |
| 12/19/19               |                                      | 7 of 7                | 16             | 7               | 2.75 hrs       |
| 1/16/20                | Yes. No agenda items.                | -                     | -              | -               | -              |
| 2/20/20                |                                      | 6 of 6                | 17             | 12              | 4.25 hrs       |
| 3/19/20                | Yes. COVID-19.                       | -                     | -              | -               | -              |
| 4/16/20                | Yes. COVID-19.                       | -                     | -              | -               | -              |
| 5/21/20                |                                      | 6 of 6                | 18             | 10              | 3.5 hrs        |
| 6/18/20                |                                      | 5 of 6                | 19             | 12              | 3.75 hrs       |
| 7/16/20                |                                      | 6 of 6                | 13             | 9               | 2.75 hrs       |
| 8/20/20                |                                      | 6 of 6                | 28             | 10              | 3.75 hrs       |
|                        |                                      |                       |                |                 |                |
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**Commission:** *Disability Commission*

**Commission Secretary:** Dominika Bednarska

Vacant seats: 2  
(as of August 31, 2020)

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9<br>2/1/20            | Yes – no quorum                      | 8 of 9                | 5              | 3               | 2.5 hrs        |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 09/04/2019             |                                      | 7 of 7                | 0              | 0               | 3 hours        |
| 10/02/2019             |                                      | 5 of 6                | 1              | 1               | 3 hours        |
| 11/06/2019             |                                      | 6 of 6                | 0              | 0               | 3 hours        |
| No Dec Meeting         |                                      |                       |                |                 |                |
| 1/08/2020              |                                      | 4 of 6                | 1              | 1               | 3 hours        |
| 02/05/2020             |                                      | 5 of 6                | 1              | 1               | 3 hours        |
| 03/04/2020             |                                      | 4 of 6                | 0              | 0               | 3 hours        |
| 04/01/20               | Yes – COVID-19                       |                       |                |                 |                |
| 05/06/20               | Yes – COVID-19                       |                       |                |                 |                |
| 06/03/20               | Yes – COVID-19                       |                       |                |                 |                |
| 07/01/20               | Yes – COVID-19                       |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |

# 2020 Annual Commission Attendance Report

Reporting Period: September 1, 2019 through August 31, 2020

|                                                   |
|---------------------------------------------------|
| Vacant seats: <u>0</u><br>(as of August 31, 2020) |
|---------------------------------------------------|

**Commission:** Disaster and Fire Safety Commission

**Commission Secretary:** Keith May

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/15/19                |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 2/1/20                 | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/25/19                |                                      | 9 of 9                | 4              | 1               | 2.25 hrs       |
| 10/23/19               |                                      | 8 of 9                | 4              | 2               | 2.75 hrs       |
| 12/04/19               |                                      | 5 of 9                | 5              | 2               | 2.25 hrs       |
| 1/22/20                |                                      | 8 of 9                | 9              | 6               | 2.25 hrs       |
| 2/26/20                |                                      | 9 of 9                | 8              | 3               | 2.0 hrs        |
| 4/22/20                | Cancelled due to Covid19             |                       |                |                 |                |
| 5/27/20                | Cancelled due to Covid19             |                       |                |                 |                |
| 6/11/20                |                                      | 9 of 9                | 0              | 0               | 1.0 hrs        |
| 6/24/20                | Cancelled due to Covid19             |                       |                |                 |                |
| 7/6/20                 |                                      | 6 of 9                | 0              | 0               | 1.75 hrs       |
| 7/13/20                |                                      | 7 of 9                | 0              | 0               | 2.25 hrs       |
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# 2020 Annual Commission Attendance Report

Reporting Period: September 1, 2019 through August 31, 2020

|                                                   |
|---------------------------------------------------|
| Vacant seats: <u>1</u><br>(as of August 31, 2020) |
|---------------------------------------------------|

**Commission:** Fair Campaign Practices Commission

**Commission Secretary:** Samuel Harvey

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/15/19                |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 2/1/20                 | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/19/19                |                                      | 6 of 8                | 2              | 2               | 2.9 hrs        |
| 10/17/19               | Yes – by order of Chair              |                       |                |                 |                |
| 11/21/19               |                                      | 7 of 8                | 0              | 0               | 2.9 hrs        |
| 1/16/20                |                                      | 7 of 8                | 1              | 1               | 0.7 hrs        |
| 2/6/20                 |                                      | 5 of 8                | 0              | 0               | 0.1 hrs        |
| 2/20/20                |                                      | 8 of 8                | 1              | 1               | 1.6 hrs        |
| 3/19/20                | Yes – COVID order                    |                       |                |                 |                |
| 3/24/20                |                                      | 8 of 8                | 0              | 0               | 0.4 hrs        |
| 4/23/20                |                                      | 8 of 8                | 0              | 0               | 3.8 hrs        |
| 5/21/20                |                                      | 8 of 8                | 0              | 0               | 2.8 hrs        |
| 6/18/20                |                                      | 6 of 8                | 0              | 0               | 2.1 hrs        |
| 7/16/20                |                                      | 8 of 8                | 0              | 0               | 2.3 hrs        |
| 7/23/20                |                                      | 5 of 8                | 0              | 0               | 0.1 hrs        |
| 8/31/20                |                                      | 6 of 8                | 0              | 0               | 0.2 hrs        |





# 2020 Annual Commission Attendance Report

Reporting Period: September 1, 2019 through August 31, 2020

|                                                   |
|---------------------------------------------------|
| Vacant seats: <u>2</u><br>(as of August 31, 2020) |
|---------------------------------------------------|

**Commission:** Homeless Services Panel of Experts

**Commission Secretary:** Brittany Carnegie

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/15/19                |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 2/1/20                 | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length     |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|--------------------|
| 9/4/19                 |                                      | 9 of 9                | 14             | 12              | 2.5 hours          |
| 10/2/19                |                                      | 8 of 9                | 16             | 7               | 2 hours            |
| 11/6/19                |                                      | 7 of 9                | 11             | 2               | 2 hours            |
| 1/7/20                 |                                      | 9 of 9                | 9              | 0               | 2 hours            |
| 2/5/20                 |                                      | 6 of 8                | 4              | 0               | 2 hours            |
| 3/4/20                 |                                      | 7 of 8                | 4              | 0               | 2 hours            |
| 4/1/20                 | Yes-COVID-19                         |                       |                |                 |                    |
| 5/6/20                 | Yes-COVID-19                         |                       |                |                 |                    |
| 5/28/20                |                                      | 5 of 9                | 8              | 2               | 1 hour             |
| 6/10/20                |                                      | 8 of 9                | 8              | 1               | 1 hour and 45 mins |
| 7/1/20                 |                                      | 7 of 9                | 6              | 0               | 2 hours            |
|                        |                                      |                       |                |                 |                    |
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# Page 26 of 43 2020 Annual Commission Attendance Report

Reporting Period: September 1, 2019 through August 31, 2020

|                                                   |
|---------------------------------------------------|
| Vacant seats: <u>0</u><br>(as of August 31, 2020) |
|---------------------------------------------------|

**Commission:** Landmarks Preservation Commission

**Commission Secretary:** Fatema Crane

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/15/19                |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 2/1/20                 | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/05/19                |                                      | 7 of 8                | 15             | 12              | 3 hrs 57 mins  |
| 10/03/19               |                                      | 8 of 9                | 10             | 7               | 1 hr 35 min    |
| 11/07/19               |                                      | 9 of 9                | 3              | 0               | 2 hrs 46 min   |
| 12/05/19               |                                      | 9 of 9                | 35             | 7               | 4 hrs 13 mins  |
| 2/06/20                |                                      | 8 of 9                | 10             | 6               | 2 hrs 56 mins  |
| 3/05/20                |                                      | 9 of 9                | 12             | 12              | 3 hrs 11 mins  |
| 4/02/20                | Yes, COVID                           |                       |                |                 |                |
| 5/7/20                 | Yes, COVID                           |                       |                |                 |                |
| 6/04/20                |                                      | 9 of 9                | 16             | 0               | 2 hrs 23 min   |
| 7/02/20                |                                      | 9 of 9                | 7              | 6               | 1 hr 59 min    |
| 8/06/20                |                                      | 9 of 9                | 147            | 84              | 2 hrs 28 min   |
| 9/03/20                |                                      | 8 of 9                | 10             | 2               | 2 hrs 44 min   |
|                        |                                      |                       |                |                 |                |
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# 2020 Annual Commission Attendance Report

Reporting Period: September 1, 2019 through August 31, 2020

|                                                   |
|---------------------------------------------------|
| Vacant seats: <u>1</u><br>(as of August 31, 2020) |
|---------------------------------------------------|

**Commission:** Open Government Commission

**Commission Secretary:** Samuel Harvey

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/15/19                |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 2/1/20                 | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/19/19                |                                      | 6 of 8                | 2              | 2               | 2.9 hrs        |
| 10/17/19               | Yes – by order of Chair              |                       |                |                 |                |
| 11/21/19               |                                      | 7 of 8                | 0              | 0               | 2.9 hrs        |
| 1/16/20                |                                      | 7 of 8                | 1              | 1               | 0.7 hrs        |
| 2/20/20                |                                      | 8 of 8                | 1              | 1               | 1.6 hrs        |
| 3/19/20                | Yes – COVID order                    |                       |                |                 |                |
| 4/23/20                |                                      | 8 of 8                | 0              | 0               | 3.8 hrs        |
| 5/21/20                |                                      | 8 of 8                | 0              | 0               | 2.8 hrs        |
| 6/18/20                |                                      | 6 of 8                | 0              | 0               | 2.1 hrs        |
| 7/16/20                |                                      | 8 of 8                | 0              | 0               | 2.3 hrs        |







**2020 Annual Commission Attendance Report**

Reporting Period: September 1, 2019 through August 31, 2020

|                                                   |
|---------------------------------------------------|
| Vacant seats: <u>2</u><br>(as of August 31, 2020) |
|---------------------------------------------------|

**Commission:** Personnel Board

**Commission Secretary:** LaTanya Bellow

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/15/19                |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 2/1/20                 | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/3/19                 |                                      | 6 of 7                | 1              | 1               | .73 hrs        |
| 10/7/19                |                                      | 7 of 7                | 0              | 0               | 1.43 hrs       |
| 11/4/19                |                                      | 6 of 7                | 1              | 0               | 1.28 hrs       |
| 12/2/19                |                                      | 7 of 7                | 3              | 0               | 1.62 hrs       |
| 1/6/20                 |                                      | 6 of 7                | 2              | 1               | 1.08 hrs       |
| 2/3/20                 |                                      | 5 of 7                | 1              | 0               | 1.23 hrs       |
| 3/2/20                 |                                      | 7 of 7                | 0              | 0               | 1.25 hrs       |
| 4/6/20                 | Yes - COVID                          |                       |                |                 |                |
| 5/4/20                 | Yes – COVID                          |                       |                |                 |                |
| 6/1/20                 | Yes – COVID                          |                       |                |                 |                |
| 7/6/20                 | Recessed                             |                       |                |                 |                |
| 8/3/20                 | Recessed                             |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |
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# 2020 Annual Commission Attendance Report

Reporting Period: September 1, 2019 through August 31, 2020

|                                                   |
|---------------------------------------------------|
| Vacant seats: <b>0</b><br>(as of August 31, 2020) |
|---------------------------------------------------|

**Commission:** Planning Commission

**Commission Secretary:** Alene Pearson

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason               | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|----------------------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/4/19                 |                                                    | 7 of 9                | 6              | 6               | 3 hrs 59 mins  |
| 10/2/19                |                                                    | 8 of 6                | 6              | 5               | 2 hrs 12 mins  |
| 11/6/19                |                                                    | 9 of 9                | 10             | 5               | 3 hrs 5 mins   |
| 12/4/19                |                                                    | 8 of 9                | 9              | 6               | 2 hrs 40 mins  |
| 1/15/20                |                                                    | 9                     | 14             | 7               | 3 hrs 9 mins   |
| 2/5/20                 |                                                    | 8                     | 33             | 23              | 3 hrs 11 mins  |
| 2/19/20                | Cancelled- Date reserved for subcommittee meeting  |                       |                |                 |                |
| 3/4/20                 |                                                    | 9                     | 13             | 8               | 3 hrs 31 mins  |
| 3/18/20                | Cancelled- COVID                                   |                       |                |                 |                |
| 4/1/20                 | Cancelled- COVID                                   |                       |                |                 |                |
| 5/6/20                 | Cancelled- COVID                                   |                       |                |                 |                |
| 6/3/20                 | Cancelled- COVID                                   |                       |                |                 |                |
| 7/1/20                 |                                                    | 8                     | 7              | 1               | 2 hrs 29 mins  |
| 8/5/20                 | Cancelled – Technical Issues                       |                       |                |                 |                |
| 8/19/20                | Cancelled – Date reserved for subcommittee meeting |                       |                |                 |                |

# 2020 Annual Commission Attendance Report

Reporting Period: September 1, 2019 through August 31, 2020

|                                                  |
|--------------------------------------------------|
| Vacant seats: 1 _____<br>(as of August 31, 2020) |
|--------------------------------------------------|

**Commission:** Police Review Commission

**Commission Secretary:** Katherine J. Lee

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/15/19                |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 2/1/20                 | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9-4-19                 |                                      | 9 of 9                | 7              | 4               | 3.0 hrs        |
| 9-18-19                |                                      | 6 of 9                | 2              | 1               | 1.9 hrs        |
| 10-9-19                | Yes – public safety power shutoff    |                       |                |                 |                |
| 10-23-19               |                                      | 8 of 9                | 10             | 3               | 3.2 hrs        |
| 11-13-19               |                                      | 7 of 9                | 11             | 7               | 2.7 hrs        |
| 12-11-19               |                                      | 7 of 9                | 10             | 9               | 3.2 hrs        |
| 1-8-20                 |                                      | 6 of 8                | 7              | 2               | 2.3 hrs        |
| 1-22-20                |                                      | 6 of 8                | 7              | 2               | 1.4 hrs        |
| 2-5-20                 |                                      | 7 of 8                | 11             | 4               | 3.0 hrs        |
| 2-26-20                |                                      | 7 of 8                | 8              | 1               | 1.4 hrs        |
| 3-11-20                |                                      | 7 of 8                | 3              | 0               | 1.8 hrs        |
| 3-25-20                | Yes – COVID 19                       |                       |                |                 |                |
| 4-8-20                 |                                      | 7 of 8                | 9              | 5               | 2.7 hrs        |
| 4-22-20                | Yes – COVID 19                       |                       |                |                 |                |
| 5-13-20                |                                      | 8 of 8                | 3              | 0               | 1.5 hrs        |
| 5-27-20                |                                      | 7 of 8                | 4              | 4               | 1.6 hrs        |
| 6-10-20                |                                      | 8 of 8                | 34             | 19              | 2.0 hrs        |
| 6-24-20                |                                      | 7 of 8                | 15             | 2               | 3.4 hrs        |
| 7-8-20                 |                                      | 7 of 8                | 16             | 8               | 3.3 hrs        |
| 7-22-20                |                                      | 8 of 8                | 13             | 6               | 1.9 hrs        |
|                        |                                      |                       |                |                 |                |

# 2020 Annual Commission Attendance Report

Reporting Period: September 1, 2019 through August 31, 2020

|                                            |
|--------------------------------------------|
| Vacant seats: 0<br>(as of August 31, 2020) |
|--------------------------------------------|

**Commission:** Public Works Commission

**Commission Secretary:** Nisha Patel/Joe Enke

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
|                        |                                      |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/05/19                |                                      | 8 of 9                | 3              | 3               | 2.75 hrs       |
| 10/03/19               |                                      | 7 of 8                | 4              | 2               | 2.75 hrs       |
| 11/07/19               |                                      | 6 of 8                | 4              | 2               | 2.50 hrs       |
| 1/09/20                |                                      | 9 of 9                | 7              | 2               | 3.00 hrs       |
| 1/29/20                |                                      | 6 of 9                | 8              | 8               | 2.75 hrs       |
| 2/06/20                |                                      | 8 of 9                | 20             | 0               | 4.0 hrs        |
| 3/05/20                |                                      | 7 of 9                | 2              | 0               | 2.75 hrs       |
| 4/02/20                | Yes - Covid-19                       |                       |                |                 |                |
| 5/07/20                | Yes - Covid-19                       |                       |                |                 |                |
| 6/04/20                | Yes - Covid-19                       |                       |                |                 |                |
| 7/09/20                |                                      | 9 of 9                | 0              | 0               | 3.25 hrs       |
|                        |                                      |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |
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# 2020 Annual Commission Attendance Report

Reporting Period: September 1, 2019 through August 31, 2020

Vacant seats: 2  
 (as of August 31, 2020)

**Commission:** Sugar-Sweetened Beverage Product Panel of Experts Commission

**Commission Secretary:** Dechen Tsering

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/15/19                |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 2/1/20                 | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/19/19                |                                      | 6 of 8                | 0              | 0               | 2.62 hrs       |
| 10/17/19               |                                      | 4 of 7                | 0              | 0               | 1.84 hrs       |
| 11/21/19               |                                      | 3 of 7                | 0              | 0               | 1.96 hrs       |
| 1/16/20                |                                      | 6 of 7                | 5              | 3               | 2.90 hrs       |
| 2/26/20                |                                      | 6 of 7                | 6              | 3               | 2.62 hrs       |
| 3/19/20                | Cancelled - COVID                    |                       |                |                 |                |
| 4/16/20                | Cancelled - COVID                    |                       |                |                 |                |
| 5/21/20                | Cancelled - COVID                    |                       |                |                 |                |
| 6/18/20                | Cancelled - COVID                    |                       |                |                 |                |
| 7/16/20                | Cancelled - COVID                    |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |
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# 2020 Annual Commission Attendance Report

Reporting Period: September 1, 2019 through August 31, 2020

Vacant seats: 5  
 (as of August 31, 2020)

**Commission:**     Youth Commission    

**Commission Secretary:**     Ginsi Bryant    

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/15/19                |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 2/1/20                 | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/9/19                 |                                      | 11 of 13              | 2              | 0               | 1.03 hrs       |
| 10/15/19               |                                      | 8 of 10               | 0              | 0               | 1.25 hrs       |
| 11/12/19               | Yes- no quorum                       |                       |                |                 |                |
| 12/09/19               |                                      | 8 of 10               | 4              | 2               | 1.45 hrs       |
| 1/13/20                |                                      | 7 of 8                | 2              | 0               | .75            |
| 2/10/20                |                                      | 6 of 8                | 0              | 0               | .50            |
| 3/3/20                 |                                      | 9 of 10               | 0              | 0               | 1.25 hrs       |
| 4/13/20                | Cancelled-Covid-19                   |                       |                |                 |                |
| 5/11/20                | Cancelled-Covid-19                   |                       |                |                 |                |
| 6/1/20                 | Cancelled-Covid-19                   |                       |                |                 |                |
| July                   | Break                                |                       |                |                 |                |
| August                 | Break                                |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |
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# 2020 Annual Commission Attendance Report

Reporting Period: September 1, 2019 through August 31, 2020

|                                            |
|--------------------------------------------|
| Vacant seats: 0<br>(as of August 31, 2020) |
|--------------------------------------------|

**Commission:** Zoning Adjustments Board

**Commission Secretaries:** Shannon Allen and Steven Buckley

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/15/19                |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 2/1/20                 | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/26/19                |                                      | 9 of 9                | 10             | 6               | 3 hrs          |
| 10/10/19               |                                      | 7 of 9                | 17             | 10              | 3 hrs 53 mins  |
| 10/24/19               |                                      | 9 of 9                | 60             | 49              | 5 hrs 37 min   |
| 11/14/19               |                                      | 9 of 9                | 34             | 16              | 3 hrs 49 min   |
| 12/12/19               |                                      | 9 of 9                | 60             | 41              | 5.75 hrs       |
| 1/9/20                 |                                      | 7 of 9                | 8              | 9               | 1.75 hrs       |
| 1/23/20                |                                      | 8 of 9                | 40             | 15              | 3 hrs 51 mins  |
| 2/13/20                |                                      | 8 of 9                | 21             | 10              | 3 hrs 17 mins  |
| 2/27/20                | Canceled – not enough agenda items   |                       |                |                 |                |
| 3/12/20                |                                      | 8 of 9                | 24             | 16              | 3 hrs 10 mins  |
| 3/26/20                | Canceled due to COVID                |                       |                |                 |                |
| 4/9/20                 | Canceled due to COVID                |                       |                |                 |                |
| 4/23/20                | Canceled due to COVID                |                       |                |                 |                |
| 5/14/20                | Canceled due to COVID                |                       |                |                 |                |
| 5/28/20                |                                      | 9 of 9                | 29             | 7               | 1.25 hrs       |
| 6/11/20                |                                      | 7 of 9                | 14             | 5               | 2 hrs          |
| 6/25/20                |                                      | 9 of 9                | 57             | 37              | 6.75 hrs       |
| 7/9/20                 |                                      | 9 of 9                | 23             | 11              | 3.5 hrs        |
| 7/23/20                |                                      | 9 of 9                | 23             | 6               | 2.5 hrs        |
| 8/13/20                |                                      | 8 of 9                | 30             | 20              | 3.5 hrs        |
| 8/27/20                |                                      | 7 of 9                | 65             | 24              | 3 hrs 41 mins  |

**2020 Annual Commission Attendance Report**

Reporting Period: September 1, 2019 through August 31, 2020

Vacant seats: 2  
(as of August 31, 2020)

**Commission:** Zero Waste Commission

**Commission Secretary:** Heidi Obermeit

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/15/19                |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 2/1/20                 | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/23/19                |                                      | 6 of 8                | 7              | 3               | 2 hrs          |
| 10/28/19               |                                      | 8 of 9                | 13             | 5               | 2 hrs          |
| 11/25/19               |                                      | 7 of 9                | 5              | 5               | 2 hrs          |
| 1/27/20                |                                      | 8 of 9                | 4              | 1               | 2 hrs          |
| 2/26/20                |                                      | 7 of 8                | 7              | 3               | 2 hrs          |
| 3/23/20                | Yes, COVID                           |                       |                |                 |                |
| 4/27/20                | Yes, COVID                           |                       |                |                 |                |
| 5/26/20                | Yes, COVID                           |                       |                |                 |                |
| 6/22/20                | Yes, COVID                           |                       |                |                 |                |
| 7/27/20                | Yes, COVID                           |                       |                |                 |                |
|                        |                                      |                       |                |                 |                |
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| <b>Approved Leaves of Absence Granted During the Period<br/>September 2019 - August 2020</b> |                            |
|----------------------------------------------------------------------------------------------|----------------------------|
| <b>Commission</b>                                                                            | <b># Leaves of Absence</b> |
| Animal Care Commission                                                                       | 1                          |
| Board of Library Trustees                                                                    | 0                          |
| Cannabis Commission                                                                          | 2                          |
| Children, Youth, and Recreation Commission                                                   | 3                          |
| Civic Arts Commission                                                                        | 4                          |
| Commission on Aging                                                                          | 6                          |
| Commission on Disability                                                                     | 4                          |
| Commission on Labor                                                                          | 2                          |
| Commission on the Status of Women                                                            | 7                          |
| Community Environmental Advisory Commission                                                  | 5                          |
| Community Health Commission                                                                  | 6                          |
| Design Review Committee                                                                      | 0                          |
| Disaster and Fire Safety Commission                                                          | 5                          |
| Elmwood BID Advisory Board                                                                   | 0                          |
| Energy Commission                                                                            | 6                          |
| Fair Campaign Practices Commission                                                           | 10                         |
| Homeless Commission                                                                          | 4                          |
| Homeless Services Panel of Experts                                                           | 6                          |
| Housing Advisory Commission                                                                  | 5                          |
| Human Welfare and Community Action Commission                                                | 1                          |
| Joint Subcommittee for the Implementation of State Housing                                   | 5                          |
| Landmarks Preservation Commission                                                            | 9                          |
| Loan Administration Board                                                                    | 0                          |
| Measure O Bond Oversight Committee                                                           | 6                          |
| Mental Health Commission                                                                     | 0                          |
| Open Government Commission                                                                   | 10                         |
| Parks and Waterfront Commission                                                              | 4                          |
| Peace and Justice Commission                                                                 | 3                          |
| Personnel Board                                                                              | 3                          |
| Planning Commission                                                                          | 4                          |
| Police Review Commission                                                                     | 10                         |
| Public Works Commission                                                                      | 3                          |
| Solano Avenue BID Advisory Board                                                             | 0                          |
| Sugar-Sweetened Beverage Product Panel of Experts                                            | 7                          |
| Transportation Commission                                                                    | 2                          |
| Youth Commission                                                                             | 5                          |
| Zero Waste Commission                                                                        | 7                          |
| Zoning Adjustments Board                                                                     | 29                         |





Cheryl Davila  
Councilmember  
District 2

ACTION CALENDAR

November 10, 2020

*(Continued from September 22, 2020)*

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Support Community Refrigerators

RECOMMENDATION

1. Adopt a Resolution to create an allocation of the homeless budget towards the purchasing of community refrigerators to be distributed in Council districts to provide access to food for those who have no refrigeration or may be food insecure.
2. Allocate \$8,000 of the budget for the purchasing of the refrigerators.

RATIONALE FOR RECOMMENDATION

The City of Berkeley spent \$6.5 million of the general fund to combat homelessness in 2019. The COVID-19 pandemic, the raging fires and smoke in the state of California, the unhoused community is being hit even harder. The economic challenges of businesses closing, financial strains and health concerns increasing leads to increased disparities. It is necessary to support our communities who cannot buy basic necessities for survival such as food. A district fridge would bring together our communities to aid the homeless. Moreover, this is a part of a larger goal to bridge financial inequities in the City of Berkeley.

BACKGROUND

The City of Berkeley spent close to \$20 million on providing homeless services. About \$6.5 million came from its general fund, about \$9.5 million came from regional, state, and federal funds and \$3.9 million were one-time funds from the state's Homeless Emergency Aid Program.

COVID-19 has strained access to money and resources such as food for our homeless communities. The fires and dangerous air quality have also created a need for cooled water. Health disparities increase in times of distress and hit our at-risk communities the hardest.

Implementing an accessible refrigerator program, run by each district and its neighborhoods is a step in the right direction. Several cities across the country such as Los Angeles, Oakland, and New York have already created community fridges. Businesses, organizations, and individuals work together to keep the fridges stocked with prepackaged meals, leftovers, fresh fruits and vegetables, water, and other drinks. Anyone who feels the need to can take anything they need, at any time of day.

This is essential now. Food insecurity is an issue that ravages homeless communities. Yet, in some cities, we dump more than one million tons of food into landfills . Many community fridges are located in areas with high levels of food insecurity, either in “food deserts” (neighborhoods that lack access to fresh, affordable food) or “food swamps” (neighborhoods where there is an overabundance of fast food).

In the City of Oakland, the community group “Town Fridge” has set up refrigerators in publicly accessible locations throughout Oakland. The purpose is to create a mutual aid to address food insecurities in the community. These community refrigerators have donation guidelines posted at their locations, where they accept produce, pantry staples, bottled water, prepared meals but forbid raw meat. They also require: label and dates of all perishables on food containers; placing non-perishables on the shelving outside the fridge; If a fridge is full, they ask donors to not leave the food outside the fridge, but donate the food to a nearby encampment. Many locations have outside shelving for placement of non perishable items.

Residents can also apply to be a “fridge host”, hosting a community refrigerator on their block. Since this program has been established, it is a model for other cities to implement.

Community fridges will allow 24/7 access to fresh foods to the public, while empowering people of our community.

#### FINANCIAL IMPLICATIONS

The estimated price of a low-cost fridge is approximately \$800. Purchasing one for each district of Berkeley amounts to approximately \$8,000 allocated from the budget.

This program can be at no cost to the City as residents replace their refrigerators with newer technology refrigerators, and can donate their old refrigerators to be used as Community Refrigerators.

#### ENVIRONMENTAL SUSTAINABILITY

Protecting our communities during this climate and health crisis is an act of environmental sustainability.

#### CONTACT PERSONS

Cheryl Davila  
Councilmember District 2  
510.981.7120  
[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

Sanjita Pamidimukkala  
Eshal Sandhu  
District 2 Intern

#### ATTACHMENTS:

1. Resolution
2. Four Pictures from Deputy City Manager Paul Buddenhagen of Community Fridge at 59th and Marshall

#### REFERENCES:

1. Oakland Town Fridge <https://linktr.ee/townfridge>





**TOWN FRIDGE**

Current Locations:

**NORTH OAKLAND**  
+59th Street,  
in between Marshall  
and Fremont

**WEST OAKLAND**  
+Linden Street, Past 30th  
+16th Street and West  
+14th Street and Peralta

**DOWNTOWN**  
+Broadway and 15th  
Street, in the plaza

**WE KEEP US FED**

**FREE FOOD**

**THIS ISN'T CHARITY  
THIS IS MUTUAL AID**

**COMIDA GRATIS**

TAKE WHAT YOU NEED - LEAVE WHAT YOU DON'T

**TOWN FRIDGE  
DONATION GUIDELINES**

**OPEN 24/7**

We Accept:  
Produce  
Pantry Staples  
Bottled Water  
Prepared Meals  
**NO RAW MEAT**

**WE KEEP US FED**

**THIS ISN'T CHARITY THIS IS MUTUAL AID**

Label and date all perishables on the container.  
Put non-perishables on the shelving outside the fridge.  
If a fridge is full, do not leave your donation! Check another fridge location, see if there is a nearby encampment or people who would want the food. If they say no, or you cannot find anyone, please take it home and do not leave it outside the fridge.  
Spread the love! If you have a big donation of the same items, spread it across several fridges.  
Tag @townfridge on Instagram when you make a donation, so we can keep track of donations and give live updates.  
Take what you need, leave what you can.





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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA,  
PROVIDING OUR HOUSELESSNESS COMMUNITY WITH DISTRICT REFRIGERATORS

WHEREAS, The City of Berkeley spent close to \$20 million on providing homeless services. About \$6.5 million came from its general fund, about \$9.5 million came from regional, state, and federal funds and \$3.9 million were one-time funds from the state's Homeless Emergency Aid Program; and

WHEREAS, COVID-19 has strained access to money and resources such as food for our homeless communities. The fires and dangerous air quality have also created a need for cooled water. Health disparities increase in times of distress and hit our at-risk communities the hardest; and

WHEREAS, Implementing an accessible refrigerator program, run by each district and its neighborhoods is a step in the right direction. Several cities across the country such as Los Angeles, Oakland, and New York have already created community fridges. Businesses, organizations, and individuals work together to keep the fridges stocked with prepackaged meals, leftovers, fresh fruits and vegetables, water, and other drinks. Anyone who feels the need to can take anything they need, at any time of day; and

WHEREAS, This is essential now. Food insecurity is an issue that ravages homeless communities. Yet, in some cities, we dump more than one million tons of food into landfills . Many community fridges are located in areas with high levels of food insecurity, either in "food deserts" (neighborhoods that lack access to fresh, affordable food) or "food swamps" (neighborhoods where there is an overabundance of fast food); and

WHEREAS, In the City of Oakland, the community group "Town Fridge" has set up refrigerators in publicly accessible locations throughout Oakland. The purpose is to create a mutual aid to address food insecurities in the community. These community refrigerators have donation guidelines posted at their locations, where they accept produce, pantry staples, bottled water, prepared meals but forbid raw meat. They also require: label and dates of all perishables on food containers; placing non-perishables on the shelving outside the fridge; If a fridge is full, they ask donors to not leave the food outside the fridge, but donate the food to a nearby encampment. Many locations have outside shelving for placement of non perishable items. Residents can also apply to be a "fridge host", hosting a community refrigerator on their block. Since this program has been established, it is a model for other cities to implement; and

WHEREAS, Community fridges will allow 24/7 access to fresh foods to the public, while empowering people of our community; and

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley, California supports not only the implementation of district fridges to reduce the amount of food insecurity in the homeless community, but also the reduction of financial inequities in our city. Specifically, the Council of the City of Berkeley calls for:

1. Create an allocation of the homeless budget towards the purchasing of community refrigerators to be distributed in Council districts to provide access to food for those who have no refrigeration or may be food insecure.
2. Allocate \$8,000 of the budget for the purchasing of the refrigerators.



Cheryl Davila  
Councilmember  
District 2

ACTION CALENDAR

November 10, 2020

*(Continued from September 15, 2020)*

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Vote of No Confidence in the Police Chief

RECOMMENDATION

Adopt a resolution taking a Vote of No Confidence in the Police Chief.

BACKGROUND

On June 9, 2020, Berkeley Police Chief Andrew Greenwood made comments to the Berkeley City Council advocating for shooting protestors of police violence, saying, “We can shoot people”, when asked about an alternative to tear gas.

During this time of national recognition of the reckoning of police violence and racial justice, the Chief’s comments were not merely a gaffe but an inexcusable declaration of police violence and the violation of the most basic rights guaranteed in the United States Constitution, which he is sworn to protect.

Berkeley is considered one of the most progressive cities in the country and should be leading the nation in police transformation. We must be working to find ways to respond to harms in our communities that do not put marginalized groups in constant danger. Chief Greenwood’s comments directly contradict this objective.

A Center for Policing Equity report in 2018 demonstrated the disparate treatment to African American and people of color. Unfortunately, during the pandemic, disparities have only increased. Analysis of the Berkeley Police Department’s Open Data Portal shows that disparities between the number of Black and White civilians the department stops *doubled during the COVID-19 pandemic*.

According to the police department’s data conducted by independent analysis report “Racial Disparities in Berkeley Policing Update on Pandemic Period, March 15 to June 2020” released on June 19, 2020, the following conclusions can be drawn from the data representing the first 13 weeks of the pandemic shutdown, from March 15 through June 12:

1. Predictably, the number of police stops for all racial groups is down due to the stay-home order. The total number of stops, 608, is about a fourth of an average 13-week quarter in 2008.
2. *The disparity between stops of African American and White civilians has skyrocketed*, as is evident from the raw numbers: African American stops are exactly 50% of total 608 stops at **304**, with White stops at **143** for 23.52% of all stops. This compares to percentages of 3,083 and 2,706, or 28% and 32% respectively in the year 2018.
3. Taking into account the *low number of African Americans* residing in Berkeley, the *disparities come into sharp relief*. African American stops are about 42.7 per 1,000 of their population, where White stops are about 2.9 per 1,000, a disparity of **14.5 to 1**. This compares to a disparity of 7.6 to 1 in 2018, meaning that **the racial disparity in stops has almost doubled** between 2018 and the pandemic period.

The citations per stop are down by about two-thirds compared to that of 2018. While that might sound like good news, that is not necessarily the case. A reduced rate of writing citations likely means that civilians of all races are being stopped without the required reasonable suspicion of criminal activity. What's more, **the citation rate for African American civilian stops is 7.57% and for Whites, 15.38%, a disparity of over two to one**. That disparity indicates that only half as many African American stops as White stops are conducted with valid suspicion of a criminal act. The citation rate of 7.5% for African Americans raises questions about why the other 92.5% were stopped.

The BPD did not report the stop data for a period of August 2019 through early June 2020 with the excuse that "For a period we had someone who was part of the processing of the data, and that position was eliminated due to staffing shortages." Competent leadership should ensure a prioritized process should always have repeatability, and an automation built into it. That means the system will not fall due to the departure of an individual.

BPD continues to demonstrate disparate treatment of people of color, Chief Greenwood's comments and actions are cause for a Vote of No Confidence. The community is demanding change. For example, at the July 14, 2020 City Council meeting with over three hundred attendees, the majority stating they had no confidence in the Chief of Police as well as demanding defunding the police. Now is the time to step up and listen to the demands of our beloved community.

#### FINANCIAL IMPLICATIONS

To be determined, there could be cost savings and efficiencies in policies, procedures, processes, by eliminating the disparate treatment of African Americans and People of Color in our community.

#### ENVIRONMENTAL SUSTAINABILITY

Protecting our communities during this climate and health crisis is an act of environmental sustainability.



CONTACT PERSONS

Cheryl Davila  
Councilmember District 2  
510.981.7120  
[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

ATTACHMENTS:

1. Resolution
2. Racial Disparities in Berkeley Policing Update on Pandemic Period, March 15 to June 2020

REFERENCES:

Article: Marchers in Berkeley demand resignation of police chief  
<https://www.berkeleyside.com/2020/06/13/marchers-in-berkeley-demand-resignation-of-police-chief>

Center for Policing Equity Report on the Berkeley Police Department (05/09/18)  
[https://www.cityofberkeley.info/uploadedFiles/Police\\_Review\\_Commission/Commissions/2018/Berkeley%20Report%20-%20May%202018.pdf](https://www.cityofberkeley.info/uploadedFiles/Police_Review_Commission/Commissions/2018/Berkeley%20Report%20-%20May%202018.pdf)

City Auditor's Office Dispatcher Audit (04/25/19): <http://bit.ly/2DvbCpv>  
[https://www.cityofberkeley.info/uploadedFiles/Auditor/Level\\_3\\_-\\_General/Dispatch%20Workload\\_Fiscal%20Year%202018.pdf](https://www.cityofberkeley.info/uploadedFiles/Auditor/Level_3_-_General/Dispatch%20Workload_Fiscal%20Year%202018.pdf)

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA,  
TAKING A VOTE OF NO CONFIDENCE IN THE POLICE CHIEF

WHEREAS, On June 9, 2020, Berkeley Police Chief Andrew Greenwood made comments to the Berkeley City Council advocating for shooting protestors of police violence, saying, "We can shoot people", when asked about an alternative to tear gas; and

WHEREAS, During this time of national recognition of the reckoning of police violence and racial justice, the Chief's comments were not merely a gaffe but an inexcusable declaration of police violence and the violation of the most basic rights guaranteed in the United States Constitution, which he is sworn to protect; and

WHEREAS, Berkeley is considered one of the most progressive cities in the country and should be leading the nation in police transformation. We must be working to find ways to respond to harms in our communities that do not put marginalized groups in constant danger. Chief Greenwood's comments directly contradict this objective; and

WHEREAS, A Center for Policing Equity report in 2018 demonstrated the disparate treatment to African American and people of color. Unfortunately, during the pandemic, disparities have only increased. Analysis of the Berkeley Police Department's Open Data Portal shows that disparities between the number of Black and White civilians the department stops *doubled during the COVID-19 pandemic*; and

WHEREAS, According to the police department's data conducted by independent analysis titled "Racial Disparities in Berkeley Policing Update on Pandemic Period, March 15 to June 2020" released on June 19, 2020, the following conclusions can be drawn from the data representing the first 13 weeks of the pandemic shutdown, from March 15 through June 12:

4. Predictably, the number of police stops for all racial groups is down due to the stay-home order. The total number of stops, 608, is about a fourth of an average 13-week quarter in 2008.
5. *The disparity between stops of African American and White civilians has skyrocketed*, as is evident from the raw numbers: African American stops are exactly 50% of total 608 stops at **304**, with White stops at **143** for 23.52% of all stops. This compares to percentages of 3,083 and 2,706, or 28% and 32% respectively in the year 2018.
6. Taking into account the *low number of African Americans* residing in Berkeley, the *disparities come into sharp relief*. African American stops are about 42.7 per 1,000 of their population, where White stops are about 2.9 per 1,000, a disparity of **14.5 to 1**. This compares to a disparity of 7.6 to 1 in 2018, meaning that **the racial disparity in stops has almost doubled** between 2018 and the pandemic period.

WHEREAS, The citations per stop are down by about two-thirds compared to that of 2018. While that might sound like good news, that is not necessarily the case. A reduced rate of

writing citations likely means that civilians of all races are being stopped without the required reasonable suspicion of criminal activity. What's more, **the citation rate for African American civilian stops is 7.57% and for Whites, 15.38%, a disparity of over two to one.** That disparity indicates that only half as many African American stops as White stops are conducted with valid suspicion of a criminal act. The citation rate of 7.5% for African Americans raises questions about why the other 92.5% were stopped; and

WHEREAS, The BPD did not report the stop data for a period of August 2019 through early June 2020 with the excuse that "For a period we had someone who was part of the processing of the data, and that position was eliminated due to staffing shortages." Competent leadership should ensure a prioritized process should always have repeatability, and an automation built into it. That means the system will not fall due to the departure of an individual; and

WHEREAS, BPD continues to demonstrate disparate treatment of people of color, Chief Greenwood's comments and actions are cause for a Vote of No Confidence. The community is demanding change. For example, at the July 14, 2020 City Council meeting with over three hundred attendees, the majority stating they had no confidence in the Chief of Police as well as demanding defunding the police. Now is the time to step up and listen to the demands of our beloved community.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley hereby take a Vote of No Confidence in the Police Chief.

Racial Disparities in Berkeley Policing  
Update on Pandemic Period, March 15 to June 12, 2020  
George Lippman  
June 19, 2020

As of June 12, the BPD resumed publication of demographic stop data to the online open portal, after a break since July 31, 2019. See:  
<https://data.cityofberkeley.info/Public-Safety/Berkeley-PD-Stop-Data-NEW-/4tbf-3yt8>

The following conclusions can be drawn from the data representing the first 13 weeks of the pandemic shutdown, from March 15 through June 12.

1. Predictably, the number of police stops for all racial groups is down due to the stay-home order. The total number of stops, 608, is about a fourth of an average 13-week quarter in 2008.
2. *The disparity between stops of African American and White civilians has skyrocketed*, as is evident from the raw numbers: African American stops are exactly 50% of total 608 stops at **304**, with White stops at **143** for 23.52% of all stops. This compares to percentages of 3,083 and 2,706, or 28% and 32% respectively in the year 2018.
3. Taking into account the *low number of African Americans* residing in Berkeley, the *disparities come into sharp relief*. African American stops are about 42.7 per 1,000 of their population, where White stops are about 2.9 per 1,000, a disparity of **14.5 to 1**. This compares to a disparity of 7.6 to 1 in 2018, meaning that **the racial disparity in stops has almost doubled** between 2018 and the pandemic period.
4. The citations per stop are down by about two-thirds compared to that of 2018. While that might sound like good news, that is not necessarily the case. A reduced rate of writing citations likely means that civilians of all races are being stopped without the required reasonable suspicion of criminal activity. What's more, **the citation rate for African American civilian stops is 7.57% and for Whites, 15.38%, a disparity of over two to one**. That disparity indicates that only half as many African American stops as White stops are conducted with valid suspicion of a criminal act. The citation rate of 7.5% for African Americans raises questions about why the other 92.5% were stopped.

An overall risk in this pandemic is that the social and legal emergency undermines democratic norms such as transparency, civilian oversight, and adherence to constitutional principle and established process. The doubling of the already high disparity of Black and White stop rates is an indicator that equal treatment under the law (Fourteenth Amendment) has been shelved in practice.

Suspension of oversight bodies such as the PRC and the Fair and Impartial Policing Working Group--and proposals to permanently defund city commissions--and the failure to publish the required stop data, all while residents are not allowed to freely travel outdoors in the city, are also troubling; they bar the community from utilizing the "disinfectant effects of sunshine."

In the attached spreadsheet, see the first tab, or sheet (“BPD Raw Data\_3-16 to 6-12-20”) for the full listing of police encounters in that period. At the bottom of this tab please find a chart summarizing the calculations on numbers and percentages of stops, and numbers, percentages, and racial disparities in enforcement outcomes (citations and arrests). Contact me directly for calculations used to quantify disparities in stops based on the population by race in Berkeley.

| Ethnicity       | Stopped | % of total    | Cited | % of stops resulting in citation | Arrest | % of stops resulting in arrest |
|-----------------|---------|---------------|-------|----------------------------------|--------|--------------------------------|
| Asian           | 29      | 4.77%         | 6     | 20.69%                           | 0      | 0.00%                          |
| Black           | 304     | <b>50.00%</b> | 23    | <b>7.57%</b>                     | 8      | <b>2.63%</b>                   |
| Hispanic/Latino | 88      | 14.47%        | 9     | 10.23%                           | 4      | 4.55%                          |
| White           | 143     | <b>23.52%</b> | 22    | <b>15.38%</b>                    | 7      | <b>4.90%</b>                   |
| Bad data        | 1       | 0.16%         | 0     | 0.00%                            | 0      | 0.00%                          |
| Other           | 43      | 7.07%         | 11    | 25.58%                           | 0      | 0.00%                          |
| TOTALS:         | 608     | 100.00%       | 71    | 11.68%                           | 19     | 3.13%                          |

George Lippman  
 geolippman.pjc@earthlink.net

For context on the citation rate disparities, I refer to my presentation to the Mayor’s Fair and Impartial Policing Working Group from January 2020, “Key things to understand about the BPD stop data.” That presentation refers to data from the year 2012-2018.

The citation rate discrepancies are stable over the years studied. They are critical because they show the chances of civilians of different ethnic groups to be stopped by police in Berkeley with no ensuing need for enforcement action. The citation rate metric removes the need for consideration of residency. It also removes any need for consideration of the demographics of crime. Those who argue for allowing police officers to put more weight on a civilian’s race in their decision to stop them, contend that people of color commit crime at higher rates than White people. But this disparity in post-stop enforcement shows that Black people are twice more likely than Whites to be stopped where there either was no reasonable suspicion, or that suspicion was unfounded.

These numbers are not the end of the discussion, but the beginning. Particularly the stop and the citation rate disparities require us to delve deeper. The City government should investigate how the decision to make a stop is made. Are the disparate stops being made by a subset of the street officers or across the board? Do stops that are officer-initiated versus dispatched result in different levels of disparity? Are there certain officers who make proportionately more stops of African Americans and Latinos than other officers do? How can those outlier officers be identified?

Answers to these questions will give the Working Group and the department the tools to ensure that policing is conducted fairly and impartially.

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In conclusion, the data described above compel the Working Group to develop an action plan that will achieve the following goals:

- Identify officers that are outliers in their practice of stopping, searching, and citation-writing, and appropriately train and manage them.
- We cannot make poorly performing officers take the entire responsibility for the disparities. We have to also look at who their commanders are, what direction the officers are getting from those commanders, and what action these commanders are taking to address the performance of these officers.
- Adopt programs such as precision-based policing and intelligence-led stops to heavily reduce stops, particularly of African Americans and Latinos.
- Reduce racial disparities in citation rates as defined in this paper as close to zero as possible.
- Ensure that all use of force is reported.



# Communications

All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

## **City Clerk Department**

2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

## **Records Online**

<http://www.cityofberkeley.info/recordsonline>

To search for communications associated with a particular City Council meeting using Records Online:

1. Select Search Type = “Public – Communication Query (Keywords)”
2. From Date: Enter the date of the Council meeting
3. To Date: Enter the date of the Council meeting (this may match the From Date field)
4. Click the “Search” button
5. Communication packets matching the entered criteria will be returned
6. Click the desired file in the Results column to view the document as a PDF