



AGENDA
BERKELEY CITY COUNCIL MEETING
Tuesday, September 20, 2022
6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
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 Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/88667906480>. 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: 886 6790 6480. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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.

To submit a written communication for the City Council's consideration and inclusion in the public record, email council@cityofberkeley.info.

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. Resolution Reviewing and Ratifying the Proclamation of Local Emergency Due to the Spread of a Severe Acute Respiratory Illness Caused by a Novel (New) Coronavirus (COVID-19)

From: City Manager

Recommendation: Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, and July 26, 2022.

Financial Implications: To be determined

Contact: Farimah Brown, City Attorney, (510) 981-6950

2. Resolution Making Required Findings Pursuant to the Government Code and Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference

From: City Manager

Recommendation: Adopt a resolution making the required findings pursuant to Government Code Section 54953(e)(3) and determining that as a result of the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference, initially ratified by the City Council on September 28, 2021, and subsequently reviewed and ratified on October 26, 2021, November 16, 2021, December 14, 2021, January 10, 2022, February 8, 2022, March 8, 2022, March 22, 2022, April 12, 2022, May 10, 2022, May 31, 2022, June 28, 2022, July 26, 2022, and August 23, 2022.

Financial Implications: To be determined

Contact: Farimah Brown, City Attorney, (510) 981-6950

3. Establish 2023 City Council Meeting Schedule

From: City Manager

Recommendation: Adopt a Resolution establishing the City Council regular meeting schedule for 2023, with starting times of 6:00 p.m.

Financial Implications: None

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

Consent Calendar

- 4. 2023 Tax Rate: Transportation Network Company User Tax**
From: City Manager
Recommendation: Adopt first reading of an Ordinance setting the 2023 tax rate (effective January 1, 2023) for the transportation network company at the following rates: 53.775 cents on the user for each prearranged trip that originates in the City that is not part of a pooled prearranged trip and 26.249 for each pooled prearranged trip on each user who arranges each prearranged trip that originates in the City and which comprises part of the pooled prearranged trip.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 5. Contract No. 084349-1 Amendment: AMCS Group Inc. for Zero Waste PC Scale Software Maintenance and Professional Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 084349-1 with AMCS Group, Inc. to provide additional maintenance support and professional services for the Public Works Department's Zero Waste Scale House in an amount \$45,000 for a total contract amount not to exceed \$261,282 and extending the term from July 1, 2022 through June 31, 2025.
Financial Implications: See report
Contact: LaTanya Bellow, Information Technology, (510) 981-6500
- 6. Protiviti Government Services: Using General Services Administration (GSA) Vehicle for Professional Services Purchase Orders**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to issue purchase orders with Protiviti Government Services for the purchase of professional services using the General Services Agency's (GSA) purchasing vehicle no. GS-35F-0280X for an amount not to exceed \$250,000 through December 31, 2023.
Financial Implications: Total FY 2023 Professional Services - \$250,000
Contact: LaTanya Bellow, Information Technology, (510) 981-6500
- 7. Contract No. 105921-1 Amendment: TruePoint Solutions, LLC for Accela Professional Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 105921-1 with TruePoint Solutions, LLC for professional services, increasing the amount by \$195,000, for a total not-to-exceed amount of \$1,047,200 and extending the term by two years for the term beginning June 1, 2015 to June 30, 2024.
Financial Implications: See report
Contact: LaTanya Bellow, Information Technology, (510) 981-6500

Consent Calendar

8. **Contract: SCS Engineers for Landfill Post Closure Maintenance and Monitoring Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with SCS Engineers, in an amount not to exceed \$714,022, to provide engineering, maintenance, and monitoring services for the landfill to meet mandatory compliance requirements at Cesar Chavez Park, from January 1, 2023, to June 30, 2026.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
9. **Contracts: Davey Resource Group, Inc., and HortScience Bartlett Consulting for On-Call Arborist Services**
From: City Manager
Recommendation: Adopt two Resolutions authorizing the City Manager to execute the following contracts and any amendments for on-call arborist services for capital improvement projects, each for a period of November 1, 2022, through December 31, 2025:
1. Davey Resource Group, Inc. for an amount not to exceed \$125,000.
2. HortScience Bartlett Consulting for an amount not to exceed \$125,000.
Financial Implications: See report.
Contact: Liam Garland, Public Works, (510) 981-6300
10. **Contracts: On-Call Civil Engineering Services, CSW Stuber-Stroeh Engineering Group, Inc., HDR Engineering, Inc., LCC Engineering & Surveying, Inc., Mark Thomas & Company, Inc., Park Engineering, Inc., Pavement Engineering Inc., and SCI Consulting Group.**
From: City Manager
Recommendation: Adopt seven Resolutions authorizing the City Manager to execute the following contracts and any amendments for on-call civil engineering services for capital improvement projects, each for a period of November 1, 2022 through December 31, 2025:
1. CSW Stuber-Stroeh Engineering Group, Inc. for an amount not to exceed \$750,000.
2. HDR Engineering, Inc. for an amount not to exceed \$750,000.
3. LCC Engineering & Surveying, Inc. for an amount not to exceed \$1,500,000.
4. Mark Thomas & Company, Inc. for an amount not to exceed \$750,000.
5. Park Engineering, Inc. for an amount not to exceed \$1,500,000.
6. Pavement Engineering Inc. for an amount not to exceed \$1,500,000.
7. SCI Consulting Group for an amount not to exceed \$150,000.
Financial Implications: See report.
Contact: Liam Garland, Public Works, (510) 981-6300

Consent Calendar

11. Contract No. 10350 (112199-1) Amendment: Technology, Engineering, and Construction, Inc. for Tank Maintenance and Certification Services
From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or designee to execute an amendment to Contract No. 10350 with Technology, Engineering and Construction, Inc. for the provision of tank maintenance and certification services, extending the contract term to June 30, 2024 and increasing the amount by \$100,000 for a total contract amount not to exceed \$250,000.

Financial Implications: See report

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

12. Contract No. 31900085 Amendment: Syntech Systems, Inc. for a Fuel Management System and Software
From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 31900085 with Syntech Systems, Inc. to provide ongoing service and support of infrastructure and software for the City's Fleet Fueling Program, increasing the contract amount by \$45,000 for a new not to exceed amount of \$231,472 and extending the contract term through June 30, 2025.

Financial Implications: See report.

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

13. Contract: Shaw Industries, Inc. for Civic Center Building Carpet Replacement Project
From: City Manager

Recommendation: Adopt a Resolution: 1. Pursuant to City Charter Article XI Section 67.2 requirements, accepting the California Multiple Award Schedule (CMAS) bid procedures; 2. Approving the CMAS Contract with Shaw Industries, Inc. for Carpet Replacements at the Civic Center Building; 3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the terms and conditions of the agreements with Shaw Industries, Inc. in an amount not to exceed \$177,218.68, which includes a contingency of \$23,115.

Financial Implications: See report.

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

Council Consent Items

- 14. Helping Achieve Responsible Development with Healthcare and Apprenticeship Training Standards (HARD HATS) Referral**
From: Mayor Arreguin (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Hahn (Co-Sponsor), Councilmember Taplin (Co-Sponsor)
Recommendation: Refer to the City Attorney and City Manager to draft a HARD HATS Ordinance based on the policy terms outlined below and bring the Ordinance back to Council for action on December 13, 2022.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, (510) 981-7100

Action Calendar

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

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

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

Action Calendar – Public Hearings

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

Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

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

Action Calendar – Public Hearings

15. Zoning Ordinance Amendments Making Technical Edits and Corrections to Berkeley Municipal Code (BMC) Title 23

From: City Manager

Recommendation: Conduct a public hearing and, upon conclusion, adopt the first reading of an Ordinance containing technical edits, corrections and other non-substantive amendments to the following sections of the Zoning Ordinance:

- BMC Section 23.204.050 (C-C Zoning District)
- BMC Section 23.204.080 (C-E Zoning District)
- BMC Section 23.204.090 (C-NS Zoning District)
- BMC Section 23.204.130 (C-DMU District)
- BMC Section 23.206.050 (Protected Uses)
- BMC Section 23.304.030 (Setbacks)
- BMC Section 23.304.090 (Usable Open Space)
- BMC Section 23.322.030 (Required Parking Spaces)
- BMC Section 23.406.070 (Design Review)

Financial Implications: None

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

Action Calendar – Old Business

16. **Restoring and Improving Access to City of Berkeley Website and Archival Materials** *(Continued from July 26, 2022) (Item contains revised materials)*
From: Councilmember Hahn (Author), Councilmember Taplin (Co-Sponsor), Councilmember Bartlett (Co-Sponsor)

Recommendation:

1. Accept the report outlining results from consultation with the City Manager after introduction of this item and thank City Staff for their consideration.
2. As a means to support transparency and improve ease of access to historical/archival government records for policymakers, the press, and the general public, request that the City Manager continue developing and implementing measures that support efficient and effective searching, sorting, and identification of responsive materials through Records Online.
3. To support transparency and ease of access to government records, consider creating and disseminating a “style guide” with standards/conventions/protocols for accurately referencing and attaching City materials so they can be properly linked to or easily accessed in Records Online (or a successor/alternative program/database), allowing such materials to be referenced consistently by Councilmembers, Staff, members of the press, and other authors.
4. Refer to the November 2022 Budget Update up to \$50,000 for staff support for Council/Mayor offices to locate documents previously accessed via now-expired links, and request that the City Manager consult Councilmembers and the Mayor to offer the scope of assistance available and identify potential needs.
5. As a means to support transparency and restore ease of access to City materials referenced/attached via now-broken links in City reports, plans, items, and other documents created prior to launch of the new City website, request that the City Manager consider updating key plans, programs and reports by creating and linking PDFs of previously linked documents and/or substituting broken links with footnotes/references in a standard format allowing referenced and attached materials to be quickly/directly located through Records Online (or a successor/alternative program/database).
6. To better fulfill the requirements of the City of Berkeley’s Open Government Ordinance, request the City Manager retain materials such as Council, Committee, and Commission agendas, minutes, recordings, and other official documents on the website for a period at least 4 years, and preferably longer, before retiring them to Records Online.

Financial Implications: Staff time

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

Action Calendar – New Business

17. **Extending Community Agency Contracts for One Year at Existing Levels and Postponing the Community Agency Request for Proposal (RFP) Process Until Fiscal Year 2024**
From: City Manager
Recommendation: Adopt a Resolution that extends all existing community agency contracts under the community agency Request for Proposal (RFP) process for one year, at current baseline one-year funding, and postpone the four-year Community Agency’s RFP process for one fiscal year, to FY2024, with new contracts to start in FY2025.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
18. **Audit Status Report Response: Code Enforcement Resources Significantly Constrained and Improvements Needed in Case Management and Oversight**
From: City Manager
Contact: Peter Radu, City Manager's Office, (510) 981-7000

Information Reports

19. **Update on the Implementation of Fair and Impartial Policing Task Force Recommendations**
From: City Manager
Contact: Jennifer Louis, Police, (510) 981-5900

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.*

Archived indexed video streams are available at:

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>.

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 made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street as well as posted on the City's website at <https://berkeleyca.gov/>.

Agendas and agenda reports may be accessed via the Internet at:
<https://berkeleyca.gov/your-government/city-council/city-council-agendas>
and may be read at reference desks at the following locations:

City Clerk Department - 2180 Milvia Street, First Floor
Tel: 510-981-6900, TDD: 510-981-6903, Fax: 510-981-6901
Email: clerk@cityofberkeley.info

Libraries: Main – 2090 Kittredge Street,
Claremont Branch – 2940 Benvenue, West Branch – 1125 University,
North Branch – 1170 The Alameda, South Branch – 1901 Russell

COMMUNICATION ACCESS INFORMATION:

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



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

I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on September 8, 2022.

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

Mark Numainville, City Clerk

Communications

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

Transfer Station

1. David Lerman

IKE Kiosks

2. Cecilia Mayer
3. Allen Mayer
4. Cynthia Whiting
5. Jinny Wong

King and West Campus Pool

6. Pamela Michaud (2)

People's Park

7. Martha Vognar
8. Miranda Winther

Wildfire Prevention

9. Bruce Feingold

Poet Laureate Position

10. Rafael Jesus Gonzalez
11. Sharon Coleman

Problem Fraternity House at 2344 Fulton Street

12. Dan Auten

72-Hour Parking Rule Complaint

13. Kris Ho

Heat Wave and Seniors

14. David Lerman (2)
15. Tanya Bustamante, Manager of Aging Services Division

Supplemental Communications and Reports

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

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



Office of the City Attorney

CONSENT CALENDAR
September 20, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Farimah Faiz Brown, City Attorney

Subject: Resolution Reviewing and Ratifying the Proclamation of Local
Emergency Due to the Spread of a Severe Acute Respiratory Illness
Caused by a Novel (New) Coronavirus (COVID-19)

RECOMMENDATION

Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, and July 26, 2022.

FISCAL IMPACT OF RECOMMENDATION

To be determined.

CURRENT SITUATION AND ITS EFFECTS

Pursuant to California Government Code section 8630 and Berkeley Municipal Code Chapter 2.88, on March 3, 2020, the City Manager, in her capacity as Director of Emergency Services, proclaimed a local emergency due to conditions of extreme peril to the safety of persons and property within the City as a consequence of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19), including a confirmed case in the City of Berkeley. As a result of multiple confirmed and presumed cases in Alameda County, the County has declared a local health emergency. The Proclamation of Local Emergency empowers the Director of Emergency Services to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such local emergency. Pursuant to Government Code section 8630(b) and Berkeley Municipal Code section

2.88.040.A.1, on March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312.

Pursuant to Government Code section 8630(c), the City Council must review the need for continuing the local emergency at least once every sixty (60) days. The Council last reviewed and ratified the Proclamation of Local Emergency on May 10, 2022. The Council therefore must review the continuing need for the local emergency by July 9, 2022.

This item requests that the Council review the continued need for the local emergency and again ratify the Proclamation of Local Emergency issued on March 3, 2020, initially ratified by the Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, and July 26, 2022. If reviewed and ratified on September 20, 2022, the Council will need to again review and ratify the proclamation by November 19, 2022 in order to continue the local emergency.

If at any time the Council determines that the need for continuing the local emergency has ended, state law directs the Council to terminate the local emergency at the earliest possible date that conditions warrant. (Cal. Gov. Code section 8630(d).)

BACKGROUND

On March 1, 2020, Alameda County Public Health Department and Solano County Public Health Department reported two presumptive cases of COVID-19, pending confirmatory testing by the Centers for Disease Control (CDC), prompting Alameda County to declare a local health emergency.

On March 3, 2020, the City's Director of Emergency Services proclaimed a local emergency due to the spread of COVID-19, including a confirmed case in the City of Berkeley and multiple confirmed and presumed cases in Alameda County.

On March 10, 2020, the City Council ratified the Proclamation of Local Emergency. Since that date, there have been over 4,955 confirmed cases of COVID-19 and at least 55 deaths in the City of Berkeley.

Since April 2021, the highly transmissible SARS-CoV-2 B.1.617.2 ("Delta") variant has been detected in the City of Berkeley and is contributing to substantial levels of community transmission.

The City Council has subsequently reviewed and ratified the Proclamation of Local Emergency on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, and July 26, 2022.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Not applicable.

RATIONALE FOR RECOMMENDATION

The Resolution would enable the Director of Emergency Services to continue to efficiently allocate resources due to the ongoing and imminent threat to public safety.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Dee Williams-Ridley, City Manager, City Manager's Office (510) 981-7000

Farimah Brown, City Attorney, City Attorney's Office (510) 981-6998

Attachments:

1: Resolution

RESOLUTION NO. –N.S.

RESOLUTION REVIEWING AND RATIFYING THE PROCLAMATION OF LOCAL EMERGENCY

WHEREAS, the Emergency Services Act, Government Code sections 8558(c) and 8630 authorize the proclamation of a local emergency when conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a city exist; and

WHEREAS, pursuant to Government Code section 8630, such an emergency may be proclaimed by the governing body or by an official designated by ordinance adopted by the governing body; and

WHEREAS, Berkeley Municipal Code section 2.88.040 provides that the City Manager, serving as the Director of Emergency Services, may request that the City Council proclaim the existence of a local emergency; and

WHEREAS, under provision of local law, if the City Council cannot be convened and, in the judgment of the Director of Emergency Services, the circumstances warrant it, a proclamation of local emergency may be issued which must be ratified or nullified by the City Council within seven days of issuance; and

WHEREAS, in accordance with authority granted under the above provisions of state and local law, the Director of Emergency Services beginning on March 3, 2020 did proclaim the existence of a local emergency caused by epidemic in the form of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (“COVID-19”), including confirmed cases in California and the San Francisco Bay Area, and presumed cases in Alameda County prompting the County to declare a local health emergency; and

WHEREAS, on March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312; and

WHEREAS, Government Code section 8630(c) requires that the City Council review the need for continuing the local emergency at least once every sixty (60) days; and

WHEREAS, the City Council subsequently reviewed the need for continuing the local emergency and again ratified the Proclamation of Local Emergency on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, and July 26, 2022; and

WHEREAS, the City Council does find that the aforesaid conditions of extreme peril continue to exist, and now include over 13,000 confirmed cases of COVID-19 and at least 61 deaths in the City of Berkeley, thereby warranting and necessitating the continuation of the local emergency; and

WHEREAS, the City Council will need to again review the need for continuing the local emergency and ratify the Proclamation of Local Emergency by August 27, 2022;

WHEREAS, the City Council recognizes that the SARS-CoV-2 B.1.617.2 (“Delta”) variant of COVID-19 that is currently circulating nationally and within the City is contributing to a substantial increase in transmissibility and more severe disease; and

WHEREAS, on July 16, 2021, in light of the apparent increased transmissibility of the Delta variant, the City of Berkeley recommended that all individuals including fully vaccinated persons wear masks in public indoor settings; and

WHEREAS, on July 26, 2021, the California State Health Officer issued an order requiring vaccination or routine testing of all employees working in high-risk health care and congregate settings, in light of the fact that current requirements of staff in health care settings, such as universal mask requirements for all staff are not proving sufficient to prevent transmission of the more transmissible Delta variant; and

WHEREAS, on July 27, 2021, the CDC updated its guidance for fully vaccinated persons to reflect new evidence regarding the Delta variant, noting that “[i]nfections in fully vaccinated people (breakthrough infections) happen in only a small proportion of people who are fully vaccinated, even with the Delta variant”; and

WHEREAS, on August 2, 2021, the Health Officer for the City of Berkeley issued an order requiring all individuals to wear masks in all indoor public settings; and

WHEREAS, on August 5, 2021, the California State Health Officer issued an order requiring that workers in healthcare settings be fully vaccinated by September 30, 2021; and

WHEREAS, on August 11, 2021, the City announced its intention to implement a vaccination policy for City employees to protect the health and safety of the City of Berkeley’s employees and community members from the imminent and substantial threat to public health and safety posed by the Delta variant; and

WHEREAS, on September 14, 2021, given the increased and unforeseen risk posed by the Delta variant, as compared to earlier variants of the COVID-19 virus previously present in the City of Berkeley, the City Council found that a Citywide vaccination policy protects public health and reduces the risk of substantial harm to City staff and community members that could result from workplace outbreaks caused by the Delta variant; and

WHEREAS, on September 14, 2021, given the urgency posed by the highly transmissible nature of the Delta variant, the City Council recognized the variant’s existence as creating an emergency of grave character and as warranting immediate adoption of a Citywide vaccination policy.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that it is hereby proclaimed and ordered that the Proclamation of Local Emergency, issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the City Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, and July 26, 2022, has been reviewed and is hereby again ratified and confirmed.

BE IT FURTHER RESOLVED that during the existence of this local emergency the powers, functions, and duties of the emergency organization of this City shall be those prescribed by state law, and the Charter, ordinances, resolutions and approved plans of the City of Berkeley.



Office of the City Attorney

CONSENT CALENDAR
September 20, 2022

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

From: Farimah Faiz Brown, City Attorney

Subject: Resolution Making Required Findings Pursuant to the Government Code and Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference

RECOMMENDATION

Adopt a resolution making the required findings pursuant to Government Code Section 54953(e)(3) and determining that as a result of the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference, initially ratified by the City Council on September 28, 2021, and subsequently reviewed and ratified on October 26, 2021, November 16, 2021, December 14, 2021, January 10, 2022, February 8, 2022, March 8, 2022, March 22, 2022, April 12, 2022, May 10, 2022, May 31, 2022, June 28, 2022, July 26, 2022, and August 23, 2022.

FISCAL IMPACT OF RECOMMENDATION

To be determined.

CURRENT SITUATION AND ITS EFFECTS

The City Council made the initial findings required under the Government Code on September 28, 2021. The Council must make the findings every thirty days in order to continue to meet exclusively through video conference or teleconference.

Pursuant to California Government Code section 8630 and Berkeley Municipal Code Chapter 2.88.040, on March 3, 2020, the City Manager, in her capacity as Director of Emergency Services, proclaimed a local emergency due to conditions of extreme peril to the safety of persons and property within the City as a consequence of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19), including a confirmed case in the City of Berkeley. As a result of multiple confirmed and presumed cases in Alameda County, the County has declared a local health emergency. On March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency due to the spread of COVID-19. On March 10, 2020, the City

Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312.

On March 17, 2020, Governor Newsom signed Executive Order N-29-20, which suspended certain portions of the Ralph M. Brown Act (Cal. Gov. Code § 54950 et seq.) related to the holding of teleconferenced meetings by City legislative bodies. Among other things, Executive Order N-29-20 suspended requirements that each location from which an official accesses a teleconferenced meeting be accessible to the public. These changes were necessary to allow teleconferencing to be used as a tool for ensuring social distancing. City legislative bodies have held public meetings via videoconference and teleconference pursuant to these provisions since March 2020. These provisions of Executive Order N-29-20 will expire on September 30, 2021.

COVID-19 continues to pose a serious threat to public health and safety. There are now over 4,700 confirmed cases of COVID-19 and at least 55 deaths in the City of Berkeley. Additionally, the SARS-CoV-2 B.1.617.2 (“Delta”) variant of COVID-19 that is currently circulating nationally and within the City is contributing to a substantial increase in transmissibility and more severe disease.

As a result of the continued threat to public health posed by the spread of COVID-19, state and local officials continue to impose or recommend measures to promote social distancing, mask wearing and vaccination. Holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies, and therefore public meetings cannot safely be held in person at this time

Assembly Bill 361 (Rivas), signed into law by Governor Newsom on September 16, 2021, amended a portion of the Brown Act (Government Code Section 54953) to authorize the City Council, during the state of emergency, to determine that, due to the spread of COVID-19, holding in-person public meetings would present an imminent risk to the health or safety of attendees, and therefore City legislative bodies must continue to meet via videoconference and teleconference. Assembly Bill 361 requires that the City Council must review and ratify such a determination every thirty (30) days. Therefore, if the Council passes this resolution on September 20, 2022, the Council will need to review and ratify the resolution by October 20, 2022.

This item requests that the Council review the circumstances of the continued state of emergency posed by the spread of COVID-19, and find that the state of emergency continues to directly impact the ability of the public and members of City legislative bodies to meet safely in person, that holding public meetings of City legislative bodies in person would present imminent risks to the health and safety of attendees, and that state and local officials continue to promote social distancing, mask wearing and vaccination. This item further requests that the Council determine that City legislative bodies, including but not limited to the City Council and its committees, and all commissions and boards, shall continue to hold public meetings via videoconference

and teleconference, and that City legislative bodies shall continue to comply with all provisions of the Brown Act, as amended by SB 361.

BACKGROUND

On March 1, 2020, Alameda County Public Health Department and Solano County Public Health Department reported two presumptive cases of COVID-19, pending confirmatory testing by the Centers for Disease Control (CDC), prompting Alameda County to declare a local health emergency.

On March 3, 2020, the City's Director of Emergency Services proclaimed a local emergency due to the spread of COVID-19, including a confirmed case in the City of Berkeley and multiple confirmed and presumed cases in Alameda County.

On March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency due to the spread of COVID-19.

On March 10, 2020, the City Council ratified the Proclamation of Local Emergency. Since that date, there have been over 4,700 confirmed cases of COVID-19 and at least 57 deaths in the City of Berkeley.

On March 17, 2020, Governor Newsom signed Executive Order N-29-20 which suspended certain portions of the Ralph M. Brown Act (Cal. Gov. Code § 54950 et seq.) to allow teleconferencing of public meetings to be used as a tool for ensuring social distancing. As a result, City legislative bodies have held public meetings via teleconference throughout the pandemic. The provisions of Executive Order N-29-20 allowing teleconferencing to be used as a tool for social distancing will expire on September 30, 2021.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Not applicable.

RATIONALE FOR RECOMMENDATION

The Resolution would enable the City Council and its committees, and City boards and commissions to continue to hold public meetings via videoconference and teleconference in order to continue to socially distance and limit the spread of COVID-19.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Farimah Brown, City Attorney, City Attorney's Office (510) 981-6998
Mark Numainville, City Clerk, (510) 981-6908

Attachments:1: Resolution Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference

RESOLUTION NO. –N.S.

RESOLUTION MAKING THE REQUIRED FINDINGS PURSUANT TO GOVERNMENT CODE SECTION 54953(E)(3) AND DIRECTING CITY LEGISLATIVE BODIES TO CONTINUE TO MEET VIA VIDEOCONFERENCE AND TELECONFERENCE

WHEREAS, in accordance with Berkeley Municipal Code section 2.88.040 and sections 8558(c) and 8630 of the Government Code, which authorize the proclamation of a local emergency when conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a City exist, the City Manager, serving as the Director of Emergency Services, beginning on March 3, 2020, did proclaim the existence of a local emergency caused by epidemic in the form of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (“COVID-19”), including confirmed cases in California and the San Francisco Bay Area, and presumed cases in Alameda County prompting the County to declare a local health emergency; and

WHEREAS, on March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency pursuant to the California Emergency Services Act, in particular, Government Code section 8625; and

WHEREAS, the Proclamation of a State of Emergency issued by Governor Newsom on March 4, 2020 continues to be in effect; and

WHEREAS, on September 16, 2021, Governor Newsom signed into law AB 361, which authorizes the City Council to determine that, due to the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference; and

WHEREAS, the City Council does find that the aforesaid conditions of extreme peril continue to exist, and now include over 4,700 confirmed cases of COVID-19 and at least 55 deaths in the City of Berkeley; and

WHEREAS, the City Council recognizes that the SARS-CoV-2 B.1.617.2 (“Delta”) variant of COVID-19 that is currently circulating nationally and within the City is contributing to a substantial increase in transmissibility and more severe disease; and

WHEREAS, as a result of the continued threat to public health posed by the spread of COVID-19, state and local officials continue to impose or recommend measures to promote social distancing, mask wearing and vaccination; and

WHEREAS, holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies, and therefore public meetings cannot safely be held in person at this time; and

WHEREAS, the City Council made the initial findings required by the Government Code on September 28, 2021; and

WHEREAS, the City Council made subsequent findings required by the Government Code on October 26, 2021, November 16, 2021, December 14, 2021, January 10, 2022, February 8, 2022, March 8, 2022, March 22, 2022, April 12, 2022, May 10, 2022, May 31, 2022, June 28, 2022, July 26, 2022, and August 23, 2022; and

WHEREAS, the City Council will need to again review the need for the continuing necessity of holding City legislative body meetings via videoconference and teleconference by October 20, 2022.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that, pursuant to Government Code section 54953, the City Council has reviewed the circumstances of the continued state of emergency posed by the spread of COVID-19, and finds that the state of emergency continues to directly impact the ability of the public and members of City legislative bodies to meet safely in person, that holding public meetings of City legislative bodies in person would present imminent risks to the health and safety of attendees, and that state and local officials continue to promote social distancing, mask wearing and vaccination.

BE IT FURTHER RESOLVED that City legislative bodies, including but not limited to the City Council and its committees, and all commissions and boards, shall continue to hold public meetings via videoconference and teleconference.

BE IT FURTHER RESOLVED that all City legislative bodies shall comply with the requirements of Government Code section 54953(e)(2) and all applicable laws, regulations and rules when conducting public meetings pursuant to this resolution.



Office of the City Manager

CONSENT CALENDAR
September 20, 2022

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Mark Numainville, City Clerk
Subject: Establish 2023 City Council Meeting Schedule

RECOMMENDATION

Adopt a Resolution establishing the City Council regular meeting schedule for 2023, with starting times of 6:00 p.m.

FISCAL IMPACTS OF RECOMMENDATION

None.

BACKGROUND

Pursuant to the Open Government Ordinance, the Council must adopt an annual regular meeting schedule with at least 24 regular meetings. The schedule generally consists of either two or three meetings per month and provides for Spring, Summer and Winter recess periods. Meetings have not been scheduled on City holidays, Election Day or days of major religious/cultural observances that have work restrictions pursuant to Council policy.

Four City Council Worksessions will be scheduled for 2023. This number is slightly lower than previous years, but due to holidays and the need for two meetings in December to meet the 24-meeting requirement, only four available Worksession dates are scheduled. The Worksession dates are scheduled for the following dates.

- February 21, 2023
- May 16, 2023
- June 20, 2023
- July 18, 2023

The Mayor or a majority of the Council may call special meetings as needed. The Council may also amend the regular meeting schedule when necessary.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

CONTACT PERSON

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

Attachments:

1: Resolution

Exhibit A: 2023 Council Calendar

2: List of Religious/Cultural Observances for 2023

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

ADOPTING THE CITY COUNCIL 2023 REGULAR MEETING SCHEDULE

WHEREAS, pursuant to the Open Government Ordinance, the Council must adopt an annual meeting schedule with at least 24 regular meetings; and

WHEREAS, the proposed schedule (Exhibit A) provides for regular meetings to occur with starting times of 6:00 p.m. on specified Tuesdays of each month with exceptions provided for recess periods or when a meeting would fall on a City, religious or cultural holiday with work restrictions or Election Day; and

WHEREAS, the Council desires to establish as part of their schedule a Winter, Spring and Summer recess period for 2023; and

WHEREAS, the Mayor or a majority of the Council may call special meetings or revise the regular meeting schedule when necessary.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council adopts the 2023 regular meeting schedule on specified Tuesdays at 6:00 p.m. as indicated:

Winter Recess – December 14, 2022 – January 16, 2023
January 17 and January 31, 2023
February 14 and February 28, 2023
March 14 and March 21, 2023
Spring Recess – March 22 – April 10, 2023
April 11 and April 25, 2023
May 9, and May 23, 2023
June 6, June 13 and June 27, 2023
July 11 and July 25, 2023
Summer Recess – July 26 – September 11, 2023
September 12 and September 19, 2023
October 3 and October 10, 2023
November 7, November 14, and November 28, 2023
December 5 and December 12, 2023
Winter Recess – December 13, 2023 – January 15, 2024

Exhibit A: 2023 Council Calendar

City Clerk Department 2023 Council Calendar

(Subject to change. For the latest information, please contact the City Clerk Department, 510-981-6900.)

| Date | Time |
|--|-----------|
| January | |
| Winter Recess (Dec. 14, 2022 – Jan. 16, 2023) | |
| Jan 17 | 6:00 p.m. |
| Jan 31 | 6:00 p.m. |
| February | |
| Feb 14 | 6:00 p.m. |
| Feb 28 | 6:00 p.m. |
| March | |
| Mar 14 | 6:00 p.m. |
| Mar 21 | 6:00 p.m. |
| April | |
| Spring Recess (March 22 – April 10, 2023) | |
| April 11 | 6:00 p.m. |
| April 25 | 6:00 p.m. |
| May | |
| May 9 | 6:00 p.m. |
| May 23 | 6:00 p.m. |
| June | |
| June 6 | 6:00 p.m. |
| June 13 | 6:00 p.m. |
| June 27 | 6:00 p.m. |
| July | |
| July 11 | 6:00 p.m. |
| July 25 | 6:00 p.m. |
| Summer Recess (July 26 – Sept. 11, 2023) | |
| September | |
| Sept 12 | 6:00 p.m. |
| Sept 19 | 6:00 p.m. |
| October | |
| Oct 3 | 6:00 p.m. |
| Oct 10 | 6:00 p.m. |
| November | |
| Nov 7 | 6:00 p.m. |
| Nov 14 | |
| Nov 28 | 6:00 p.m. |
| December | |
| Dec 5 | 6:00 p.m. |
| Dec 12 | 6:00 p.m. |
| Winter Recess (Dec. 13, 2023 – Jan. 15, 2024) | |

City Policy Regarding the Scheduling of City Meetings on All Significant Religious Holidays

Pursuant to Resolution No. 70,066-N.S., it is the policy of the City to avoid scheduling meetings of City Legislative Bodies (City Council, Commissions and Boards, Council Policy Committees, Task Forces) on religious holidays that incorporate significant work restrictions.

City legislative bodies must avoid scheduling meetings on the religious holidays listed below.

| Religion | Holiday | Date | 2023 Date |
|--------------|----------------------------------|------------------------------|----------------------------------|
| Christian | Good Friday | Varies (March or April) | 4/7/23 |
| Christian | Easter Sunday | Varies (March or April) | 4/9/23 |
| Christian | Christmas | December 25 | 12/25/23 |
| | | | |
| Jewish | Rosh Hashanah | Varies (Sept. or Oct.) | 9/15/23-9/17/23 |
| Jewish | Yom Kippur | Varies (Sept. or Oct.) | 9/24/23-9/25/23 |
| Jewish | Sukkot - first and last day | Varies (Sept. or Oct.) | 9/29/23, 10/6/23 |
| Jewish | Shmini Atzeret/ Simchat Torah | Varies (Sept. or Oct.) | 10/6/23-10/8/23 |
| Jewish | Chanukah (1 st night) | Varies (Nov. or Dec.) | 12/7/23 |
| Jewish | Passover (Nights 1, 2, 7, 8) | Varies (March or April) | 4/5,4/6,4/12,4/13 |
| Jewish | Shavuot | Varies (May or June) | 5/25/23-5/27/23 |
| Jewish | Shabbat | Weekly | Friday sunset to Saturday sunset |
| Jewish* | Purim | Varies (February or March) | 3/6/23-3/7/23 |
| Jewish* | Tish'a B'Av | Varies (July or August) | 7/26/23-7/27/2023 |
| Jewish* | Yom HaShoah | Varies (April or May) | 4/17/23-4/18/23 |
| | | | |
| Buddhist | Vesak | Varies (April or May) | 5/5/23 |
| | | | |
| Hindu | Diwali | Varies (Oct. or Nov.) | 11/12/23 |
| Hindu | Dussera | Varies (Oct.) | 10/24/2023 |
| Hindu | Holi | Varies (March) | 3/8/23 |
| Hindu | Makar Sankranti | Varies (January or February) | 1/14/2023 |
| | | | |
| Islam | Eid al-Fitr | Varies | 4/21/23-4/22/23 |
| Islam | Eid al-Adha | Varies | 6/28/23-6/29/23 |
| | | | |
| Shinto | New Year | January 1-3 | 1/1/23-1/3/23 |
| Shinto | Obon Ceremony | August 13-15 | 8/13/23-8/15/23 |
| | | | |
| Baha'i Faith | Birth of Baja'u'llah | Varies | 10/16/22-10/17/23 |
| Baha'i Faith | Birth of Bab | Varies | 10/16/22-10/17/23 |
| | | | |
| Cultural | Chinese New Year (Day 1-7) | Varies (Jan. 21 – Feb. 20) | 1/21/23-1/27/23 |
| Cultural | Kwanzaa | Dec. 26 – Dec. 31 | 12/26/23-1/1/24 |

* No work restriction, but avoid scheduling meetings if possible



Office of the City Manager

CONSENT CALENDAR
September 20, 2022

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Henry Oyekanmi, Director, Finance Department
 Subject: 2023 Tax Rate: Transportation Network Company User Tax

RECOMMENDATION

Adopt first reading of an Ordinance setting the 2023 tax rate (effective January 1, 2023) for the transportation network company user tax at the following rates: 53.775 cents on the user for each prearranged trip that originates in the City that is not part of a pooled prearranged trip and 26.249 for each pooled prearranged trip on each user who arranges each prearranged trip that originates in the City and which comprises part of the pooled prearranged trip.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended 53.775 cents for each non-pooled prearranged trip and 26.249 cents on each user for each pooled prearranged trip will result in estimated collections of \$978,705.

CURRENT SITUATION AND ITS EFFECTS

The 2022 tax of 50 cents tax per each non-pooled prearranged trip and the 25 cents tax per each pooled prearranged trip is being adjusted by the Personal Income Growth of 7.550% as authorized on November 3, 2020 by voter approved Measure GG as the voters approved the greater of the Consumer Price Index in the immediate San Francisco Bay Area of 4.996% or Personal Income Growth increase in California of 7.550%

BACKGROUND

On November 3, 2020, over 66% of Berkeley voters approved Measure GG which authorized a transportation network company user tax for prearranged trips for private and pooled trips for general municipal services in the City until January 1, 2041.

The tax may be increased or decreased annually in May, according to the greater of the increase or decrease in the cost of living in the immediate San Francisco Bay Area or personal income growth in the state of California, as verified by official United States economic report.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

ALTERNATIVE ACTIONS CONSIDERED

The fiscal impact on general municipal services of forgoing an adjustment to the fiscal year's transportation network company user tax would be a reduction of \$68,705 in estimated collections.

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, 981-7326

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

IMPOSING A GENERAL TAX ON USERS OF TRANSPORTATION NETWORK COMPANIES AT A RATE OF 53.775 CENTS FOR PRIVATE TRIPS AND 26.249 CENTS FOR POOLED TRIPS

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

Section 1. The 2023 Tax Rate, effective January 1, 2023, to fund general municipal services is set at 53.775 cents for private trips and 26.249 for pooled trips.

Section 2. This tax rate will result in estimated total collections of \$978,705.

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 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.



Office of the City Manager

CONSENT CALENDAR
September 20, 2022

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: LaTanya Bellow, Acting Director, Information Technology
Subject: Contract No. 084349-1 Amendment: AMCS Group Inc. for Zero Waste PC Scale Software Maintenance and Professional Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 084349-1 with AMCS Group, Inc. to provide additional maintenance support and professional services for the Public Works Department’s Zero Waste Scale House in an amount \$45,000 for a total contract amount not to exceed \$261,282 and extending the term from July 1, 2022 through June 31, 2025.

FINANCIAL IMPLICATIONS

Funds for this contract are allocated in the Department of Public Works’ Zero Waste Tech Services – Software Maintenance Fund. Spending for this contract amendment for maintenance support and professional services in future fiscal year is subject to Council’s approval of the proposed citywide budget and annual appropriation ordinances.

\$45,000 July 1, 2022 – June 30, 2025: Maintenance and Professional Services
Budget Code 601–35–362–377–0000–000–472–613130–
(Public Works Department Zero Waste Tech Svcs – Software Maint Fund)

CURRENT SITUATION AND ITS EFFECTS

The Department of Public Works Zero Waste Division uses AMCS, formerly PC Scale, software to (1) accept payment from drive-in customers, (2) facilitate monthly billing to larger routine customers, and (3) provide accurate tonnage readings and report metrics for refuse, recycling, and organics collected by City trucks. This software has streamlined Zero Waste operations which now processes approximately 430 transactions a day resulting in approximately \$25,000 in daily revenue. This amendment seeks to extend support and maintenance through June 2025.

BACKGROUND

In 2009, the Public Works Department, in coordination with the Information Technology Department, developed a Request for Proposal (RFP) (Specification No. 08-10316-C) for an Integrated Software System for the Transfer Station. The intention of this RFP was to replace the City's existing scale house system which was outdated and no longer supported by a reliable vendor. Four responses were received to the RFP. A review panel comprised of Zero Waste, Information Technology and Finance/Customer Service staff evaluated the proposals. PC Scale Inc. scored the highest in the evaluation process and was selected.

In 2010, with the Council approval, the City entered into a contract agreement with PC Scale Inc. to provide new scale house software. PC Scale Inc. successfully installed their server and client-based software, provided customized programming integration with Accounts Receivable (MR) and Utility Billing (CX) modules within FUND\$, and provided training to all scale house staff. (Contract No. 8432)

In 2014, the Council approved a contract extension with PC Scale who continued to provide excellent customer service and software maintenance. (Contract No. 8432A)

In late 2014, the AMCS Resource Technology Group acquired PC Scale Inc.

On May 5, 2018, the Council authorized the City Manager to execute an amendment to Contract No. 8432 to provide additional maintenance and support services for an amount not to exceed \$216,282 and extend the term through June 30, 2020. (Contract No. 8432B)

On May 15, 2020, the City extended the term of the contract from 6/30/2020 to 6/30/2021.

On March 8, 2021, the City extended the term of the contract from 6/30/2021 to 6/30/2022.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The AMCS software provides detailed reporting metrics on waste management for various oversight agencies such as the EPA. This ensures that the City follows proper waste management protocols that are in line with regulations that keep the City clean. Furthermore, the implementation of the digital signature pads at the scale house have reduced the number of receipts from three to one (a 66% decrease in the use of paper) thus working toward the City's goal of achieving zero waste to landfills.

RATIONALE FOR RECOMMENDATION

The AMCS software has improved customer service, streamlined operations, and assisted with providing accurate data collection of tonnage for refuse, recycling and organics. AMCS has provided excellent support and consulting services.

ALTERNATIVE ACTIONS CONSIDERED

City Staff believes that the AMCS software fits with the City's operational and financial objectives. As such, City Staff has not considered replacing AMCS software at this time.

CONTACT PERSON

LaTanya Bellow, Acting Director, Information Technology, 510.981.7012

Attachments:

1: Resolution

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

CONTRACT NO. 084349-1 AMENDMENT: AMCS GROUP INC. FOR ZERO WASTE
PC SCALE SOFTWARE MAINTENANCE AND PROFESSIONAL SERVICES

WHEREAS, in 2009, a Request for Proposal (Specification No. 08-10316-C) for an Integrated Software System for the Transfer Station was released, and PC Scale, Inc. was identified as the vendor who could provide the best value to the City; and

WHEREAS, in 2010, Council approved an amount not to exceed \$137,740 (Contract No. 084349-1, formally 8432) to enter into the contract with PC Scale, Inc. to provide new scale house software; and

WHEREAS, on September 30, 2014, by Resolution No. 66,729 – N.S., the Council approved a contract extension an amount not to exceed \$172,098 (Contract No. 084349-1) with PC Scale, Inc. for continued maintenance services and support; and

WHEREAS, in late 2014, the AMCS Resource Technology Group acquired PC Scale Inc.; and

WHEREAS, on May 5, 2018, by Resolution No. 68,037 – N.S., the Council approved a contract extension an amount not to exceed \$216,282 (Contract No. 084349-1) with PC Scale, Inc. for continued maintenance services and support; and

WHEREAS, the City seeks to amend the existing contract to provide maintenance services and support from PC Scale, Inc., and funding for this recommendation is available in the Department of Public Works' Zero Waste Tech Services – Software Maintenance Fund in the amount of \$45,000; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend Contract No. 084349-1 with PC Scale, Inc. to provide maintenance services, and support for the Zero Waste Software Maintenance System in an amount not to exceed \$45,000 for a total contract amount not to exceed \$261,282 and extending the term from July 1, 2022 through June 30, 2025.



Office of the City Manager

CONSENT CALENDAR
September 20, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: LaTanya Bellow, Acting Director, Information Technology

Subject: Protiviti Government Services: Using General Services Administration (GSA) Vehicle for Professional Services Purchase Orders

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to issue purchase orders with Protiviti Government Services for the purchase of professional services using the General Services Agency's (GSA) purchasing vehicle no. GS-35F-0280X for an amount not to exceed \$250,000 through December 31, 2023.

FISCAL IMPACTS OF RECOMMENDATION

One-time funding for this project is available in the Department of Information Technology's Fiscal Year 2023 Cost Allocation Fund allocation. Spending for this contract in future fiscal years will be subject to Council approval of the proposed citywide budget and annual appropriation ordinances.

\$150,000 FY 2023: Professional Services
Budget Code: 680-35-361-000-0000-000-472-612990-
(IT Cost Allocation, IT Department, Professional Services)

\$100,000 FY 2023: Professional Services
Budget Code: 680-35-362-377-0000-000-472-612990-
(IT Cost Allocation, IT Department, Professional Services)

\$250,000 Total FY 2023 Professional Services

CURRENT SITUATION AND ITS EFFECTS

FUND\$ is the legacy financial system that still serves the City for many modules like Property Tax, Land Management, Accounts Receivables and Cash Receipts, and houses all the historic data for many of the modules.

The City's Department of Information Technology (DoIT) is currently working on development and support for many of the enterprise projects and systems, as we transition from FUND\$ to other enterprise systems. As we continue the software migration

from FUND\$ to other enterprise systems like Tyler Munis, there is still a need to continue maintaining our Fund\$ system, so that we can keep supporting many of the modules like Property Tax and Accounts Receivables/Cash Receipts which are still in Fund\$. For migrated modules like Payroll, city staff still needs to be able to access the data for auditing and reporting. To maintain the Fund\$ system there is lot of day-to-day maintenance in terms of user requests, as well as regular work in maintenance projects in the area of security and software upgrades.

The City has several under-resourced critical tasks and key projects that require expert knowledge of our existing infrastructure, custom software programs, and business rules. In order to use our existing staff for these projects and tasks we need to be able to supplement the work with external consultants.

Additionally, the City regularly participates in purchasing vehicles, or Master Award Schedules (MAS) negotiated by GSA. GSA negotiates long term contracts for prices on supplies, products, and services with suppliers on behalf of government agencies, including local government, that ensure volume discount pricing.

BACKGROUND

The City lost two key IT staff (APAlls) that were assisting on multiple projects on the enterprise side since 2020. The City was able to fill one position in 2021. We have not yet been able to fill the other position. Both these positions require knowledge of enterprise systems and have a big learning curve for the new staff to get used to the systems. The City has been using consultants to augment the work on several enterprise projects as well as provide operational support. As we continue looking for permanent replacement as well as staff critical projects, we need specialized consultants for continuity in the projects, work on strategic projects, and to provide day to day operational support.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Protiviti Government Services staff will conduct their work remotely thus reducing greenhouse gas emissions from travel to and from City facilities. Creating efficiencies in City financial services will mean that less paper processes are used, and we save paper.

RATIONALE FOR RECOMMENDATION

The City is currently using Protiviti Government Services under multiple GSA vehicles across several departments for specific professional services engagements. Protiviti Government Services works with Robert Half International to immediately source analysts with the skillset and experience required to work on these projects.

Additionally, staff determined that not using Protiviti Government Services for the remainder of FY puts some of the projects in jeopardy of not being completed and puts operational support in jeopardy for some of our key enterprise systems.

ALTERNATIVE ACTIONS CONSIDERED

Hiring additional internal staff to fulfill the needs were considered. However, given the deep technical expertise and knowledge required it would be difficult to hire the appropriate staff and get them trained in a timely manner for the projects.

CONTACT PERSON

LaTanya Bellow, Acting Director, Information Technology, 510-981-7012

Attachments:

1: Resolution

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

PROTIVITI GOVERNMENT SERVICES: USING GENERAL SERVICES ADMINISTRATION (GSA) VEHICLE FOR PROFESSIONAL SERVICES PURCHASE ORDERS

WHEREAS, in July 2020, the City engaged a consultant to assist in various Accela and Tyler Munis projects, which the consultant has aptly done so far; and

WHEREAS, Protiviti Government Services has the expertise in operations and implementations of complex projects, and provides well qualified analysts; and

WHEREAS, the City regularly participates in purchasing vehicles, or Master Award Schedules (MAS) negotiated by GSA, which negotiates long term contracts for prices on supplies, products, and services with suppliers on behalf of government agencies, including local government, that ensure volume discount pricing; and

WHEREAS, one-time funding for this is available in the Department of Information Technology's Fiscal Year (FY) 2023 Cost Allocation Fund, and spending for this contract in future fiscal years will be subject to Council approval of the proposed citywide budget and annual appropriation ordinances.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized issue purchase orders with Protiviti Government Services for the purchase of professional services using the General Services Agency's (GSA) purchasing vehicle no. GS-35F-0280X for an amount not to exceed \$250,000 through December 30, 2023.



Office of the City Manager

CONSENT CALENDAR
September 20, 2022

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: LaTanya Bellow, Acting Director, Information Technology
Subject: Contract No. 105921-1 Amendment: TruePoint Solutions, LLC for Accela Professional Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 105921-1 with TruePoint Solutions, LLC for professional services, increasing the amount by \$195,000, for a total not-to-exceed amount of \$1,047,200 and extending the term by two years for the term beginning June 1, 2015 to June 30, 2024.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the additional professional services is available in the Fiscal Year (FY) 2023 Permit Service Center fund, Sewer Fund, and Transportation Fund, as itemized below, and any future expenditures are subject to Council approval of the proposed citywide budget and Annual Appropriations Ordinances.

FY 2023: Professional Services – Planning

\$150,000 FY 2023: 621-53-585-634-0000-000-472-612990
(Permit Service Center Fund, IT)

FY 2023: Professional Services – Public Works

\$20,000 FY 2023: 611-54-623-676-0000-000-472-612990
(Sewer Fund, Public Works)

\$25,000 FY 2023: 621-54-623-678-0000-000-472-612990
(Permit Service Center Fund, Public Works)

\$195,000 Total Professional Services

CURRENT SITUATION AND ITS EFFECTS

The departments of Planning and Public Works currently use the Accela Civic Platform as its permitting system and continue to enhance online features that make it easier for customers to apply for a permit, schedule inspections, and pay for permits online. Feedback for making permitting more accessible online has been very positive and the City seeks to extend this functionality to all permit types.

These online enhancements have become particularly critical in order to keep permitting services accessible and efficient for the community during the COVID 19 pandemic and consistent with the City's strategic goal *"to be a customer-focused organization that provides excellent, timely and easily accessible service to the community."*

TruePoint Solutions provides resources that are focused on configuration and scripting work that is needed by the City to effectively implement these new features and provide support.

BACKGROUND

Established in 2004, TruePoint Solutions, LLC provides design, implementation, and support services to public sector technology solutions. In 2005, TruePoint Solutions became an Accela-Certified implementation partner.

In 2015, the City contracted with TruePoint Solutions for report writing and additional scripting and configuration of Accela's Building Permit system. In 2016, the City Council approved an amendment with TruePoint Solutions for the management of the Private Sewer Laterals module for the Department of Public Works. In 2018, the City Council approved an amendment with TruePoint Solutions to provide professional assistance for the work on system issues as requested and prioritized by the City and suggest additional enhancements/improvements. In 2019, the City Council approved an amendment with Truepoint Solutions for additional configuration and troubleshooting assistance. In 2021, the City Council approved an amendment to enhance online functionality of Accela.

ENVIRONMENTAL SUSTAINABILITY

The City will help reduce carbon emissions by allowing most, if not all, permitting processes to be performed online thereby reducing traffic into the City.

RATIONALE FOR RECOMMENDATION

TruePoint Solutions is an Accela-Certified implementation partner. TruePoint performs specialized process analysis, configuration, and scripting to support the City's implementation of Accela's Permitting system. As a result, TruePoint has in-depth knowledge of City business processes and data architecture that would take another vendor years to acquire.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered completing these projects and enhancements without professional services however, doing so would lead to an inefficient allocation of staff resources and significantly extend implementation timelines.

CONTACT PERSON

LaTanya Bellow, Acting Director, Information Technology, 510-981-7012

Attachments:

1: Resolution

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

CONTRACT NO. 105921-1 AMENDMENT: TRUEPOINT SOLUTIONS, LLC FOR
ACCELA PROFESSIONAL SERVICES

WHEREAS, TruePoint Solutions provides design, implementation, and support services to public sector technology solutions, and are an Accela-Certified implementation partner; and

WHEREAS, these online enhancements have become particularly critical in order to keep permitting services accessible and efficient for the community during the COVID 19 pandemic and consistent with the City's strategic goal *"to be a customer-focused organization that provides excellent, timely and easily accessible service to the community"*; and

WHEREAS, TruePoint has previously provided excellent report writing, scripting, and consulting services for Accela and therefore has an in-depth knowledge of City business processes and data architecture that would take another vendor years to acquire; and

WHEREAS, funding for the additional professional services is available in the Fiscal Year (FY) 2023 Permit Service Center fund, Sewer Fund, and Transportation Fund, and any future expenditures are subject to Council approval of the proposed citywide budget and Annual Appropriations Ordinances.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend contract No. 105921-1 with TruePoint Solutions, LLC, increasing the amount by \$195,000, for a total not-to-exceed amount of \$1,047,200 and for the term beginning June 1, 2015 to June 30, 2024.



Office of the City Manager

CONSENT CALENDAR
September 20, 2022

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: Contract: SCS Engineers for Landfill Post Closure Maintenance and Monitoring Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with SCS Engineers, in an amount not to exceed \$714,022, to provide engineering, maintenance, and monitoring services for the landfill to meet mandatory compliance requirements at Cesar Chavez Park, from January 1, 2023, to June 30, 2026.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the contract in the amount of \$185,400 is currently available in the Zero Waste Fund program budget (601-54-623-672-3011-000-472-612310-). The remaining amount for FY 2023 (\$41,094) will be budgeted in that account pending the approval of the first Amendment to the Annual Appropriations Ordinance (AAO). The rest will be budgeted in the Zero Waste Fund in future fiscal years. The not to exceed amount is \$714,022 (\$226,494 from FY 2023; \$237,818.70 from FY 2024; \$249,709.30 from FY 2025).

CURRENT SITUATION AND ITS EFFECTS

A Request for Qualifications (RFQ) was issued June 28, 2022 (Specification No. 22-11521-C), seeking qualified firms or individuals to provide comprehensive engineering, post-closure monitoring, and maintenance and regulatory compliance and reporting services at the closed City of Berkeley Landfill at Cesar Chavez Park.

On August 11, 2022, the City received two proposals evaluated by a review panel. SCS Engineers received the highest rankings of the firms evaluated and were determined to be the best qualified to meet the City's needs.

The provided services support the Strategic Plan's goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

BACKGROUND

This project is located at Cesar Chavez Park (previously known as North Waterfront Park, site of the former Berkeley Landfill) at the Berkeley Marina. The closure of the Berkeley Landfill, comprising 90 acres, was completed in 1991, and the entire site has since been open for public use. The Bay Area Air Quality Management District (BAAQMD) issued an operations permit to the City for Berkeley Landfill Post Closure Monitoring and Maintenance Program to monitor and maintain the landfill gas collection system, as well as to maintain and monitor the groundwater wells, leachate wells, and other surface and subsurface conditions for compliance with the state and federal regulations.

The City is required to continue with the maintenance, monitoring, and reporting of the site of the old landfill, in compliance with the operating permit requirements issued by the Federal Environmental Protection Agency (EPA), Regional Water Quality Control Board (RWQCB), BAAQMD, and CalRecycle (formerly the California Integrated Waste Management Board). The landfill post-closure compliance work will be required for forty to fifty years before the site is deemed a closed site.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no negative environmental effects of this action. This contract will help ensure successful compliance with regulatory requirements related to the groundwater wells and leachate wells, as well as the surface and subsurface components of the landfill closure, including ensuring that greenhouse gasses that naturally emanate from Cesar Chavez Park are captured and destroyed before entering the atmosphere.

RATIONALE FOR RECOMMENDATION

The professional services are required to comply with the permit requirements in order to undertake: 1) monitoring and maintaining the operation of the landfill gas collection system at the site in compliance with regulations and reporting requirements of BAAQMD; and 2) monitoring and maintaining the groundwater wells and leachate wells, as well as the surface and subsurface components of the landfill closure, in compliance with regulations and requirements.

ALTERNATIVE ACTIONS CONSIDERED

No alternative action was considered since compliance with the federal, state, and regional regulatory requirements are mandatory.

CONTACT PERSON

Farid Javandel, Deputy Director of Public Works, Transportation and Engineering (510) 981-7061

Joe Enke, Manager of Engineering, Public Works (510) 981-6411

Attachment:

1: Resolution

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

CONTRACT: SCS ENGINEERS FOR LANDFILL POST-CLOSURE MAINTENANCE
AND MONITORING SERVICES

WHEREAS, the City must comply with State Regional Water Quality Control Board, CalRecycle, and Bay Area Air Quality Management District regulations applicable to the Berkeley closed landfill at the site of Cesar Chavez Park; and

WHEREAS, on June 28, 2022, the City released a Request for Qualifications (Specification No. 22-11521-C) seeking firms to provide professional services for the closed landfill; and

WHEREAS, on August 11, 2022, the City received three submissions, which were reviewed and rated; and

WHEREAS, SCS Engineers was considered the best qualified to meet the City's needs; and

WHEREAS, the City does not have the resources required to fulfill the obligations of the landfill post-closure operations permit; and

WHEREAS, funding for FY 2023 in the amount of \$185,400 is currently available in the Zero Waste Fund, \$41,094 will be added in FY 2023 via the first Amendment to the Annual Appropriations Ordinance (AAO) and future year NTE amounts will be added in future fiscal year budgets in the Zero Waste Fund(601-54-623-672-3011-000-472-612310-).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with SCS Engineers for Landfill Post Closure Maintenance and Monitoring services for the contract period of January 1, 2023 through June 30, 2026 in an amount not to exceed \$714,022. A record signature copy of the said contract and any amendments are to be on file in the Office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR
September 20, 2022

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: Contracts: Davey Resource Group, Inc., and HortScience Bartlett Consulting for On-Call Arborist Services

RECOMMENDATION

Adopt two Resolutions authorizing the City Manager to execute the following contracts and any amendments for on-call arborist services for capital improvement projects, each for a period of November 1, 2022, through December 31, 2025:

1. Davey Resource Group, Inc. for an amount not to exceed \$125,000.
2. HortScience Bartlett Consulting for an amount not to exceed \$125,000.

FISCAL IMPACTS OF RECOMMENDATION

Initial funding for the contract for each consultant is available in the Fiscal Year (FY) 2023 Sidewalks capital improvement program budget in the amount of \$185,000 in the Capital Improvement Fund (501) and \$30,000 in Measure T-1 (511) Infrastructure Bond Fund via approval of the First Annual Appropriations Ordinance (AAO1). Initial funding will be in the current T1 Sidewalk Repair project (PWT1SW2201). Funding for FY 2024 through FY 2026 of each contract is subject to appropriation in the future fiscal years' capital budget based on the department's needs for arborist services.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley issued a Request for Qualifications (RFQ) on June 28, 2022 (Specification No. 22-11520-C), seeking qualified firms or individuals to provide on-call arborist services for various capital improvement programs and projects.

On July 26, 2022, the City received two Statements of Qualification (SOQs) from arborist firms, which were evaluated by a review panel. Davey Resource Group, Inc. and HortScience Bartlett Consulting were both highly ranked and were determined to be qualified to meet the City's needs and also checked references.

The services support the Strategic Plan goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND

In an effort to reduce the Sidewalk 50-50 Program backlog, the Engineering Division of Public Works has significantly ramped up sidewalk repair work. Due to the nature of the sidewalk and its proximity to trees, tree evaluations by certified arborists are necessary in sidewalk repair. Recommendations by a certified arborist can ensure trees are safely pruned or protected during the work. In the past, these recommendations were provided by the Forestry Division of the Parks Recreation and Waterfront Department. The repair work increase has expanded beyond the capacity of their limited staff. On-call contracts offer professional services when needed and reduce the need for hiring additional staff.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no negative environmental effects of this action. These contracts will minimize impacts on our Parks Recreation and Waterfront Department and ensure the successful completion of capital improvement projects such as sidewalk repair projects, which will improve accessibility and promote greener modes of transportation.

RATIONALE FOR RECOMMENDATION

Davey Resources Group, Inc. and HortScience Bartlett Consulting have particular expertise in arboricultural services. These firms received the highest rankings of the firms evaluated and are the best qualified to meet the City's needs. City staff recommends awarding a contract to these consultants to get the best value for the City. It will distribute the anticipated workload, create an alternative source for services, and secure more competitive proposals. If these contracts are not awarded, the City will not have on-call arborist consultant services available, which would negatively impact the City's ability to proceed with planned capital improvement projects. The City has insufficient staffing and resources to provide arborist services for the number of projects in our capital program.

ALTERNATIVE ACTIONS CONSIDERED

Council could choose not to move forward with these contracts, which would significantly delay the progress of planned capital improvement projects.

CONTACT PERSON

Farid Javandel, Deputy Director of Public Works, Transportation and Engineering (510) 981-7061
Joe Enke, Manager of Engineering, Public Works (510) 981-6411

Attachments:

- 1: Resolution – Contract with Davey Resource Group
- 2: Resolution – Contract with HortScience Bartlett Consulting

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

CONTRACT: DAVEY RESOURCE GROUP INC. FOR ON CALL ARBORIST SERVICES

WHEREAS, on June 28, 2022, the City released a Request for Qualifications (Specification No. 22-11520-C) seeking firms or individuals to provide on-call arborist services for capital improvement projects; and

WHEREAS, on July 26, 2022, the City received two submissions, which were reviewed and rated; and

WHEREAS, the two highest-rated firms would be considered the best qualified to meet the City's needs; and

WHEREAS, the submission from Davey Resource Group, Inc. has been found, by City staff, to be one of the two highest-rated firms, responsive to the City's request; and

WHEREAS, funding is available in the FY 2023 budget in the Capital Improvement Fund 501 and Measure T1 Infrastructure and Facilities Bond Fund 511. In future years, funding will be identified and requested for appropriation as projects arise.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with Davey Resource Group, Inc for on-call arborist services for the contract period of November 1, 2022, through December 31, 2025, in an amount not to exceed \$125,000. A record signature copy of the said contract and any amendments are to be on file in the Office of the City Clerk.

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

CONTRACT: HORT SCIENCE BARLETT CONSULTING FOR ON CALL ARBORIST SERVICES

WHEREAS, on June 28, 2022, the City released a Request for Qualifications (Specification No. 22-11520-C) seeking firms or individuals to provide on-call arborist services for capital improvement projects; and

WHEREAS, on July 26, 2022, the City received two submissions, which were reviewed and rated; and

WHEREAS, the two highest-rated firms would be considered the best qualified to meet the City's needs; and

WHEREAS, the submission from Hort Science Barlett Consulting has been found, by City staff, to be one of the two highest rated firms, responsive to the City's request; and

WHEREAS, funding is available in the FY 2023 budget in the Capital Improvement Fund 501, Measure T1 Infrastructure and Facilities Bond Fund 511. In future years, funding will be identified and requested for appropriation as projects arise.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with Hort Science Barlett Consulting for on-call arborist services for the contract period of November 1, 2022, through December 31, 2025, in an amount not to exceed \$125,000. A record signature copy of the said contract and any amendments are to be on file in the Office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR
September 20, 2022

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: Contracts: On-Call Civil Engineering Services, CSW Stuber-Stroeh Engineering Group, Inc., HDR Engineering, Inc., LCC Engineering & Surveying, Inc., Mark Thomas & Company, Inc., Park Engineering, Inc., Pavement Engineering Inc., and SCI Consulting Group

RECOMMENDATION

Adopt seven Resolutions authorizing the City Manager to execute the following contracts and any amendments for on-call civil engineering services for capital improvement projects, each for a period of November 1, 2022 through December 31, 2025:

1. CSW Stuber-Stroeh Engineering Group, Inc. for an amount not to exceed \$750,000.
2. HDR Engineering, Inc. for an amount not to exceed \$750,000.
3. LCC Engineering & Surveying, Inc. for an amount not to exceed \$1,500,000.
4. Mark Thomas & Company, Inc. for an amount not to exceed \$750,000.
5. Park Engineering, Inc. for an amount not to exceed \$1,500,000.
6. Pavement Engineering Inc. for an amount not to exceed \$1,500,000.
7. SCI Consulting Group for an amount not to exceed \$150,000.

FISCAL IMPACTS OF RECOMMENDATION

Initial funding for the contract for each consultant is available in the Fiscal Year (FY) 2023 Streets and Storm/Green Infrastructure capital improvement program budgets in Capital Improvement Fund (Fund 501), Measure T-1 Infrastructure Bond Fund (Fund 511) and Clean Stormwater Fund (Fund 616). Funding for FY 2024 through FY 2026 of each contract is subject to appropriation in the future fiscal years' capital budget based on the department's needs for civil engineering services.

Contract: On-Call Civil Engineering Services
CSW Stuber-Stroeh Engineering Group, Inc., HDR Engineering, Inc.,
LCC Engineering & Surveying, Inc. Mark Thomas & Company, Inc.,
Park Engineering Inc., Pavement Engineering, Inc.,
and SCI Consulting Group

CONSENT CALENDAR
September 20, 2022

CURRENT SITUATION AND ITS EFFECTS

A Request for Qualifications (RFQ) was issued March 24, 2022 (Specification No. 22-11507-C) seeking qualified firms or individuals to provide on-call civil engineering services for various capital improvement programs and projects

On April 26, 2022, the City received twelve Statements of Qualification (SOQs) from engineering firms, which were evaluated by a review panel. CSW Stuber-Stroeh Engineering Group, Inc., HDR Engineering, Inc., LCC Engineering & Surveying, Inc., Mark Thomas & Company, Inc., Park Engineering, Inc., Pavement Engineering Inc., and SCI Consulting Group received the highest rankings of the firms evaluated and were determined to be the best qualified to meet the City's needs. References were also checked.

The provided services support the Strategic Plan goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND

Over the next several years, the Engineering Division of the Public Works Department is expecting significantly increased workloads, resulting from deferred maintenance, ongoing capital projects, T1 projects, and increased funding for the street capital improvement program. The City has used civil engineering consultants in the past to design and manage projects to supplement City staff. These include situations in which the nature of the work is specialized such as assessment districts, paving, drainage, and green infrastructure for design, permitting, construction administration, and inspections. On-call contracts provide professional design, engineering, and construction management services when needed and reduce the need for hiring additional staff.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no negative environmental effects of this action. These contracts will help ensure the successful completion of capital improvement projects including stormwater improvements to reduce flood potential and green infrastructure projects to implement Measure T1.

RATIONALE FOR RECOMMENDATION

CSW Stuber-Stroeh Engineering Group, Inc., HDR Engineering, Inc., LCC Engineering & Surveying, Inc., Mark Thomas & Company, Inc., Park Engineering, Inc., Pavement Engineering Inc., and SCI Consulting Group have particular expertise in engineering design, construction management, construction support, and assessment district engineering. These firms received the highest rankings of the firms evaluated and are the best qualified to meet the City's needs. City staff recommends awarding a contract to these consultants to get the best value for the City. It will distribute the anticipated workload, create an alternative source for services, and secure more competitive proposals. If these contracts are not awarded, the City will no longer have on-call civil

Contract: On-Call Civil Engineering Services
CSW Stuber-Stroeh Engineering Group, Inc., HDR Engineering, Inc.,
LCC Engineering & Surveying, Inc. Mark Thomas & Company, Inc.,
Park Engineering Inc., Pavement Engineering, Inc.,
and SCI Consulting Group

CONSENT CALENDAR
September 20, 2022

engineering consultant services available which would negatively impact the City's ability to proceed with planned capital improvement projects. The City has insufficient staffing and resources to design, manage and inspect construction of the number of projects in our capital program.

ALTERNATIVE ACTIONS CONSIDERED

Council could choose not to move forward with these contracts, in which case, the progress of planned capital improvement projects would be significantly delayed.

CONTACT PERSON

Farid Javandel, Deputy Director of Public Works, Transportation and Engineering (510) 981-7061

Joe Enke, Manager of Engineering, Public Works (510) 981-6411

Attachments:

- 1: Resolution – Contract with CSW Stuber-Stroeh Engineering Group, Inc.
- 2: Resolution – Contract with HDR Engineering, Inc.
- 3: Resolution – Contract with LCC Engineering & Surveying, Inc.
- 4: Resolution – Contract with Mark Thomas & Company Inc.
- 5: Resolution – Contract with Park Engineering Inc.
- 6: Resolution – Contract with Pavement Engineering Inc.
- 7: Resolution – Contract with SCI Consulting Group

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

CONTRACT: CSW STUBER-STROEH ENGINEERING GROUP INC. FOR ON CALL
CIVIL ENGINEERING SERVICES

WHEREAS, on March 24, 2022, the City released a Request for Qualifications (Specification No. 22-11507-C) seeking firms or individuals to provide on-call civil engineering services for capital improvement projects; and

WHEREAS, on April 26, 2022, the City received twelve submissions, which were reviewed and rated; and

WHEREAS, the seven highest rated firms would be considered the best qualified to meet the City's needs; and

WHEREAS, the submission from CSW Stuber-Stroeh Engineering Group, Inc. has been found, by City staff, to be one of the seven highest rated firms, responsive to the City's request; and

WHEREAS, funding is available in the FY 2023 budget in the Capital Improvement Fund 501, Measure T1 Infrastructure and Facilities Bond Fund 511 and Clean Stormwater Fund 616, and funding in future years will be identified and requested for appropriation as projects arise.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with CSW Stuber-Stroeh Engineering Group, Inc. for on-call civil engineering services for the contract period of November 1, 2022 through December 31, 2025 in an amount not to exceed \$750,000. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.

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

CONTRACT: HDR ENGINEERING, INC. FOR ON CALL CIVIL ENGINEERING SERVICES

WHEREAS, on March 24, 2022, the City released a Request for Qualifications (Specification No. 22-11507-C) seeking firms or individuals to provide on-call civil engineering services for capital improvement projects; and

WHEREAS, on April 26, 2022, the City received twelve submissions, which were reviewed and rated; and

WHEREAS, the seven highest rated firms would be considered the best qualified to meet the City's needs; and

WHEREAS, the submission from HDR Engineering, Inc. has been found, by City staff, to be one of the seven highest rated firms, responsive to the City's request; and

WHEREAS, funding is available in the FY 2023 budget in the Capital Improvement Fund 501, Measure T1 Infrastructure and Facilities Bond Fund 511 and Clean Stormwater Fund 616, and funding in future years will be identified and requested for appropriation as projects arise.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with HDR Engineering, Inc. for on-call civil engineering services for the contract period of November 1, 2022 through December 31, 2025 in an amount not to exceed \$750,000. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.

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

CONTRACT: LCC ENGINEERING & SURVEYING, INC. FOR ON CALL CIVIL
ENGINEERING SERVICES

WHEREAS, on March 24, 2022, the City released a Request for Qualifications (Specification No. 22-11507-C) seeking firms or individuals to provide on-call civil engineering services for capital improvement projects; and

WHEREAS, on April 26, 2022, the City received twelve submissions, which were reviewed and rated; and

WHEREAS, the seven highest rated firms would be considered the best qualified to meet the City's needs; and

WHEREAS, the submission from LCC Engineering & Surveying, Inc. has been found, by City staff, to be one of the seven highest rated firms, responsive to the City's request; and

WHEREAS, funding is available in the FY 2023 budget in the Capital Improvement Fund 501, Measure T1 Infrastructure and Facilities Bond Fund 511 and Clean Stormwater Fund 616, and funding in future years will be identified and requested for appropriation as projects arise.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with LCC Engineering & Surveying, Inc. for on-call civil engineering services for the contract period of November 1, 2022 through December 31, 2025 in an amount not to exceed \$1,500,000. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.

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

CONTRACT: MARK THOMAS & COMPANY, INC. FOR ON CALL CIVIL
ENGINEERING SERVICES

WHEREAS, on March 24, 2022, the City released a Request for Qualifications (Specification No. 22-11507-C) seeking firms or individuals to provide on-call civil engineering design and construction management services for capital improvement projects; and

WHEREAS, on April 26, 2022, the City received twelve submissions, which were reviewed and rated; and

WHEREAS, the seven highest rated firms would be considered the best qualified to meet the City's needs; and

WHEREAS, the submission from Mark Thomas & Company, Inc. has been found, by City staff, to be one of the seven highest rated firms, responsive to the City's request; and

WHEREAS, funding is available in the FY 2023 budget in the Capital Improvement Fund 501, Measure T1 Infrastructure and Facilities Bond Fund 511 and Clean Stormwater Fund 616, and funding in future years will be identified and requested for appropriation as projects arise.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with Mark Thomas & Company, Inc. for on-call civil engineering services for the contract period of November 1, 2022 through December 31, 2025 in an amount not to exceed \$750,000. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.

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

CONTRACT: PARK ENGINEERING INC. FOR ON CALL CIVIL ENGINEERING SERVICES

WHEREAS, on March 24, 2022, the City released a Request for Qualifications (Specification No. 22-11507-C) seeking firms or individuals to provide on-call civil engineering services for capital improvement projects; and

WHEREAS, on April 26, 2022, the City received twelve submissions, which were reviewed and rated; and

WHEREAS, the seven highest rated firms would be considered the best qualified to meet the City's needs; and

WHEREAS, the submission from Park Engineering Inc. has been found, by City staff, to be one of the seven highest rated firms, responsive to the City's request; and

WHEREAS, funding is available in the FY 2023 budget in the Capital Improvement Fund 501, Measure T1 Infrastructure and Facilities Bond Fund 511 and Clean Stormwater Fund 616, and funding in future years will be identified and requested for appropriation as projects arise.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with Park Engineering Inc. for on-call civil engineering services for the contract period of November 1, 2022 through December 31, 2025 in an amount not to exceed \$1,500,000. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.

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

CONTRACT: PAVEMENT ENGINEERING INC. FOR ON CALL CIVIL ENGINEERING SERVICES

WHEREAS, on March 24, 2022, the City released a Request for Qualifications (Specification No. 22-11507-C) seeking firms or individuals to provide on-call civil engineering services for capital improvement projects; and

WHEREAS, on April 26, 2022, the City received twelve submissions, which were reviewed and rated; and

WHEREAS, the seven highest rated firms would be considered the best qualified to meet the City's needs; and

WHEREAS, the submission from Pavement Engineering Inc. has been found, by City staff, to be one of the seven highest rated firms, responsive to the City's request; and

WHEREAS, funding is available in the FY 2023 budget in the Capital Improvement Fund 501, Measure T1 Infrastructure and Facilities Bond Fund 511 and Clean Stormwater Fund 616, and funding in future years will be identified and requested for appropriation as projects arise.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with Pavement Engineering Inc. for on-call civil engineering services for the contract period of November 1, 2022 through December 31, 2025 in an amount not to exceed \$1,500,000. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.

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

CONTRACT: SCI CONSULTING GROUP FOR ON CALL CIVIL ENGINEERING SERVICES

WHEREAS, on March 24, 2022, the City released a Request for Qualifications (Specification No. 22-11507-C) seeking firms or individuals to provide on-call civil engineering design and construction management services for capital improvement projects; and

WHEREAS, on April 26, 2022, the City received twelve submissions, which were reviewed and rated; and

WHEREAS, the seven highest rated firms would be considered the best qualified to meet the City's needs; and

WHEREAS, the submission from SCI Consulting Group has been found, by City staff, to be one of the seven highest rated firms, responsive to the City's request; and

WHEREAS, funding is available in the FY 2023 budget in the Capital Improvement Fund 501, Measure T1 Infrastructure and Facilities Bond Fund 511 and Clean Stormwater Fund 616, and funding in future years will be identified and requested for appropriation as projects arise.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with SCI Consulting Group for on-call civil engineering services for the contract period of November 1, 2022 through December 31, 2025 in an amount not to exceed \$150,000. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR
September 20, 2022

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Liam Garland, Director, Public Works
Subject: Contract No. 10350 (112199-1) Amendment: Technology, Engineering, and Construction, Inc. for Tank Maintenance and Certification Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or designee to execute an amendment to Contract No. 10350 with Technology, Engineering and Construction, Inc. for the provision of tank maintenance and certification services, extending the contract term to June 30, 2024 and increasing the amount by \$100,000 for a total contract amount not to exceed \$250,000.

FISCAL IMPACTS OF RECOMMENDATION

This is a citywide contract and annual costs are estimated at approximately \$30,000. Funding is available in the FY 2023 budget in the following funds:

| Department / Fund | ERMA Account Code | Amount FY 2023 |
|----------------------------|------------------------------------|----------------|
| Equipment Maintenance Fund | 672-54-626-722-0000-000-474-624110 | \$29,333 |
| Library Fund | 101-22-242-272-0000-000-463-612990 | \$4,000 |
| Total FY 2023 Amount | | \$33,333 |

Additional funding for the remaining contract term will be appropriated in future fiscal years.

CURRENT SITUATION AND ITS EFFECTS

Technology, Engineering and Construction, Inc. (TEC) maintains and inspects above-ground and underground fuel storage tanks monthly at the City's Corporation Yard, Transfer Station, Central Library, Public Safety Building, and all Fire Stations. The underground fuel tank and recycled oil storage systems must be tested annually, maintained, and certified to ensure the proper operation of monitoring and dispensing equipment.

The recommended amendment will enable the City to continue to comply with annual regulatory testing, conduct routine maintenance, and provide for unforeseen repairs. These efforts minimize the risk of potential air pollution and contamination to soil and

groundwater. TEC has consistently provided high quality, cost effective, and timely professional services to the City.

This contract amendment supports the Strategic Plan Priority goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND

Request for Proposal No. 16-11059 for tank maintenance and certification was issued in June of 2016. Two bids were received and evaluated. TEC was selected as the most qualified vendor. Contract No. 10350 with TEC for tank maintenance and certification services was originally executed in August 2016.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Regular maintenance and testing of the fuel storage tanks are critical to ensure that the tanks are intact and functioning properly, which minimizes the risk of potential air pollution and contamination to soil and groundwater.

RATIONALE FOR RECOMMENDATION

The recommended amendment will enable the City to continue to comply with annual regulatory testing, conduct routine maintenance, and provide for unforeseen repairs.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Andrew Brozyna, Deputy Director of Operations, Public Works, 510-981-6396
Joy Brown, Operations Manager, Public Works, 510-981-6629
Greg Ellington, Equipment Maintenance Superintendent, Public Works, 510-981-6469

Attachment:

1: Resolution

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

CONTRACT NO. 10350 (112199-1) AMENDMENT: TECHNOLOGY, ENGINEERING,
AND CONSTRUCTION, INC. FOR TANK MAINTENANCE AND CERTIFICATION
SERVICES

WHEREAS, Technology, Engineering and Construction, Inc. was selected through the City's competitive bid process, and in August 2016 the City Manager executed a contract to provide tank maintenance and certification services and training; and

WHEREAS, Public Works needs maintenance and certification services to provide maintain the aboveground and underground fuel storage tanks for the City and the used oil recycling tanks; and

WHEREAS, funding is budgeted in FY 2023 in the Equipment Maintenance Fund (672-54-626-722-0000-000-474-624110) and Library Fund (101-22-242-272-0000-000-463-612990); and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or designee is authorized to execute an amendment to Contract No. 10350 (112199-1) with Technology, Engineering and Construction, Inc. for the provision of tank maintenance and certification services, extending the contract term to June 30, 2024 and increasing the contract amount by \$100,000 for a total not to exceed amount of \$250,000.



Office of the City Manager

CONSENT CALENDAR
September 20, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Public Works

Subject: Contract No. 31900085 Amendment: Syntech Systems, Inc. for a Fuel Management System and Software

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 31900085 with Syntech Systems, Inc. to provide ongoing service and support of infrastructure and software for the City's Fleet Fueling Program, increasing the contract amount by \$45,000 for a new not to exceed amount of \$231,472 and extending the contract term through June 30, 2025.

FISCAL IMPACTS OF RECOMMENDATION

The anticipated annual contract expenditures amount is \$15,000 to support annual software license support, user fees, and hardware. Funding in the amount of \$15,000 is available in FY 2023 Equipment Maintenance Fund 672 (672-54-626-722-0000-000-473-651110) for the first year. Funding for the remaining two years of the contract term will be appropriated each fiscal year as part of the budget process.

CURRENT SITUATION AND ITS EFFECTS

In 2020, Syntech Systems, Inc. (Syntech) installed a new fuel management system at the Corporation Yard and the Transfer Station to replace failed and outdated equipment and implement the fuel reporting software FMLive. This software and automated fuel tracking system allow for the most accurate fuel use accountability, billing, and reporting. The Equipment Maintenance Division of Public Works has a continuous need for these services to manage fuel levels, prevent fuel theft, and support internal department billing for fuel usage.

Syntech's ongoing services include providing training as needed to Equipment Maintenance and Information Technology Staff, FM Live software annual fees, annual cloud hosting, and vehicle and equipment hardware.

Continuing these services through the contract amendment supports the Strategic Plan Priority of advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND

A request for proposals (RFP) Specification No. 16-11039 for a Fueling System and Software Upgrade solution was issued and three responses were received. The City's Equipment Maintenance Superintendent and support staff, evaluated the three responses for cost, experience, qualifications, responsiveness, and references. Responsive vendors were asked to provide onsite demonstrations of their products along with detailed information about software capabilities and any additional associated costs. Syntech was selected as the most responsive and best qualified vendor to meet the City's Fleet fueling and reporting needs.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The Syntech system provides accurate fuel usage data at the Corporation Yard and the Transfer Station which will assist with Climate Action Plan reporting. In addition to the evaluation of Fleet fuel efficiency which is a factor in the decision-making process when replacing vehicles.

RATIONALE FOR RECOMMENDATION

Syntech software captures vehicle odometer data and a record of all transactions automatically with no manual interaction, thus reducing human error, improving asset management, driver accountability, and preventing theft. It provides vehicle error codes and extended reporting data including tank level and fuel utilization tracking information for accurate tax reporting.

ALTERNATIVE ACTIONS CONSIDERED

No reasonable alternative exists as Syntech has recently installed the new system. The hardware and software are working as expected, and Syntech continues to provide excellent support services as needed.

CONTACT PERSON

Andrew Brozyna, Deputy Director of Operations, Public Works, 510-981-6396
Joy Brown, Operations Manager, Public Works, 510-981-6629
Greg Ellington, Equipment Maintenance Superintendent, Public Works, 510-981-6469

Attachment:
1: Resolution

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

CONTRACT NO. 31900085 AMENDMENT: SYNTECH SYSTEMS, INC. FOR
FUELING SYSTEM AND SOFTWARE

WHEREAS, the City of Berkeley owns and operates vehicles and equipment which must be re-fueled at one of the City's two fueling islands; and

WHEREAS, the City issued a request for written proposals from qualified firms to provide a viable fuel dispensing system and fuel reporting software (Specification No. 16-11039); and received three qualifying vendor responses and determined that Syntech Systems, Inc. was the most responsive and best-qualified vendor to meet current and future Fleet fueling and reporting needs; and

WHEREAS, Funding is available in the amount of \$15,000 from the FY 2023 Equipment Maintenance Fund (672-54-626-722-0000-000-473-651110); and

WHEREAS, the Equipment Maintenance Division of Public Works has a continuous need for these services to manage fuel levels, prevent fuel theft, and support internal department billing for fuel usage; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract amendment with Syntech Systems, Inc. increasing the contract amount by \$45,000 for a new not to exceed amount of \$231,472 and extending the contract term through June 30, 2025.



Office of the City Manager

CONSENT CALENDAR
September 20, 2022

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: Contract: Shaw Industries, Inc. for Civic Center Building Carpet Replacement Project

RECOMMENDATION

Adopt a Resolution:

1. Pursuant to City Charter Article XI Section 67.2 requirements, accepting the California Multiple Award Schedule (CMAS) bid procedures;
2. Approving the CMAS Contract with Shaw Industries, Inc. for Carpet Replacements at the Civic Center Building;
3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the terms and conditions of the agreements with Shaw Industries, Inc. in an amount not to exceed \$177,218.68, which includes a contingency of \$23,115.

FISCAL IMPACTS OF RECOMMENDATION

Funding for this carpet replacement project is available in the Fiscal Year 2023 Facilities Capital Improvement Program (CIP) budget from the Capital Improvement Fund (501).

Cost:

| | |
|--|----------------------|
| Carpet Replacement (CMAS by Shaw Industries, Inc.) | \$ 154,103.20 |
| Contingency (15%) | \$ 23,115.48 |
| Total Cost | \$ 177,218.68 |

FY 2023 Funding:

| | |
|---|---------------------|
| Capital Improvement Fund (501-54-623-677-3014-000-444-662110) | \$177,218.68 |
| Total Construction Cost | \$177,218.68 |

CURRENT SITUATION AND ITS EFFECTS

Carpets at the Civic Center Building, located at 2180 Milvia Street, need to be replaced on the first floor (Human Resources) and on the Fourth floor (City Attorney). Most of the carpets have surpassed their typical life expectancy of twenty years.

Shaw Industries, Inc. was selected through the California Multiple Award Schedule (CMAS) bid procedure. This allows the City to procure a contractor that was previously selected through the State of California bidding process. All pricing, products and/or

services offered to the State of California through this system are made available to the City. Making use of this process results in costs savings and expedites contractor selection.

The provided services will support the Strategic Plan goals of creating a resilient, safe, connected, and prepared city and providing state-of-the-art, well-maintained facilities.

BACKGROUND

The existing broadloom carpets in the Civic Center Building are over twenty years old and are in need of replacement. There are numerous locations throughout the building where carpet failures are visible, including crushed carpeting padding, seam failures, heavy staining, and other deficiencies that are typical of a carpet that has exceeded its useful life.

In 2015, the City developed technical specifications for carpet tiles to be used in City-owned buildings. The specifications have been used for several past projects, including the Public Safety Building Carpet Replacement Project in 2017 and the Civic Center Carpet Replacement in 2020. The carpet tiles proved to be well-received, low-maintenance, and less expensive to install than non-tile carpets.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The proposed product meets the criteria established in the specifications, which is in accordance with the sustainable resolutions and ordinances administered by the City's Office of Energy and Sustainable Development, the City of Berkeley Revised General Plan, the City's Climate Action Plan, and CalGreen. For example, the project will replace the existing carpet with PVC-free carpet tiles that are 100% recyclable.

RATIONALE FOR RECOMMENDATION

Contracted services are required for this project as the City does not have the in-house expertise to complete this specialized work. Shaw Industries, Inc. provided a cost-effective price, complying with the City's carpet specifications.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Farid Javandel, Deputy Director, Transportation and Engineering (510) 981-7061
Joe Enke, Manager of Engineering, Dept. of Public Works (510) 981-6411
Elmar Kapfer, Supervising Civil Engineer, Dept. of Public Works (510) 981-6435

Attachments:

1: Resolution

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

CONTRACT: SHAW INDUSTRIES, INC. FOR THE CIVIC CENTER BUILDING
CARPET REPLACEMENT PROJECT

WHEREAS, the existing broadloom carpeting in the Civic Center Building is in need of replacement; and

WHEREAS, The City has neither the labor nor the equipment necessary to undertake this renovation project; and

WHEREAS, City Charter Article XI Section 67.2 allows the City to purchase goods without undergoing a competitive bid process when using pricing obtained by the State of California through a competitive process; and

WHEREAS, the California Multiple Award Schedule (CMAS) is available to state and local governments; and

WHEREAS, THE California Department of General Service Procurement Division determined Shaw Industries, Inc.'s bid pricing to be fair and reasonable and awarded CMAS Contract No. 4-13-72-0008C; and

WHEREAS, funds are available in the FY 2023 Budget in the Capital Improvement Fund 501 (budget code: 501-54-623-677-3014-000-444-662110); and

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments, extensions, or change orders until completion of the project in accordance with the terms and conditions of the agreement with Shaw Industries, Inc. for the carpet replacement project at the Civic Center Building, in an amount not to exceed \$177,218.68, which includes a contingency of \$23,115.48. A record signature copy of the agreement and any amendments to be on file in the office of the City Clerk.



City Council

CONSENT CALENDAR
September 20, 2022

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Ben Bartlett,
Councilmember Sophie Hahn and Councilmember
Terry Taplin

Subject: Helping Achieve Responsible Development with
Healthcare and Apprenticeship Training Standards
(HARD HATS) Referral

RECOMMENDATION

Refer to the City Attorney and City Manager to draft a HARD HATS Ordinance based on the policy terms outlined below and bring the Ordinance back to Council for action on December 13, 2022.

POLICY COMMITTEE REVIEW AND REVISED POLICY TERMS

On May 16, 2019, the Land Use, Housing & Economic Development Committee approved the following motion: M/S/C (Hahn/Arreguín) to send the item to the full Council with a Positive Recommendation. Vote: All Ayes.

The City Council then subsequently referred the item to the Commission on Labor. After the item was sent to the Commission for review, the COVID-19 pandemic hit. The state of emergency and Shelter-In-Place orders to minimize human contact and the spread of the virus resulted in the suspension of certain non-essential Boards and Commissions for over a year. This effectively stalled work by the commission on this item. To facilitate action on this important policy, the authors have worked with City Department staff (City Manager's Office, City Attorney's Office, Planning, HHCS) and stakeholders (labor representatives, contractors, housing developers) to discuss policy terms for a proposed HARD HATS Ordinance, discussing goals as well as implementation issues. This input has helped inform the draft proposal being submitted for Council action. Further review will be undertaken when this item is formally referred for drafting.

The recommended action is to refer the proposal to the City Attorney and City Manager to draft a HARD HATS Ordinance for adoption. The purpose of the ordinance is to address the shortage of qualified local construction workers, rising labor costs, and set a new bar for labor standards in the local construction industry. These measures are intended to improve the recruitment, training, and retention of skilled construction workers.

The ordinance should include the following elements:

1. Scope:
 - a. The City shall require contractor prequalification for covered General Plan Area projects ("Covered Projects"), which are projects consisting of construction, alteration, demolition, installation, remediation, repair, or

remodel of 50,000 square feet or more of floor area.

- b. All contractors or subcontractors of any tier (“Contractors”) entering into a contract on a Covered Project valued in excess of ½ of one percent of the value of the prime contract for the Covered Project must be prequalified.

2. Apprenticeship:

- a. For purposes of the “Covered Project”, each Contractor shall do at least one of the following (and shall sign a statement certifying that on the Covered Project it will do at least one of the following):
 - i. participate in a joint labor-management apprenticeship program;
 - ii. participate in an apprenticeship program approved by the State of California Division of Apprenticeship Standards that has a graduation rate of 50% or higher and has graduated an average of at least thirty (30) apprentices annually for the five (5) years immediately preceding the Covered Project. The Contractor will also maintain at least the ratio of apprentices required by California Labor Code section 1777.5 for the duration of the Covered Project. Any change in program participation must be immediately provided to the City; or
 - iii. make and require its subcontractors to make hourly contributions to the CAC for every apprenticeable craft hour worked on the Covered Project of at least the apprenticeship contribution rate for the classification of “plumber, pipefitter, steamfitter” in Alameda County.¹
- b. Contributions to an apprenticeship program or the CAC shall not be credited towards compliance with BMC Chapter 13.99 (Minimum Wage).
- c. Upon review of the ordinance after 2 years, the City Council will consider whether to supplement the ordinance with a 180 consecutive day apprenticeship prequalification requirement.

3. Health Care Security:

- a. In order to be prequalified, each Contractor will sign a statement stipulating to and providing documented proof that the Contractor, in addition to the regular hourly wages paid to its construction worker employees (“Covered Construction Workers”), has made Required Health Care Expenditures to or on behalf of each Covered Construction Worker for 180 consecutive days prior to the submission of the prequalification documents, during periods of employment.
 - i. The Required Health Care Expenditure is calculated by multiplying the number of hours worked by the hourly Health Care Expenditure Rate.
 - ii. The Health Care Expenditure Rate shall be determined annually from the “average contribution” based on the City and County of San Francisco Health Service System’s annual 10-County Survey amount for Alameda County for the applicable fiscal year. Such “average contribution” shall be prorated on an hourly basis by dividing the monthly average contribution

¹ See hourly contribution rate for the “plumber, pipefitter, steamfitter” via <https://www.dir.ca.gov/OPRL/pwappwage/wage/21201583.html?VarWageId=21201583>. The form for making contributions is found here: <https://www.dir.ca.gov/DAS/tf/cac2.asp>.

for Alameda County by one hundred and fifty (150), the typical number of hours worked in a month by a construction worker.

- iii. In the case of a Contractor that has employed no Covered Construction Workers for 180 consecutive days prior to the submission of the prequalification documents, said Contractor must have had an ongoing contractual obligation to hire subcontractors during that period that provide Required Health Care Expenditures.
 - b. For purposes of the Covered Project, each Contractor shall make Required Health Care Expenditures to or on behalf of each Covered Construction Worker in addition to their regular hourly wages during periods of employment (and sign a statement certifying that it will do so on the Covered Project). In the case of a Contractor that will employ no Covered Construction Workers on the Covered Project, said Contractor shall make Required Health Care Expenditures on behalf of the Covered Construction Workers employed by its subcontractor(s) in the event said subcontractor(s) fail(s) to make Required Health Care Expenditures in accordance with this ordinance.
 - c. Required Health Care Expenditures may be made to a health plan in which the Covered Construction Worker is enrolled, to a Covered Construction Worker's health savings account, and/or to a Covered Construction Worker in the form of cash at double the rate of the Required Health Care Expenditures.
 - d. Contractors shall maintain accurate records of the Required Health Care Expenditures, and proof of same, and allow the City reasonable access to such records.
 - e. Required Health Care Expenditures shall not be credited towards compliance with BMC Chapter 13.99 (Minimum Wage).
4. Contractor Commitment Statement:
 - a. Each Contractor will sign a statement stipulating that on the Covered Project it will continue to make contributions to an apprenticeship program or the CAC and Required Health Care Expenditures as set forth above for the duration of the Covered Project.
5. Community Benefits Agreement Exception:
 - a. If an otherwise Covered Project is covered by a Project Labor Agreement (or Community Benefits Agreement or similar labor agreement) with the Building and Construction Trades Council of Alameda County, Contractors will be deemed in compliance with the Apprenticeship and Health Care Security provisions of the ordinance as such agreements already require health care coverage and apprenticeship fund contributions. Such agreements also deter unscrupulous contracting practices by bidders and contractors, promote stable construction careers for trade workers, and increase the capacity of local apprenticeship and training programs.
 6. The final ordinance shall contain severability language.

CURRENT SITUATION AND ITS EFFECTS

As the City of Berkeley plans to increase production of housing, commercial buildings, and public facilities, the need for a skilled construction workforce is vital. Shortages of skilled construction workers, particularly residential trade workers, threaten to delay or derail development plans.

The shortages are attributable to factors such as reduced utilization of state-approved apprenticeships, fewer young labor force entrants, dwindling contractor offerings of health and retirement plans, and the related trend of lagging construction productivity growth. These realities have been affecting the land use goals of local jurisdictions. For instance, in San Francisco, many entitled projects with thousands of units awaiting construction are stalled due to skilled labor shortages, diminished contractor productivity, and construction costs that spiked.

The creation and utilization of apprenticeship along with the commitments to paid healthcare act to both recruit and retain an adequate base of construction workers and to be a pipeline for future supervisors and licensed independent contractors. Requiring contractors on major projects in Berkeley to employ apprentices results in a higher volume of apprentice training, and thus, an increase in the construction labor force available to carry out the construction anticipated by the general plan, and especially that targeted by the Housing Element.

BACKGROUND

The City's interests in taking action to redress the inadequate status quo condition of construction workforce development are several:

1. Comply with the RHNA and the General Plan Economic Development & Employment Element. The goals articulated in the General Plan depend on considerably more construction activity than the local supply of skilled construction workers can support. Moreover, construction projects in Berkeley have to compete with projects in other cities that have a similar problem contributing to a serious overall regional imbalance between demand for construction labor and local supply of skilled construction workers. This puts at risk all kinds of essential work, as construction workers are required to build, alter, maintain, and repair homes, schools, offices, retail stores, manufacturing facilities, laboratories, recreational facilities, and infrastructure for utilities and transportation. Setting a high bar for contractor prequalification will encourage employers to provide benefits and training that increase workforce retention and provide financial security.

Berkeley has been assigned a Regional Housing Needs Assessment (RHNA) of roughly 9,000 units of housing to produce over an eight year period, or over 1,100 units per year. Berkeley does not have an adequate supply of construction workers to build over 1,100 housing units per year while also building, altering, and maintaining public and private commercial nonresidential buildings and infrastructure. Only 1,250 construction sector employees lived in Berkeley in 2018.² Applying statewide statistical averages, about 900 of those employees are manual construction, alteration, installation, or repair workers. Given similar needs around the Bay Area and the State of California, Berkeley cannot rely on contractors to reliably import surplus skilled construction workers from other cities. Construction jobs - particularly residential construction jobs - have lost their competitive edge relative to other jobs in the Bay Area regional economy. To meet its General Plan goals, Berkeley should and can create working conditions that will help to overcome the construction labor market's failures to make construction jobs attractive enough to recruit and retain productive trade workers.

2. Reduce demand-side pressure on Berkeley's — and the region's — affordable housing supply. Homebuilding is supposed to reduce the number of people waiting in line for housing they can afford. But when the homebuilding industry itself generates excessive very low and low wage construction employment, that just increases the number of people needing

² U.S. Census Bureau LEHD Origin-Destination Employment Statistics, Version 7, Residence Area Characteristics.

subsidies from the taxpayer. Low wage employment is in fact a problem in both the residential +and commercial construction markets. Fifty-five percent of Alameda County construction workers' households are Extremely Low Income, Very Low Income, or Low Income.³

3. Promote jobsite health & safety. Construction trade workers experience exceptionally high rates of serious injury on the job, especially on sites with inadequately trained workers. One of every five serious workers' compensation insurance claims which involve death, permanent total disability or major permanent partial disability - is related to a construction employee, despite the fact that construction jobs account for less than one out of every 25 California jobs. For a working life in construction, the risk of fatal injury is approximately one death per 200 full-time-equivalent employees according to a recent study in the American Journal of Industrial Medicine. A policy that promotes apprenticeship training and higher construction compensation rates will likely reduce the occurrence of non-fatal and fatal injuries on General Plan Area major projects.

A recent Canadian study of workers' compensation claims from 58,837 construction companies found that unionization was associated with a 25% lower incidence of lost-time allowed injury claims, a 23% lower incidence of musculoskeletal lost-time allowed injury claims, and a 16% lower incidence of lost-time allowed critical injury claims. In California too, employers of lower paid construction workers make more serious and non-serious workers compensation claims.⁴

Contractors that invest in their workforce are incentivized to invest in worker health & safety training and in jobsite safety practices in order to reduce the likelihood of injury to their workforce and increase productivity. We expect that this prequalification policy will lead to lower rates of injury - including fatal occupational injury - on major construction project sites.

4. Promote worker retention by incentivizing provision of health insurance and investment in training.

Construction employer contributions towards training and health insurance are essential. In order to address housing affordability through increased housing supply, California communities must address broken development and construction systems. A 2020 survey of Bay Area city officials measured the degree to which officials agreed on what factors constrain the creation of new housing. Two-thirds of survey respondents said that construction workforce availability is a constraint, ranking fourth highest among 16 specific potential constraints, just behind "financing/funding for affordable housing" and *ahead* of "land suitability."⁵

Construction workers who live in Alameda County are uninsured at rates 3-4 times higher than the rate of non-construction workers.⁶ Incentivizing the provision of health insurance will reduce the number of residents who currently go without and will increase worker retention in the field of residential construction.

³ Analysis of U.S. Census, ACS 2015-2019 Microdata.

⁴ Workers Compensation Insurance Rating Bureau "Relativity Review Sheets," various years.

⁵ Association of Bay Area Governments. Memorandum: "Summary of Local Jurisdiction Survey Results," March 12, 2020, page 5. Downloaded 3/26/2021 via mtc.legistar.com/gateway.aspx?M=F&ID=6b572dad-e960-4c4f-8bff-27a5650bc534.pdf

⁶ Analysis of U.S. Census, ACS 2015-2019 Microdata.

California residential building was strongest when apprenticeship training was strongest. For example, during the 1970s, when California was producing housing at the average annual rate of 200,000 units, the state reported an average of 9,000 carpenter apprentices. California residential builders utilized apprentices every bit as much as commercial builders, according to a 1976 U.S. Bureau of Labor Statistics report.⁷ Between 1973 and 1982, more than 11,000 carpenter apprentices statewide completed their programs. These carpenters were the core of California's trained and skilled residential construction workforce through the 1980s, when housing production continued at a strong pace. De-unionization and the recession of the early 1990s, however, led to sharply reduced utilization of apprentices by residential contractors. Carpenter apprenticeship completions fell by 50 percent between 1996-2005 compared to 1973-1982.⁸ Because apprenticeship programs provide a living wage and long-term employment through benefits and ongoing training, promoting apprenticeship in the residential market will retain workers in the residential space and allow their employers to build more housing stock.

5. Address inequality as residential developer profit margins continue to increase while labor wages and benefits have remained stagnant.

According to the State of California's 2014 Affordable Housing Cost Study and Economic Census data specific to California's construction industry, construction labor wages and benefits account for only 15% of total project costs.⁹ Meanwhile, since 1992 the industry's basis for profitability has increased 50% more than either construction labor or materials. Despite this increase in profitability, there is still a disconnect between construction workers and apprenticeship and health insurance plans, resulting in a shrinking supply of labor. This has constrained the construction industry's ability to expand in response to the rising construction needs of California and its many cities.

California residential contractors offer fringe benefits at low rates to building trades workers. Only one third of construction workers are policyholders for employment-based health insurance, compared to over half of all other employed male civilian workers, according to data from the Annual Social and Economic Supplement of the U.S. Bureau of Labor Statistics' Current Population Survey (CPS). California construction workers' rate of coverage under any employer- or union-provided health insurance ranks 35th among the states, proximate in rank to Alabama, Colorado, Louisiana, Nevada, and Virginia.

The under-performance of California contractors in providing health care security to employees constrains the supply of skilled construction labor. A peer-reviewed study in 2010 found that only 35 percent of blue-collar construction workers who are not covered by collective bargaining agreements had health insurance paid for at least in part by an employer. This same study found that health insurance funded through collectively bargained employer contributions to plans that are portable within the construction industry increased industry-retention rates by up to 40 percent compared to baseline retention rates of

⁷ U.S. Department of Labor, Bureau of Labor Statistics, Bulletin 1911, "Industry Wage Survey: Contract Construction September 1973," Washington, D.C.: 1976. See Tables 28 & 46. Downloaded via <http://fraser.stlouisfed.org>.

⁸ Littlehale, Scott. (2019). *Rebuilding California: The Golden State's Housing Workforce Reckoning*. Smart Cities Prevail. pp. 23-25. Downloaded 3/26/2021 via https://www.smartcitiesprevail.org/wp-content/uploads/2019/01/SCP_HousingReport.0118_2.pdf

⁹ Lantsberg, Alex. (2017). *The Value of Linking Good Construction Jobs to California's Housing Reforms*. Pp. 4-5. Downloaded 3/26/2021 via http://smartcitiespre.wpengine.com/wp-content/uploads/2017/03/SCP_HousingReport.0314.pdf

construction workers without any health insurance coverage.¹⁰ A City policy to prequalify residential contractors based on their investment in workers' health care security will promote a greater, more stable supply of skilled construction labor.

Thus, it is in the City of Berkeley's economic interest to support a pipeline of skilled workers to accomplish the construction objectives and policies of the Berkeley General Plan. More specifically, the policy will promote the following Plan goals:

- 1) Ensure that Berkeley has an adequate supply of decent housing, living wage jobs, and businesses providing basic goods and services.
- 2) New housing will be developed to expand housing opportunities in Berkeley to meet the needs of all income groups.

To increase the prospects for successful implementation and build-out goals of the Plan, it is advised that the City adopt the aforementioned construction workforce development ordinance, known as the HARD HATS Ordinance.

OUTREACH OVERVIEW AND RESULTS

In 2019, the Labor Commission held a public hearing on the Council's previous referral and gathered public input. The 2019 Council referral led to a public hearing before the Labor Commission. Subsequently the Building and Construction Trades Council of Alameda County has provided further input leading to the current proposal. Additionally, the author met with local housing developers and contractors to present the proposed policy terms and get input on how it may impact residential construction. The authors also met extensively with the City Attorney's office and City Department staff to get input on the proposal around legality, implementation and enforcement.

RATIONALE FOR RECOMMENDATION

The City of Berkeley, along with numerous neighboring cities, school districts, special districts and the state of California plans to increase production of housing, commercial buildings, and/or public facilities. Shortages of skilled construction workers, however, will likely prevent many cities from achieving these goals.

This local workforce development ordinance will require contractors to utilize apprentices from state-approved training programs or make CAC contributions; and offer employees an hourly contribution, in addition to the employee's regular hourly wage, paid to a health plan, to an employee savings account, and/or to an employee in the form of cash. The policy will help stabilize regional construction markets; and enhance productivity of the construction workforce Berkeley needs to meet its General Plan's build-out goals.

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

The City Manager and City Attorney will draft the ordinance which will be enforced by the City or through private right of action, consistent with the terms below.

Developers should be made aware of this ordinance during the entitlement process. The City should also attach conditions to zoning permits requiring compliance with the ordinance. Lack of compliance with the HARD HATS ordinance could result in compliance and revocation

¹⁰ Littlehale, Scott. (2019). *Rebuilding California: The Golden State's Housing Workforce Reckoning*. Smart Cities Prevail. pp. 23-25. Downloaded 3/26/2021 via https://www.smartcitiesprevail.org/wp-content/uploads/2019/01/SCP_HousingReport.0118_2.pdf

proceedings for entitlements if a verified complaint is brought to the City's Planning Department or Code Enforcement Division.

1. Precondition for Building Permits

As a condition of a zoning entitlement, the City shall issue building permits only where all Contractors meet the prequalification requirements of this Ordinance and submit all required documentation demonstrating compliance. The implementing departments (HHCS, Planning) must verify compliance prior to building permit being issued.

The City may revoke or suspend the applicable building permit where any Contractor is out of compliance with this Ordinance.

2. City Enforcement

While a Covered Project is underway, the City shall issue a citation or stop work order with respect to any Contractor that submitted a false or misleading prequalification questionnaire and/or has not, in fact, complied with the prequalification requirements herein. In the event of a stop work order, such Contractor shall permanently abandon the Covered Project and leave the work site within twenty-four (24) hours of notice by the City.

In the event that any person identifies a Contractor on a Covered Project that submitted a false or misleading prequalification questionnaire and/or has not, in fact, complied with the prequalification requirements herein, the person may file a complaint with the City. Upon receipt of such a complaint, the City shall investigate the complaint and, if a violation is found, issue a citation or stop work order to the Contractor within ten (10) days of the original complaint. In the event of a stop work order, such Contractor shall permanently abandon the Covered Project and leave the work site within twenty-four (24) hours of notice by the City.

If a Contractor subject to a stop work order remains on the Covered Project, the City shall issue a penalty of \$1,000 per day for the first week, doubling for each successive week. If the Contractor has received a citation or stop work order under this Ordinance, or has otherwise been penalized under this Ordinance, within the prior twelve (12) months, the penalty shall be \$2,000 per day for the first week, doubling for each successive week. In that event, the prime contractor shall be jointly and severally liable for the penalty.

3. Private Right of Action for Required Health Care Expenditures

The Ordinance will provide for a private right of action on behalf of Covered Construction Workers who should have received, but did not receive, Required Health Care Expenditures to which they were entitled on a Covered Project. A labor union or a joint labor-management cooperation committee may also bring such a private action on behalf of a Covered Construction Worker who should have received, but did not receive, Required Health Care Expenditures to which they were entitled on a Covered Project.

Persons may file such claims directly against the prime contractor and/or applicable subcontractor in the Superior Court for the County of Alameda. In addition to costs and other expense shifting provisions provided in the Code of Civil Procedure, a prevailing plaintiff shall be entitled to reasonable attorney fees.

4. Private Right of Action for Injunctive Relief

In addition to any other enforcement mechanism available to the City or any member of the public, the Ordinance will provide for a private right of action for a Covered Construction Worker,

a labor union, or a joint labor-management cooperation committee, to seek injunctive relief compelling compliance with the Ordinance and assessment of the penalties therein. Persons may file such claims directly against the prime contractor and/or applicable subcontractor in the Superior Court for the County of Alameda. In addition to costs and other expense shifting provisions provided in the Code of Civil Procedure, a prevailing plaintiff shall be entitled to reasonable attorney fees.

5. Repeat Offender List

The City shall review the complaints filed under this Ordinance on a monthly basis to determine if any person or entity has been associated with three or more violations of the Ordinance within the last 12 months. Any such person or entity shall be placed on a public list available on the City of Berkeley's website and shall be prohibited from working on Covered Projects for a period of 12 months from their most recent violation.

If the Developer or any Contractor contracts with a person or entity for a Covered Project who is named on the public list ("Repeat Offender"), and the Repeat Offender again violates the Ordinance as determined by the City or the Superior Court, then the Developer or Contractor who contracted with the Repeat Offender shall be jointly and severally liable for any and all penalties, damages, or other financial obligations incurred by the Repeat Offender.

FISCAL IMPACTS OF RECOMMENDATION

Costs associated with administering the prequalification compliance documentation.

ENVIRONMENTAL SUSTAINABILITY

No negative impact. The use of a skilled and trained workforce is a green building practice which improves the quality and environmental performance of construction.

OUTCOMES AND EVALUATION

It is expected that the City Council will refer to the City Manager and City Attorney to create a policy requiring contractors to utilize apprentices from state-approved apprenticeship training programs, and to offer employees employer-paid health insurance plans or a cash alternative adequate to fund high-quality health insurance coverage, consistent with the directives herein.

CONTACT PERSON

Mayor Jesse Arreguín

510-981-7100



Office of the City Manager

PUBLIC HEARING
September 20, 2022

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Jordan Klein, Director, Planning and Development Department
 Subject: Zoning Ordinance Amendments Making Technical Edits and Corrections to Berkeley Municipal Code (BMC) Title 23

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt the first reading of an Ordinance containing technical edits, corrections and other non-substantive amendments to the following sections of the Zoning Ordinance:

- BMC Section 23.204.050 (C-C Zoning District)
- BMC Section 23.204.080 (C-E Zoning District)
- BMC Section 23.204.090 (C-NS Zoning District)
- BMC Section 23.204.130 (C-DMU District)
- BMC Section 23.206.050 (Protected Uses)
- BMC Section 23.304.030 (Setbacks)
- BMC Section 23.304.090 (Usable Open Space)
- BMC Section 23.322.030 (Required Parking Spaces)
- BMC Section 23.406.070 (Design Review)

FISCAL IMPACTS OF RECOMMENDATION

Adoption of the recommended amendments will not result in any costs or revenues to the City.

CURRENT SITUATION AND ITS EFFECTS

Ensuring an accurate Zoning Ordinance relates to the Strategic Plan goal to be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

On October 12, 2021, the City Council adopted a new Zoning Ordinance (Title 23 – Berkeley Municipal Code). This action was the culmination of the first comprehensive review of the Zoning Ordinance since 1999, rewording and reformatting Berkeley’s land use regulations to make them easier to understand and administer. Aside from a specific list of “consent changes” to maintain consistency with State law and codify

existing practices, no substantive policy changes were included. The new Zoning Ordinance became effective December 1, 2021.

Since then, certain inconsistencies and inadvertent changes have come to light which need to be corrected to ensure that the Zoning Ordinance accurately reflects City Council policy. The ordinance included with this staff report would make 10 amendments / corrections to the new Zoning Ordinance. These are summarized below in **Table 1**.

Table 1. Recommended Zoning Ordinance Amendments

| Subject/Section | Issue | Amendment |
|---|---|--|
| Sec 23.204.050.D: C-C Zoning District <i>Development Standards</i> | Reference for <i>Abutting/Confronting a Residential District</i> is incorrect. | Correct reference. |
| Sec 23.204.080.D: C-E Zoning District <i>Development Standards</i> | Note [2] on Development Standards table includes an incorrect reference. | Correct reference. |
| Sec 23.204.090.D: C-NS Zoning District <i>Development Standards</i> | The Usable Open Space requirement in the C-NS is erroneously listed as 200 square feet (sf) per unit for Non-Residential and Mixed Use projects, when it should be 40 sf. | Correct development standards table to 40 sf of Usable Open Space per unit. |
| Sec 23.204.130.E: C-DMU Zoning District <i>Open Space Requirements</i> | BMC does not include requirement in the C-DMU that balconies can only constitute 50% or less of required Usable Open Space. | Amend the C-DMU Usable Open Space Requirements table to include this requirement. |
| Sec 23.206.050.A: MU-LI Zoning District <i>Lot Ownership</i> | Section applies to multiple lots that are under common ownership, <i>not</i> single lots with multiple owners. | Amend section to clarify that it applies to multiple lots that are under common ownership, not single lots with multiple owners. |
| Sec 23.304.030.B: Setbacks <i>Allowed Setbacks in Residential Districts</i> | BMC includes additional setback reduction option for parcels in the R-1A, west of San Pablo Avenue, which was previously repealed. | Strike this option. |
| Sec 23.304.030.B: Setbacks <i>Solar Energy Equipment</i> | BMC refers to the Residential Energy Conservation Ordinance (RECO), which no longer exists. | Strike reference to RECO. |

| Subject/Section | Issue | Amendment |
|--|--|---|
| Sec 23.304.090: Usable Open Space <i>Applicability</i> | Applicability section includes an incorrect limitation. | Strike listed districts; standard applies to all districts. |
| Sec 23.322.030.C: Required Parking Spaces <i>Manufacturing Districts</i> | BMC includes incorrect required parking spaces for Manufacturing Uses in the MU-LI. | Change from 1.5 spaces per 1,000 sf to 1.0 spaces. |
| Sec 23.406.070: Design Review <i>Purpose</i> | Purpose erroneously states that Design Review only applies to non-residential buildings. | Amend section to clarify that Design Review can apply to buildings other than non-residential (mixed use, for example). |

BACKGROUND

At its meeting of July 6, 2022, the Planning Commission held a public hearing on the proposed amendments,¹ and recommended adoption by a vote of 8-0-0-1 (Moved by Twu, Seconded by Hauser. Ayes: Ghosh, Hauser, Mikiten, Moore, Oatfield, Twu, Vincent, Wiblin. Noes: None. Abstain: None. Absent: Kapla).

When the new Zoning Ordinance was presented for adoption by the City Council in October, 2021, staff indicated that routine updates would follow periodically to correct unintended errors and make text edits. This is the third such package of amendments.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental and climate impacts or opportunities associated with the adoption of the proposed amendments.

RATIONALE FOR RECOMMENDATION

The proposed Zoning Ordinance amendments are required to ensure that the new Zoning Ordinance accurately reflects the prior ordinance and City Council policy, and does not contain any changes from the old Zoning Ordinance that were not specifically authorized by City Council.

ALTERNATIVE ACTIONS CONSIDERED

No alternatives were considered.

¹ Agenda-related materials for the July 6, 2022 Planning Commission meeting can be found at: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-07-06%20PC%20Agenda%20Packet%20with%20attachments_no%20links_0.pdf

CONTACT PERSON

Jordan Klein, Director, Planning & Development Department, 510-981-7410

Justin Horner, Associate Planner, Planning and Development Department, 510-981-7476

Attachments:

- 1: Ordinance
- 2: Consent Changes Matrix
- 3: Report to Planning Commission, July 6, 2022
- 4: Public Hearing Notice

ORDINANCE NO. -N.S.

AMENDING TITLE 23 OF THE BERKELEY MUNICIPAL CODE TO CORRECT ERRORS AND MAKE NON-SUBSTANTIVE, TECHNICAL EDITS TO THE ZONING ORDINANCE

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

Section 1. That Berkeley Municipal Code Section 23.204.050.D Table 23.204-8 is amended as follows:

Table 23.204-8. C-C DEVELOPMENT STANDARDS

| | PROJECT LAND USE | | | SUPPLEMENTAL STANDARDS |
|---|-----------------------|------------------------------|--|--------------------------|
| | NON-RESIDENTIAL | MIXED USE | RESIDENTIAL ONLY | |
| Lot Area Minimum | | | | 23.304.020 |
| New Lots | No minimum | | 5,000 sq. ft | |
| Per Group Living Accommodation Resident | 350 sq. ft. [1] | | | |
| Usable Open Space, Minimum | | | | 23.304.090 |
| Per Dwelling Unit | 200 sq. ft. | 200 sq. ft. [2] | 200 sq. ft. | |
| Per Group Living Accommodation Resident | 90 sq. ft. | | | |
| Floor Area Ratio, Maximum | 3.0 | | No maximum | |
| Main Building Height, Minimum | No minimum | | | |
| Main Building Height, Maximum | 40 ft. and 2 stories | 40 ft. and 3 stories [3] [4] | 35 ft. and 3 stories | 23.304.050 |
| Lot Line Setbacks, Minimum | | | | 23.304.030--Setbacks |
| Abutting/Confronting a Non-residential District | No minimum | | See Table 23.204-9 | |
| Abutting/Confronting a Residential District | See 23.304.139030.C-2 | | | |
| Building Separation, Minimum | No minimum | | 23.304.040--Building Separation in Residential Districts | |
| Lot Coverage, Maximum | 100% | | See Table 23.204-10 | 23.304.120--Lot Coverage |

Notes:

[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.

[2] Minimum open space for mixed use projects can be reduced with a UP(PH). See 23.204.050.D.3.

[3] In mixed use buildings, the third and higher stories must be used for residential purposes.

[4] The maximum height of a mixed use project can be increased to 50 ft and 4 stories with the issuance of a UP(PH).

Section 2. That Berkeley Municipal Code Section 23.204.080.D Table 23.204-21 is amended as follows:

Table 23.204-21. C-E DEVELOPMENT STANDARDS

| | Project Land Use | | Supplemental Standards |
|--|-------------------------------|----------------------|-------------------------------|
| | Non-Residential and Mixed Use | Residential Only | |
| Lot Area, Minimum | No minimum | 5,000 sq. ft. | 23.304.020--Lot Requirements |
| New Lots | No minimum | 5,000 sq. ft. | |
| Per Group Living Accommodation Resident | 350 sq. ft. [1] | | |
| Usable Open Space | | | 23.304.090--Usable Open Space |
| Per Dwelling Unit | 200 sq. ft. [2] | | |
| Per Group Living Accommodation Resident | 90 sq. ft.[2] | | |
| Floor Area Ratio, Maximum | | | |
| Corner Lot | 1.0 | No maximum | |
| All Other Lot | 0.8 | | |
| Main Building Height, Minimum | No minimum | No minimum | |
| Main Building Height, Maximum | 28 ft. and 2 stories [3] | 35 ft. and 3 stories | |
| Lot Line Setbacks, Minimum | | | 23.304.030--Setbacks |
| Abutting/Confronting a Non-residential District | No minimum | See Table 23.204-22 | |
| Abutting/Confronting a Residential District | See Table 23.304-3 | | |
| Building Separation, Minimum | No minimum | See Table 23.204-22 | |
| Lot Coverage, Maximum | 100% | See Table 23.204-23 | 23.304.120--Lot Coverage |
| Notes: | | | |
| [1] One additional resident is allowed for remaining lot area between 200 and 350 square feet. | | | |
| [2] Open space requirements for mixed use projects may be modified by the ZAB. See 23.204.060080.D.3 | | | |
| [3] A basement level devoted exclusively to parking is not counted as a story. | | | |

Section 3. That Berkeley Municipal Code 23.204.090.D Table 23.204-24 is amended as follows:

Table 23.204-24. C-NS DEVELOPMENT STANDARDS

| | Project Land Use | | Supplemental Standards |
|--|-------------------------------|----------------------|-------------------------------|
| | Non-Residential and Mixed Use | Residential Only | |
| Lot Area, Minimum | | | |
| New Lots | 4,000 sq. ft. | 5,000 sq. ft. | 23.304.020 |
| Per Group Living Accommodation Resident | 350 sq. ft. [1] | | |
| Usable Open Space, Minimum | | | |
| Per Dwelling Unit | 200 40 sq. ft. [2] | 200 sq. ft. | 23.304.090--Usable Open Space |
| Per Group Living Accommodation Resident | No minimum | 90 sq. ft. | |
| Floor Area Ratio, Maximum | 1.0 | No maximum | |
| Main Building Height [23] | | | |
| Minimum | 2 stories | No minimum | |
| Maximum | 35 ft. and 3 stories | 28 ft. and 2 stories | |
| Lot Line Setbacks, Minimum | | | |
| Abutting/Confronting a Non-residential District | No minimum | See Table 23.204-25 | 23.304.030 |
| Abutting/Confronting a Residential District | See 23.304.030.C.2 | | |
| Building Separation, Minimum | No minimum [4] | See Table 23.204-25 | 23.304.040 |
| Lot Coverage, Maximum | 100% | See Table 23.204-26 | 23.304.120 |
| Notes: | | | |
| [1] One additional resident is allowed for remaining lot area between 200 and 350 square feet. | | | |
| [2] For mixed use projects, usable open space dimensions may be smaller than required in 23.304.090.B.3, but no dimension may be less than 6 feet. | | | |
| [23] Basement levels devoted exclusively to parking are not counted as a story. | | | |
| [34] For mixed-use projects, minimum building separation shall be as required for residential-only projects. See Table 23.204-25 | | | |
| [4] No dimension may be less than 6 feet. | | | |

Section 4. That the Berkeley Municipal Code 23.204.130.E.4 Table 23.204-40 is amended as follows:

Table 23.204-40. C-DMU USABLE OPEN SPACE REQUIREMENTS

| | MINIMUM USABLE OPEN SPACE | SUPPLEMENTAL STANDARDS |
|---|---|--|
| Residential Uses | 80 sq. ft./unit [1] | See 23.304.090—Usable Open Space |
| Non-Residential Uses | 1 sq. ft. of privately-owned public open space per 50 sq. ft. of commercial floor area. | |
| Notes: | | |
| [1] Each square foot of usable open space provided as privately-owned public open space is counted as two square feet of required on-site open space. | | |

Section 5. That Berkeley Municipal Code 23.206.050.A.7.(d) is amended as follows:

(d) *MU-LI Lots ~~with Multiple Under Common~~ Ownerships*. Protected industrial uses in the MU-LI district may be changed to a non-protected use if:

- i. The protected industrial use is on a lot or group of abutting and confronting lots under single ownership and with more than one building; and
- ii. 25 percent or less of the total gross floor area in all buildings on the lot(s) remains as a protected industrial use.

Section 6. That Berkeley Municipal Code Section 23.304.030.B Table 23.304-1 is amended as follows:

Table 23.304-1. ALLOWED SETBACK REDUCTIONS IN RESIDENTIAL DISTRICTS

| DISTRICT WHERE ALLOWED | WHEN ALLOWED | MINIMUM SETBACK WITH REDUCTION | REQUIRED PERMIT | REQUIRED ADDITIONAL FINDINGS [1] |
|---------------------------------|--------------|--------------------------------|-----------------|---|
| Front Setback Reductions | | | | |
| ES-R | On any lot | No minimum. | UP(PH) [2] | The reduced setback is: 1) necessary to allow economic use of property due to the size, shape of the lot or the topography of the site; and 2) consistent with the ES-R district purpose. |
| R-S; R-SMU | On any lot | No minimum | AUP | The reduced setback is appropriate given the setbacks |

| | | | | |
|-------|--|------------|-----|---|
| | | | | and architectural design of surrounding buildings |
| R-SMU | For either: 1) a main building with dwelling units or group living accommodations; or 2) any building north of Durant Avenue | No minimum | AUP | The reduced setback is appropriate given the setbacks and architectural design of surrounding buildings |

Rear Setback Reductions

| | | | | |
|--------------------------------------|--|------------------|------------|---|
| ES-R [3] | On any lot | No minimum | UP(PH) [2] | The reduced setback is: 1) necessary to allow economic use of property due to the size, shape of the lot or the topography of the site; and 2) consistent with the ES-R district purpose. |
| R-1, R-1A | On a lot less than 100 ft. deep | 20% of lot depth | ZC | None |
| R-1A | To construct a dwelling unit | 12 ft. | AUP | The unit would not cause a detrimental impact on emergency access; or on light, air or privacy for neighboring properties. |
| R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU | On a lot with two or more main buildings with dwelling units | No minimum | AUP | No additional findings |
| R-SMU | For either: 1) a main building with dwelling units or group living accommodations; or 2) any building north of Durant Avenue | No minimum | AUP | The reduction is appropriate given the setbacks and architectural design of surrounding buildings |

Side Setback Reductions

| | | | | |
|-----------|--------------------------------|---|------------|---|
| ES-R [3] | Any lot | No minimum | UP(PH) [2] | The reduced setback is: 1) necessary to allow economic use of property due to the size, shape of the lot or the topography of the site; and 2) consistent with the ES-R district purpose. |
| R-1, R-1A | Lot width less than 40 ft. [4] | 10% of lot width or 3 ft., whichever is greater | ZC | None |
| R-1A | West of San Pablo Avenue to | No minimum | AUP | The unit would not cause a detrimental impact on emergency |

| | | | | |
|---|--|---|-----|---|
| | construct a dwelling unit | | | access; or on light, air or privacy for neighboring properties. |
| R-2, R-2A | Lot width less than 40 ft. | First and second stories: 10% of lot width or 3 ft., whichever is greater; Third story: 5 ft. | ZC | None |
| R-SMU | For either: 1) a main building with dwelling units or group living accommodations; or 2) any building north of Durant Avenue | No minimum | AUP | The reduced setback is appropriate given the setbacks and architectural design of surrounding buildings |
| <p>Notes:</p> <p>[1] Findings are in addition to any AUP or Use Permit findings required in 23.406--Specific Permit Requirements.</p> <p>[2] Fire Department must review and approve reduced setbacks in respect to fire safety.</p> <p>[3] For lots less than 5,000 square feet, reductions are not allowed for property lines abutting a property under different ownership.</p> <p>[4] Not permitted for rear main buildings in the R-1A district.</p> | | | | |

Section 7. That Berkeley Municipal Code Section 23.304.090.A is amended as follows:

A. *Applicability.* The standards in this section apply to areas used to satisfy minimum usable open space requirements ~~as shown in Chapters [23.202](#)--[23.202.110](#) (Zoning Districts).~~

Section 8. That Berkeley Municipal Code Section 23.304.030.B.7 is amended as follows:

7. *Solar Energy Equipment.* The Zoning Officer may approve an AUP for solar energy equipment to project into a required setback upon finding that:

- (a) The projection is necessary to install the solar energy equipment;
- (b) The proposed structures and equipment are installed with the primary purpose to collect, store, and use solar energy; and

~~(c) The building served by the solar energy equipment complies with the Residential Energy Conservation Ordinance (RECO).~~

Section 9. That Berkeley Municipal Code Section 23.322.030.C.2 Table 23.322-4 is amended as follows:

Table 23.322-4. REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS

| Land Use | Required Parking Spaces |
|---|---|
| Residential Uses | |
| Accessory Dwelling Unit | See Chapter 23.306 |
| Dwellings | None required |
| Group Living Accommodation | None required |
| Non-Residential Uses | |
| All non-residential uses except uses listed below | 2 per 1,000 sq. ft. |
| Art/Craft Studio | 1 per 1,000 sq. ft. |
| Community Care Facility | 1 per 2 non-resident employees |
| Food Service Establishment | 1 per 300 sq. ft. |
| Library | 1 per 500 sq. ft. of publicly accessible floor area |
| Laboratories | 1 per 650 sq. ft. |
| Nursing Home | 1 per 5 residents, plus 1 per 3 employees |
| Medical Practitioners | One per 300 sq. ft. |
| Large Vehicle Sales and Rental | MU-LI District: 1.5 per 1,000 sq. ft. |
| | All Other Districts: 1 per 1,000 sq. ft. of display floor area plus 1 per 500 sq. ft. of other floor area; 2 per service bay |
| Manufacturing | MU-R District: 1.5 per 1,000 sq. ft. |
| | All Other Districts: 1 per 1,000 sq. ft. for spaces less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more |
| Storage, warehousing, and wholesale trade | 1 per 1,000 sq. ft. for spaces of less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more |
| Live/Work | MU-LI District: 1 per 1,000 sq. ft. of work area where workers/clients are permitted |
| | MU-R District: if workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area |
| <p>Notes:</p> <p>[1] For multiple dwellings where the occupancy will be exclusively for persons over the age of 62, the number of required off-street parking spaces may be reduced to 25% of what would otherwise be required for multiple-family dwelling use, subject to obtaining a Use Permit.</p> | |

Section 10. That Berkeley Municipal Code Section 23.406.070.A is amended as follows:

A. Purpose. Design Review is a discretionary process to ensure that exterior changes to ~~non-residential~~ buildings comply with the City of Berkeley Design Guidelines and other applicable City design standards and guidelines.

Section 11: 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.

BASELINE ZONING ORDINANCE CONSENT CHANGES MATRIX

| Topic | Description | BZO Location | Existing Location | Rationale for Change |
|--|---|--------------|-------------------|--|
| 23.102 – Introductory Provisions | | | | |
| Effective Date | Statement of when the Ordinance becomes effective | 23.102.020 | NEW | Provide effective date |
| Authority | States that if state law referenced in Zoning Ordinance is amended, the Zoning Ordinance is deemed amended to reference the amended state law | 23.102.030 | NEW | Added for clarity |
| Laws of Other Agencies | Removes statement that uses and structures must comply with regulations and laws of other governmental agencies. | N/A | 23B.56.040 | It is unnecessary to state that uses and structures must comply with the law. Removed for clarity |
| Approvals Required | Describes approvals required for land uses and development | 23.102.050 D | NEW | Expands on existing Section 23A.12.010 to reflect current practice |
| Conflict with State or Federal Regulations | Explains how to handle conflicts with State and Fed law | 23.102.070 | NEW | Consistent with the Supremacy Clause of the United States Constitution and Article XI, Section 5(a) of the California Constitution |
| Conflicts with Other City Regulations | New language: “Where the Zoning Ordinance conflicts with other ordinances, resolutions, or regulations of the City of Berkeley, the more restrictive controls.” | 23.102.070.B | NEW | Clarity needed on how to handle conflicting requirements. The Zoning Ordinance does not supersede other City regulations. |

| Topic | Description | BZO Location | Existing Location | Rationale for Change |
|---|--|--------------|--------------------------|--|
| Conflicts with Private Agreements | Adds statement that the City is not responsible for monitoring or enforcing private agreements. | 23.102.070.C | NEW | Clarifies City role in neighbor disputes involving private agreements |
| Pending Applications | Clarifies status of applications submitted during transition from ZO to BZO | 23.102.080 C | NEW | Necessary to inform status of applications submitted during transition to BZO |
| Nonconformities | Defines what is considered nonconforming at the time of BZO adoption | 23.102.080 E | NEW | Adds up-front reference to nonconformity chapter alongside other transitional provisions |
| 23.104 – Interpreting the Zoning Ordinance | | | | |
| Purpose | States purpose of chapter | 23.104.010 | NEW | BZO standard includes purpose statement for each chapter |
| Authority | Clarifies existing Zoning Officer authority | 23.104.020 | NEW see 23B.12.020 | More accurately state ZO’s authority |
| Rules of Interpretation | New rules of interpretation relating to: meaning and intent; harmonious construction; lists and examples; references to other regulations, publications, and documents; technical and non-technical terms; terms not defined; public officials and agencies; tenses and plurals. New harmonious construction language replaces existing language: “In case of conflict between any of the provisions of this Ordinance, the most restrictive shall apply.” | 23.104.030 | 23A.080.010 | Provides for consistent application of rules |

| Topic | Description | BZO Location | Existing Location | Rationale for Change |
|---|--|----------------|-------------------|--|
| Zoning Map | Clarifies intention to follow city limits | 23.104.050 A 3 | NEW | Greater clarity to resolve uncertainty in zoning district boundaries |
| 23.106 Rules and Measurement | | | | |
| Chapter Purpose | States chapter purpose | 23.106.010 | NEW | BZO standard includes purpose statement for each chapter |
| Building Separation | Defines method of building separation measurement (outer wall to outer wall) | 23.106.080 A | NEW | Codifies existing practice and increases clarity |
| 23.108 –Zoning Districts and Map | | | | |
| Chapter Purpose | States chapter purpose | 23.108.010 | NEW | BZO standard includes purpose statement for each chapter |
| C-C and C-U Districts | C-1 zone split into two zones: Corridor Commercial (C-C) and University Avenue Commercial (C-U) district. C-U includes University Avenue Strategic Plan Overlay standards. | 23.108.020.A | 23A.16.020.A | Simplifies and clarifies C-1 rules inside and outside of University Avenue Strategic Plan area |
| Purpose of Overlay Zones | Explains purpose of overlay zones | 23.108.020.C.1 | NEW | Provide definition; explains that Overlay Zone regulations are in addition to regulations of underlying zone (not a replacement) |

| Topic | Description | BZO Location | Existing Location | Rationale for Change |
|---|--|----------------|--|---|
| Applicability of Overlay Zone Standards | <p><u>Existing language</u>: “the height, coverage, parking and usable open space shall comply with the provisions of the underlying district.”</p> <p><u>BZO language</u>: “If the overlay zone applies a standard to a property that conflicts with the underlying district, the overlay zone standard governs. If the overlay zone is silent on a standard in the underlying district, the underlying district standard applies.”</p> | 23.108.020.C.3 | 23A.16.030.C | Corrects statement inconsistent with existing use of overlay zones |
| 23.202 – Residential Districts | | | | |
| Allowed Land Uses | In Residential Districts, unlisted uses are prohibited | 23.202.020.B | NEW | Codifies existing practice, making explicit that if a use is not listed in the Allowed Uses Table for Residential Districts, the use is prohibited. |
| Open Space for ADUs in R-1 District | Removes requirement for ADUs to include usable open space. All standards for ADUs will be addressed in updated ADU chapter. | Table 23.202-2 | 23D.16.070.F | Codifies existing practice consistent with Gov’t Code Section 65852.2 |
| 23.206 – Manufacturing Districts | | | | |
| Industrial Performance Standards | Removes statements allowing City Manager to establish industrial performance standards. | 23.206.040.F | 23E.64.070.E 23E.72.070.E 23E.76.070.E 23E.80.D 23E.84.070.H | Language is unnecessary and implies authorization is required for other similar requirements. |
| | | | | |

| Topic | Description | BZO Location | Existing Location | Rationale for Change |
|---|--|----------------|-------------------------------|--|
| 23.302 – Supplemental Use Regulations | | | | |
| Warehouse Storage for Retail Use | Allows on-site storage of goods as an accessory use to a primary retail use in all districts where retail is permitted | 23.302.070.J | NEW | Codifies existing practice of allowing retail establishments to store their goods on-site if retail is permitted. |
| 23.304 – General Development Standards | | | | |
| Setback Projections – Disabled Access | Allows projections into setbacks to accommodate the disabled with a reasonable accommodations request. | 23.304.030.B.4 | 23D.04.030.A2 | Confirm with The Americans with Disabilities Act, and the California Fair Employment and Housing Act |
| Building Height Projections – Public Buildings in Residential Districts | Deletes “the height limit for schools, buildings for religious assembly use, hospitals and other public buildings shall not exceed the height limit permitted for that district. This is true for all uses.” | 23.304.050.A | 23D.04.020.A; 23E.04.020.A | Removal of extraneous language. Calling out these uses implies other uses may exceed height limit, which is not true. |
| Adeline Corridor Plan | States that projects in the Adeline Plan Area are subject to mitigation measures in the Adeline Plan FEIR | 23.304.140.D | NEW | Adds Adeline Corridor Plan to list of existing plans |

| Topic | Description | BZO Location | Existing Location | Rationale for Change |
|--|---|----------------|-------------------|--|
| 23.310 – Alcohol Beverage Sales and Service | | | | |
| Chapter Purpose | States purpose of chapter | 23.310.010 | NEW | BZO standard includes purpose statement for each chapter |
| 23.320 – Cannabis Uses | | | | |
| Chapter Purpose | States purpose of chapter | 23.320.010 | NEW | BZO standard includes purpose statement for each chapter |
| 23.324 – Nonconforming Uses, Structures and Buildings | | | | |
| Chapter Purpose | States purpose of chapter | 23.324.010 | NEW | BZO standard includes purpose statement for each chapter |
| 23.326 – Demolition and Dwelling Unit Control | | | | |
| Chapter Purpose | States purpose of chapter | 23.326.010 | NEW | BZO standard includes purpose statement for each chapter |
| 23.328 – Inclusionary Housing | | | | |
| Required Inclusionary Units in Avenues Plan Area | Deletes “Except as provided in this chapter” from 23C.12.080E, which conflicts with 23C.12.080B: “Within this area, the provisions of this section superseded any inconsistent provisions of this chapter.” | 23.328.070.D.1 | 23C.12.080.E | Maintain internal consistency |
| 23.402 – Administrative Responsibility | | | | |
| Chapter Purpose | States purpose of chapter | 23.402.010 | NEW | BZO standard includes purpose statement for each chapter |

| Topic | Description | BZO Location | Existing Location | Rationale for Change |
|--|--|----------------|-------------------|---|
| Review and Decision-Making Authority | Describes purpose of summary table | 23.402.020.A | NEW | Description of table |
| Review and Decision-Making Authority | Defines authority roles (Recommend, Decision, Appeal) | 23.402.020.B | NEW | Explains notation meaning |
| Planning and Development Department | Defines duties of Planning and Development Department | 23.402.030 | NEW | Codifies existing role and summarizes responsibilities |
| Landmarks Preservation Commission | Refers reader to BMC Chapter 3.24 for roles and responsibilities of Landmarks Preservation Commission | 23.402.050.B | NEW | Provides clarity on LPC role |
| ZAB Responsibilities and Powers | Provides that City Council may assign additional responsibilities to ZAB | 23.402.070.C.2 | NEW | Codifies existing Council authority |
| City Council | Provides that City Council has authority to take actions related to the Zoning Ordinance consistent with existing law | 23.402.090.C | NEW | Codifies existing Council authority |
| 23.404 – Common Permit Requirements | | | | |
| Purpose and Applicability | States purpose of chapter; clarifies that the chapter applies to all discretionary permits, not just use permits and variances | 23.404.010 | NEW | BZO standard includes purpose statement for each chapter. Clarifies existing practice |
| Multiple Permit Applications | Clarifies how applications are handled when they require more than one discretionary permit | 23.402.020.F | NEW | Codifies existing practice |
| Review Timeline | Adds statement that City will abide by Permit Streamlining Act | 23.404.030.A.3 | NEW | Codifies existing practice. Recognizes |

| Topic | Description | BZO Location | Existing Location | Rationale for Change |
|--------------------------------------|---|------------------|-------------------|--|
| | | | | compliance with state law is required |
| Project Evaluation and Staff Reports | Describes role of staff in reviewing, analyzing and presenting project applications | 23.404.030.D | NEW | Codifies existing practice |
| CEQA | Add statement that City will review projects for CEQA compliance | 23.404.030.E | NEW | Codifies existing practice. Recognizes that compliance with state law is required |
| Timing of Notice | Permits PC or CC to extend notice periods for applications of major significance | 23.404.040.C.3 | NEW | Best practice in compliance with Gov't Code Section 65091 |
| Zoning Ordinance Amendment Noticing | Adds notice requirements for Zoning Ordinance Amendments | 23.404.040.C.4 | NEW | Adds notice requirement for Zoning Ordinance Amendments. New requirement here is the same as for discretionary permits |
| Additional Notice | Adds "The Zoning Officer, Planning Commission or City Council may require additional public notice as determined necessary or desirable." | 23.404.040.C.7 | NEW | Codifies existing practice |
| Public Notice for Design Review | States that there is no requirement to mail or post notices in advance of a Design Review Committee meeting | 23.404.040.D.2.b | NEW | Codifies existing practice |
| Public Hearings | Clarifies that hearings will be conducted consistent with procedures developed by the review authority | 23.404.050.A | NEW | Codifies existing practice and recognizes that review authorities are empowered to create their own procedures. |

| Topic | Description | BZO Location | Existing Location | Rationale for Change |
|---|--|----------------------|--------------------|---|
| Time and Place of Hearings | Clarifies that meetings will be held at time and place for which notice was given unless there is not a quorum | 23.404.050.B | NEW | Codifies legal requirement consistent with Gov't Code Section 65091 |
| CEQA Action | Adds that action on a permit's CEQA determination must be taken before a permit is approved | 23.404.050.G | NEW | Codifies CEQA Guidelines Sections 15074 and 15090 |
| Exceptions to Protect Constitutional Rights | Allows the City Council as well as ZAB to make exceptions to protect constitutional rights and clarifies that the exception can be made when acting on any permit and is not tied to a Variance | 23.404.050.I | 23B.44.050 | Best practice. Council needs this ability in addition to ZAB to protect City from legal challenge |
| Payment for Service | Adds that applicant shall pay for mediation or conflict resolution services | 23.040.050.J.7 | NEW | Codifies existing practice |
| Effective Dates | Adds effective dates of Council actions on Zoning Ordinance amendments and legislative matters, and permits, appeals and non-legislative matters. Adds effective dates of actions by the Zoning Officer, Design Review Committee or ZAB | 23.404.060.A | NEW | Codifies current practice and legal requirements consistent with Gov't Code Section 65853-65857 |
| Expiration of Permit | Adds that if a permit is not exercised after one year, it will not lapse if the applicant has made a substantial good faith effort to obtain a building permit and begin construction. | 23.404.060.C.2. b | 23B.56.100.C &D | Best practice |
| Expiration of Permit | Defines a lapsed permit as "void and of no further force and effect," and that a new permit application must be submitted to establish a use or structure. | 23.404.060.C.3 | NEW | Provides explicit definition of what a lapsed permit means and makes explicit the |

| Topic | Description | BZO Location | Existing Location | Rationale for Change |
|--|---|----------------|-------------------|---|
| | | | | requirement to reapply. |
| Permit Revocation - City Council Hearing | Removes requirement for the City Council hearing must occur within 30 days after the ZAB issued its recommendation. | 23.404.080.D.2 | 23B.60.050.B | CC hearing within 30 days of ZAB decision is frequently infeasible. Council can hold hearing “at its discretion.” |
| 23.406 – Specific Permit Requirements | | | | |
| Variances - Eligibility | <p><u>Existing Language:</u> “The Board may grant Variances to vary or modify the strict application of any of the regulations or provisions of this Ordinance with reference to the use of property, the height of buildings, the yard setbacks of buildings, the percentage of lot coverage, the lot area requirements, or the parking space requirements of this Ordinance.”</p> <p><u>BZO Language:</u> “The ZAB may grant a Variance to allow for deviation from any provision in the Zoning Ordinance related allowed land uses, use-related standards, and development standards.”</p> | 23.406.050.B.1 | 23B.44.010 | ZAB should have authority to grant a variance to any use or development-related standard, not just uses, heights, yard setbacks, lot coverage, lot area, or parking |
| Variances – Not Allowed | Adds: “A Variance may not be granted to allow deviation from a requirement of the General Plan.” | 23.406.050.C | N/A | Codifies state law consistent with Gov’t Code Section 65906 . |
| Design Review – Changes to Approved Projects | Describes features of minor changes to approved projects that may be approved administratively: “A change that does not involve a feature of the project that was: 1) a specific consideration by the review authority in granting the approval; 2) a condition of approval; or 3) a basis for a finding in the project CEQA determination. | 23.406.070.N | N/A | Codifies current practice |
| Reasonable Accommodations – Review Procedure | <u>Existing Language:</u> “If an application under this chapter is filed without any accompanying application for another approval, permit or entitlement under this title or Title 21, it shall be heard and acted upon at the same time and in the | 23.406.090.E.1 | 23B.52.040.B | The Americans with Disabilities Act, and the California Fair |

| Topic | Description | BZO Location | Existing Location | Rationale for Change |
|---|--|--------------|-------------------|---|
| | <p>same manner, and be subject to the same procedures, as the application that would normally be required to modify the provision which is the application seeks to modify, as determined by the Zoning Officer.”</p> <p><u>BZO Language</u>: “For a Reasonable Accommodation application submitted independently from any other planning permit application, the Zoning Officer shall take action within 45 days of receiving the application.”</p> | | | <p>Employment and Housing Act</p> <p>Existing language requires the application to be reviewed in the same manner as a Variance. This conflicts with state and federal law.</p> |
| 23.410 – Appeals | | | | |
| Appeals – Remanded Matters | Removes option for prior review authority to reconsider application without a public hearing. | 23.410.040.G | 23B.32.060.D | Remanded matters require public hearing |
| 23.412 – Zoning Ordinance Amendments | | | | |
| Zoning Ordinance Amendments – Initiation | Deletes language to allow for amendments initiated without a public hearing. | 23.412.020 | 23A.20.020.C | Existing language conflicts with Gov’t Code Section 65853-65857 |
| Zoning Ordinance Amendments – Planning Commission Hearing | Removes requirement to hold Planning Commission hearing within 30 days of initiation. | 23.412.040.A | 23A.20.030.A | CC hearing within 30 days of PC decision is frequently infeasible. Council can hold hearing consistent with Public Notice section. |
| Zoning Ordinance Amendments – Effect of Planning | Deletes language that uses or structures not yet established must conform to Planning Commission recommendation before Council approval, when amendments become effective only after Council adoption. | 23.412.040.C | 23A.20.050.B | New regulations can only take effect after Council adoption. |

| Topic | Description | BZO Location | Existing Location | Rationale for Change |
|--|--|--------------|-------------------|--|
| Commission Recommendation | | | | |
| Zoning Ordinance Amendments – City Council Hearing | Removes language requiring the Planning Commission recommendation to be forwarded to the Council within 30 days and consideration by Council within 60 days for Commission decision. | 23.412.050.A | 23A.20.040 | CC hearing within 60 days of PC decision is frequently -infeasible. Council can hold hearing consistent with Public Hearings and Decision section. |
| Zoning Ordinance Amendments – City Council Action | Removes option for Council to act on amendment without a public hearing. | 23.412.050.A | 23A.20.060.A &B | Conflicts with Gov't Code Section 65853-65857 |
| Zoning Ordinance Amendments – Effective Date | Removes language about “more restrictive” amendments going into effective immediately upon adoption of ordinance. | 23.412.050.C | 23A.20.070 | Conflicts with Gov't Code Section 65853-65857 |
| Zoning Ordinance Amendments – Findings | Adds findings for Zoning Ordinance amendments | 23.412.060 | N/A | Best Practice. |
| 23.502 – Glossary | | | | |
| Defined Terms | Adds definitions to undefined terms in existing Zoning Ordinance | 23.502 | 23F.04 | Best practice. |



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: July 6, 2022

TO: Members of the Planning Commission

FROM: Justin Horner, Associate Planner

SUBJECT: Public Hearing on Zoning Ordinance Amendments that Address Technical Edits and Corrections to Berkeley Municipal Code (BMC) Title 23 – Package #3

RECOMMENDATION:

Conduct a public hearing to discuss amendments to the following sections of the Berkeley Municipal Code (BMC) and make a recommendation to City Council to approve the amendments.

- BMC Section 23.204.050 (C-C Zoning District)
- BMC Section 23.204.080 (C-E Zoning District)
- BMC Section 23.204.090 (C-NS Zoning District)
- BMC Section 23.204.130 (C-DMU District)
- BMC Section 23.206.050 (Protected Uses)
- BMC Section 23.304.030 (Setbacks)
- BMC Section 23.304.090 (Usable Open Space)
- BMC Section 23.322.030 (Required Parking Spaces)
- BMC Section 23.406.070 (Design Review)

BACKGROUND

On October 12, 2021, the City Council passed Ordinance No. 7,787-NS, which repealed the then-existing Title 23 of the Berkeley Municipal Code and zoning maps (“the old Zoning Ordinance”) and adopted a new Title 23 of the Berkeley Municipal Code and zoning maps (“the new Zoning Ordinance”). The new Zoning Ordinance became effective December 1, 2021.

The new Zoning Ordinance was created as a customer service improvement and was limited in scope to changes that reorganized and reformatted Title 23 to make the City’s zoning code easier to understand and administer. Minor “consent changes” were approved by City Council where changes were needed to bring the Ordinance into compliance with State law or to codify prior zoning interpretations (*Attachment 2*). Other than the “consent changes”, no substantive changes were intended by City Council.

As part of City Council’s approval action, staff was directed to regularly return to the Planning Commission and City Council with amendments necessary to maintain the integrity of the new

Zoning Ordinance. Amendments presented under this direction should be for the purposes of clarifying the new Zoning Ordinance, fixing mistakes in transcription and correcting unintentional errors. Substantive changes in planning policy are not to be included in this set of routine amendments, but should be presented as separate Zoning Ordinance amendments, consistent with BMC Chapter 23.412 (Zoning Ordinance Amendments).

PROPOSED ZONING ORDINANCE AMENDMENTS

Since the new Zoning Ordinance came into effect on December 1, 2021, a number of clean-up amendments have been identified. The project team anticipated technical edits and corrections during the roll-out of the new Zoning Ordinance and was prepared with an efficient process and schedule for addressing these requests. This report is the product of that process and is labeled “Package #3” because it is the third set of edits to come before Planning Commission. Future reports will be numbered accordingly.

The proposed Zoning Ordinance amendments are presented in two categories. The first category includes three amendments that require an explanation or justification. These amendments are presented below with information on what was in the old Zoning Ordinance, what is in the new Zoning Ordinance, and recommended amendments including reasons why amendments are necessary. The second category includes technical edits such as spelling, punctuation or grammatical errors, or inaccurate references. These amendments are summarized in *Table 1: Text Edits and Other Routine Amendments*.

Category One Zoning Ordinance Amendments

1. BMC Section 23.204.090 (C-NS Zoning District)

Old Zoning Ordinance: Section 23E.48.070 of the old Zoning Ordinance included development standards for projects in the C-NS zoning district. Specifically, the Section set forth requirements for Usable Open Space in Mixed Use buildings that included the following:

- Each Dwelling Unit shall have Usable Open Space of at least 40 square feet (sq. ft.), with no dimension less than six feet.

New Zoning Ordinance: Table 23.204-24 [C-NS Development Standards](#) in the new Zoning Ordinance includes the development standards for projects in the C-NS district. The Table includes two errors:

- For Non-Residential and Mixed Use Projects, the Minimum Usable Open Space is noted as 200 sq. ft. per dwelling unit, when the proper development standard for these projects is 40 sq. ft. per dwelling unit; and
- Note [4], which refers to the 6-foot minimum dimension for Usable Open Space, is incorrectly associated with the Minimum Building Separation, when it should be associated with Minimum Usable Open Space.

Additionally, the Usable Open Space section of Table 23.204-24 includes reference to the Supplemental Standard 23.304.090—Usable Open Space, which requires a minimum dimension of 10 feet for Usable Open Space. The proposed amendment clarifies in note [4] that the 6-foot dimension standard is controlling for mixed-use projects in the C-NS.

Proposed Amendment: Amend Table 23.204-24 to read:

| | Project Land Use | | Supplemental Standards |
|---|-------------------------------|----------------------|-------------------------------|
| | Non-Residential and Mixed Use | Residential Only | |
| Lot Area, Minimum | | | 23.304.020 |
| New Lots | 4,000 sq. ft. | 5,000 sq. ft. | |
| Per Group Living Accommodation Resident | 350 sq. ft. [1] | | |
| Usable Open Space, Minimum | | | 23.304.090--Usable Open Space |
| Per Dwelling Unit | 200 40 sq. ft. [2] | 200 sq. ft. | |
| Per Group Living Accommodation Resident | No minimum | 90 sq. ft. | |
| Floor Area Ratio, Maximum | 1.0 | No maximum | |
| Main Building Height [2 3] | | | |
| Minimum | 2 stories | No minimum | |
| Maximum | 35 ft. and 3 stories | 28 ft. and 2 stories | |
| Lot Line Setbacks, Minimum | | | |
| Abutting/Confronting a Non-residential District | No minimum | See Table 23.204-25 | 23.304.030 |
| Abutting/Confronting a Residential District | See 23.304.030.C.2 | | |
| Building Separation, Minimum | No minimum [4] | See Table 23.204-25 | 23.304.040 |
| Lot Coverage, Maximum | 100% | See Table 23.204-26 | 23.304.120 |

Notes:

[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.

[2] For mixed use projects, usable open space dimensions may be smaller than required in 23.304.090.B.3, but no dimension may be less than 6 feet.

[2] [3] Basement levels devoted exclusively to parking are not counted as a story.

[3] [4] For mixed use projects, minimum building separation shall be as required for residential-only projects. See Table 23.204-25.

2. BMC Section 23.204.130 (C-DMU Zoning District)

Old Zoning Ordinance: Chapter 23D.040.050.B (Usable Open Space) of the old BMC states that “no more than 50% of the total usable open space required may be satisfied by balconies.” This regulation applies to all zoning districts (residential, commercial and manufacturing).

New Zoning Ordinance: Section 23.304.090.B.4 of the new Zoning Ordinance includes the above regulation regarding balconies, and is referenced as a Supplemental Standard in the development tables for all districts, except the C-DMU. Table 23.204-40: C-DMU Usable Open Space Requirements does not include a reference to this section, although it should, as the regulation in the old Zoning Ordinance refers to all districts.

Proposed Amendment: Amend Table 23.204-40: C-DMU Usable Open Space Requirements as follows:

| | MINIMUM USABLE OPEN SPACE | SUPPLEMENTAL STANDARDS |
|--|---|-------------------------------------|
| Residential Uses | 80 sq. ft./unit [1] | <u>23.304.090—Usable Open Space</u> |
| Non-Residential Uses | 1 sq. ft. of privately-owned public open space per 50 sq. ft. of commercial floor area. | |
| Notes: [1] Each square foot of usable open space provided as privately-owned public open space is counted as two square feet of required on-site open space. | | |

3. BMC Section 23.304.030 (Setbacks)

Old Zoning Ordinance: Section 23D.20.070 of the old Zoning Ordinance included development standards in the R-1A zoning district. The Section did not include any provision for additional setback reductions for properties in the R-1A zoning district located west of San Pablo. Such a provision did exist at one time, but was removed from the R-1A zoning district regulations as part of amendments to the old Zoning Ordinance in 2018 (Ordinance No. 7,593).

New Zoning Ordinance: Table 23.304-1 Allowed Setback Reductions in Residential Districts of the new Zoning Ordinance includes a provision permitting specific setback reductions for properties in the R-1A located west of San Pablo Avenue.

Proposed Amendment: Amend Table 23.304-1 Allowed Setback Reductions in Residential Districts to strike the provision:

| District Where Allowed | When Allowed | Minimum Setback with Reductions | Required Permit | Required Additional Findings |
|-------------------------------|---|--|------------------------|--|
| R-1A | West of San Pablo Avenue to construct a dwelling unit | No minimum | AUP | The unit would not cause a detrimental impact on emergency access; or on light, air or privacy for neighboring properties. |

Category Two Zoning Ordinance Amendments

The following table includes minor text edits, along with a rationale for each edit.

Table 1: Text Edits and Other Routine Amendments

| Zoning Ordinance Section | Proposed Amendment | Rationale |
|--|---|---|
| 23.204.050.D Table 23.204-8 (C-C Development Standards Table) | Under Non-Residential and Mixed Use projects, revise reference for <i>Abutting/Confronting a Residential District</i> from 23.304.130.C.2 to 23.304.030.C. | Incorrect reference. |
| 23.204.080.D Table 23.204-21 (C-E Development Standards Table) | Revise Note [2]: [2] Open space requirements for mixed use projects may be modified by the ZAB. See 23.204.060080.D.3 | Incorrect reference. |
| 23.206.050.A.7.d (Protected Uses in the MM and MU-LI Districts) | Revise the heading for 23.206.050.A.7.d: (d) <i>MU-LI Lots <u>Under Multiple Common Ownerships</u></i> | Clarification that this section applies to multiple lots that are under common ownership, not single lots with multiple owners. |
| 23.304.090.A (Usable Open Space) | Revise as follows: A. <i>Applicability.</i> The standards in this section apply to areas used to satisfy minimum usable open space requirements. as shown in Chapters 23.202 - 23.202.110 (Zoning Districts). | The Usable Open Space standards in this section apply to all districts, not only to those listed. |
| 23.304.030.B.7.c (Solar Energy Equipment) | Revise as follows: (c) The building served by the solar energy equipment complies with the Residential Energy Conservation Ordinance (RECO). | The RECO no longer exists. |
| 23.322.030.C.2 Table 23.322-4 (Required Off-Street Parking in Manufacturing Districts) | Revise Required Parking Spaces for Manufacturing uses in the MU-LI to 1.0 space per 1,000 sf: MU-LI District: 1.05 per 1,000 sq. ft. | Does not reflect the correct parking rate, as stated in the old Zoning Ordinance. |
| 23.406.070.A (Design Review—Purpose) | Revise the first sentence of the Purpose as follows: A. <i>Purpose.</i> Design Review is a discretionary process to ensure that exterior changes to non-residential buildings comply with the City of Berkeley Design Guidelines and other applicable City design standards and guidelines. | Design Review can apply to both non-residential and residential buildings. |

NEXT STEPS

Staff recommends that the Planning Commission hold a public hearing, receive public testimony, and recommend to City Council adoption of the proposed Zoning Ordinance amendments.

ATTACHMENTS

1. Ordinance – Zoning Ordinance Amendments
2. Consent Changes Matrix
3. Public Hearing Notice

NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL

Zoning Ordinance Amendments that Address Technical Edits and Corrections to the Berkeley Municipal Code Sections 23.204.050 (C-C District); 23.204.080 (C-E District); 23.204.090 (C-NS District); 23.204.130 (C-DMU District); 23.206.050 (Protected Uses); 23.304.030 (Setbacks); 23.304.090 (Usable Open Space); 23.322.030 (Required Parking Spaces) and 23.406.070 (Design Review)

PUBLIC PARTICIPATION BY REMOTE VIDEO ONLY

The Department of Planning and Development is proposing amendments to the Zoning Ordinance. The hearing will be held on September 20, 2022 at 6:00 p.m. On October 12, 2021, the City Council passed Ordinance No. 7,787-NS, which repealed the then-existing Title 23 of the Berkeley Municipal Code and zoning maps (“the old Zoning Ordinance”) and adopted a new Title 23 of the Berkeley Municipal Code and zoning maps (“the new Zoning Ordinance”). The new Zoning Ordinance became effective December 1, 2021.

As part of City Council’s approval action, staff was directed to regularly return to City Council with any required amendments to the new Zoning Ordinance to aid in clarity, fix mistakes in transcription, or correct unintentional errors discovered as part of the transition from the old to the new Zoning Ordinance. The public hearing will consider a set of amendments to the new Zoning Ordinance that address these errors. No substantive changes to planning policy are included in this set of amendments. The Planning Commission unanimously recommended adoption of the proposed amendments.

The proposed amendments are exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Sec.15061(b)(3). The proposed amendments are only text changes to clarify and correct the Berkeley Municipal Code and, therefore, there is no possibility of a significant effect on the environment.

The hearing will be held on **Tuesday, September 20, 2022 at 6:00 PM**. The hearing will be held via videoconference pursuant to Government Code Section 54953(e) and the state declared emergency.

A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of **September 8, 2022**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact Justin Horner, Associate Planner, at 510-981-7476.

Written comments should be mailed directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or emailed to council@cityofberkeley.info in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

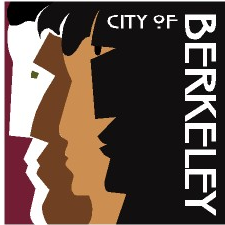
Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Published: September 9, 2022 per California Government Code Sections 65856(a) and 65090.

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on September 8, 2022.

\_\_\_\_\_  
Mark Numainville, City Clerk



Sophie Hahn  
Councilmember District 5

## SUPPLEMENTAL AGENDA MATERIAL

**Meeting Date:** July 26, 2022

**Item Number:** 32

**Item Description:** Restoring and Improving Access to City of Berkeley Website and Archival Materials

**Supplemental/Revision Submitted By:** Councilmembers Hahn, Bartlett, Taplin

**“Good of the City” Analysis:**

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

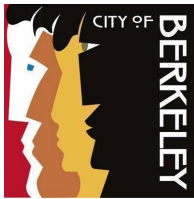
Due to illnesses in Council and City staff offices, consultation needed to refine this item took longer than usual. Given the importance of a transparent and accessible website, it is important that Council consider this revised supplemental prior to going onto Summer recess.

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

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

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

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



Councilmember Sophie Hahn  
City of Berkeley, District 5

**To:** Honorable Mayor and Members of the City Council

**From:** Councilmember Sophie Hahn (Author), Councilmembers Terry Taplin and Ben Bartlett (Co-Sponsors)

**Subject:** Restoring and Improving Access to City of Berkeley Website and Archival Materials

**RECOMMENDATION:**

*The following supplemental recommendations supersede all recommendations in the originally submitted item.*

1. Accept the report outlining results from consultation with the City Manager after introduction of this item and thank City Staff for their consideration.
2. As a means to support transparency and improve ease of access to historical/archival government records for policymakers, the press, and the general public, request that the City Manager continue developing and implementing measures that support efficient and effective searching, sorting, and identification of responsive materials through Records Online.
3. To support transparency and ease of access to government records, consider creating and disseminating a “style guide” with standards/conventions/protocols for accurately referencing and attaching City materials so they can be properly linked to or easily accessed in Records Online (or a successor/alternative program/database), allowing such materials to be referenced consistently by Councilmembers, Staff, members of the press, and other authors.
4. Refer to the November 2022 Budget Update up to \$50,000 for staff support for Council/Mayor offices to locate documents previously accessed via now-expired links, and request that the City Manager consult Councilmembers and the Mayor to offer the scope of assistance available and identify potential needs.
5. As a means to support transparency and restore ease of access to City materials referenced/attached via now-broken links in City reports, plans, items, and other documents created prior to launch of the new City website, request that the City Manager consider updating key plans, programs and reports by creating and



linking PDFs of previously linked documents and/or substituting broken links with footnotes/references in a standard format allowing referenced and attached materials to be quickly/directly located through Records Online (or a successor/alternative program/database).

6. To better fulfill the requirements of the City of Berkeley's Open Government Ordinance, request the City Manager retain materials such as Council, Committee, and Commission agendas, minutes, recordings, and other official documents on the website for a period at least 4 years, and preferably longer, before retiring them to Records Online.

### **BACKGROUND:**

In April 2022 the City of Berkeley launched a newly redesigned website, the culmination of more than five years of hard work by Communications, IT and other staff. This change has brought many important improvements, in particular with respect to customer/resident services. The site has a clean, updated look and is much easier to navigate, with fresh information just a few clicks away. Community members are able to easily and quickly access relevant and updated materials about public-facing City services and facilities and get help with important functions such as requesting a service, applying for a permit, or paying a bill.

Unfortunately, the previous website's utility as a searchable database of historic records and materials, accessible via simple, intuitive, and almost instantaneous web searches, has been largely extinguished. Staff has reported that over 15,000 pages were consolidated into 500, in an attempt to gain control of a massive amount of information - much of it outdated - and to focus the website on a particular and important user experience.

As a result of this significant reduction in materials posted to the website, thousands of pages of materials once identifiable via Google-type search engines are now only accessible through the City's Records Online portal. Records Online is a deep and materials-rich archive, but is much less intuitively searched, slower to produce results, and difficult to navigate for generations of users accustomed to the ease, flexibility, and speed of web-based searches. This reduction in search functionality for a class of users who relied on the City's website for research and other database purposes - Council offices, journalists, researchers, and other community members - is a significant challenge for those users.

Another consequence of removing thousands of pages maintained on the City's "old" website is that almost all city-facing links in plans such as the Bicycle, Pedestrian, and Vision Zero Plans, Area Plans, the SOSIP Plan, the Climate Action Plan, Electric

Mobility Plan - and hundreds of other Plans generated prior to launch of the new website - are broken. Also broken are City-facing links in every Council, Committee, or Commission report, memorandum, study, regulation, footnote, press release, health order, or other document or statement generated by the City prior to launch of the new website - and many generated since the launch that incorporate or reference pre-launch materials, up to and including materials in the most recent Council meeting packet.

To address the loss of functionality with closure of the City's previous website, Councilmembers Hahn, Harrison, Taplin, and Bartlett introduced an item titled "Restoring and Improving Access to City of Berkeley Website and Archival Materials" to the June 14, 2022 Council Meeting. This item required both interim and long-term solutions to be implemented to address the critical reduction in website functionality and the broken connections to referenced and attached ("linked") resources across virtually all of the City's documents and materials generated in the 21st Century.

Upon introduction of this item, the City Manager convened a meeting of her office and the City Clerk, Communications, and IT departments to discuss the item's recommendations. She responded to the item's referrals and outlining projected costs. At a June 9, 2022 meeting, City Staff reviewed their responses to the specific recommendations made by the referral, almost all of which they found to be either redundant to existing efforts, infeasible, or too expensive to implement. The item was postponed to allow for more collaboration and communication between the author and City Staff. Later in June, consistent with one of the item's recommendations, the City Clerk provided a zoom-based training for Councilmembers and legislative aides on the effective use of Records Online.

Only July 27th Councilmember Hahn and her staff met again with the City Manager and her team to continue the conversation about the new website and potential improvements. Councilmember Hahn asked to set aside discussion of the specific "fixes" requested by the original item and sought a broad problem-solving-oriented discussion of the challenges faced by users who relied on the previous website's deep trove of historical materials, and of the significant loss of functionality precipitated by the failure of all web-based links to City documents included as references or attachments to City plans, reports, items, and other materials.

City Staff listened carefully to first and second-hand descriptions of challenges to research and write legislation, news articles, items, memos and other materials, and to following "daisy-chains" of information previously accessible by flowing seamlessly from linked-document to linked-document. In addition, staff considered the challenge of records, studies, plans, reports, and other materials with broken links, ending or

rendering significantly more time consuming the review of linked/referenced and attached resources.

Staff acknowledged these challenges, considered suggestions, and offered some resources to help Councilmembers and others navigate the transition to a website that no longer will function as a quasi-archive, and to a more accurate but also more cumbersome/less intuitive system for doing research and creating attachments and references to City documents.

### **REPORT:**

The City Manager's specific response to the original item addresses each element of the original referral. To summarize responses:

- Restoration of URLs for linked PDFs and re-establishing access to the old website for archival and search purposes is found to be infeasible for technical and cost reasons.
- Inputting 2-3 years of historical documents for Council, Commissions, and Committees would cost \$200,000 and take up to six months.
- Training on use of Records Online was already scheduled for June, and the Clerk is addressing "all issues" with training.
- The Records Online homepage already includes search instructions, and additional documentation is being prepared.
- Adding Rent Board and Housing Agency materials to Records Online would require those agencies to opt-in and commit staff to adding their materials to the database.
- Search functions are as robust as they can be at this time, and materials in Records Online cannot be searched via web-based search engines so there is no fix possible for this challenge.
  - OnBase, the software supplier for Records Online, will be contacted to inquire about any potential to improve functionality of their search system.
  - The City is updating to a newer version of OnBase and upgrade options will be explored; however, upgrades are costly and time consuming.
- 404 Error pages don't need general or specific "redirect" notices as requested; some links were already broken, some will never be visited more than once, Goggle is the reason for the error messages, and over time Google will stop sending people to broken links so the problem will resolve itself.<sup>1</sup>

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<sup>1</sup> Links from previous Council records and City Documents, however, will continue to direct to broken links indefinitely, even after Google indexes the new website.

- Staff have decades of experience in web usability and the vendor is highly experienced. SEO is as good as it can be; no further improvements are possible. Errors are already down by 81% and Google is adapting.

The City Manager also provided additional background including a clear statement of the City's commitment to helping address operations impacts to Councilmembers and their aides and reference to actions already taken by the Clerk's office to provide training and seek improvement to the search functions of Records Online. Purging old records from the website is noted as having been a practice for over ten years. Users are "encouraged to attach documents to council items instead of using links so that the referenced information is included in the public record."

In addition to these written responses received, through conversation with the City team, we learned that the previous website's evolution as a deep historical resource, in retrospect and perhaps also at the time it was being created, was not a best practice. Nevertheless, staff members' use of the website as a repository for agendas, minutes, plans, rules, regulations, reports, and a huge volume of other City materials persisted over several decades, resulting in more than 15,000 pages of accumulated materials. At the same time, staff, council members, the press, other researchers, and members of the public came to rely on the website for an archive-like function, with outdated, stale and at times incorrect information remaining accessible alongside a huge volume of useful, accurate, and interesting information.

We were reminded that simultaneous with the evolution of the previous website as a de facto repository of historic information, the City Clerk has continuously updated the City's Records Online database, which is considered one of the deepest and most comprehensive publicly-accessible City archives of official materials. In particular, Berkeley's database includes materials from the earliest days of Berkeley's history; a feature many City legislative databases apparently do not enjoy. The City Clerk has diligently and accurately maintained Records Online throughout, while a parallel unplanned repository of materials accumulated on the old website.

Reliance on the previous website as an historical resource may have been a misguided, if widespread, practice. The challenges currently being faced were suggested to flow from the habit of users relying on web-based search engines to search for and locate potentially stale or incomplete materials on the web when Records Online was always the recommended and reliable archive. This was compounded by the habit of linking to website pages in reports, items, plans, articles and other materials rather than attaching referenced City documents in full.

In sum, through written responses and conversation we learned that adjusting to the realities of the new website would be less challenging if users had not been following poor practices all along. While not categorically stated, it appears that changing the website in response to challenges raised and fixes recommended is considered by staff to be either impossible, expensive, or otherwise not recommended. The only possible conclusion understood through these conversations is that users, not the website, need to adapt.

The City Manager and staff are open to finding ways to help with the process of adapting to the new database and search functions, and a productive conversation ensued. The results of that conversation are captured in the revised referrals, which encourage staff to continue with training and other measures already undertaken, and request consideration of a variety of other possible measures to support adaptation to a different search function and to broken links across the organization's materials, including within Councilmember work products.

### **EXPLANATION OF REFERRALS:**

#### **Referral #1:**

This referral thanks the City Manager and her team for consultation, and accepts the report.

#### **Referral #2:**

To ensure the public and all users are able to access documents proficient in use of Records Online, this item requests that the City Manager continue developing and implementing measures that support efficient and effective searching, sorting, and identification of responsive materials through Records Online.

Staff has already provided some training for Records Online, and is developing better written instructions including visual examples and screenshots. Staff may also consider creating one or more short informational videos and additional zoom/in-person training with real-time Q&A.

As noted above, staff will be requesting information from the Records Online vendor to determine if search functions can be upgraded.

#### **Referral #3**

To support authors and other users in the consistent use of "correct" attachment, reference, footnote and other protocols that formerly were achieved using links to the City website, the City Manager is requested to consider creating, posting, and disseminating a "style guide" with standards/conventions/protocols for accurately referencing and attaching City materials such that they can be linked to or easily

accessed in Records Online (or in a successor/alternative/supplemental program or database).

While staff was clear that the use of links to the City website - and to any materials found on the web - is not advisable, establishing common and effective protocols for “doing things right” will help all Records Online and website users fully, accurately, and consistently represent City materials when included as sources in footnotes and other references, or as attachments to other documents. It was noted that linking to materials on the new website is also not recommended, as these materials will be removed after a period of time and the only permanent, reliable record will be Records Online.

**Referral #4**

The City Manager very generously proposed making a clerk available through the City Manager’s office to assist Councilmembers in locating and re-establishing links/references to their own materials that were lost through the website transition. At this time, it is unclear how much utility various Council/Mayor offices would derive from such a service; the City Manager is requested to share the offer with all Council/Mayor offices to determine the scope of potential needs. A budget referral of up to \$50,000 is provided as a placeholder, pending the outcome of discussions with Council/Mayor offices to determine potential needs.

**Referral #5**

While not as specifically addressed in conversation with the City Manager, this referral requests that the City Manager consider updating key City plans, programs and reports by either recreating PDFs and linking to them or substituting broken links with footnotes/references in a standard format allowing referenced and attached materials to be quickly/directly located through Records Online.

**Referral #6**

During conversations with staff, it was discussed that a longer retention period of City Council, Committee, and Commission agendas, minutes, recordings, and other records on each body’s individual webpages might have been of better service to the public. However, the cost to restore the previous volume of listing was considered to be prohibitive. Going forward, it is requested that the City Manager retain these materials on the City Website for at least 4 years prior to their relocation solely to Records Online, to better comply with the City’s Open Government Ordinance (see below, and Attachment A).

## **WEBSITE FUNCTIONALITY AS A POLICY ISSUE**

Transparency and public access to government materials and decision making has long been a policy matter of significant concern to the Federal government as well as to State and local governments. At the State level, California's Brown Act and Public Records Act provide statewide guarantees of access to public meetings and documents. Transparency and open government are also clear, long standing Berkeley community and City values.

Berkeley's Open Government Ordinance, also known as the "Sunshine Ordinance," ensures that community members have access to public meetings and public documents. The Ordinance prescribes key roles for the City website in supporting transparency and access to public documents. A full copy of the Sunshine Ordinance is included with this memo as Attachment A.

Article IV, Section 2.16.180 of the Ordinance states that:

"All documents submitted to the City Council, including but not limited to, the Agenda and Agenda Packet, communications, and any documents submitted at a meeting of that body, shall be available through the City's website no later than the close of business the following business day after the meeting for which the documents were submitted."

No limitations, restrictions, expiration dates, or time periods are given to waive or reduce the requirement that Council materials be available through the City's website.

The Ordinance further enumerates in Section 2.06.140 records that must be available through the City's website, further establishing the website, including details as fine-grained as specific materials that must be accessible on the website, as integral to transparency, accountability, and access - all policy matters within the City Council's purview.

"The following shall be available through the City's website and shall be available in written form in the City Clerk Department:

- City Charter
- Berkeley Municipal Code
- General Plan and Area Plans
- Zoning Ordinance
- Landmarks Preservation Ordinance
- Citizen's Guide to Public Information Records Retention Schedule
- City Council Rules of Procedure
- Commissioner's Manual

Conflict of Interest Code  
Statements of Economic Interest for filers under GC 87200  
Agendas and Minutes of the meetings of all Legislative Bodies  
Index of Regional Bodies on which the City is represented and the City  
Representatives who serve on them

The same Section requires that:

“All communications from the City Manager and department heads to other agencies on behalf of the City shall be available through the City’s website at the same time they are provided to members of the City Council.”

Chapter IV, Section 2.06.160 addresses “Large document borrowing” and states:

“Large published documents produced by or on behalf of the City, such as City Budgets and environmental impact reports or statements prepared pursuant to the California Environmental Quality Act (CEQA) or the National Environmental Protection Act (NEPA), shall be available through the City’s website . . .”

As a final example, Chapter IV Section 2.06.170 address website technology directly:

“To provide for the accessibility of electronic information on the City’s website, the City shall:

1. Meet or exceed the guidelines for accessibility specified by the Federal General Services Administration pursuant to Section 508 of the Rehabilitation Act (29 U.S.C. 794d) as it may be amended from time to time.
2. When feasible within resource constraints, use open, non-proprietary, standards-based data formats on public facing information systems. When platform-specific formats must be used, provide an alternate format or a viewer to consume the file types.
3. Make audio and video available for both download and streaming using open, cross-platform, standards based formats, accessible by a broad range of computer operating systems and portable devices.
4. When feasible within resource constraints, avoid web content types that are not compatible across browsers (such as Flash).
5. Make substantive website changes trackable in an open, cross-platform, standards-based journal format (such as RSS).”



Though several portions of this Section are qualified by statements such as “when feasible” and/or “within resource constraints,” no such caveats apply to requirements for Council, Commission, and Large Documents to be available on the City Website.

It is unclear whether the new website meets all of the standards required in the Sunshine Act; regardless, what is clear is that the City’s website is central to policy issues of transparency, access, and good government. Further, the Sunshine Ordinance is very specific in its requirements of the City’s website, prescribing both the materials that must be posted to the website and the website’s functionality. Attention to this level of detail is integral to policies of transparency, access and good government.

Attachments

- A. Full Text of the City of Berkeley “Sunshine Ordinance,” Chapter 2.06 of the Berkeley Municipal Code
- B. Originally Submitted Item: Restoring and Improving Access to City of Berkeley Website and Archival Materials
- C. Screenshot of instructions for use of Records Online
- D. Documentation of challenges in Records Online search functionality

## **Chapter 2.06 OPEN GOVERNMENT**

Sections:

### **Article I. General Provisions**

- 2.06.010 Findings and purpose.**
- 2.06.020 Definitions.**
- 2.06.030 Severability.**
- 2.06.040 Implementation.**
- 2.06.050 No private cause of action.**

### **Article II. City Council Agenda Process**

- 2.06.060 City Council agenda process.**
- 2.06.070 Agenda Packet distribution.**

### **Article III. Conduct of City Council Meetings**

- 2.06.080 Number of meetings--Start time--Public hearings.**
- 2.06.090 Reports regarding regional bodies.**
- 2.06.100 Broadcast of meetings.**
- 2.06.110 Disclosure of ex parte contacts.**
- 2.06.120 Closed sessions and litigation.**
- 2.06.130 Presentation tools for the public.**

### **Article IV. Public Records**

- 2.06.140 Records available through the City's website.**
- 2.06.150 Contributions to the City.**
- 2.06.160 Large document borrowing.**
- 2.06.170 Technology standards.**
- 2.06.180 Posting of documents.**

### **Article V. Oversight**

- 2.06.190 Open Government Commission--Duties.**

## Article I. General Provisions

### 2.06.010 Findings and purpose.

- A. Democracy in our representative form of government requires that the public have an opportunity to understand the government's activities and to communicate its concerns to its elected and appointed representatives, and that those representatives have an adequate opportunity to consider those concerns and then act effectively and in a timely manner.
- B. To the extent these goals are sometimes in tension with each other in a given case, the government's obligation is to balance them responsibly, under the circumstances, in such a way that it is able to function and carry out its mission of ensuring the public's health, safety and general welfare in a fiscally and environmentally sustainable manner.
- C. Accordingly, the purpose of this ordinance is to codify certain existing practices, as well as to adopt new practices, to ensure that the public has an adequate opportunity to be informed of the City's activities and to communicate its concerns to its elected and appointed officials. (Ord. 7166-NS § 1 (part), 2011)

### 2.06.020 Definitions.

The following words and phrases shall have the meanings specified below.

- A. "Agenda" means a document that informs the public about a Meeting, published in advance of the Meeting which at a minimum (1) identifies the Legislative Body conducting the Meeting, (2) specifies the time and location of the Meeting, and (3) lists each item of business to be discussed or transacted and describes the proposed action for each such item.
- B. "Agenda Packet" means the Agenda of a particular Meeting with all its relevant Supporting Documents.
- C. "Closed Session" means a Meeting that begins with a public comment period, followed by a session that excludes the public as permitted by state law, and ends with an open session at which a public report is made as and to the extent required by state law.
- D. "Legislative Body" shall have the meaning set forth in Government Code sections [54950](#) through [54960](#), as they may be amended, or any successor sections.
- E. "Meeting" shall have the meaning set forth in Government Code sections [54950](#) through [54960](#), as they may be amended, or any successor sections.
- F. "Supporting Documents" means all documents, regardless of form or medium or author, that are provided to members of a Legislative Body for their use in considering Agenda items for a particular Meeting.
- G. "Brown Act" means Government Code sections [54950](#) et seq., as they may be amended from time to time.

H. "Public Records Act" means Government Code sections [6250](#) et seq., as they may be amended from time to time. (Ord. 7166-NS § 1 (part), 2011)

### **2.06.030 Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this ordinance, or any application thereof in any circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The Council of the City of Berkeley hereby declare that they would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional. (Ord. 7166-NS § 1 (part), 2011)

### **2.06.040 Implementation.**

The City Manager may promulgate regulations to implement this ordinance. (Ord. 7166-NS § 1 (part), 2011)

### **2.06.050 No private cause of action.**

Nothing in this chapter shall limit any person's right to seek a writ of mandate or other available administrative or judicial remedy. (Ord. 7166-NS § 1 (part), 2011)

## **Article II. City Council Agenda Process**

### **2.06.060 City Council agenda process.**

- A. The City Council Agenda Committee shall meet 15 days prior to each City Council meeting and shall determine the agenda of that City Council meeting. After the conclusion of the Agenda Committee meeting, an item may be added to the Agenda only by the City Council as a whole at a duly noticed meeting that occurs after the Agenda Committee meeting.
- B. The Agenda Committee packet, including a draft agenda and Councilmember and Commission reports shall be distributed by 5:00 p.m. 4 days before the Agenda Committee meeting.
- C. The City Council Agenda Packet shall be distributed no later than 5:00 p.m. 11 days before the scheduled City Council meeting.

D. The powers of the Agenda Committee shall be as set forth in Rules of Procedure adopted by the City Council. The Rules of Procedure may allow for the addition of time-critical items at the Agenda Committee meeting provided they are accompanied by complete reports and statements of financial implications. (Ord. 7166-NS § 1 (part), 2011)

### **2.06.070 Agenda Packet distribution.**

- A. The Agenda Packet shall consist of the Agenda and all supporting documents for the agenda items.
- B. No later than 11 days prior to a regular Meeting, the City Clerk shall:
1. Distribute the Agenda Packet to each member of the City Council;
  2. Post the Agenda Packet to the City's website;
  3. Place copies of the Agenda Packet in viewing binders in the office of the City Clerk and in the main branch of the Berkeley Public Library;
  4. Mail copies of the Agenda to any resident of the City of Berkeley who so requests in writing; and
  5. Make copies of the Agenda available free of charge in the City Clerk Department.
- C. Failure to post the Agenda Packet to the City's website shall not be a basis for cancelling a City Council meeting.
- D. The City Clerk may not accept any agenda item or revised agenda item after the established deadlines, except for items carried over by the City Council from a prior City Council meeting occurring less than 11 days earlier, which may include supplemental or revised reports.
- E. No item may be considered unless it is included in the Agenda Packet except that a correction or supplement to an item already included in the Agenda Packet may be considered, if either:
1. the City Council, by a two-thirds roll call vote, determines that the good of the City clearly outweighs the lack of time for citizen review or City Council member evaluation of an item; or
  2. the correction or supplement to an item is posted on the City's website with the City Council agendas no later than either:
    - (a) 5:00 p.m. on the fifth calendar day prior to the City Council meeting at which it is to be considered; or
    - (b) 5:00 p.m. on the day prior to the City Council meeting at which it is to be considered, subject to the receipt of the correction or supplement by the City Clerk by noon on the day prior to the City Council meeting for distribution at the meeting.

Reports carried over as Old Business need not be reproduced again.

F. Matters not included on the published Agenda may be discussed and acted upon only if and to the extent authorized by the Brown Act, specifically Government Code section [54954.2\(b\)](#) as it may be amended from time to time. (Ord. 7588-NS § 1, 2018; Ord. 7473-NS § 1, 2016; Ord. 7396-NS § 1, 2015; Ord. 7257-NS § 1, 2012; Ord. 7166-NS § 1 (part), 2011)

### **Article III. Conduct of City Council Meetings**

#### **2.06.080 Number of meetings--Start time--Public hearings.**

- A. The City Council shall hold a minimum of twenty-four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.
- B. Regular City Council meetings shall begin no later than 7:00 p.m.
- C. Except at meetings at which the budget is to be adopted, no public hearing may commence later than 10:00 p.m. unless there is a legal necessity to hold the hearing or make a decision at that meeting or the City Council determines by a two-thirds vote that there is a fiscal necessity to hold the hearing. (Ord. 7166-NS § 1 (part), 2011)

#### **2.06.090 Reports regarding regional bodies.**

Councilmembers who represent the City on regional bodies and commissions shall provide to the City Council and the public a report that briefly summarizes the discussion and any action on any item that affects the City of Berkeley subject to the following provisions:

- A. If the webpage containing the Agendas and Minutes of the Regional Body is directly linked from the City of Berkeley web site, no additional report from the Councilmember is required.
- B. If the Agendas and Minutes of the Regional Body are not linked as described in paragraph A., the Councilmember must submit the required summary report to the Council agenda process no later than 15 days after the minutes of the Regional Body meeting have been approved and the report will appear on the next available Council agenda. Such reports shall state where additional information about the issues summarized may be obtained. (Ord. 7395-NS § 1, 2015; Ord. 7166-NS § 1 (part), 2011)

#### **2.06.100 Broadcast of meetings.**

- A. All regular and special meetings of the City Council, Redevelopment Agency, Rent Stabilization Board, and Zoning Adjustments Board, when held in the venue regularly used, shall be recorded, televised and video-streamed live as well as archived for replay. The live broadcasts shall be captioned.

B. It is the intent of the City to broadcast the meetings of the Planning Commission, Landmarks Preservation Commission, and Housing Advisory Commission, in the same manner as specified in paragraph A, as City resources become available.

C. The broadcast requirements shall not apply if necessary equipment malfunctions or if a public meeting is changed to a location that does not have the technological capacity to accommodate the broadcasting needs. (Ord. 7166-NS § 1 (part), 2011)

### **2.06.110 Disclosure of ex parte contacts.**

Whenever a Legislative Body holds a public hearing on a zoning, landmarks, subdivision or other adjudicative matter, following any staff presentation, each member of the Legislative Body shall verbally disclose all ex parte contacts concerning the subject of the hearing. Members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Such reports shall include a brief statement describing the name, date, place, and content of the contact. Written reports shall be available for public review in the office of the secretary to the Legislative Body prior to the Meeting and placed in a file available for public viewing at the Meeting. (Ord. 7166-NS § 1 (part), 2011)

### **2.06.120 Closed sessions and litigation.**

A. Before any Closed Session, a Legislative Body shall meet in open session for the purpose of taking public comment solely on the subject(s) of the Closed Session.

B. Any member of a Legislative Body attending a Closed Session by teleconferencing is required to state at the beginning and end of the Closed Session that they are participating with no other person present and to file a signed statement to that effect under penalty of perjury, except that if a member of a Legislative Body is disabled and needs assistance to participate in a Closed Session, the City shall provide a staff assistant who is authorized to attend the Closed Session. Any specialized attendant or assistant, whom a disabled Council Member needs to have present in order to participate fully in the Closed Session shall be allowed to attend the Closed Session.

C. Immediately following the end of the Closed Session, the Legislative Body shall make a report in open session describing any final action taken as required by state law, as well as any other matter or statement the City Council decides to make. If the Closed Session is not followed the same day by a regular meeting of the Legislative Body, the report shall also be made at the next regular meeting.

D. The location of reports to the public after a Closed Session has ended shall be in a venue that is open to the public, and where practicable, one that supports video transmission, audio, and video-streaming.

E. Any report on final approvals taken in Closed Session shall be posted no later than the end of the following business day to the City's website.

F. When litigation involving the City is finally adjudicated or otherwise settled, the text and terms of any settlement shall be subject to disclosure. No attorney representing the City shall solicit or agree to any settlement

provision that would restrict disclosure of terms or communications between each party after settlement and any such provision shall be void.

G. When settlements are authorized by the City Council at a Closed Session but are not reported out immediately following the end of the Closed Session, the City Attorney shall prepare an information item for the City Council Agenda promptly upon execution of the settlement, which shall include a copy of any settlement agreement. (Ord. 7166-NS § 1 (part), 2011)

### **2.06.130 Presentation tools for the public.**

Members of the public may use City equipment for audio/visual presentations for items on the meeting agenda of the City Council if the presentation is provided to the City Clerk no later than seven (7) days before the meeting, or five (5) days before for items carried over from a meeting that occurred the week immediately prior. Requests for presentation tools are subject to reasonable availability of any equipment that the proposed presentation would require. Presentations from the public shall comply with the time limits set forth in the City Council Rules of Procedure. (Ord. 7166-NS § 1 (part), 2011)

## **Article IV. Public Records**

### **2.06.140 Records available through the City's website.**

A. The following shall be available through the City's website and shall be available in written form in the City Clerk Department:

City Charter

Berkeley Municipal Code

General Plan and Area Plans

Zoning Ordinance

Landmarks Preservation Ordinance

Citizen's Guide to Public Information

Records Retention Schedule

City Council Rules of Procedure

Commissioner's Manual

Conflict of Interest Code



Statements of Economic Interest for filers under GC 87200

Agendas and Minutes of the meetings of all Legislative Bodies

Index of Regional Bodies on which the City is represented and the City Representatives who serve on them

B. All communications from the City Manager and department heads to other agencies on behalf of the City shall be available through the City's website at the same time they are provided to members of the City Council. (Ord. 7166-NS § 1 (part), 2011)

### **2.06.150 Contributions to the City.**

Any gift of funds, goods, or services worth more than \$1000 in aggregate, which may be accepted or collected by the City or any of its functionaries or Legislative Bodies, for the purpose of carrying out or assisting any City function, shall be disclosed and approved on the Agenda of a regular Meeting of the City Council. (Ord. 7166-NS § 1 (part), 2011)

### **2.06.160 Large document borrowing.**

Large published documents produced by or on behalf of the City, such as City Budgets and environmental impact reports or statements prepared pursuant to the California Environmental Quality Act (CEQA) or the National Environmental Protection Act (NEPA), shall be available through the City's website and made available at designated City offices with copies available for borrowing by the public at the Berkeley Central Public Library. (Ord. 7166-NS § 1 (part), 2011)

### **2.06.170 Technology standards.**

A. To provide for the accessibility of electronic information on the City's website, the City shall:

1. Meet or exceed the guidelines for accessibility specified by the Federal General Services Administration pursuant to Section 508 of the Rehabilitation Act ([29 U.S.C. 794d](#)) as it may be amended from time to time.
2. When feasible within resource constraints, use open, non-proprietary, standards-based data formats on public facing information systems. When platform-specific formats must be used, provide an alternate format or a viewer to consume the file types.
3. Make audio and video available for both download and streaming using open, cross-platform, standards-based formats, accessible by a broad range of computer operating systems and portable devices.
4. When feasible within resource constraints, avoid web content types that are not compatible across browsers (such as Flash).

5. Make substantive website changes trackable in an open, cross-platform, standards-based journal format (such as RSS).
- B. Nothing in this Section shall require programming a computer to respond to a request for information or to release information that would violate a licensing agreement or copyright law. (Ord. 7166-NS § 1 (part), 2011)

### **2.06.180 Posting of documents.**

All documents submitted to the City Council, including but not limited to, the Agenda and Agenda Packet, communications, and any documents submitted at a meeting of that body, shall be available through the City's website no later than the close of business the following business day after the meeting for which the documents were submitted. (Ord. 7166-NS § 1 (part), 2011)

## **Article V. Oversight**

### **2.06.190 Open Government Commission--Duties.**

A) There is hereby created the Open Government Commission, which shall have authority for oversight of this Chapter and Chapter [2.09](#), the Lobbyist Registration Act, as set forth in this Section. The Open Government Commission shall consist of the members of the Berkeley Fair Campaign Practices Commission established by Berkeley Municipal Code section [2.12.170](#) who shall be ex officio members of the Open Government Commission.

- 1) The Open Government Commission shall:
  - a) hear complaints by any person concerning alleged non-compliance with this Ordinance, the Brown Act, the Public Records Act, or the Lobbyist Registration Act, by the City or any of its legislative bodies, elected or appointed officials, officers or employees;
  - b) consider ways to informally resolve those complaints and make recommendations to the Council regarding such complaints;
  - c) seek advice from the City Attorney concerning those complaints;
  - d) advise the City Council of its opinion, conclusion or recommendation as to any complaint; and
  - e) take any action authorized by the Lobbyist Registration Act under Chapter [2.09](#).

To be considered by the Open Government Commission, complaints shall be submitted in writing using a form provided by the City, and must be submitted to the Secretary of the Commission no less than 14 days prior to the Commission meeting at which it will be considered.

- 2) In addition, the Commission may advise the City Council concerning the report prepared pursuant to subdivision [\(C\)](#), propose additional legislation or procedures that it deems advisable to ensure the City's

compliance with this Ordinance, the Brown Act, the Public Records Act, and the Lobbyist Registration Act, and advise the City Council as to any other action or policy that it deems advisable to enhance open and effective government in Berkeley.

B) The power and authority of the Open Government Commission with respect to oversight of this Chapter shall be limited to the functions set forth in this Section, and the Commission shall not have any of the additional authority or powers set forth in Chapter [2.12](#) with respect to oversight or enforcement of this Chapter.

C) Each year, the City Manager shall prepare and submit to the Open Government Commission a report that contains at least the following information:

- 1) The number of Public Records Act requests received by the City;
- 2) The average length of time taken to respond to those requests;
- 3) The approximate number of pages produced in response to those requests;
- 4) The number and resolution of all written complaints received by the City concerning its compliance with the Public Records Act with respect to such requests;
- 5) The number and resolution of all complaints received by the City concerning its compliance with the Brown Act; and
- 6) Any other information the City Manager deems appropriate that relates to the City's compliance with this Ordinance, the Brown Act, the Public Records Act, the Lobbyist Registration Act, or open and effective government in Berkeley.

D) Notwithstanding anything to the contrary in Section [2.04.075](#) or Chapter [3.02](#), the appointment and tenure of members of the Commission shall be governed by Chapter [2.12](#). (Ord. 7629-NS § 2, 2018; Ord. 7166-NS § 1 (part), 2011)

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**The Berkeley Municipal Code is current through Ordinance 7812-NS, passed May 24, 2022.**

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

**Note:** This site does not support Internet Explorer. To view this site, Code Publishing Company recommends using one of the following browsers: Google Chrome, Firefox, or Safari.

[City Website: www.berkeleyca.gov](http://www.berkeleyca.gov)

[Code Publishing Company](#)



**Sophie Hahn**  
**Councilmember**  
**District 5**

ACTION CALENDAR

July 26, 2022

*(Continued from July 12, 2022)*

To: Honorable Mayor and Members of the City Council

From: Councilmember Sophie Hahn (Author), Councilmembers Terry Taplin, Ben Bartlett and Kate Harrison (Co-Sponsors)

Subject: Restoring and Improving Access to City of Berkeley Website and Archival Materials

RECOMMENDATION

Direct the City Manager to:

1. Restore at previous URLs all PDF documents previously hosted on the City of Berkeley website.
2. Create a publicly accessible archival copy of the City's previous website, CityofBerkeley.info, that can be accessed without logins and via internet search engines. Include a prominent disclaimer noting the date the website, page, or document was archived, with links redirecting to the active website or other responsive resource.
3. On the new website, update Commission pages to include a minimum of 2 years of historic agendas and other materials and update City Council and Council Committee pages to include at least 3 years of complete materials.
4. By July 15, 2022 develop and make available to all City staff and to the public training at beginner to expert levels on use of the City's Records Online search function and create more extensive and less technical self-help resources covering basic and expert use.
5. In recognition of increased public traffic, update the Records Online homepage to explain how the portal works and link to more robust self-help resources and alternative search functions.
6. Coordinate with agency staff to include all relevant records (agendas, minutes, etc.) from Rent Board and Housing Authority in Records Online Portal.

7. Update any remaining 404 pages to explain that the City's website has been moved/updated, and provide links to helpful pages, search functions and/or pathways to access responsive materials. As quickly as possible, consider implementing redirects with wildcards to direct as many old links to relevant new website pages in lieu of the standard 404 page. E.g. cityofberkeley.info/planning\* to the Planning Department site map/homepage, or Department Specific 404 page explaining new navigation.

Refer to the City Manager the following additional improvements to Records Online:

1. Within Records Online, provide unique archival/search categories for each City Commission, Board, Committee and Rent Board, and consider other useful categories, to assist users in narrowing results and identifying responsive materials.
2. Allow Records Online search *results* to be sorted by date and by other searchable factors. Consider means to integrate records online into default site search bar.
3. Explore and report back to Council options for improving the scope of Records Online, improving search options and sorting, and making all materials – or materials from January 1, 2000 (or an earlier recommended date) forward, searchable using internet search engines.

### BACKGROUND

The recently launched new City Website has brought many important improvements, in particular with respect to customer/resident services. It's much easier for users to find help with important functions such as requesting a service, reporting a pothole, or paying a bill, and to learn about public-facing services and facilities. It also includes well-organized foundational information about City departments and special projects. All of this represents a huge improvement for these users and uses.

The new website's utility as a resource and archive for specialized or in-depth records and materials, however, has been severely hobbled. Staff has reported that over 15,000 pages were consolidated into 500, in an attempt to focus the website on a particular and important user experience. Unfortunately, other functionalities were severely reduced and users who have long relied on the website to access a broad range of important materials have limited opportunities to search for and find responsive documents.

Another consequence of removing the City's "old" website is that all links in plans such as the Bicycle, Pedestrian, and Vision Zero Plans, Area Plans, the SOSIP Plan, the Climate Action Plan, Electric Mobility Plan - and all other Plans generated prior to launch of the new website - are broken. Links in every item, memorandum, study,

regulation, footnote, press release, health order, or other document or statement generated by the City prior to launch of the new website are also dead.

Materials previously accessible via simple search engine queries are no longer accessible, except via an “old school” portal that requires time and expertise to navigate. Unlike 21st Century search engines, Records Online works best when a user knows exactly what they are looking for, including the title and date a document or topic was generated, severely limiting its utility. Broader searches generate voluminous results that cannot be easily browsed, adding significant time to locate materials that previously could be identified instantaneously. For members of the public curious about a City topic or policy, and in particular for staff and Council Members involved in research or writing memos, policies, programs, plans, and other in depth items, the extra time involved searching for responsive documents can add up to hours, and important documents are likely to be missed.

Compounding this problem, website pages that previously linked to years’ worth of archived documents, press releases, memos, regulations, plans and similar materials either no longer exist, or contain only shallow archives. As a result, a veritable trove of documents and reports important to understanding the history and current status of the City and its programs and policies, while technically still available via expert use of Records Online, are functionally beyond reach.

Addressing the loss of critical transparency and functionality with closure of the City’s previous website requires urgent action. This item requires both interim and long term solutions to be implemented on an expedited basis.

#### FINANCIAL IMPLICATIONS

Significant reduction in staff time across the organization chasing broken links and searching for materials in Records Online. Staff time to implement requested changes and research additional solutions.

#### CURRENT SITUATION AND ITS EFFECTS

The updated website presents significant challenges for important users and uses. Members of the public, staff, and elected officials are no longer able to reliably locate or navigate current and historic materials. Critical transparency is vastly decreased, and user time across the City and among members of the public is increased, rendering both work and public participation more difficult and time consuming.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

N/A

CONTACT PERSON

Councilmember Sophie Hahn      Council District 5      510-981-7150

**ATTACHMENT C:**


**SCREENSHOT OF INSTRUCTIONS FOR USE OF RECORDS ONLINE**



## Welcome to the City of Berkeley's Records Online

Records Online contains Election information, Ordinances, Resolutions, Staff Reports, Meeting Minutes, Contracts, Communications and other City documents. Review the [date ranges](#) of specific document types found in Records Online.

**Search Tips and Instructions:**

1. For all date fields, the proper search format is **mm/dd/yyyy**.
2. A "**full text**" query locates a specified search term in the record. The search term can be combined with other data fields associated with the document type.
3. A "**keywords**" query searches in the specified data fields associated with the document type.
4. \*Asterisks\* around a search term find that term where it is part of the data field (e.g. \*parking\* or \*signs\* or \*sidewalk\*).
5. Narrow your search as much as possible by choosing the correct record category (ordinance, contracts, etc.)
6. For full-text queries, you may use the following search tools: Exact Phrase: "term1 term2"; Boolean: term1 AND term2 OR term3 NOT term4; Soundex: S{term}; Fuzzy: F{term}; Near: N#{term1, term2}
7. To open a document in a new window, click the  icon.

For assistance in using Records Online, contact the [City Clerk Department](#)



**Exercise:** searching Records Online

**Focus:** BMASP Off-Agenda from December 13, 2018 (below)

**Results:** 10 attempts. All unsuccessful. Document not found.

*The document being searched for:*



City Manager's Office

December 13, 2018

To: Honorable Mayor and Members of the City Council

From:  Dee Williams-Ridley, City Manager

Re: Waterfront / Marina Fund Update

**SUMMARY**

The Marina Enterprise Fund – the mechanism for managing all Waterfront revenues and expenditures – cannot support ongoing basic operating costs and overdue maintenance. The fund has annual revenues of approximately \$6.2 million and annual expenditures of approximately \$7.2 million. Years of deferred maintenance have yielded an estimated \$106 million in Marina infrastructure needs, \$10.33 million of which are for immediate concerns. This report updates the Council on the projected insolvency of the Marina Fund, the contributing factors, and potential solutions as we approach the next budget cycle. This report builds on previous reports regarding this issue over the last year<sup>1</sup> and two decades of reports dating back to 1999 documenting a long history of the Marina Fund revenues struggling to cover basic operating costs, leaving little to no room for capital or maintenance work.<sup>2</sup>

Recent safety issues and deteriorating infrastructure have accelerated a fiscal crisis at the Waterfront. There have been sharp declines in berth rental revenue as boat owners have left the Berkeley Marina. Berth occupancy rates declined from 85% in 2016 to 79% in 2018. Lease revenue also fell, with revenue from the Doubletree Hotel down more than 4% in FY18 over the prior year. At the same time, long-deferred infrastructure repairs are rapidly increasing expenditures as pilings, docks, building systems, parking lots and street paving begin to fail.

The combination of falling revenue and increasing expenditure have strained the relatively small Marina Fund to a breaking point:

<sup>1</sup> [July 1, 2018: Off-Agenda Report](#); May 8, 2018: [Worksession Report](#) and [Budget Report: April 12, 2018: Off-Agenda Report; November 7, 2017: Worksession Report](#)

<sup>2</sup> See Council Minutes, Item 38, 11/9/99; Marina Master Plan, 6/1/03, p.61; FY 2006 & FY 2007 Biennial Budget Update – First Quarter, 12/13/05, p.10; Fees: Marina Fee Increases for FY 2007, 6/20/06, p.1; FY 2009 Mid-biennial Budget Update - Pres, 5/6/08, see Slide 21; Fees: Marina Fee Increases for FY 2012, 5/17/11, p.2; Parks, Recreation and Waterfront Department Budget Presentation, 3/5/13, p. 8; Parks, Recreation and Waterfront Department Budget Presentation, 3/5/13, p. 6; Marina Fee Increases, 5/26/15, p.2.

# Search space: All Records Query (Full Text)

## Search Term: waterfront / marina fund update

### Date Range: 11/01/2018 to 12/18/2018

*Search #1 - Begin with wide date range, November through December 2018  
Use exact wording of document subject: waterfront / marina fund update*



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### Search Tips and Instructions:

1. For all date fields, the proper search format is **mm/dd/yyyy**.
2. A **"full text"** query locates a specified search term in the record. The search term can be combined with other data fields associated with the document type.
3. A **"keywords"** query searches in the specified data fields associated with the document type.
4. **"Asterisks"** around a search term find that term where it is part of the data field (e.g. "parking" or "signs" or "sidewalk").
5. Narrow your search as much as possible by choosing the correct record category (ordinance, contracts, etc.)
6. For full-text queries, you may use the following search tools: Exact Phrase: "term1 term2"; Boolean: term1 AND term2 OR term3 NOT term4; Soundex: S{term}; Fuzzy: F{term}; Near: N#{term1, term2}
7. To open a document in a new window, click the icon.

For assistance in using Records Online, contact the [City Clerk Department](#)

### Search

**Search Type**

Public - All Records Query (Full Text)

Search for documents by entering a search term and any other fields, then click Search.

**Search Term**

waterfront / marina fund update

**From Date** 11/01/2018 **To Date** 12/18/2018

[Search](#) [Reset](#)

### Results

| Sc... | Name                                                                                                                                 |
|-------|--------------------------------------------------------------------------------------------------------------------------------------|
|       | 83.3 11/15/2018; CLK - Communication; Public; ; SPECIAL; Communications                                                              |
|       | 83.3 11/27/2018; CLK - Communication; Public; ; REGULAR; Communications                                                              |
|       | 82.29 11/15/2018; CLK - Agenda Packet (Public); Parks Recreation and Waterfront; ; SPECIAL; Parks, Recreation & Waterfront Dep       |
|       | 79.39 12/6/2018; CLK - Agenda Packet (Public); Parks Recreation and Waterfront; ; SPECIAL; Semi-Annual Report on Measure T1 C        |
|       | 79.11 12/6/2018; CLK - Communication; Public; ; SPECIAL; Supplemental Communications 3                                               |
|       | 78.57 12/4/2018; CLK - Agenda Packet (Public); City Clerk; ; REGULAR; City Council Referral Process - 2018 Interim Update            |
|       | 70.38 12/6/2018; CLK - Agenda Packet (Public); City Manager; ; SPECIAL; Update on the Berkeley Strategic Plan                        |
|       | 63.28 11/27/2018; CLK - Agenda Packet (Public); City Manager; ; REGULAR; FY 2018 Year-End Results and FY 2019 First Quarter I        |
|       | 63.01 11/27/2018; CLK - Agenda Packet (Public); Parks Recreation and Waterfront; ; REGULAR; Contract No. 10217 Amendment: T          |
|       | 62.84 11/27/2018; CLK - Minutes; City Council; ; REGULAR;                                                                            |
|       | 62.67 CLK - Voter Information Pamphlet for General 11/6/2018                                                                         |
|       | 62.67 11/13/2018; CLK - Agenda Packet (Public); Finance; ; REGULAR; Contract No. 9821 Amendment: First Alarm Security & Patr         |
|       | 62.67 12/11/2018; CLK - Agenda Packet (Public); City Clerk; ; REGULAR; Confirming the Results of the November 6, 2018, General       |
|       | 62.67 12/11/2018; CLK - Resolution; City Council; 68704; ; To achieve more resilient and climate-smart, technologically advanced inf |
|       | 62.47 12/11/2018; CLK - Agenda Packet (Public); Public Works; ; REGULAR; Contract: Disability Access Consultants for ADA Self E      |
|       | 62.37 11/27/2018; CLK - Agenda Packet (Public); City Clerk; ; REGULAR; Minutes for Approval                                          |
|       | 61.38 12/5/2018; CLK - Minutes; Energy Commission; ; ;                                                                               |
|       | 60.32 11/15/2018; CLK - Agenda Packet (Public); Public Works; ; SPECIAL; Update on Department of Public Works Capital Improver       |
|       | 59.8 12/11/2018; CLK - Resolution; City Council; 68713; ; Contract: Disability Access Consultants for ADA Self Evaluation and Tran   |
|       | 55.7 12/6/2018; CLK - Agenda Packet (Public); Parks Recreation and Waterfront; ; SPECIAL; Semi-Annual Report on Measure T1 C         |
|       | 55.38 11/13/2018; CLK - Agenda Packet (Public); City Clerk; ; REGULAR; Revised Records Retention Schedule                            |
|       | 55.02 11/13/2018; CLK - Resolution; City Council; 68661; ; Revised Records Retention Schedule                                        |
|       | 54.56 12/11/2018; CLK - Agenda Packet (Public); District 4; ; REGULAR; Referral to City Manager to establish Recreational Vehicle \  |

*Search #2 - Same search term. Narrow the date range to December 2018.*



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3. A "**keywords**" query searches in the specified data fields associated with the document type.
4. \*Asterisks\* around a search term find that term where it is part of the data field (e.g. \*parking\* or \*signs\* or \*sidewalk\*).
5. Narrow your search as much as possible by choosing the correct record category (ordinance, contracts, etc.)
6. For full-text queries, you may use the following search tools: Exact Phrase: "term1 term2"; Boolean: term1 AND term2 OR term3 NOT term4; Soundex: S(term); Fuzzy: F(term); Near: N#(term1, term2)
7. To open a document in a new window, click the icon.

For assistance in using Records Online, contact the [City Clerk Department](#)

Search

**Search Type**  
 Public - All Records Query (Full Text) ▼

Search for documents by entering a search term and any other fields, then click Search.

**Search Term**

**From Date**  **To Date**

Results

| Sc... | Name                                                                                                                            |
|-------|---------------------------------------------------------------------------------------------------------------------------------|
| 79.39 | 12/6/2018; CLK - Agenda Packet (Public); Parks Recreation and Waterfront; ; SPECIAL; Semi-Annual Report on Measure T1 C         |
| 79.11 | 12/6/2018; CLK - Communication; Public; ; SPECIAL; Supplemental Communications 3                                                |
| 78.57 | 12/4/2018; CLK - Agenda Packet (Public); City Clerk; ; REGULAR; City Council Referral Process - 2018 Interim Update             |
| 70.38 | 12/6/2018; CLK - Agenda Packet (Public); City Manager; ; SPECIAL; Update on the Berkeley Strategic Plan                         |
| 62.67 | 12/11/2018; CLK - Agenda Packet (Public); City Clerk; ; REGULAR; Confirming the Results of the November 6, 2018, General I      |
| 62.67 | 12/11/2018; CLK - Resolution; City Council; 68704; ; To achieve more resilient and climate-smart, technologically advanced infr |
| 62.47 | 12/11/2018; CLK - Agenda Packet (Public); Public Works; ; REGULAR; Contract: Disability Access Consultants for ADA Self Ev      |
| 61.38 | 12/5/2018; CLK - Minutes; Energy Commission; ; ;                                                                                |
| 59.8  | 12/11/2018; CLK - Resolution; City Council; 68713; ; Contract: Disability Access Consultants for ADA Self Evaluation and Trans  |
| 55.7  | 12/6/2018; CLK - Agenda Packet (Public); Parks Recreation and Waterfront; ; SPECIAL; Semi-Annual Report on Measure T1 C         |
| 54.56 | 12/11/2018; CLK - Agenda Packet (Public); District 4; ; REGULAR; Referral to City Manager to establish Recreational Vehicle V   |
| 54.24 | 12/6/2018; CLK - Agenda Packet (Public); Planning and Development; ; SPECIAL; Climate Action Plan Update                        |
| 53.99 | 12/11/2018; CLK - Agenda Packet (Public); Mayor; ; REGULAR; Establishment of Traffic Circle Policy Task Force                   |
| 53.99 | 12/11/2018; CLK - Minutes; City Council; ; REGULAR;                                                                             |
| 53.92 | 12/4/2018; CLK - Agenda Packet (Public); Planning and Development; ; REGULAR; Referral Response: Reclassifying the zonin        |
| 53.92 | 12/4/2018; CLK - Communication; Public; ; REGULAR; Supplemental Communications 3                                                |
| 53.92 | 12/11/2018; CLK - Agenda Packet (Public); Planning and Development; ; REGULAR; Referral Response: Reclassifying the zon         |
| 53.92 | 12/11/2018; CLK - Resolution; City Council; 68724; ; Referral Response: Reclassifying the Zoning and Amending the Berkeley      |
| 53.92 | EXPENDITURE Contract - # 9674C - Date Executed: 12/14/2018 - Direct Line Tele Response - After hours answering services         |
| 53.85 | 12/6/2018; CLK - Minutes; City Council; ; SPECIAL;                                                                              |
| 53.67 | 12/11/2018; CLK - Agenda Packet (Public); Mayor; ; REGULAR; Establishment of Traffic Circle Policy Task Force - Supp            |
| 53.67 | 12/11/2018; CLK - Communication; Public; ; REGULAR; Supplemental Communications 2                                               |
| 53.17 | 12/11/2018; CLK - Agenda Packet (Public); Zero Waste Commission; ; REGULAR; Referral Response: Berkeley Single Use Fo           |

## Search #3 – Update search term to use double quotes to restrict to exact phrase. Still constrained to December 2018



### Welcome to the City of Berkeley's Records Online

Records Online contains Election information, Ordinances, Resolutions, Staff Reports, Meeting Minutes, Contracts, Communications and other City documents. Review the [date ranges](#) of specific document types found in Records Online.

#### Search Tips and Instructions:

1. For all date fields, the proper search format is **mm/dd/yyyy**.
2. A **"full text"** query locates a specified search term in the record. The search term can be combined with other data fields associated with the document type.
3. A **"keywords"** query searches in the specified data fields associated with the document type.
4. **"Asterisks"** around a search term find that term where it is part of the data field (e.g. "parking" or "signs" or "sidewalk").
5. Narrow your search as much as possible by choosing the correct record category (ordinance, contracts, etc.)
6. For full-text queries, you may use the following search tools: Exact Phrase: "term1 term2"; Boolean: term1 AND term2 OR term3 NOT term4; Soundex: S{term}; Fuzzy: F{term}; Near: N#{term1, term2}
7. To open a document in a new window, click the icon.

For assistance in using Records Online, contact the [City Clerk Department](#)

#### Search

**Search Type**

Public – All Records Query (Full Text)

Search for documents by entering a search term and any other fields, then click Search.

**Search Term**

"waterfront / marina fund update"

**From Date** 12/01/2018 **To Date** 12/31/2018

#### Results

No documents found.

*Search #4 – Remove the spaces on both sides of forward-slash. Keep double quotes. Still constrained to December 2018*



## Welcome to the City of Berkeley's Records Online

Records Online contains Election information, Ordinances, Resolutions, Staff Reports, Meeting Minutes, Contracts, Communications and other City documents. Review the [date ranges](#) of specific document types found in Records Online.

### Search Tips and Instructions:

1. For all date fields, the proper search format is **mm/dd/yyyy**.
2. A **"full text"** query locates a specified search term in the record. The search term can be combined with other data fields associated with the document type.
3. A **"keywords"** query searches in the specified data fields associated with the document type.
4. **"Asterisks"** around a search term find that term where it is part of the data field (e.g. "parking" or "signs" or "sidewalk").
5. Narrow your search as much as possible by choosing the correct record category (ordinance, contracts, etc.)
6. For full-text queries, you may use the following search tools: Exact Phrase: "term1 term2"; Boolean: term1 AND term2 OR term3 NOT term4; Soundex: S{term}; Fuzzy: F{term}; Near: N#{term1, term2}
7. To open a document in a new window, click the icon.

For assistance in using Records Online, contact the [City Clerk Department](#)

### Search

**Search Type**

Public – All Records Query (Full Text)

Search for documents by entering a search term and any other fields, then click Search.

### Search Term

"waterfront/marina fund update"

### From Date

12/01/2018

### To Date

12/31/2018

Search

Reset

### Results

No documents found.

## Search #5 - Try new search term: off-agenda



### Welcome to the City of Berkeley's Records Online

Records Online contains Election information, Ordinances, Resolutions, Staff Reports, Meeting Minutes, Contracts, Communications and other City documents. Review the [date ranges](#) of specific document types found in Records Online.

#### Search Tips and Instructions:

1. For all date fields, the proper search format is **mm/dd/yyyy**.
2. A **"full text"** query locates a specified search term in the record. The search term can be combined with other data fields associated with the document type.
3. A **"keywords"** query searches in the specified data fields associated with the document type.
4. **"Asterisks"** around a search term find that term where it is part of the data field (e.g. \*parking\* or \*signs\* or \*sidewalk\*).
5. Narrow your search as much as possible by choosing the correct record category (ordinance, contracts, etc.)
6. For full-text queries, you may use the following search tools: Exact Phrase: "term1 term2"; Boolean: term1 AND term2 OR term3 NOT term4; Soundex: S(term); Fuzzy: F(term); Near: N#(term1, term2)
7. To open a document in a new window, click the icon.

For assistance in using Records Online, contact the [City Clerk Department](#)

#### Search

**Search Type**

Public - All Records Query (Full Text)

Search for documents by entering a search term and any other fields, then click Search.

**Search Term**

off-agenda

**From Date** 11/01/2018 **To Date** 12/18/2018

[Search](#) [Reset](#)

#### Results

| Sc...                 | Name                                                                                                                       |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------|
| <a href="#">79.36</a> | 12/4/2018; CLK - Agenda Packet (Public); City Clerk; ; REGULAR; City Council Referral Process - 2018 Interim Update        |
| <a href="#">78.16</a> | 11/15/2018; CLK - Agenda Packet (Public); Parks Recreation and Waterfront; ; SPECIAL; Parks, Recreation & Waterfront Dep   |
| <a href="#">77.98</a> | 12/4/2018; CLK - Agenda Packet (Public); City Clerk; ; REGULAR; City Council Short Term Referral Process - Monthly Update  |
| <a href="#">77.26</a> | 11/15/2018; CLK - Communication; Public; ; SPECIAL; Communications                                                         |
| <a href="#">77.26</a> | 11/27/2018; CLK - Communication; Public; ; REGULAR; Communications                                                         |
| <a href="#">61.04</a> | 11/1/2018; CLK - Minutes; Landmarks Preservation Commission; ; ;                                                           |
| <a href="#">61.04</a> | 12/4/2018; CLK - Minutes; City Council; ; REGULAR;                                                                         |
| <a href="#">60.42</a> | 12/6/2018; CLK - Minutes; Landmarks Preservation Commission; ; ;                                                           |
| <a href="#">60.24</a> | 11/27/2018; CLK - Agenda Packet (Public); Human Resources; ; REGULAR; Memorandum of Understanding: International Bro       |
| <a href="#">60.24</a> | 11/27/2018; CLK - Resolution; City Council; 68670; ; Memorandum Agreement: International Brotherhood of Electrical Workers |
| <a href="#">60.05</a> | 12/11/2018; CLK - Agenda Packet (Public); Human Resources; ; REGULAR; Memorandum of Understanding: Public Employe          |
| <a href="#">60.05</a> | 12/11/2018; CLK - Resolution; City Council; 68709; ; Memorandum of Understanding (MOU): Public Employees Union PEU Lo      |
| <a href="#">59.8</a>  | 12/4/2018; CLK - Agenda Packet (Public); Planning and Development; ; REGULAR; Referral Response: Reclassifying the zoni    |
| <a href="#">59.8</a>  | 12/11/2018; CLK - Agenda Packet (Public); Planning and Development; ; REGULAR; Referral Response: Reclassifying the zoni   |
| <a href="#">59.8</a>  | 12/17/2018; CLK - Minutes; Rent Stabilization Board; ; REGULAR; Minutes                                                    |
| <a href="#">59.68</a> | 11/13/2018; CLK - Agenda Packet (Public); City Clerk; ; REGULAR; Revised Records Retention Schedule                        |
| <a href="#">59.68</a> | 11/13/2018; CLK - Resolution; City Council; 68661; ; Revised Records Retention Schedule                                    |
| <a href="#">59.68</a> | 12/11/2018; CLK - Resolution; City Council; 68725; ; Adopt Findings under CA Environmental Quality Act (CEQA) and a mitiga |
| <a href="#">59.24</a> | 11/27/2018; CLK - Communication; Public; ; REGULAR; Supplemental Communications 2                                          |
| <a href="#">59.24</a> | 12/4/2018; CLK - Communication; Public; ; REGULAR; Supplemental Communications 2                                           |
| <a href="#">57.68</a> | EXPENDITURE Contract - # 31900013 - Date Executed: 11/29/2018 - The Library Corporation - Integrated Library System        |
| <a href="#">56.18</a> | 11/13/2018; CLK - Agenda Packet (Public); Planning and Development; ; REGULAR; Request to Reduce the In-Lieu Provision     |
| <a href="#">56.18</a> | 12/4/2018; CLK - Agenda Packet (Public); Community Environmental Advisory Commission; ; REGULAR; Referral Response:        |

**CITY OF BERKELEY** Housing Authority Public Library Rent Board School District

City Services Community & Recreation Safety & Health Construction & Development Doing Business Your Government

Your Government > City Council > Off-Agenda Memos

## Off-Agenda Memos

Read off-agenda memos sent by the City Manager to the Mayor and City Council.

| NAME                                                      | DATE       |
|-----------------------------------------------------------|------------|
| <a href="#">Berkeley Marina Area Specific Plan Update</a> | 06/08/2022 |
| <a href="#">Pools Renovation Update</a>                   | 06/02/2022 |
| <a href="#">FPPC Biennial Notice</a>                      | 06/01/2022 |
| <a href="#">Strategic Plan Q1 Report</a>                  | 05/31/2022 |
| <a href="#">Electric Micromobility</a>                    | 05/10/2022 |

## Search #6 - Add the word 'memo', search term now: off agenda memo



### Welcome to the City of Berkeley's Records Online

Records Online contains Election information, Ordinances, Resolutions, Staff Reports, Meeting Minutes, Contracts, Communications and other City documents. Review the [date ranges](#) of specific document types found in Records Online.

#### Search Tips and Instructions:

1. For all date fields, the proper search format is **mm/dd/yyyy**.
2. A **"full text"** query locates a specified search term in the record. The search term can be combined with other data fields associated with the document type.
3. A **"keywords"** query searches in the specified data fields associated with the document type.
4. **"Asterisks"** around a search term find that term where it is part of the data field (e.g. \*parking\* or \*signs\* or \*sidewalk\*).
5. Narrow your search as much as possible by choosing the correct record category (ordinance, contracts, etc.)
6. For full-text queries, you may use the following search tools: Exact Phrase: "term1 term2"; Boolean: term1 AND term2 OR term3 NOT term4; Soundex: S{term}; Fuzzy: F{term}; Near: N#{term1, term2}
7. To open a document in a new window, click the icon.

For assistance in using Records Online, contact the [City Clerk Department](#)

#### Search

**Search Type**

Public - All Records Query (Full Text)

Search for documents by entering a search term and any other fields, then click Search.

#### Search Term

off agenda memo

#### From Date

11/01/2018

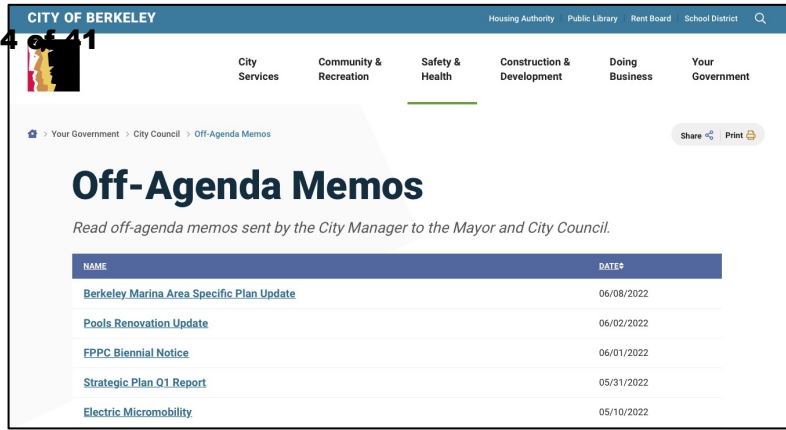
#### To Date

12/31/2018

Search Reset

#### Results

| Sc...                 | Name                                                                                                            |
|-----------------------|-----------------------------------------------------------------------------------------------------------------|
| <a href="#">78.49</a> | 12/4/2018; CLK - Agenda Packet (Public); City Clerk; ; REGULAR; City Council Referral Process - 2018 Interim U  |
| <a href="#">76.93</a> | 11/15/2018; CLK - Agenda Packet (Public); Parks Recreation and Waterfront; ; SPECIAL; Parks, Recreation & Wal   |
| <a href="#">76.45</a> | 12/4/2018; CLK - Agenda Packet (Public); City Clerk; ; REGULAR; City Council Short Term Referral Process - Mo   |
| <a href="#">65.14</a> | 12/4/2018; CLK - Agenda Packet (Public); City Manager; ; REGULAR; Structure for City Council Standing Policy C  |
| <a href="#">65.14</a> | 12/11/2018; CLK - Agenda Packet (Public); City Manager; ; REGULAR; Structure for City Council Standing Policy C |
| <a href="#">64.37</a> | 11/28/2018; CLK - Minutes; Human Welfare and Community Action Commission; ; ;                                   |
| <a href="#">63.59</a> | 11/27/2018; CLK - Agenda Packet (Public); City Clerk; ; REGULAR; Amendment: FY 2019 Annual Appropriations C     |
| <a href="#">63.59</a> | 11/27/2018; CLK - Communication; Public; ; REGULAR; Supplemental Communications 1                               |
| <a href="#">54.15</a> | 11/13/2018; CLK - Agenda Packet (Public); Planning and Development; ; REGULAR; ZAB Appeal: 3000 Shattuck ,      |
| <a href="#">54.15</a> | 11/27/2018; CLK - Agenda Packet (Public); Planning and Development; ; REGULAR; ZAB Appeal: 3000 Shattuck ,      |
| <a href="#">49.27</a> | 12/11/2018; CLK - Agenda Packet (Public); Human Resources; ; REGULAR; Memorandum of Understanding: Pub          |
| <a href="#">49.27</a> | 12/11/2018; CLK - Resolution; City Council; 68709; ; Memorandum of Understanding (MOU): Public Employees Ur     |
| <a href="#">45.47</a> | 11/1/2018; CLK - Minutes; Landmarks Preservation Commission; ; ;                                                |
| <a href="#">45.47</a> | 12/4/2018; CLK - Minutes; City Council; ; REGULAR;                                                              |
| <a href="#">45.04</a> | 12/6/2018; CLK - Minutes; Landmarks Preservation Commission; ; ;                                                |
| <a href="#">44.92</a> | 11/27/2018; CLK - Agenda Packet (Public); Human Resources; ; REGULAR; Memorandum of Understanding: Inter        |
| <a href="#">44.92</a> | 11/27/2018; CLK - Resolution; City Council; 68670; ; Memorandum Agreement: International Brotherhood of Electr  |
| <a href="#">44.62</a> | 12/4/2018; CLK - Agenda Packet (Public); Planning and Development; ; REGULAR; Referral Response: Reclassify     |
| <a href="#">44.62</a> | 12/11/2018; CLK - Agenda Packet (Public); Planning and Development; ; REGULAR; Referral Response: Reclassi      |
| <a href="#">44.62</a> | 12/17/2018; CLK - Minutes; Rent Stabilization Board; ; REGULAR; Minutes                                         |
| <a href="#">44.53</a> | 11/13/2018; CLK - Agenda Packet (Public); City Clerk; ; REGULAR; Revised Records Retention Schedule             |



*Search #7 - Try new Boolean: off AND agenda AND memo.  
Constrain date to just December 2018*



## Welcome to the City of Berkeley's Records Online

Records Online contains Election information, Ordinances, Resolutions, Staff Reports, Meeting Minutes, Contracts, Communications and other City documents. Review the [date ranges](#) of specific document types found in Records Online.

### Search Tips and Instructions:

1. For all date fields, the proper search format is **mm/dd/yyyy**.
2. A **"full text"** query locates a specified search term in the record. The search term can be combined with other data fields associated with the document type.
3. A **"keywords"** query searches in the specified data fields associated with the document type.
4. **"Asterisks"** around a search term find that term where it is part of the data field (e.g. **\*parking\*** or **\*signs\*** or **\*sidewalk\***).
5. Narrow your search as much as possible by choosing the correct record category (ordinance, contracts, etc.)
6. For full-text queries, you may use the following search tools: Exact Phrase: "term1 term2"; Boolean: term1 AND term2 OR term3 NOT term4; Soundex: S{term}; Fuzzy: F{term}; Near: N#{term1, term2}
7. To open a document in a new window, click the icon.

For assistance in using Records Online, contact the [City Clerk Department](#)

### Search

**Search Type**

Public – All Records Query (Full Text)

Search for documents by entering a search term and any other fields, then click Search.

### Search Term

off AND agenda AND memo

### From Date

12/01/2018

### To Date

12/31/2018

### Results

| Sc...                                                                                                                   | Name |
|-------------------------------------------------------------------------------------------------------------------------|------|
| 78.49 12/4/2018; CLK - Agenda Packet (Public); City Clerk; ; REGULAR; City Council Referral Process – 2018 Interim Upda |      |
| 76.45 12/4/2018; CLK - Agenda Packet (Public); City Clerk; ; REGULAR; City Council Short Term Referral Process – Monthl |      |



## Search #8 - Try Boolean: waterfront AND marina AND fund AND update. Date range November to December 2018



### Welcome to the City of Berkeley's Records Online

Records Online contains Election information, Ordinances, Resolutions, Staff Reports, Meeting Minutes, Contracts, Communications and other City documents. Review the [date ranges](#) of specific document types found in Records Online.

#### Search Tips and Instructions:

1. For all date fields, the proper search format is **mm/dd/yyyy**.
2. A **"full text"** query locates a specified search term in the record. The search term can be combined with other data fields associated with the document type.
3. A **"keywords"** query searches in the specified data fields associated with the document type.
4. **"Asterisks"** around a search term find that term where it is part of the data field (e.g. **"parking"** or **"signs"** or **"sidewalk"**).
5. Narrow your search as much as possible by choosing the correct record category (ordinance, contracts, etc.)
6. For full-text queries, you may use the following search tools: Exact Phrase: "term1 term2"; Boolean: term1 AND term2 OR term3 NOT term4; Soundex: S{term}; Fuzzy: F{term}; Near: N# {term1, term2}
7. To open a document in a new window, click the icon.

For assistance in using Records Online, contact the [City Clerk Department](#)

#### Search

**Search Type**

Public – All Records Query (Full Text)

Search for documents by entering a search term and any other fields, then click Search.

#### Search Term

waterfront AND marina AND fund AND update

#### From Date

11/01/2018

#### To Date

12/31/2018

#### Results

| Sc... | Name                                                                                            |
|-------|-------------------------------------------------------------------------------------------------|
| 83.3  | 11/15/2018; CLK - Communication; Public; ; SPECIAL; Communications                              |
| 83.3  | 11/27/2018; CLK - Communication; Public; ; REGULAR; Communications                              |
| 82.29 | 11/15/2018; CLK - Agenda Packet (Public); Parks Recreation and Waterfront; ; SPECIAL; Parks, Re |
| 79.39 | 12/6/2018; CLK - Agenda Packet (Public); Parks Recreation and Waterfront; ; SPECIAL; Semi-Ann   |
| 79.11 | 12/6/2018; CLK - Communication; Public; ; SPECIAL; Supplemental Communications 3                |
| 78.57 | 12/4/2018; CLK - Agenda Packet (Public); City Clerk; ; REGULAR; City Council Referral Process – |

*Search #9 - New Boolean: marina AND enterprise AND fund.  
Limit date range to December 2018*



## Welcome to the City of Berkeley's Records Online

Records Online contains Election information, Ordinances, Resolutions, Staff Reports, Meeting Minutes, Contracts, Communications and other City documents. Review the [date ranges](#) of specific document types found in Records Online.

### Search Tips and Instructions:

1. For all date fields, the proper search format is **mm/dd/yyyy**.
2. A **"full text"** query locates a specified search term in the record. The search term can be combined with other data fields associated with the document type.
3. A **"keywords"** query searches in the specified data fields associated with the document type.
4. **"Asterisks"** around a search term find that term where it is part of the data field (e.g. \*parking\* or \*signs\* or \*sidewalk\*).
5. Narrow your search as much as possible by choosing the correct record category (ordinance, contracts, etc.)
6. For full-text queries, you may use the following search tools: Exact Phrase: "term1 term2"; Boolean: term1 AND term2 OR term3 NOT term4; Soundex: S(term); Fuzzy: F(term); Near: N#(term1, term2)
7. To open a document in a new window, click the icon.

For assistance in using Records Online, contact the [City Clerk Department](#)

### Search

#### Search Type

Public – All Records Query (Full Text)

Search for documents by entering a search term and any other fields, then click Search.

#### Search Term

marina AND enterprise AND fund

#### From Date

12/01/2018

#### To Date

12/31/2018

[Search](#) [Reset](#)

### Results

| Sc... | Name                                                                                                      |
|-------|-----------------------------------------------------------------------------------------------------------|
| 77.95 | 12/4/2018; CLK - Agenda Packet (Public); City Manager; ; REGULAR; Amendment: FY 2019 Annual Appropriation |
| 77.95 | 12/4/2018; CLK - Ordinance; City Council; 7634; ; Amending the Annual Appropriations Ordinance No. 7617-N |
| 73.52 | 12/11/2018; CLK - Agenda Packet (Public); City Clerk; ; REGULAR; Minutes for Approval                     |


*Search #10 – Try exact phrase in double quotes: “marina fund update”.  
Limit date range to December 2018*



## Welcome to the City of Berkeley's Records Online

Records Online contains Election information, Ordinances, Resolutions, Staff Reports, Meeting Minutes, Contracts, Communications and other City documents. Review the [date ranges](#) of specific document types found in Records Online.

### Search Tips and Instructions:

1. For all date fields, the proper search format is **mm/dd/yyyy**.
2. A **"full text"** query locates a specified search term in the record. The search term can be combined with other data fields associated with the document type.
3. A **"keywords"** query searches in the specified data fields associated with the document type.
4. **"Asterisks"** around a search term find that term where it is part of the data field (e.g. \*parking\* or \*signs\* or \*sidewalk\*).
5. Narrow your search as much as possible by choosing the correct record category (ordinance, contracts, etc.)
6. For full-text queries, you may use the following search tools: Exact Phrase: "term1 term2"; Boolean: term1 AND term2 OR term3 NOT term4; Soundex: S{term}; Fuzzy: F{term}; Near: N#{term1, term2}
7. To open a document in a new window, click the  icon.

For assistance in using Records Online, contact the [City Clerk Department](#)

### Search

### Results

#### Search Type

Public – All Records Query (Full Text)

Search for documents by entering a search term and any other fields, then click Search.

#### Search Term

"marina fund update"

#### From Date

12/01/2018

#### To Date

12/31/2018

Search

Reset

No documents found.



Sophie Hahn  
Councilmember  
District 5

ACTION CALENDAR  
September 20, 2022  
(Continued from July 26, 2022)

To: Honorable Mayor and Members of the City Council

From: Councilmember Sophie Hahn (Author), Councilmembers Terry Taplin, Ben Bartlett and Kate Harrison (Co-Sponsors)

Subject: Restoring and Improving Access to City of Berkeley Website and Archival Materials

RECOMMENDATION

Direct the City Manager to:

1. Restore at previous URLs all PDF documents previously hosted on the City of Berkeley website.
2. Create a publicly accessible archival copy of the City's previous website, CityofBerkeley.info, that can be accessed without logins and via internet search engines. Include a prominent disclaimer noting the date the website, page, or document was archived, with links redirecting to the active website or other responsive resource.
3. On the new website, update Commission pages to include a minimum of 2 years of historic agendas and other materials and update City Council and Council Committee pages to include at least 3 years of complete materials.
4. By July 15, 2022 develop and make available to all City staff and to the public training at beginner to expert levels on use of the City's Records Online search function and create more extensive and less technical self-help resources covering basic and expert use.
5. In recognition of increased public traffic, update the Records Online homepage to explain how the portal works and link to more robust self-help resources and alternative search functions.
6. Coordinate with agency staff to include all relevant records (agendas, minutes, etc.) from Rent Board and Housing Authority in Records Online Portal.

7. Update any remaining 404 pages to explain that the City's website has been moved/updated, and provide links to helpful pages, search functions and/or pathways to access responsive materials. As quickly as possible, consider implementing redirects with wildcards to direct as many old links to relevant new website pages in lieu of the standard 404 page. E.g. cityofberkeley.info/planning\* to the Planning Department site map/homepage, or Department Specific 404 page explaining new navigation.

Refer to the City Manager the following additional improvements to Records Online:

1. Within Records Online, provide unique archival/search categories for each City Commission, Board, Committee and Rent Board, and consider other useful categories, to assist users in narrowing results and identifying responsive materials.
2. Allow Records Online search *results* to be sorted by date and by other searchable factors. Consider means to integrate records online into default site search bar.
3. Explore and report back to Council options for improving the scope of Records Online, improving search options and sorting, and making all materials – or materials from January 1, 2000 (or an earlier recommended date) forward, searchable using internet search engines.

### BACKGROUND

The recently launched new City Website has brought many important improvements, in particular with respect to customer/resident services. It's much easier for users to find help with important functions such as requesting a service, reporting a pothole, or paying a bill, and to learn about public-facing services and facilities. It also includes well-organized foundational information about City departments and special projects. All of this represents a huge improvement for these users and uses.

The new website's utility as a resource and archive for specialized or in-depth records and materials, however, has been severely hobbled. Staff has reported that over 15,000 pages were consolidated into 500, in an attempt to focus the website on a particular and important user experience. Unfortunately, other functionalities were severely reduced and users who have long relied on the website to access a broad range of important materials have limited opportunities to search for and find responsive documents.

Another consequence of removing the City's "old" website is that all links in plans such as the Bicycle, Pedestrian, and Vision Zero Plans, Area Plans, the SOSIP Plan, the Climate Action Plan, Electric Mobility Plan - and all other Plans generated prior to launch of the new website - are broken. Links in every item, memorandum, study,

regulation, footnote, press release, health order, or other document or statement generated by the City prior to launch of the new website are also dead.

Materials previously accessible via simple search engine queries are no longer accessible, except via an “old school” portal that requires time and expertise to navigate. Unlike 21st Century search engines, Records Online works best when a user knows exactly what they are looking for, including the title and date a document or topic was generated, severely limiting its utility. Broader searches generate voluminous results that cannot be easily browsed, adding significant time to locate materials that previously could be identified instantaneously. For members of the public curious about a City topic or policy, and in particular for staff and Council Members involved in research or writing memos, policies, programs, plans, and other in depth items, the extra time involved searching for responsive documents can add up to hours, and important documents are likely to be missed.

Compounding this problem, website pages that previously linked to years’ worth of archived documents, press releases, memos, regulations, plans and similar materials either no longer exist, or contain only shallow archives. As a result, a veritable trove of documents and reports important to understanding the history and current status of the City and its programs and policies, while technically still available via expert use of Records Online, are functionally beyond reach.

Addressing the loss of critical transparency and functionality with closure of the City’s previous website requires urgent action. This item requires both interim and long term solutions to be implemented on an expedited basis.

#### FINANCIAL IMPLICATIONS

Significant reduction in staff time across the organization chasing broken links and searching for materials in Records Online. Staff time to implement requested changes and research additional solutions.

#### CURRENT SITUATION AND ITS EFFECTS

The updated website presents significant challenges for important users and uses. Members of the public, staff, and elected officials are no longer able to reliably locate or navigate current and historic materials. Critical transparency is vastly decreased, and user time across the City and among members of the public is increased, rendering both work and public participation more difficult and time consuming.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

N/A

CONTACT PERSON

Councilmember Sophie Hahn      Council District 5      510-981-7150







Office of the City Manager

ACTION CALENDAR  
September 20, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services

Subject: Extending Community Agency Contracts for One Year at Existing Levels and Postponing the Community Agency Request for Proposal (RFP) Process Until Fiscal Year 2024

RECOMMENDATION

Adopt a resolution that extends all existing community agency contracts under the community agency Request for Proposal (RFP) process for one year, at current baseline one-year funding, and postpone the four-year Community Agency's RFP process for one fiscal year, to FY2024, with new contracts to start in FY2025.

SUMMARY

This extension would apply to all community agency contracts awarded under the FY 2020-2023 RFP, released on November 19, 2018 for four-year contracts, for an additional one-year term (FY 2024) with an additional year of baseline funding. A list of the agencies and programs subject to this extension, broken down by funding source, is available in Attachment 2.

This recommendation would not include special funds awarded outside of the RFP process; such as one-time emergency relief funds due to COVID-19, the Sugar-Sweetened Beverage Product Panel of Experts RFP process, the Mental Health Service Act, and City Council priorities, etc.

Staff is asking the Council to adopt this recommendation, because undertaking a new funding allocation cycle this year poses notable challenges for both community partners and City staff and commissions. These challenges include: community agency capacity, skewed community agency outcome data due to COVID-19 impacts on services, significant City staffing shortages, and new commission configurations that have created some uncertainty regarding their purview in this process.

FISCAL IMPACTS OF RECOMMENDATION

For years the City has combined local, state, and federal funding for community services into one RFP. The next RFP is currently scheduled to be released in the fall/winter of FY 2023 for funding starting in FY 2024. In FY 2020, the City awarded

approximately \$8.1 million in community agency contracts as part of the RFP process. Those contracts began in FY 2020 and will end at the end of FY 2023. Most (85%, more than \$7 million) of this funding is from local sources, primarily General Fund, including more than \$1.4 million dollars in Measure E funds (See Table 1).

**Table 1: Summary of Funding**

| # | FY 2023 Funding Source                                                         | Amount             |
|---|--------------------------------------------------------------------------------|--------------------|
| 1 | HUD: Community Development Block Grant (CDBG), Emergency Solutions Grant (ESG) | \$1,068,938        |
| 2 | State: Community Services Block Grants (CSBG)                                  | \$160,000          |
| 3 | General Fund (GF) including Measure P                                          | \$5,249,517        |
| 4 | Local Measure E                                                                | \$1,569,911        |
| 5 | Other, Including Mental Health Services Act and Childcare Mitigation fee       | \$33,275           |
|   | <b>Total</b>                                                                   | <b>\$8,081,641</b> |

*Note: General Funds received pursuant to Measures P and U1, Sugar Sweetened Beverage funds, Childcare Mitigation fee and Mental Health Services Act funds are provided in similar contracts to community agencies but have not been included in the RFP process in the past. However, since the RFP contracts were awarded in July of 2019, some of these funding sources have been used to fund the activities of the contracts awarded as part of the RFP process.*

Adopting this resolution will keep community agency funding at the current level for another year, with no additional budget impacts.

**CURRENT SITUATION AND ITS EFFECTS**

The RFP process for community agency funding is an essential tool to ensure that City funds are allocated to agencies that address local priorities, demonstrate their service outcomes, and have the capacity to effectively manage the requirements of City funding, particularly federal funds. The complete funding allocation cycle (including RFP development, RFP release, application review by select Commissions and Council approval) lasts nine months, and is an extensive and thoughtful staff and commission review of the proposals and the organizational capacity of the agencies requesting the funds.

Undertaking a new funding allocation cycle this year poses notable challenges for both community partners and the City. These challenges are related to community agency capacity, skewed community agency outcome data due to COVID-19 impacts on services, significant City staffing shortages, and new commission configurations.

**Community Agency Capacity:** Agencies would benefit from an additional year of funding to allow them to implement ongoing service adjustments and prepare for future funding proposals as they emerge from the pandemic.

The City's non-profit community partners have deeply felt the impacts of COVID-19 on their operations. Our partners have worked diligently during the last two years, through the COVID-19 pandemic, to meet service measures and program outcomes in the midst of very challenging and constantly changing work environments. The experience varies by agency and type of program, with some programs expanding their services and others shrinking in response to both increased need and/or increased constraints resulting from COVID-19. Programs have had to re-define how they provide services while also facing staffing shortages, supply chain issues, entering into new funder relationships, and other challenges.

As COVID-19 restrictions are lifting, programs are again needing to re-invent, re-evaluate and implement new and ever-changing protocols to address changing needs in changing conditions; all with fewer staff members due to workforce staffing shortages. Since the community agencies are facing the same labor shortages and hiring challenges as the City, their administrative capacity to respond to an RFP is also impacted.

We reached out to community agencies to get their feedback on the recommendation through an online survey and, more informally, as part of our daily discussions with them. While we received few responses to the online survey, they were all in support of the recommendation, as was the feedback we received through our daily discussions.

**Skewed Community Agency Outcome Data:** For many of the funded agencies, the service outcome and performance measure data from the last two years during COVID-19 are well outside the historical normal ranges, due to rapidly shifting conditions. Consequently, most agencies have fallen short of their goals established prior to COVID-19. This makes it challenging for the City to accurately assess the performance of community agencies.

**City Staffing Shortages:** The HHCS divisions that lead the RFP process (Housing & Community Services and the Office of the Director) are currently experiencing significant staffing shortages. Specifically, HCS has a nearly 25% staffing vacancy rate. This includes both the Community Services Specialist III (CSSIII) that manages the RFP process and the Community Services Specialist II (CSSII) that manages funding for youth-serving organizations under Vision 2020. Additionally, the HCS Manager and key staff continue to support COVID-impacted homeless services agencies, careful stewardship of millions of dollars in federal COVID relief funds, and complex affordable housing projects and new housing projects such as People's Park and BART housing developments.

**Commissions:** Four commissions in three departments have been heavily involved in the funding application review and recommendation process in the past. Currently, only three are slated to participate in the next RFP cycle:

- 1) the Housing Advisory Commission (HAC) in HHCS,
- 2) the Human Welfare and Community Action Commission (HWCAC) in HHCS,
- 3) the Homeless Services Panel of Experts (HSPE) in the City Manager’s Office.

The City has yet to determine the fourth commission which would evaluate the Vision 2020 awards for youth-serving programs. The commission that was responsible for evaluating the RFP process for these contracts previously, the Children Youth and Recreation Commission (CYRC), has since dissolved. These newly formed and existing commissions have begun to meet regularly again, after their extended suspension during COVID-19, and are working on priorities. This includes moving forward policies and programs that were temporarily stalled.

In the typical RFP process, the commissions (and staff supporting the commissions) thoroughly review all applications and make funding recommendations. This time-intensive process includes multiple subcommittee meetings that require staffing support due to the complex subject matter, and a minimum of two full commission meetings for each participating commission. Allowing the commissions one additional year to settle into restructuring and new priorities will be beneficial to future application evaluation.

HCS employees presented this recommendation at commission meetings in July and August of this year. Below is a summary of their recommendations:

**Table 3:** Commission Actions and Vote

| Name of Commission and Date of Meeting                               | Action and Vote                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|----------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Homeless Services Panel of Experts (HSPE) – 07/06/2022</b></p> | <p>Request that the City post the 2019 funding proposals for those homeless service providers whose funding was approved with additional information on the following:</p> <ul style="list-style-type: none"> <li>• Current project descriptions,</li> <li>• Current funding level,</li> <li>• Current hours of operation and location,</li> <li>• Current staffing level,</li> <li>• Current program services provided during COVID, and</li> <li>• Most recent contract monitor evaluation for each provider.</li> </ul> <p>Following this information provided, HSPE also requests COVID safe site visits.</p> <p>VOTE: M/S/C (Marasovic/Feller) Ayes: Kealoha-Blake, De la Guardia, Bookstein, Feller, Meany, Marasovic, Jones. Noes: None. Abstain: None. Absent: None</p> |

|                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Housing Advisory Commission (HAC) –</b><br/>07/07/2022</p>    | <p>Recommend to Council that all existing community agency contracts under the Community Agency RFP process be extended for one year at the current baseline one-year funding amount, and that the four-year Community Agency RFP process be postponed for one fiscal year with a consideration that Council provide financial Cost of Living Adjustments (COLA) for the one year extension to all participating agencies.<br/>VOTE: M/S/C (Potter/Mendonca) Ayes: Lee-Egan, Mendonca, Potter, Rodriguez, and Sanidad, and Noes: None. Abstain: None. Absent: Calavita (excused), Fain (excused), Johnson (unexcused), and Simon-Weisberg (unexcused).</p>                        |
| <p><b>Human Welfare and Community Action Commission (HWCAC)</b></p> | <p>No action – Discussion only. Commission members were not in favor of the recommendation based on their discussion, but did not take a vote. They expressed a concern with the lack of funding increase to account for rising costs for well performing agencies and disappointment that some agencies they viewed as underperforming not having to go through the RFP process this year to determine if they should still receive funding from the City. Further, they had concerns about new or previously unfunded agencies not having an opportunity to apply for funding for another year, particularly those agencies that meet a high priority yet underserved need.</p> |

**Misalignment with the City’s Two-Year Budget Process:** As it stands, the RFP for community funding cycle is currently set to end (FY23) in the middle of the City’s two-year budget (FY 23/24). This creates complications for the City’s budget development and projections since the four-year contract terms will span three budget cycles rather than two. The postponement will realign these cycles.

BACKGROUND

The Housing and Community Services (HCS) Division of the Health, Housing and Community Services Department (HHCS) administers local, state, and federal funding for services to low-to-moderate income Berkeley residents through a Request for Proposals (RFP) process. Funds in the RFP support a wide range of services provided by non-profit community agencies that vary in size and capacity. The last RFP was released in FY 2019 for a four-year contract (FY 2020 – FY 2023).

The process requires that various members of HCS coordinate with HHCS Office of the Director (2020 Vision) and City Manager’s Office. It involves staff across all these divisions working with four commissions: 1) the Housing Advisory Commission (HAC) in HHCS, 2) the Human Welfare and Community Action Commission (HWCAC) in HHCS, and 3) the Homeless Services Panel of Experts (HSPE) to develop funding recommendations to the City Council in June.

While each commission has their own approach to reviewing applications and making funding recommendations, on average they met bi-weekly for a three-month period during the last RFP process, and there is no reason to believe this cycle would be any different. Each Commission can elect to require presentations from proposers and conduct site visits. Commission members often request additional information to inform their recommendations. City staff support the commission work by scheduling and attending the meetings and site visits, taking notes, writing minutes, following up with community agencies to request information, preparing additional analyses, researching alternatives, and mediating other issues as they arise. This is a demonstrably robust, labor-intensive, and holistic process, and one that solicits diverse feedback and analysis in order to ensure that the selected agencies are prepared to meet the needs of the community.

In response to the FY 2019 RFP, HCS received an unprecedented number of applications requesting over \$20 million in support (far exceeding the available funding). There were 119 applications from 63 agencies, and new programs accounted for 27 percent of the submissions. In the end, 75 applications were recommended for the available \$8.3 million.<sup>1</sup>

At the end of the last RFP process, the City and commissions had a solid recommendation to Council that was grounded in evaluation of past performance and City priorities, and aligned funding recommendations with County-wide homeless initiatives alongside a complete overhaul of both homeless and 2020 Vision service measures and outcomes. Council adopted the City Manager recommendations in part because it was apparent how much excellent work went into ensuring the right programs were funded for the right amount of money. Adding one more year to this contract continues alignment with the priorities and budgets that have already been adopted, and ensures stability for the community agencies that are still reeling from the impacts of COVID-19.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Upon release of the RFP for CDBG, ESG, and HOME funding in FY 2019, applicants were encouraged to propose projects that meet various City-wide goals, such as the Climate Action Plan. Projects funded with CDBG, ESG, and HOME are required to follow state and local regulations, including those related to green building and energy. CDBG funding for community facility projects places a priority on projects that promote energy efficiency and improve accessibility. Single family rehabilitation, including energy efficiency, was a funding priority in the FY 2019 RFP. With this recommendation the City will continue funding both City-administered and community agency-administrated

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<sup>1</sup> Available funds, not including, CDBG funds to cover COB staff and over \$1 million for the Public Facility Notice of Funding Availability (NOFA).

programs. Each program funded by HUD funds also undergoes an Environmental Review to understand and mitigate possible environmental impacts.

#### RATIONALE FOR RECOMMENDATION

Staff's recommendation effectively mitigates the current situation and its effects in the following ways:

**Community Agency Capacity:** By extending contracts for one year, community agencies will have an opportunity to adjust, stabilize, and perform at the expected levels of service with lessened impact from COVID-19 restrictions on service delivery.

**Skewed Community Agency Outcome Data:** Best practice is to have accurate data to guide future funding decisions. By postponing the RFP process, staff and commission members would have the benefit of at least a year of relatively standard performance data on current contracts, allowing better analysis of program performance.

**City Staffing Shortages:** Administering the RFP process is not feasible without sufficient staff to lead it. Administering the process with the current staffing levels would impact the administration of other high priority programs and projects.

**Commissions:** Extending the RFP one more year will allow the commissions to settle into the new routines, configurations and priorities, as well as allow newer commissioners to learn more about funded programs and the funding process.

**Misalignment with the City's Two-Year Budget Process:** Aligning the RFP for community funding with the City's budget process aids in seamless budget development and projections. Extending the contracts by one year, allows the new RFP cycle to start in FY25, with the start of the City next two-year budget (FY25/26).

#### ALTERNATIVE ACTIONS CONSIDERED

The HAC recommended adding Cost of Living Adjustments (COLAs) to the extended contracts. The HWCAC also expressed concerns about rising costs to community agencies. Staff appreciates this request given the already low wages in the nonprofit sector and the instability and difficulty posed to our valuable nonprofit partners. Council could consider adding COLAs to these contracts for one year as part of the Fiscal Year 2023 budget process.

CONTACT PERSON

Joshua Oehler, Community Development Project Coordinator, HHCS, (510) 981-5408

Attachments:

1: Resolution

2: List of Agencies, Programs and Their Current Funding Levels for Contracts Awarded starting in FY2020 as Part of the RFP Process



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

EXTEND COMMUNITY AGENCY CONTRACTS FOR ONE YEAR, THROUGH FISCAL YEAR 2024, AT EXISTING LEVELS AND POSTPONE THE COMMUNITY AGENCY REQUEST FOR PROPOSAL (RFP) FOR ONE YEAR, CONDUCTING THE RFP PROCESS IN FISCAL YEAR 2024 AND STARTING THE CONTRACTS IN FISCAL YEAR 2025

WHEREAS, the Housing and Community Services Division (HCS) in the Health, Housing and Community Services (HHCS) Department administers a combined Request for Proposals (RFP) for Community Agency Funding every four years, with the next RFP release scheduled to occur in the fall of FY 2023 for funding starting in FY 2024; and

WHEREAS, funding sources include Community Development Block Grant (CDBG), Community Services Block Grant (CSBG), Emergency Solutions Grants (ESG) program City of Berkeley Measure E, City of Berkeley Measure P, Mental Health Services Act and City General Funds; and

WHEREAS, the impacts of the COVID-19 pandemic have considerably impacted community agencies, including current staffing levels, resulting in reduced community agency capacity to respond to a complex RFP at pre-pandemic levels; and

WHEREAS, City staffing shortages and the ongoing COVID-related emergency services and funding pose significant challenges in coordinating an RFP review with the four commissions managed by City staff (the Housing Advisory Commission, the Human Welfare and Community Action Commission, the Parks, Recreation and Waterfront Commission, and the Homeless Commission); and

WHEREAS, in the last RFP process the City Manager and commissions' recommendation to Council included a thorough evaluation of past performance and City priority alignment; and

WHEREAS, Council adopted the City Manager's community agency funding recommendations from the last RFP; and

WHEREAS, extending the community agency contracts by one-year responds to community request, exhibits support for partner agencies, and aids in budget development and projections by aligning the community agency funding on the City's FY 2023/2024 budget cycle; and

WHEREAS, adding one more year to the current community agency contracts will continue alignment with the priorities and budgets that have already been adopted, and ensure stability for the community agencies that are still strongly experiencing the impacts of the COVID-19 pandemic.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to extend all existing community agency contracts under the community agency Request for Proposal (RFP) process for one year (through FY 2024), at current baseline one-year funding, and postpone the four-year Community Agency RFP process for one fiscal year, until FY 2024. A signed copy of said documents, agreements and any amendments will be kept on file in the Office of the City Clerk.

Attachment 2: List of Agencies, Programs and Their Current Funding Levels for Contracts Awarded starting in FY2020 as Part of the RFP Process

| Attachment 2 - List of Agencies, Programs and Their Current Funding Levels for Contracts Awarded starting in FY20 as Part of the RFP Process |                    |                  |                  |                  |                    |                |                  |                              |                    |
|----------------------------------------------------------------------------------------------------------------------------------------------|--------------------|------------------|------------------|------------------|--------------------|----------------|------------------|------------------------------|--------------------|
| Agency - Program                                                                                                                             | FY 2023 Adopted    | CDBG             | CSBG             | ESG              | GF Measure P       | GF Measure L11 | GF Other         | GF Mayor's Reimagining Funds | Other Funds        |
| <b>Childcare</b>                                                                                                                             |                    |                  |                  |                  |                    |                |                  |                              |                    |
| Bay Area Hispano Institute for Advancement - Child Development Program                                                                       | \$82,143           |                  |                  |                  |                    |                | \$82,143         |                              |                    |
| Bananas Inc.:                                                                                                                                |                    |                  |                  |                  |                    |                |                  |                              |                    |
| Child Care Subsidies                                                                                                                         | \$283,110          |                  |                  |                  |                    |                | \$269,835        |                              | \$13,275           |
| Play & Learn Playgroups                                                                                                                      | \$10,527           |                  |                  |                  |                    |                | \$10,527         |                              |                    |
| ORIS Services                                                                                                                                | \$95,000           |                  |                  |                  |                    |                | \$95,000         |                              |                    |
| Ephesians Children's Center - Childcare Program                                                                                              | \$45,507           |                  |                  |                  |                    |                | \$45,507         |                              |                    |
| Healthy Black Families, Inc. - Sisters Together Empowering Peers (STEP)                                                                      | \$43,808           |                  |                  |                  |                    |                | \$43,808         |                              |                    |
| Nia House Learning Center                                                                                                                    | \$39,999           |                  |                  |                  |                    |                | \$39,999         |                              |                    |
| <i>Childcare Total</i>                                                                                                                       | <i>\$600,094</i>   |                  |                  |                  |                    |                | <i>\$586,819</i> |                              | <i>\$13,275</i>    |
| <b>Disability Programs</b>                                                                                                                   |                    |                  |                  |                  |                    |                |                  |                              |                    |
| Bay Area Outreach and Recreation Program - Recreational Services for the Disabled                                                            | \$43,592           |                  |                  |                  |                    |                | \$43,592         |                              |                    |
| Bonita House - Creative Wellness Center                                                                                                      | \$15,324           |                  |                  |                  |                    |                | \$15,324         |                              |                    |
| Center for Independent Living - Residential Access Program                                                                                   | \$159,660          | \$159,660        |                  |                  |                    |                |                  |                              |                    |
| Easy Does It                                                                                                                                 | \$1,569,911        |                  |                  |                  |                    |                |                  |                              | \$1,569,911        |
| Through the Looking Glass                                                                                                                    | \$27,206           |                  |                  |                  |                    |                | \$27,206         |                              |                    |
| <i>Disability Programs Total</i>                                                                                                             | <i>\$1,815,693</i> | <i>\$159,660</i> |                  |                  |                    |                | <i>\$86,122</i>  |                              | <i>\$1,569,911</i> |
| <b>Employment Training</b>                                                                                                                   |                    |                  |                  |                  |                    |                |                  |                              |                    |
| Bread Project                                                                                                                                | \$57,850           |                  |                  |                  |                    |                | \$57,850         |                              |                    |
| Inter-City Services                                                                                                                          | \$101,351          |                  |                  |                  |                    |                | \$101,351        |                              |                    |
| Multicultural Institute Lifeskills Program                                                                                                   | \$68,136           |                  |                  |                  |                    |                | \$68,136         |                              |                    |
| Rising Sun - Green Energy Training Services                                                                                                  | \$67,828           |                  |                  |                  |                    |                | \$67,828         |                              |                    |
| <i>Employment Training Total</i>                                                                                                             | <i>\$295,165</i>   |                  |                  |                  |                    |                | <i>\$295,165</i> |                              |                    |
| <b>Health</b>                                                                                                                                |                    |                  |                  |                  |                    |                |                  |                              |                    |
| Lifelong Medical Care:                                                                                                                       |                    |                  |                  |                  |                    |                |                  |                              |                    |
| Access for Uninsured (BPC, WBFP, Uninsured, Acupuncture Detox)                                                                               | \$189,855          |                  | \$160,000        |                  |                    |                | \$29,855         |                              |                    |
| Geriatric Care/Hypertension                                                                                                                  | \$114,543          |                  |                  |                  |                    |                | \$114,543        |                              |                    |
| Berkeley Free Clinic - Free Women and Transgender Health Care Service                                                                        | \$15,858           |                  |                  |                  |                    |                | \$15,858         |                              |                    |
| <i>Health Total</i>                                                                                                                          | <i>\$320,256</i>   |                  | <i>\$160,000</i> |                  |                    |                | <i>\$160,256</i> |                              |                    |
| <b>Homeless Services</b>                                                                                                                     |                    |                  |                  |                  |                    |                |                  |                              |                    |
| Alameda County Homeless Action Center:                                                                                                       |                    |                  |                  |                  |                    |                |                  |                              |                    |
| SSI Advocacy                                                                                                                                 | \$129,539          |                  |                  |                  | \$109,539          |                |                  |                              | \$20,000           |
| Rapid Rehousing for Homeless Elders Project                                                                                                  | \$68,220           |                  |                  |                  | \$68,220           |                |                  |                              |                    |
| Alameda County Network of Mental Health Clients:                                                                                             |                    |                  |                  |                  |                    |                |                  |                              |                    |
| Daytime Drop-In                                                                                                                              | \$ 35,721          |                  |                  |                  | \$ 35,721          |                |                  |                              |                    |
| Representative Pavee Services                                                                                                                | \$ 32,016          |                  |                  |                  | \$ 32,016          |                |                  |                              |                    |
| Bay Area Community Services:                                                                                                                 |                    |                  |                  |                  |                    |                |                  |                              |                    |
| North County HRC                                                                                                                             | \$1,081,785        | \$248,419        |                  | \$0              | \$833,366          |                |                  |                              |                    |
| STAIR Pathways                                                                                                                               | \$205,357          |                  |                  | \$205,357        |                    |                |                  |                              |                    |
| Berkeley Food & Housing Project:                                                                                                             |                    |                  |                  |                  |                    |                |                  |                              |                    |
| Case Management Tied to Permanent Housing                                                                                                    | \$100,190          |                  |                  |                  | \$100,190          |                |                  |                              |                    |
| Men's Shelter                                                                                                                                | \$170,502          | \$170,502        |                  |                  |                    |                |                  |                              |                    |
| Women's Shelter                                                                                                                              | \$119,963          |                  |                  |                  | \$119,963          |                |                  |                              |                    |
| Bonita House - Case Management Tied to Permanent Housing                                                                                     | \$24,480           |                  |                  |                  | \$24,480           |                |                  |                              |                    |
| Building Opportunities for Self Sufficiency:                                                                                                 |                    |                  |                  |                  |                    |                |                  |                              |                    |
| BOSS House Navigation Team                                                                                                                   | \$86,831           |                  |                  |                  | \$86,831           |                |                  |                              |                    |
| Representative Pavee Services                                                                                                                | \$52,440           |                  |                  |                  | \$52,440           |                |                  |                              |                    |
| Ursula Sherman Village Families Program                                                                                                      | \$51,383           |                  |                  |                  | \$51,383           |                |                  |                              |                    |
| Ursula Sherman Village Singles Shelter                                                                                                       | \$104,662          |                  |                  |                  | \$104,662          |                |                  |                              |                    |
| Dorothy Day - Berkeley Emergency Storm Shelter                                                                                               | \$30,101           |                  |                  |                  | \$30,101           |                |                  |                              |                    |
| Larkin Street - Turning Point Program                                                                                                        | \$407,643          |                  |                  |                  | \$407,643          |                |                  |                              |                    |
| Lifelong Medical Care:                                                                                                                       |                    |                  |                  |                  |                    |                |                  |                              |                    |
| Case Management Tied to Permanent Housing                                                                                                    | \$163,644          |                  |                  |                  | \$163,644          |                |                  |                              |                    |
| Supportive Housing Program UA Homes                                                                                                          | \$55,164           |                  |                  |                  | \$55,164           |                |                  |                              |                    |
| Options Recovery Services - Detox Services & Day Treatment - Transitional Housing and Case Management                                        | \$50,000           |                  |                  |                  | \$50,000           |                |                  |                              |                    |
| The Suitcase Clinic                                                                                                                          | \$9,828            |                  |                  |                  | \$9,828            |                |                  |                              |                    |
| Toolworks, Inc. Supportive Housing                                                                                                           | \$47,665           |                  |                  |                  | \$47,665           |                |                  |                              |                    |
| Women's Daytime Drop-In Center:                                                                                                              |                    |                  |                  |                  |                    |                |                  |                              |                    |
| Bridget Transitional House Case Management                                                                                                   | \$118,728          |                  |                  |                  | \$118,728          |                |                  |                              |                    |
| Daytime Drop-In Services                                                                                                                     | \$48,153           |                  |                  |                  | \$48,153           |                |                  |                              |                    |
| Homeless Case Management - Housing Retention                                                                                                 | \$100,190          |                  |                  |                  | \$100,190          |                |                  |                              |                    |
| <i>Homeless Services Total</i>                                                                                                               | <i>\$3,294,205</i> | <i>\$418,921</i> |                  | <i>\$205,357</i> | <i>\$2,649,927</i> |                |                  |                              | <i>\$20,000</i>    |
| <b>Housing Development &amp; Rehabilitation</b>                                                                                              |                    |                  |                  |                  |                    |                |                  |                              |                    |
| Bay Area Community Land Trust                                                                                                                | \$5,200            |                  |                  |                  |                    |                | \$5,200          |                              |                    |
| CHDO Programs                                                                                                                                |                    |                  |                  |                  |                    |                |                  |                              |                    |
| Habitat for Humanity East Bay/Silicon Valley - Housing Rehabilitation Grant Program                                                          | \$250,000          | \$250,000        |                  |                  |                    |                |                  |                              |                    |
| <i>Housing Development &amp; Rehabilitation Total</i>                                                                                        | <i>\$255,200</i>   | <i>\$250,000</i> |                  |                  |                    |                | <i>\$5,200</i>   |                              |                    |
| <b>Legal/Advocacy</b>                                                                                                                        |                    |                  |                  |                  |                    |                |                  |                              |                    |
| East Bay Community Law Center - Consumer Justice Clinic/Housing Advocacy                                                                     | \$33,644           |                  |                  |                  |                    |                | \$33,644         |                              |                    |
| Eden Council for Hope and Opportunity                                                                                                        | \$35,000           | \$35,000         |                  |                  |                    |                |                  |                              |                    |
| Eviction Defense Center - Housing Retention                                                                                                  | \$250,000          |                  |                  |                  | \$250,000          |                |                  |                              |                    |
| Family Violence Law Center - Domestic Violence & Homelessness Prevention Project                                                             | \$61,842           |                  |                  |                  |                    |                | \$61,842         |                              |                    |
| <i>Legal/Advocacy Total</i>                                                                                                                  | <i>\$380,486</i>   | <i>\$35,000</i>  |                  |                  | <i>\$250,000</i>   |                | <i>\$95,486</i>  |                              |                    |
| <b>Other</b>                                                                                                                                 |                    |                  |                  |                  |                    |                |                  |                              |                    |
| Berkeley Community Gardening Collaborative                                                                                                   | \$11,895           |                  |                  |                  |                    |                | \$11,895         |                              |                    |
| McGee Avenue Baptist Church                                                                                                                  | \$17,844           |                  |                  |                  |                    |                | \$17,844         |                              |                    |
| SFEEDS Community Resolution Center                                                                                                           | \$22,553           |                  |                  |                  |                    |                | \$22,553         |                              |                    |
| <i>Other Total</i>                                                                                                                           | <i>\$52,292</i>    |                  |                  |                  |                    |                | <i>\$52,292</i>  |                              |                    |
| <b>Recreation</b>                                                                                                                            |                    |                  |                  |                  |                    |                |                  |                              |                    |

NOTE: Funding sources for these amounts may differ from funding sources used in the original award amount

| Agency - Program                                                           | FY 2023 Adopted    | CDBG             | CSBG             | ESG              | GF Measure P       | GF Measure 111 | GF Other           | GF Mayor's Reimagining Funds | Other Funds        |
|----------------------------------------------------------------------------|--------------------|------------------|------------------|------------------|--------------------|----------------|--------------------|------------------------------|--------------------|
| Ephesians Children's Center - Greg Brown Park Supervision                  | \$18,573           |                  |                  |                  |                    |                | \$18,573           |                              |                    |
| <i>Recreation Total</i>                                                    | <i>\$18,573</i>    |                  |                  |                  |                    |                | <i>\$18,573</i>    |                              |                    |
| <b>Seniors</b>                                                             |                    |                  |                  |                  |                    |                |                    |                              |                    |
| J-Sei                                                                      | \$9,110            |                  |                  |                  |                    |                | \$9,110            |                              |                    |
| <i>Seniors Total</i>                                                       | <i>\$9,110</i>     |                  |                  |                  |                    |                | <i>\$9,110</i>     |                              |                    |
| <b>Youth</b>                                                               |                    |                  |                  |                  |                    |                |                    |                              |                    |
| Bay Area Community Resources - School Based Behavioral Health Services     | \$94,964           |                  |                  |                  |                    |                | \$94,964           |                              |                    |
| Bay Area Hispano Institute for Advancement - Out of School Time Programs   | \$21,447           |                  |                  |                  |                    |                | \$21,447           |                              |                    |
| Berkeley High School Bridge Program                                        | \$79,000           |                  |                  |                  |                    |                | \$79,000           |                              |                    |
| Berkeley Youth Alternatives:                                               |                    |                  |                  |                  |                    |                |                    |                              |                    |
| Afterschool Program                                                        | \$30,000           |                  |                  |                  |                    |                | \$30,000           |                              |                    |
| Counseling                                                                 | \$30,000           |                  |                  |                  |                    |                | \$30,000           |                              |                    |
| Biotech Partners - Biotech Academy at Berkeley High                        | \$91,750           |                  |                  |                  |                    |                | \$91,750           |                              |                    |
| Ephesians School-Age Program                                               | \$39,840           |                  |                  |                  |                    |                | \$39,840           |                              |                    |
| Lifelong Medical Care - Rosa Parks Collaborative                           | \$44,804           |                  |                  |                  |                    |                | \$44,804           |                              |                    |
| Multicultural Institute Youth Mentoring                                    | \$33,603           |                  |                  |                  |                    |                | \$33,603           |                              |                    |
| Pacific Center for Human Growth - Safer Schools Project                    | \$23,245           |                  |                  |                  |                    |                | \$23,245           |                              |                    |
| RISE Program                                                               | \$216,039          |                  |                  |                  |                    |                | \$216,039          |                              |                    |
| Stiles Hall                                                                | \$90,000           |                  |                  |                  |                    |                | \$90,000           |                              |                    |
| Through The Looking Glass - Parenting Education and Kindergarten Readiness | \$25,000           |                  |                  |                  |                    |                | \$25,000           |                              |                    |
| UC Berkeley                                                                |                    |                  |                  |                  |                    |                |                    |                              |                    |
| BUILD Literacy/Cal Corp                                                    | \$95,360           |                  |                  |                  |                    |                | \$95,360           |                              |                    |
| Bridging Berkeley                                                          | \$34,640           |                  |                  |                  |                    |                | \$34,640           |                              |                    |
| YMCA of the East Bay - Y-Scholars Program                                  |                    |                  |                  |                  |                    |                |                    |                              |                    |
| Y-Scholars Program                                                         | \$40,000           |                  |                  |                  |                    |                | \$40,000           |                              |                    |
| School Readiness Program                                                   | \$50,875           |                  |                  |                  |                    |                | \$50,875           |                              |                    |
| <i>Youth Total</i>                                                         | <i>\$1,040,567</i> |                  |                  |                  |                    |                | <i>\$1,040,567</i> |                              |                    |
| <b>TOTAL COMMUNITY AGENCY</b>                                              | <b>\$8,081,641</b> | <b>\$863,587</b> | <b>\$760,000</b> | <b>\$205,357</b> | <b>\$2,699,927</b> | <b>\$0</b>     | <b>\$2,349,590</b> | <b>\$0</b>                   | <b>\$1,603,186</b> |

NOTE: Funding sources for these amounts may differ from funding sources used in the original award amount



Office of the City Manager

ACTION CALENDAR  
September 20, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Peter Radu, Assistant to the City Manager

Subject: Audit Status Report Response: Code Enforcement Resources Significantly Constrained and Improvements Needed in Case Management and Oversight

INTRODUCTION

On June 26th, 2018, the City Auditor submitted a Code Enforcement Unit (CEU) audit report<sup>1</sup>, with recommendations to improve operational efficiencies and implement a resource analysis process. The purpose of this report is to update City Council on the status of implementing the audit report's recommendations. This is the fourth status report regarding this audit.<sup>2</sup>

CURRENT SITUATION AND ITS EFFECTS

The audit report contains twelve recommendations. During the previous update presented to Council on February 25, 2020, five of the recommendations were implemented, five were partially implemented, and two not implemented. As of this report, there are two updates: two recommendations that had been partially implemented are now fully implemented, and one recommendation that had not been implemented is now partially implemented. Very shortly after the last staff report on implementation progress, the COVID-19 pandemic led the declaration of a local emergency, which had the effect of dramatically re-prioritizing staff resources and time. As a result of this (as well as ongoing staffing challenges and staff turnover), no additional audit recommendations have updates at this time. The attachment provides a detailed table of audit report recommendations, corrective action plans, and implementation progress updates.

The next status report to Council is expected to be presented in March of 2023.

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<sup>1</sup> Audit: Code Enforcement Resources Significantly Constrained and Improvements Needed in Case Management and Oversight: [https://berkeleyca.gov/sites/default/files/2022-01/Code%20Enforcement%20Resources%20Significantly%20Constrained\\_Fiscal%20Year%202018.pdf](https://berkeleyca.gov/sites/default/files/2022-01/Code%20Enforcement%20Resources%20Significantly%20Constrained_Fiscal%20Year%202018.pdf)

<sup>2</sup> For the most recent status report to Council, please see: <https://records.cityofberkeley.info/PublicAccess/api/Document/Acyyy0z%C3%89f6BGxygYOKilwnT5xY%C3%81vvTsWjQcJOn8rLKhGzqxHKZqhnd6zucp3%C3%81MkrR3HB1Rs4ykdL%C3%815PMYmmf2iA%3D/>

### BACKGROUND

The Neighborhood Services Code Enforcement Unit's goal is to provide a clean and safe environment for all Berkeley residents, workers, and visitors. The CEU is responsible for the enforcement of administrative violations of the Berkeley Municipal Code and some provisions of California State codes related to building, zoning, and housing. The City Manager's Office oversees the CEU, which now consists of three full-time staff: one Code Enforcement Supervisor and two Code Enforcement Officer IIs. As of this writing, one of the two Code Enforcement Officer II positions is vacant and hiring is underway.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

### POSSIBLE FUTURE ACTION

The City Manager's Office will continue to work with the Code Enforcement Unit to address the recommendations. This includes exploring third-party services for outsourcing administrative functions of the CEU (such as citations), which would create efficiencies and free up staff time to focus on field inspections, follow up with property owners, etc.

### CONTACT PERSON

Jeff Conner, Neighborhood Services Code Enforcement Supervisor, 510-981-2492.

### Attachments:

1: Audit Findings, Recommendations, and Management Response Summary Table

| Audit Title: Code Enforcement Resources Significantly Constrained and Improvements Needed in Case Management and Oversight |                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |            |             |                   |                     |                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|----------------------------------------------------------------------------------------------------------------------------|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-------------|-------------------|---------------------|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Finding                                                                                                                    | Recommendation Number | Recommendation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Issue Date | Closed Date | Department        | Last Period: Status | This Period: Status | This Period: Update                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Code Enforcement Unit resources are insufficient to meet demand.                                                           | 1.1                   | <p>Implement a resource analysis process by which proposed legislation is discussed with City management to evaluate the impact on current City resources and determine the feasibility of making the intended impact. The analysis should take place before the policy is presented to Council for adoption and include considerations of:</p> <ul style="list-style-type: none"> <li>• Staff time and other City resource needs, including the fiscal impact of those resource needs</li> <li>• Opportunity cost, i.e., consideration of other activities that will be deprioritized in order to meet new demands</li> <li>• Feasibility impact to determine how best to rollout out new legislation</li> </ul> | 6/26/2018  | 6/30/2022   | Mayor and Council | Partly Implemented  | Implemented         | Council continues to utilize the standing policy committees to consider the impact of select proposed legislation on City resources; City staff regularly attend the committee meetings and advise Council on the city staff time and opportunity cost implications of proposed policies. To the extent this process has now become a regular feature of Council policy development, we consider the recommendation fully implemented at this time. |
| Code Enforcement Unit resources are insufficient to meet demand.                                                           | 1.2                   | Require that the Agenda Committee ensure ordinances have undergone a resource analysis as described in Recommendation 1.1 when necessary and, if not, are returned to the appropriate City Council member for further assessment before being passed into local law.                                                                                                                                                                                                                                                                                                                                                                                                                                              | 6/26/2018  | 1/29/2019   | Mayor and Council | Implemented         |                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Code Enforcement Unit resources are insufficient to meet demand.                                                           | 1.3                   | Conduct a staffing analysis to determine the appropriate staffing level needed for the Code Enforcement Unit to effectively enforce City codes. In conducting the analysis, include an assessment of the workload impact created by the codes for which the CEU is solely responsible as well as those created by the codes for which CEU shares responsibility with other enforcement units.                                                                                                                                                                                                                                                                                                                     | 6/26/2018  |             | City Manager      | Not Started         | Not Started         | Due to continued significant staff turnover and the reprioritization of city resources and efforts during the COVID-19 pandemic, this work has not been completed. Ongoing vacancies in the unit have prevented commencement of this work. Staff plan to revisit the recommendation after vacant existing positions are backfilled.                                                                                                                 |

|                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |     |                  |              |              |                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                        |
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| Code Enforcement Unit resources are insufficient to meet demand. | <p>Use the staffing analysis performed in response to Recommendation 1.3 to:</p> <ul style="list-style-type: none"> <li>Quantify the full burden cost of additional staff</li> <li>Determine if sufficient budgetary funding is available for additional staff</li> <li>Request additional staffing from Council during the annual appropriations process</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 1.4 | 6/26/2018        | City Manager | Not Started  | Partly Implemented | <p>the analysis recommended in Recommendation 1.3, staff recognize the shortcomings of current staffing levels and the effects that this has had on NSCEU response times. NSCEU's goal for this metric is 10-day average to acquire cases created. As of June 2022, our YTD average days to acquire cases is 29 days. These averages are without being fully staffed (two Code Officers in the Unit) in May and June; prior to these last two months when we were fully staffed with two Code Officers, the average was as low as 15-day average. With this in mind, the City Manager has recommended to the Council, for inclusion in the FY23-24 Biennial Budget, one additional FTE Code Enforcement Officer I position, which will help the supervisor and existing Enforcement Officers reduce response times, increase their presence in the community, and implement Council policy</p> |                                                                                                                                                                                                                                                                                                                        |
| Code Enforcement Unit resources are insufficient to meet demand. | <p>If budgetary constraints prevent additional staffing or if Council does not approve the budget needed to fund additional staffing, report to Council the restrictions placed on the Code Enforcement Unit's ability to effectively enforce City codes. Include information explaining the hindrance this will cause for any new ordinances the City Council may want to pass in the future. Provide this information regularly, for example, annually as part of the budget process, to keep Council informed of the CEU's capacity restrictions. See also Recommendation 1.7.</p>                                                                                                                                                                                                                                                                                            | 1.5 | 6/26/2018        | 6/30/2022    | City Manager | Partly Implemented | Implemented                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <p>We are marking this as implemented based on the 6/27/2022 status update and based on the inclusion of 1 Code Enforcement Officer in the 2023/24 budget book (pg. 399) to 'reduce response time to complaints.'</p>                                                                                                  |
| Code Enforcement Unit resources are insufficient to meet demand. | <p>Assess Berkeley municipal codes to identify the codes for which the CEU is solely responsible and those for which the CEU has a shared role with other work units. Use the results of the assessment to:</p> <ul style="list-style-type: none"> <li>Create process workflows showing shared work unit responsibilities</li> <li>Create written guidance describing work unit responsibilities</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 1.6 | 6/26/2018        | 1/1/2018     | City Manager | Implemented        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                        |
| Code Enforcement Unit resources are insufficient to meet demand. | <p>Implement code enforcement software that:</p> <ul style="list-style-type: none"> <li>Identifies case assignment to CEU officers and other work units</li> <li>Prioritizes cases, in particular high-risk cases posing health and safety risks</li> <li>Captures pertinent case dates, e.g., opened, notice of violation, citation issuance, and closed</li> <li>Tracks enforcement actions taken within the CEU and other work units</li> <li>Quantifies citations issued and collected</li> <li>Allows for readily identifying repeat offenders</li> <li>Includes performance measurement tools, e.g., turnaround times within defined specifications (see Recommendation 2.2)</li> <li>Allows for uploading information from mobile technologies (see Recommendation 1.8)</li> <li>Includes reporting tool to showcase workload trends and capacity restrictions</li> </ul> | 1.7 | (i.e., backlogs) | 6/26/2018    | City Manager | Partly Implemented | Partly Implemented                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <p>The vendor selection process for Planning Department software, originally initiated in July 2019, was put on pause by the COVID-19 pandemic's significant impacts on City finances and priorities. If and as that process restarts, NSCEU staff will continue to be included in the software selection process.</p> |



|                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |           |              |                    |                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| Code Enforcement Unit resources are insufficient to meet demand.                                     | <p>Implement mobile computers and printers to allow Code Enforcement Officers to complete more work in the field, thus improving their time spent in the community and reducing time in the office. Mobile computers should have the capacity to interface with the code enforcement case management software</p> <p>1.8 implemented in response to Recommendation 1.7.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 6/26/2018 | City Manager | Partly Implemented |                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Process modifications and increased oversight needed to ensure equity, efficiency, and effectiveness | <p>Develop and issue written procedures for code enforcement operations that:</p> <ul style="list-style-type: none"> <li>• Reflect current practices and management expectations.</li> <li>• Describe the tiered prioritization system giving attention to cases based on risk levels of high, moderate, and standard. Require adherence to a uniform technology policy, which includes:                             <ul style="list-style-type: none"> <li>o Assigning unique numbers to cases.</li> <li>o Recording all pertinent case data timely, e.g., within two business days of receipt.</li> <li>o Using a single, centralized system to record, manage, and monitor case information.</li> <li>o Using case file management standards so that pertinent data are captured uniformly.</li> </ul> </li> <li>• Inform staff that preferential treatment should not be given to complaints made or referred by City Council members, Council staff, and City management. Those complaints should be prioritized based on established objectives and channeled through the appropriate supervisor.</li> <li>• Describe processes for issuing citations in a consistent and equitable manner.</li> <li>• Include beat assignments once feasible to do so, i.e., after the CEU addresses the backlog and receives adequate software tools.</li> </ul> <p>2.1</p> | 6/26/2018 | 6/26/2019    | City Manager       | Implemented        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Process modifications and increased oversight needed to ensure equity, efficiency, and effectiveness | <p>Implement performance metrics and goals to:</p> <ul style="list-style-type: none"> <li>• Assess the effectiveness of code enforcement operations and goal achievement</li> <li>• Identify constraints preventing goal attainability.</li> <li>• Submit regular reports, e.g., biannually, to City management on performance.</li> </ul> <p>Include a metric to provide at least some proactive code enforcement activities. Develop this metric after implementing the process and system improvement recommendations made in this report.</p> <p>2.2</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 6/26/2018 | City Manager | Partly Implemented | Partly Implemented | <p>NSCEU has resumed use of performance measures. The most recent annual performance measures were reported to the Council in the FY23-24 Budget Book, and staff used the performance measures (specifically, the discrepancy between the Unit's goal response time of 10 days to acquire new cases, against the CY21 measure of 53 days), in part to justify the City Manager's recommendation that the Council include one additional FTE Code Enforcement Officer I position in the Unit as part of the FY23-24 Biennial Budget adoption.</p> |
| Process modifications and increased oversight needed to ensure equity, efficiency, and effectiveness | <p>Assess the feasibility of using complaint thresholds and self certifying techniques for standard priority violations. For example, wait to receive at least two complaints about a standard level violation before performing an investigation, and allow a code violator to self-report on a standard level violation to remove the need for reinspection. If feasible, implement the techniques to give code enforcement officers more time on field inspections of high risk cases.</p> <p>2.3</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 6/26/2018 | 6/26/2018    | City Manager       | Implemented        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

|                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                 |                                                |                  |                  |                     |                    |
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| <p>Process modifications and increased oversight needed to ensure equity, efficiency, and effectiveness</p> | <p>Develop procedures for monitoring staffs' work and addressing weaknesses that may prevent goal achievement, such as conflicts of interest. For example:</p> <ul style="list-style-type: none"> <li>• Review Form 700s to identify property owned by CEU personnel before assigning cases to officers.</li> <li>• Randomly select case records to look for:             <ul style="list-style-type: none"> <li>o Indicators that case action did not progress as required or expected suggesting favoritism or kickbacks.</li> <li>o Properties with closed cases that continue to receive complaints for the same issue. This could indicate a repeat offender as well as a failure to take appropriate actions against a code violator.</li> </ul> </li> </ul> | <p>The Assistant to the City Manager for Neighborhood Services should perform this oversight of the Code Enforcement Unit Supervisor, and the Code Enforcement Supervisor should perform this oversight of Code Enforcement</p> | <p>2.4 Officers and the Assistant Planner.</p> | <p>6/26/2018</p> | <p>6/26/2018</p> | <p>City Manager</p> | <p>Implemented</p> |
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Office of the City Manager

INFORMATION CALENDAR  
September 20, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jennifer Louis, Interim Chief of Police

Subject: Update on the Implementation of Fair and Impartial Policing Task Force Recommendations

INTRODUCTION

On February 23<sup>rd</sup>, 2021 during a City Council Special Meeting, Council referred the recommendations from the Mayor's Fair and Impartial Policing (FIP) Task Force to the Berkeley Police Department for implementation. Quarterly updates were requested by Council and the last quarterly update was provided on June 14, 2022.

CURRENT SITUATION AND ITS EFFECTS

This report provides a quarterly update on the implementation of the Task Force recommendations. Implementation of the FIP Task Force recommendations remains a priority of the Berkeley Police Department. The Professional Standards Division is responsible for managing the project of implementing the recommendations.

Implementation of the recommendations has necessitated the amendment of departmental policies and establishment of new protocols. As part of the process, members of BPD have met on several occasions with Council and Mayor representatives, Police Review Commission and now Police Accountability Board members, FIP Task Force members, and the Police Accountability Board Subcommittee on FIP recommendation implementation. During these meetings, the substance and progress on the implementation of the recommendations were discussed and BPD has been provided feedback and background on the various intentions with each respective recommendation.

The following outlines the specific Task Force recommendations and the respective progress:

### **Implement a New Evidence-Based Traffic Enforcement Model**

#### **Task Force Recommendations:**

- **Focusing the basis for traffic stops on safety**

#### **Implementation:**

Officers have been provided data regarding primary collision factors and have been directed to enforce those violations wherever they are observed. In addition to focusing on enforcement of primary collision factor violations, sworn personnel are also expected to make investigative stops related to criminal intelligence and information brought forth by the community or our investigations. BPD has implemented and conducted departmental training on a three-prong approach that focuses on primary collision factors, community member reports of dangerous driving or safety issues and community caretaking. Community caretaking considers safety violations that aren't always noted as the primary collision factor but can be a significant contributing factor in serious collisions.

#### **Status:**

Recommendation implementation complete and evaluation and transparency efforts are ongoing. Training for all sworn personnel has concluded. The Traffic Division and the National Highway Traffic Safety Administration continuously collect and provide the Berkeley Police Department with data on primary collision factors and statistics on violations that impact public safety. This data provides officers with current information on what to educate the community on and what violations to focus enforcement towards. The department will continue to review and evaluate data on traffic offenses that affect community safety. This will drive the primary focus on ongoing enforcement and education efforts. Information related to this recommendation will also be shared in the near future with the public via BPD's Transparency Hub. Additionally, the focus of traffic enforcement will be formalized as a departmental directive via relevant policy updates.

#### **Task Force Recommendation:**

- **Use a clear, evidence-based definition for stops of criminal suspects**

#### **Implementation:**

The Police Department is establishing a precision based policing model that considers data and public safety. This model aims to reduce the number of stops that studies have shown had minimal impact on public safety.

Data driven-tools that enable close to real-time dashboard tracking of calls for service demands have been provided to the Community Services Bureau and Patrol Watch Commanders to help guide officers in their enforcement focus.

During this reporting period, the Department implemented a system that employs a feedback loop with information flowing both ways. The system provides the tracking of calls for service with the goal of call analysis for patrol deployment strategies and also allows officers in the field to communicate their observations to the Community Service Bureau. This feedback loop provides information back to the Community Services Bureau and creates an accountability measure so strategies can be evaluated.

**Status:**

Recommendation implementation complete and ongoing efforts include the development of data-driven tools to enhance a precision-based policing model and approach to enforcement stops. The goal is to have data-driven approaches to violence prevention programs and real time crime and call analysis for patrol deployment strategies. Ensuring that we implement approaches that identify and work to reduce racial disparities will be a cornerstone to our evidence-based approaches. The Berkeley Police Department will continue to only use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria. The Transparency Hub streamlines the collection and dissemination of police data. This system allows for exploration of different evidence-based approaches.

**Task Force Recommendation:**

- **Reaffirming and clarifying that the Berkeley Police Department will only use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria.**

**Implementation:**

Penal code 13519.4 is existing California law that prohibits racial profiling. BPD Policy 401 (Fair and Impartial Policing) also prohibits racial profiling. Section 401.2 explicitly states, "Officers shall not consider race, ethnicity, national origin, gender, age, religion, sexual orientation/identity or socio-economic status in establishing either reasonable suspicion or probable cause, or when carrying out other law enforcement activities..."

The above policies were reviewed in light of the task force recommendations and found to affirm and clarify police officer responsibilities in stops.

**Status:**

Recommendation implementation complete and ongoing efforts include: BPD will continue to conduct ongoing training in topics such as implicit bias, racial profiling, and procedural justice concepts. BPD will hold all members to Departmental Policies, especially those strictly and clearly prohibiting racial profiling. Further, stops will be information and evidence based. The BPD Data Analyst Team will continue to develop tools to focus internal efforts using

evidence and information and share data publicly about enforcement and related results.

### **Implement Procedural Justice Reforms**

#### **Task Force Recommendation:**

- **Refer amendments to existing BPD policy and the creation of an Early Intervention System (EIS) related to traffic, bike and pedestrian stops.**

#### **Implementation:**

The current Early Warning System was originally issued in 2004 and revised in 2008. The system mandates the monitoring of officer's behavior and performance to include, but not limited to attendance, complaints, use of force incidents, and other factors. The Early Warning System serves as a program that identifies and address behavior or training issues before they become a disciplinary matter. Amendments have been made to the Department's Early Warning System policy (Policy 1041) to include the monitoring of stop data for individual officers.

#### **Status:**

Implementation complete via issuance of updated policy reflecting recommendations. Pursuant to the FIP recommendation and after meeting with the FIP task Force stakeholders, language was added to the current Early Warning System policy to include data around traffic, bicycle, and pedestrian stops as a category that supervisors will consider for early intervention if merited. Ongoing efforts include implementing new systems for the monitoring of officer's individual stop data by their respective supervisors. The Audits and Inspections Sergeant will also conduct separate and random quarterly audits of officer's stop data, complaints, uses of force incidents and other factors and report the findings to the Chief of Police. The first of these audits is slated to occur this Fall and the results will be provided to the Police Accountability Board.

#### **Task Force Recommendation:**

- **Adopt a policy to require written consent for all vehicle and residence searches and update the consent search form in alignment with best practice and community feedback.**

#### **Implementation:**

A revised written consent form has been created and amendments have been made to our existing search and seizure policy to require written consent for all consent searches. The Department implemented a redesigned Consent Search Form incorporating the collaborative feedback from multiple discussions with the Police Accountability Board.

**Status:**

Implementation completed via issuance of updated form reflecting recommendations.

**Task Force Recommendation:**

- **Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole.**

**Implementation:**

On February 10, 2021, updates were completed on Policy 311. Sections 311.5 and 311.6 were modified to reflect the above limitations to warrantless searches. The above policies were reviewed and modified in line with the task force recommendations and departmental goals to build trust and collaborate with the community to address crime and safety concerns.

**Status:**

Recommendation implemented. The update to Policy 311 limits the searches conducted on individuals on supervised release status. On April 18, 2022, the Public Safety Committee made a recommendation for a policy change to this recommendation. On July 26<sup>th</sup>, 2022 the City Council approved Policy 311 and on August 2<sup>nd</sup>, 2022 the policy was updated and released. The Department has trained on these updates and will continue to assess and review the impacts of these searches in consideration and support of the tenets of FIP.

**Task Force Recommendation:**

- **Address Profiling by Proxy (PAB Policy Development, Dispatcher Training).**

**Implementation:**

The Communications Center Operation Manual has been amended to address handling cases involving profiling by proxy. All dispatchers have reviewed the amended manual and are instructed to be cognizant and screen for profiling by proxy calls.

**Status:**

Recommendation implemented. Berkeley Police Department will continue to educate and train dispatchers on how to identify and address biased based reporting. Officers and supervisors are also expected to screen profiling by proxy calls. The Department as a whole will continue to seek out and train on anti-bias, implicit bias, and profiling by proxy topics to strengthen our ability to identify and address biased based reporting.

**Task Force Recommendation:**

- **Fire racist police officers identified through social media and other media screens.**

**Implementation:**

The following existing policies dictate procedures for investigating employees in this area; these policies adhere to due process and Government Section 3300:

*Policy 1029 (Employee Speech, Expression and Social Networking) provides accountability to employee personal social media posts. Section 1029.4(b) states “Speech or expression that, while not made pursuant to an official duty, is significantly link to, or related to, the Berkeley Police Department and tends to compromise or damage the mission, function, or reputation of professionalism of the Berkeley police Department or its employee.*

*PR 232 (Controversial Discussion), PR 235 (Acts –Statements-By employees), PR 238 (Organizational Membership), and PR 250 (enforcement of Law, Impartiality) are also policies that provide accountability for any racist behaviors.*

The above policies were reviewed in light of the task force recommendations and found to provide necessary authority to investigate allegations of racism. Departmental policy clearly identifies discrimination based upon a person’s race as misconduct, and requires reporting and prompt investigating of any allegation of racism. Any employee who becomes aware of or observes any discrimination on the basis of a protected class is required to notify a supervisor by the end of their shift or within 24 hours if they are off duty.

**Status:**

Recommendation implemented, however the Berkeley Police Department is committed to continuing to explore additional lawful methods to identify and address potentially racist behaviors or actions by our members. If at any time the police department becomes aware of any issues related to these concerns, the matter would be thoroughly investigated and employees will be held accountable.

**Task Force Recommendation:**

- **Require regular analysis of BPD stop, search, and use of force data;**

**Implementation:**

The Open Data Portal (ODP) is a public facing website that gives the public access to police data and is accessible through the City’s website. This allows for open and independent analysis and review to foster police accountability and transparency.



The Department will not only collect and report on stop, search and use of force data, but will regularly analyze the data via the Data Analyst Team. That analysis will at a minimum help direct policy, training, and resource allocation.

**Status:**

Implementation of recommendation complete and the Department will continue ongoing evaluation and data sharing. BPD is committed to transparency and is continuously exploring different ways to provide the public with access to more police data. The Data and Policy Analysis Team developed a Transparency Hub that will facilitate independent review and analysis of police data. This hub was launched after several community and internal stakeholder groups had an opportunity to view and collaborate on design. The Transparency Hub hosts BPD's Open Data Portal along with tools to help the public visualize and analyze the department's data, including interactive dashboards summarizing stop and search data, calls for service, and use of force data. The Transparency Hub updates in near-real time and gives the public access to datasets reaching further back in time than had been available. In the next phase of implementation there will be a 'Crime Mapper' page on the Transparency Hub that will include additional data on cases.

**Task Force Recommendations:**

- **Make resources on police-civilian encounters more publicly available such as through RAHEEM.org;**
- **For any individual detained, BPD officers shall provide a business card with information on the commendation and complaint process with the Police Accountability Board and the Berkeley Police Department, Internal Affairs Bureau.**

**Implementation:**

BPD Officers provide business cards to all detained individuals with information, a QR code and links to the BPD website which provide community members with information on making a commendation or complaint about an interaction with BPD. In addition to the information on how to make a complaint, a link is provided to the ACLU webpage containing information on police-civilian encounters.

**Status:**

Recommendation implemented. All business cards will continue to be printed with the above information. These resources ensure police accountability as well as provide ways the community can comment on the service BPD has provided.

**Refer the following recommendations summarized below to the Reimagine Public Safety process****Task Force Recommendations:**

- **Create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized with the Police Review Commission or its successor and includes a basic report card and quarterly neighborhood check-ins; Conduct a baseline community survey**

**Implementation:**

BPD actively supported and participated in the work of the Reimagine Public Safety Task Force by providing data and information, answering questions, providing hands-on experience and discussing opportunities, impacts and effects of recommendations. Several community surveys were conducted by consultants as part of the overall Reimagine Public Safety process.

**Status:**

Initial implementation complete. To support feedback systems, the Berkeley Police Department will be seeking ongoing community input and feedback around reform efforts via the Transparency Hub.

**Acknowledge and reaffirm the following recommendations summarized below that are already underway****Task Force Recommendation:**

- **BPD released stop, arrest, calls for service and use of force data from 2012 to present to the Working Group;**

**Implementation:**

The police department released the requested historical data in December of 2020. BPD stop, arrest, and calls for service data are regularly updated in the Open Data Portal and will be updated in near real time on the Transparency Hub.

**Status:**

Recommendation implemented.

**Task Force Recommendation:**

- **Fund and implement a specialized care unit for mental health crises;**

**Implementation:**

The City has contracted with a consulting firm, RDA Consulting, to conduct a feasibility study for a specialized care unit. The study has concluded; refer to below supporting materials for link to the final report from RDA Consulting.

**Status:**

Implementation in progress and being managed by the Health, Housing and Community Services (HHCS) Department. While the work to create a Specialized Care Unit continues, three community-based contracts managed by HHCS have been initiated to provide interim services.

**Task Force Recommendation:**

- **Conduct a Capacity Study of police calls and responses and use of officer time outside of case work.**

**Implementation:**

The City's Auditor's report was released which analyzed Computer Aided Dispatch data. Recommendations from this analysis were provided to the Police Department and findings were referred to the Reimagine Public Safety Task Force.

**Status:**

Implementation in progress. An assessment of overall staffing levels as well as patrol beat specific analysis has been referred to the budget process via the Council's direction on Reimagining Public Safety. Internally the Data Analysts Team has been directed to continue their work to refine the way and type of data that is collected, and analyze call response time to support the likely upcoming consultant work.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

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

**POSSIBLE FUTURE ACTION**

The Police Department will continue to work toward the full implementation of the Task Force recommendations.

**FISCAL IMPACTS OF POSSIBLE FUTURE ACTION**

Staff time and additional training time to be determined at a later date.

**CONTACT PERSON**

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Supporting Materials:

1: Berkeley Police Policy and Training Materials

<https://berkeleyca.gov/safety-health/police/policy-training-materials>

2: California Legislative Information

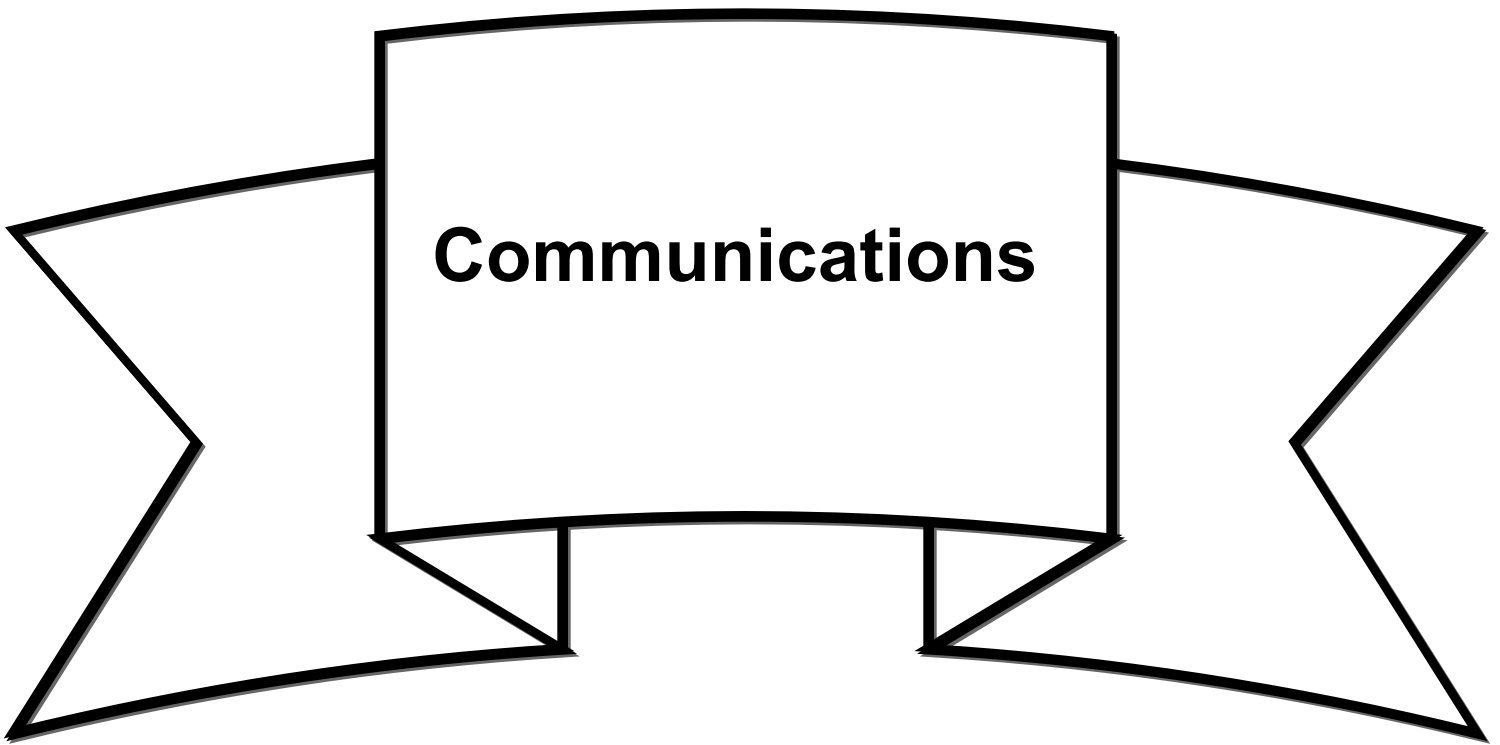
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=13519.4.&nodeTreePath=7.5.1.2&lawCode=PEN](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=13519.4.&nodeTreePath=7.5.1.2&lawCode=PEN)

3. Reimagine Task Force and National Institute for Criminal Justice Reform (NICJR) Survey

<https://berkeley-rps.org/wp-content/uploads/2021/10/Berkeley-Community-Engagement-Report-v7.pdf>

4. RDA Consulting Final Report on Specialize Care Unit

[https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_Commissions/Berkeley-MH-SCU\\_Final-Recommendations\\_FINAL.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_Commissions/Berkeley-MH-SCU_Final-Recommendations_FINAL.pdf)



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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